EXHIBIT 85

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February 24, 2012

VIA ELECTRONIC MAIL

Mr. Ben Patterson
Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2482

RE: *Vietnam Veterans of America, et al. v. CIA, et al.*, No. CV 09 0037-CW (N.D. Cal.)

Dear Mr. Patterson:

I am writing in response to your February 21, 2012 letter regarding last week's meet-and-confer calls. At the outset of your letter, you assert that "there are a number of inaccuracies in these letters, but I will only address a few issues. I refer you to my February 16, 2012 letter for an accurate summary of the calls." I am not sure what you mean by this statement. In your February 16 letter, you invited Defendants to "let you know as soon as possible" if Defendants "disagree with any of the above characterizations from our meet-and-confer calls." My letter and Josh Gardner's letter were written in response to your February 16 letter in an attempt to correct your characterizations of the meet-and-confer calls. If you believe there are inaccuracies in our letters from February 17, please describe them.

ANNUAL REPORTS

You suggest that VA agreed to broaden its search for responsive documents. This, however, is not the case. As Plaintiffs know, the Veterans Health Administration already searched for and produced all non-privileged, responsive documents related to (among other terms) the 60 plus substances Plaintiffs identified in their March 21, 2011 letter. VHA is willing to review the list of studies in the 202 pages attached to your letter and produce those studies to the extent that it has not already done so and, given the age of the studies, they are reasonably available. As such, I am not sure what you are requesting when you ask that VA "confirm that *all documents relating* to those studies-not just the studies themselves – had been produced." Are Plaintiffs now proposing that VHA conduct an additional search using the names of studies that are between 40 and 60 years old?

CLAIMS FILES

Next, you propose the following "compromise" regarding VA's production of additional Chem-Bio claims files:

> *DVA should produce all claims files for veterans whose names appear in the DoD Chem-Bio database, who were in service between January 1, 1938 and December 31, 1975, and who allege an exposure to a chemical or biological substance other than just exposure to Agent Orange in Vietnam, as the basis of a claim for disability compensation, or whose survivors allege such exposure as the basis of a claim for dependency and indemnity compensation.*

We disagree with this proposal. Your definition includes exposures to any chemical or biological substance in a wide variety of contexts unrelated to any testing program at issue in this case, including exposures related to military occupational duties, combat hazards, or other environmental exposures. Even with respect to Agent Orange, your "compromise" includes claims based on exposure related to handling or storage of, or proximity to, herbicides outside Vietnam, but unrelated to testing. Accordingly, VA suggests the following:

> *VA will produce all claims files for veterans whose names and dates of birth appear in the DoD Chem-Bio database, who were in service between January 1, 1938 and December 31, 1976, and who allege an exposure to a chemical or biological substance during a testing program (including those veterans who allege such exposure but also allege other exposures, such as exposure to Agent Orange in Vietnam) as the basis of a claim for disability compensation, or whose survivors allege such exposure as the basis of a claim for dependency and indemnity compensation.*

To the extent that Plaintiffs find the term "testing program" ambiguous, VA would agree that for this purpose of this proposal, "testing program" refers to a program in which a person was exposed to a chemical or biological substance for the purpose of studying or observing the effects of such exposure.

MAGNETIC TAPES

As a follow-on to last week's meet and confer regarding the magnetic tapes, I understand that DLA has both secured the funds for the part and ordered the part. They expect to receive the part by close of business on Tuesday, February 28, and they estimate that it will take approximately one week from its receipt to determine whether the part will allow them to access and review the information on the tapes.

Given this new information, it seems prudent to return to the discussion of whether or not VA will produce claims files for those individuals whose names appear on the magnetic tapes, but whose claims files have not yet been produced by VA once the content of the magnetic tapes, to the extent possible, has been reviewed and undergone proper declassification review.

PRIVILEGE LOG

You request clarification regarding VA's characterization of documents as "duplicates." As I explained in my February 17 letter, VA has defined "duplicate" very narrowly. As I previously explained, VA considers a document to be a duplicate of a previous document on the prior privilege log if the documents are identical or substantively identical. VA did not agree, as you seem to suggest, that it would identify the documents that are "exactly identical" as opposed to "substantively identical."

VA will remove its "duplicate" designation for DVA0078 003361; DVA078 004221; DVA0078 004663 – 64; DVA0078 002366 - 68; and DVA0078 002700 – 03. The correct duplicate for DVA0078 002785 – 88 is 1026-1029.

Finally, VA has now clarified the descriptions for entries 167-169 and 170-172, as reflected in the attached privilege log. I trust that these changes, along with the fact that the withheld portion of these documents is identical to documents previously submitted for *in camera* review (and which the Court declined to order be produced), removes this issue from Plaintiffs' draft joint statement.

Best regards,

Lily Farel

Lily Farel
Trial Attorney
Federal Programs Branch
United States Department of Justice

Enclosure