

1 GORDON P. ERSPAMER (CA SBN 83364)
Gerspamer@mofo.com
2 EUGENE ILLOVSKY (CA SBN 117892)
Eillovsky@mofo.com
3 STACEY M. SPRENKEL (CA SBN 241689)
SSprenkel@mofo.com
4 MORRISON & FOERSTER LLP
425 Market Street
5 San Francisco, California 94105-2482
Telephone: 415.268.7000
6 Facsimile: 415.268.7522

7 Attorneys for Plaintiffs
Vietnam Veterans of America; Swords to
8 Plowshares; Veterans Rights Organization;
Bruce Price; Franklin D. Rochelle; Larry
9 Meirow; Eric P. Muth; David C. Dufrane;
Wray C. Forrest; Tim Michael Josephs; and
10 William Blazinski

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

15 VIETNAM VETERANS OF AMERICA *et al.*,
16 Plaintiffs,
17 v.
18 CENTRAL INTELLIGENCE AGENCY *et al.*,
19 Defendants.

Case No. CV 09-0037-CW

**DECLARATION OF BERNARD
EDELMAN ON BEHALF OF
VIETNAM VETERANS OF AMERICA
IN SUPPORT OF PLAINTIFFS'
REPLY IN SUPPORT OF MOTION
FOR CLASS CERTIFICATION**

**[AMENDED VERSION PURSUANT
TO MARCH 29, 2012 ORDER]**

Hearing Date: April 5, 2012
Time: 2:00 p.m.
Courtroom: 2, 4th Floor
Judge: Hon. Claudia Wilken

Complaint filed January 7, 2009

PUBLIC REDACTED VERSION

1 I, Bernard Edelman, declare as follows:

2 1. I am the Deputy Director for Policy and Government Affairs for Vietnam Veterans
3 of America, where I have been employed for nine years. I am authorized to make this
4 Declaration for and on behalf of Plaintiff Vietnam Veterans of America (“VVA”), and I make this
5 Declaration for that reason. I submit this Declaration in support of Plaintiffs’ Reply in Support of
6 Motion for Class Certification. I have personal knowledge of the facts recited in this Declaration,
7 and if called upon, could testify competently as to them.

8 2. **VVA Background Information**: The VVA, founded in 1978, is a national
9 non-profit organization primarily dedicated to the interests of Vietnam-era veterans and their
10 families. The VVA’s founding principle is “Never again will one generation of veterans abandon
11 another.” VVA has over 65,000 members and 650 local chapters in 48 states. Although our
12 mission is primarily dedicated to Vietnam-era veterans, we also conduct activities to help
13 veterans generally or to assist with other special issues that are not confined to Vietnam veterans.
14 VVA’s principal goals are to promote veterans’ access to quality health care, to insure that
15 veterans receive mandated compensation for diseases or conditions that they have incurred during
16 or as a result of military service, to support the next generation of America’s veterans, including
17 Operation Iraqi Freedom and Operation Enduring Freedom veterans, and to hold government
18 agencies accountable for their legal, ethical, and moral obligations to its veterans. VVA also
19 certifies veteran service officers who can assist individuals in filing claims for disability
20 compensation and other benefits with the Department of Veterans’ Affairs (“DVA”). These
21 veteran services officers provide assistance to individuals regardless of whether they are
22 Vietnam-era veterans.

23 3. The purposes of the VVA, its State Councils, and its Chapters are:

24 a. To help foster, encourage, and promote the improvement of the condition
25 of the Vietnam-era veteran.

26 b. To promote physical and cultural improvement, growth and development,
27 self-respect, self-confidence, and usefulness of Vietnam-era veterans and others.

1 c. To eliminate discrimination suffered by Vietnam-era veterans and to
2 develop channels of communication which will assist Vietnam-era veterans to maximize
3 self-realization and enrichment of their lives and enhance life-fulfillment.

4 d. To study, on a non-partisan basis, proposed legislation, rules, or regulations
5 introduced in any Federal, State, or local legislative or administrative body which may affect the
6 social, economic, educational, or physical welfare of the Vietnam-era veteran or others; and to
7 develop public policy proposals designed to improve the quality of life of the Vietnam-era
8 veteran and others, especially in the areas of employment, education, training, and health.

9 e. To conduct and publish research, on a non-partisan basis, pertaining to the
10 relationship between Vietnam-era veterans and American society, the Vietnam War experience,
11 the role of the United States in securing peaceful co-existence for the world community, and other
12 matters which affect the social, economic, educational, or physical welfare of the Vietnam-era
13 veteran or others.

14 4. **VVA Members:**

15 a. VVA does not maintain records in the ordinary course of business which
16 show the identity of which of its members participated in the chemical and biological testing
17 programs. Therefore, the identity of all the participant members is not known to VVA. However,
18 we have conducted outreach from time to time which has led us to find out that a number of VVA
19 members participated in the testing of chemical substances such as mustard gas and many others,
20 and biological substances. And in other cases, we have received inquiries from our members who
21 are seeking help in trying to figure out or resolve issues relating to their participation in chemical
22 and biological weapons tests. In many of these situations, I have been the person at VVA
23 assigned to follow-up with these veterans. I have personally been in touch with a substantial
24 number of test participants over the years, many of whom were VVA members. VVA has
25 assisted some of these veterans in seeking disability compensation, health care, and other services
26 such as referrals. It is difficult to reconstruct the exact number of member participants that we
27 have had contact with or assisted through the years, but I would estimate that there are at least
28 twenty members that fall within this group. In addition, other members may have been involved,

1 but VVA does not possess information concerning members who may still view the secrecy oath
2 as a barrier to communicating even with VVA. Even so, VVA does not initially ask if someone is
3 a member of VVA before providing information and will provide assistance or information to
4 veterans even if they are not members.

5 b. As a result of these activities, I know that among VVA's members there
6 are former members of our armed services who participated in Defendants' programs of human
7 experimentation into drugs, chemicals, biological substances, and other substances, and who have
8 suffered or continue to suffer adverse health effects from their participation in such experiments,
9 who desire to or have sought to obtain health care, and/or have sought to obtain service-connected
10 disability compensation from DVA. From sources available to me, I compiled a list of fourteen
11 veterans who VVA learned had participated in the chemical and biological weapons test program,
12 which I understand was provided to Defendants' counsel. *See* Sprengel Declaration at Exhibit 73.
13 Since then, I have been in contact with approximately six additional members who reported to me
14 that they participated in the chemical and biological weapons test program.

15 c. Many members of the VVA are elderly, suffer from disabilities, and lack
16 the ability to navigate the complex regulations and regulatory procedures.

17 d. Based on my review of VVA records, REDACTED joined the VVA on
18 March 8, 2005.

19 5. **Chemical and Biological Tests:**

20 a. The VVA has had a special interest and focus on chemical and biological
21 testing and the use of Agent Orange since the organization was formed in 1978 and has been
22 involved in a variety of activities relating to legislation, services, and outreach. In particular,
23 VVA was actively involved in compensation and health care issues relating to participation in
24 Project 112/SHAD ("Shipboard Hazard and Defense"), a program to test chemical and biological
25 weapons in real world environments such as ships. As an example, the VVA created a task force
26 to locate units and personnel involved in SHAD testing and filed a lawsuit contending that
27 participants' rights were violated because they could not support claims for disability
28

1 compensation with information about their participation in the top-secret SHAD program. *See*
2 *Vietnam Veterans of America v. McNamara*, 201 Fed. Appx. 779 (D.C. Cir. 2006).

3 b. Although the chemical weapons program at Edgewood Arsenal spanned
4 several decades, we have found that many of the Edgewood or Fort Detrick participants were sent
5 to Vietnam, either before or after completing their assignments at Edgewood or Detrick. This is
6 not surprising, since the chemical and biological tests were active during the entire period of the
7 Vietnam war, 1961-75. And many other service members participated in field tests of chemical
8 and biological substances at military facilities located throughout the United States.

9 6. **Issues Relating to Class Members:** We at VVA have found that many
10 individuals who participated in the chemical and biological weapons tests, and the survivors of
11 those who have died, face obstacles in asserting their rights and in obtaining health care and
12 disability compensation. There are many reasons for this, but they include factors such as the
13 following:

14 a. Many of the test participants do not necessarily associate diseases or
15 conditions that they have with their participation in the biological or chemical weapons tests
16 because they lack basic information about the substances to which they were exposed, and
17 information concerning dose and the types of health effects associated with exposure or
18 participation.

19 b. The effects of physical and/or mental disease or conditions that interfere
20 with their ability to help themselves, including post-traumatic stress disorder (“PTSD”). In some
21 cases, privacy concerns prevent them from raising claims or bringing suit on their own behalf.

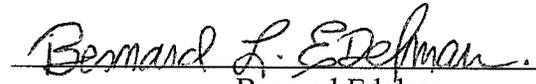
22 c. The shortage of available legal services to assist veterans.

23 d. The fact that the testing programs were top secret, and the continuing
24 impact of oaths of secrecy or instructions that the veterans received at the time of the testing
25 programs to never discuss or reveal their involvement.

26 e. Socio-economic factors that make it difficult for participants to understand
27 or negotiate the complex programs relating to health care and disability compensation.

28

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that this Declaration was executed in Silver Spring, Maryland,
3 on this 21st day of March, 2012.

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5 Bernard Edelman
6 on behalf of
7 Vietnam Veterans of America

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