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 13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 OAKLAND DIVISION

16 VIETNAM VETERANS OF AMERICA, et al.,  
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 Plaintiffs,  
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 v.  
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 20 CENTRAL INTELLIGENCE AGENCY, et al.,  
 21  
 Defendants.

Case No. CV 09-0037-CW (EDL)

**STATUS REPORT**

1           The Department of the Army hereby provides a status report concerning its recent  
2 compliance activities under the Court’s injunction. Specifically, the Army’s prior status report,  
3 filed April 16, 2014 [Dkt. 563], stated that, if the Army decided to enter into a contract with a  
4 third party to conduct literature-search and health-effects assessment work, the Army would  
5 notify the court of the contract and of the deadlines contained therein. *See id.* at 7. By this report  
6 and through the declarations filed herewith, the Army is providing this contract-related  
7 information.

8           As the Court is aware, the Army has interpreted the Court’ orders to require the Army to,  
9 in addition to activities and assessments the Government has already conducted, conduct  
10 literature searches pertaining to chemical and biological substances at issue in this case and to  
11 assess, based on this research, whether the Army has generated and/or obtained Newly Acquired  
12 Information that may bear on the health of test participants. *See Status Rpt.*, Dkt. 561 at 10. As  
13 set forth in the Army’s prior filings, engaging in such research activities requires a series of  
14 determinations and procedural steps. With respect to this work at its outset, many of these steps,  
15 including the preparation of a Performance Work Statement (PWS) for consideration by Army  
16 Medical Command (MEDCOM), were completed earlier this year. *See Dkt. 561 at 10–14; Dkt.*  
17 *563 at 5–7.*

18           Following the preparation of a PWS, and as the Army has previously explained, a critical  
19 aspect of this decisionmaking process — one which substantially informs the timing of the  
20 project — is the decision whether to execute the project “in-house” or whether to use a contracted  
21 third party. *Dkt. 561 at 9–11; Dkt. 563 at 6–7.* After considering Army’s options and resources,  
22 MEDCOM decided that the scope and nature of the project favored the use of a third-party  
23 contract for these services. After MEDCOM made this determination, Army contracting officers  
24 then engaged in the multi-step contracting process that governs such contracting activities. (This  
25 process and the timing considerations associated with it are described in detail in the declaration  
26 of LTC Marc Bustamante, previously filed on April 16, 2014. *See Dkt. 563-4.*) This process  
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1 culminated in the selection of Blue Earth Marketing Company as the contractor for this  
2 requirement. Kreps Decl. ¶¶ 3–4.

3 The attached declaration of Tonya Kreps describes the nature of the contract, the work to  
4 be performed, and the deadlines contained in that contract. In summary, the contract  
5 contemplates that the contractor will identify and evaluate potential information concerning  
6 substances tested during the testing programs and prepare a report for Army review. *Id.* ¶¶ 3–5.  
7 The period of performance is September 30, 2014 through September 29, 2015, with an option for  
8 a six-month extension. *Id.* ¶ 9. Additional information regarding the decision to engage a third-  
9 party contractor is provided in the attached declaration of Uldric Fiore.

10 Army oversight will be managed primarily by the Contracting Officer Representative Dr.  
11 Mark Dertzbaugh, a Biological Services Administrator with a Ph.D. in the fields of microbiology  
12 and immunology. Kreps Decl. ¶ 6. Dr. Dertzbaugh was assigned to this role in October 2014,  
13 after entry into the contract at the end of September 2014. Additional oversight will be  
14 undertaken by an internal panel of subject-matter experts convened pursuant to a Quality  
15 Assurance Surveillance Plan. *Id.* ¶¶ 7–8.

16  
17 November 4, 2014

Respectfully submitted,

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