

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIETNAM VETERANS OF AMERICA; SWORDS  
TO PLOWSHARES; VETERANS RIGHTS  
ORGANIZATION; BRUCE PRICE; FRANKLIN  
D. ROCHELLE; LARRY MEIROW; ERIC P.  
MUTH; DAVID C. DUFRANE; and WRAY C.  
FORREST, individually, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et al.,

Defendants.

\_\_\_\_\_ /

No. C 09-0037 CW

ORDER DENYING  
DEFENDANTS' MOTION  
FOR A PROTECTIVE  
ORDER STAYING  
FURTHER DISCOVERY  
AND FOR A  
MODIFICATION OF THE  
CASE MANAGEMENT  
ORDER  
(Docket No. 134)

Defendants Central Intelligence Agency, et al., move for a protective order and a modification of the Case Management Order. Plaintiffs Vietnam Veterans of America, et al., oppose the motion. The motion was taken under submission on the papers. Having considered the papers submitted by the parties, the Court DENIES Defendants' motion.

BACKGROUND

Because the Court's Order of January 19, 2010 describes the allegations of this case in sufficient detail, they will not be repeated in their entirety here. In sum, Plaintiffs charge Defendants with various claims arising from the United States' human experimentation programs, many of which were conducted at Edgewood Arsenal and Fort Detrick, both located in Maryland.

Under the Case Management Order, fact discovery will end on May 31, 2011, all case-dispositive motions will be heard on January

1 5, 2012 and a twenty-day trial will begin on March 26, 2012.

2 DISCUSSION

3 Defendants seek a protective order staying all discovery in  
4 this case until September 30, 2011. They also ask the Court to  
5 continue several case management dates by nine months, so that fact  
6 discovery would close on February 29, 2012 and trial would begin on  
7 December 27, 2012.

8 Generally, parties may conduct discovery on any "matter  
9 relevant to a claim or defense." Rivera v. NIBCO, Inc., 364 F.3d  
10 1057, 1063 (9th Cir. 2004) (citing Fed. R. Civ. P. 26(b)). Courts  
11 may issue a protective order that limits the scope of discovery  
12 upon a showing of "good cause." Fed. R. Civ. P. 26(c). "The  
13 burden is upon the party seeking the order to 'show good cause' by  
14 demonstrating harm or prejudice that will result from the  
15 discovery." Rivera, 364 F.3d at 1063.

16 Defendants contend that all discovery should be stayed pending  
17 an ongoing Department of Defense (DoD) investigation into the  
18 Army's chemical and biological testing programs. This  
19 investigation, which was initiated independent of this litigation,  
20 is being conducted by a private contractor, Battelle Memorial  
21 Institute. Under the DoD's Statement of Work (SOW), Battelle is  
22 required to, among other things, gather information to develop a  
23 "consolidated reference repository" that "identifies personnel that  
24 were potentially exposed to chemical and biological agents during  
25 either weapons testing or defensive equipment testing." Kilpatrick  
26 Decl., Ex. 1 at ¶ 2.4. This information includes "the test names,  
27 test objectives, chemical or biological agents involved, and number  
28 of service members and other personnel potentially affected by each

1 test from 1942 to the present timeframe." Id. ¶ 3.5. Battelle's  
2 final report is due September 28, 2011.

3 Defendants maintain that the information Battelle collects  
4 should be "largely sufficient" to resolve Plaintiffs' claims and  
5 that, if additional data are necessary, targeted discovery could  
6 occur after September, 2011. Mot. at 8. Defendants contend that  
7 allowing discovery to continue during the pendency of the  
8 investigation would be inefficient and waste resources. They also  
9 argue that additional discovery of the CIA is not currently  
10 warranted because the agency has a "limited nexus" to Plaintiffs'  
11 claims. Id. at 9.

12 Defendants do not justify the extraordinary step of staying  
13 all discovery for almost a year. It is not apparent that the DoD  
14 investigation addresses all the matters subject to discovery in  
15 this case. To the extent that the two overlap, Defendants do not  
16 suggest that they cannot satisfy their discovery obligations by  
17 providing Plaintiffs with information received from Battelle as the  
18 investigation progresses. Notably, Battelle provides Defendants  
19 with monthly reports on the "technical data" it has "extracted" and  
20 the "technical progress made." Kilpatrick Decl., Ex. 1 at ¶¶ 3.5.3  
21 and 4.1. Also, as the SOW makes clear, the DoD investigation  
22 largely entails the collection and compilation of documents and  
23 information. Defendants offer no reason why Rule 30(b)(6)  
24 witnesses should not be designated and depositions should not go  
25 forward.

26 So long as they demonstrate good cause, Defendants may seek  
27 tailored protective orders that limit discovery. However, they do  
28 not establish that all discovery must come to a halt.

1 Because the Court declines to stay all discovery, a  
2 modification of the Case Management Order is not necessary.

3 CONCLUSION

4 For the foregoing reasons, the Court DENIES Defendants' motion  
5 for a protective order staying discovery and a modification of the  
6 Case Management Order. (Docket No. 134.)

7 IT IS SO ORDERED.

8  
9 Dated: 10/7/2010



CLAUDIA WILKEN  
United States District Judge

United States District Court  
For the Northern District of California

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**Beaudoin, Kathy E.**

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U.S. District Court  
Northern District of California  
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**Case Number:** [4:09-cv-00037-CW](#)

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**Docket Text:**

**ORDER by Judge Claudia Wilken DENYING [134] DEFENDANTS MOTION FOR A PROTECTIVE ORDER STAYING FURTHER DISCOVERY AND FOR A MODIFICATION OF THE CASE MANAGEMENT ORDER. (ndr, COURT STAFF) (Filed on 10/7/2010)**

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