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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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United States District Court  
Northern District of California

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11 VIETNAM VETERANS OF AMERICA,  
12 et al.,  
13 Plaintiffs,  
14 v.  
15 CENTRAL INTELLIGENCE AGENCY,  
16 et al.,  
17 Defendants.  
18

Case No.: 09-cv-0037 CW (JSC)

**REPORT AND RECOMMENDATION  
RE: PLAINTIFFS' MOTION TO  
EXTEND CASE DEADLINES (Dkt.  
No. 338)**

19 Pending before the Court is Plaintiffs' Motion to Extend Fact Discovery Deadline and  
20 Unopposed Motion to Extend Other Case Deadlines. (Dkt. No. 338). Having considered the  
21 parties' filings regarding this matter, the Court recommends that the motion be GRANTED  
22 in part.  
23

**DISCUSSION**

24 Plaintiffs seek a 90-day extension of all case deadlines in this action. This would be  
25 the nineteenth modification of the case deadlines in this action. Defendants do not oppose an  
26 extension of the fact discovery deadline for two depositions, nor do they oppose an extension  
27 of the expert disclosure deadline and the remaining dates; however, Defendants object to a  
28 wholesale extension of the deadline for fact discovery.

1 Plaintiffs identify three categories of outstanding discovery: 1) the Department of  
2 Defense (“DOD”) emails, 2) Defense Technical Information Center (“DTIC”) documents,  
3 and 3) Department of Veterans Affairs (“DVA”) claim files. Plaintiffs allege that the fact  
4 that Defendants will not have provided discovery regarding each of these categories by the  
5 close of fact discovery is good cause for extending the fact discovery deadline. However,  
6 Plaintiffs’ motion indicates that the DOD emails are the only category of discovery that they  
7 need prior to the close of fact discovery. Specifically, Plaintiffs allege that they need the  
8 DOD emails prior to close of fact discovery so that they can take the depositions of Ray  
9 Finno and Craig Hyams. However, Defendants have represented that they will produce “all  
10 responsive, non-privileged emails by December 23,” and Defendants have agreed to  
11 schedule the depositions of Mr. Finno and Mr. Hyams after the close of fact discovery and  
12 after the production of the emails at issue. (Dkt. No. 339, p. 2).

13 The Court is thus confused as to the basis for Plaintiffs’ request for an extension of  
14 the fact discovery deadline. As the Court has said, if the parties agree amongst themselves to  
15 extend the production deadline for specific items, the parties do not lose their right to  
16 challenge the production even if it occurs after the deadline. Although Plaintiffs may take  
17 issue with the speed of the government’s production, the parties appear to have negotiated a  
18 schedule for production of the remaining discovery. Accordingly, Plaintiffs have not  
19 established good cause for extending the fact discovery deadline to permit new discovery  
20 requests.<sup>1</sup>

21 However, based on the parties’ agreement to extend the other case deadlines, and the  
22 demonstrated good cause for doing so with respect to the expert discovery deadlines based  
23 on Defendants’ delayed production of the DTIC documents and DVA claim files, the Court  
24 recommends the following revised case schedule:

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26  
27 <sup>1</sup> Nothing in this Order precludes Plaintiffs from requesting appropriate relief relating to late  
28 or incomplete production of any outstanding discovery including the magnetic tapes or DVA  
claim files as discussed at the December 15, 2011 hearing.

Event	New Deadline
Completion of fact discovery	December 23, 2011
Disclosure of expert witnesses	April 11, 2012
Completion of expert discovery	July 11, 2012
Plaintiffs' opening dispositive motion due	July 16, 2012
Defendants' opposition and cross-motion due	August 6, 2012
Plaintiffs' reply/opposition due	August 20, 2012
Defendants' reply to any cross-motion due	September 4, 2012
Deadline to hear dispositive motions	October 11, 2012
Final pretrial conference	January 9, 2013
Trial begins	February 4, 2013

Accordingly, the Court recommends that Plaintiffs' Motion (Dkt. No. 338) be GRANTED in part as set forth above.

**IT IS SO ORDERED.**

Dated: December 20, 2011

  
 JACQUELINE SCOTT CORLEY  
 UNITED STATES MAGISTRATE JUDGE