

EXHIBIT

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12 Greene, Jr.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO

16 VETERANS FOR COMMON SENSE and)
17 VETERANS UNITED FOR TRUTH,)
18 Plaintiffs,)
19 v.)
20 Hon. GORDON H. MANSFIELD, Secretary)
of Veterans Affairs, *et al.*,)
21 Defendants.)

No. C 07-3758-SC

**NOTICE OF MOTION AND MOTION
FOR PROTECTIVE ORDER TO STAY
DISCOVERY**

Date: December 14, 2007
Time: 10:00 a.m.
Courtroom: 1

23
24 Pursuant to Rule 26(c), Fed. R. Civil P., defendants move for a protective order, staying
25 discovery for a short period of time until the Court rules on defendants' pending Motion to
26 Dismiss. The basis for this motion is set forth in the attached Memorandum of Points and
27 Authorities and Attachments A, B and C thereto. A Proposed Order is included.

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Dated November 9, 2007

Respectfully Submitted,

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16 VETERANS FOR COMMON SENSE and)
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18 Plaintiffs,)
19 v.)
20 Hon. GORDON H. MANSFIELD, Secretary)
of Veterans Affairs, *et al.*,)
21 Defendants.)

No. C 07-3758-SC

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER TO STAY
DISCOVERY**

Date: December 14, 2007
Time: 10:00 a.m.
Courtroom: 1

Introduction

24 Pursuant to Rule 26(c), Fed. R. Civil P., defendants move for a protective order, staying
25 discovery for a short period of time until the Court rules on defendants' pending Motion to
26 Dismiss. On September 25, 2007, defendants moved to dismiss plaintiffs' complaint, asserting
27 several arguments for why the court for lacks subject matter jurisdiction and why plaintiffs'
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1 claims are legally insufficient. That motion will be fully briefed shortly and is scheduled to be
2 argued on December 14, 2007. Courts have broad discretion to stay discovery where a
3 dispositive motion may resolve some or all claims, thus promoting the interests of judicial
4 economy. See Argument I, infra.

5 It is particularly appropriate for the Court to exercise its discretion to stay discovery in
6 this instance because plaintiffs' discovery requests are unreasonably overbroad and unjustified,
7 even to support the wide-ranging attack on the Department of Veterans Affairs (VA) and its
8 programs plaintiffs wish to mount. The VA has quickly reviewed the discovery requests in the
9 short time available and will demonstrate their overbroad nature, to which it would be
10 prohibitively expensive to respond, and which would cause grave disruption to VA's ability to
11 serve its constituent veterans.¹

12 Background

13 1. Plaintiffs' Claims

14 Plaintiffs, two advocacy organizations, have filed a complaint for injunctive and
15 declaratory relief that broadly challenges the benefits adjudication programs of the VA as they
16 relates to providing benefits to veterans with post traumatic stress syndrome (PTSD). Plaintiffs
17 challenge the entire process by which VA provides medical services and benefits to veterans with
18 PTSD and their survivors, alleging violations of the Due Process Clause of the Fifth Amendment,
19 the Access to Courts Clause of the First Amendment, section 504 the Rehabilitation Act and 38
20 U.S.C. § 1710(e)(1)(D).

21 2. Defendants' Motion to Dismiss

22 As noted, defendants moved to dismiss, identifying numerous jurisdiction and other legal
23 deficiencies with plaintiffs' claims. First, the only possible waiver of sovereign immunity that
24 might apply is the Administrative Procedure Act, (APA) however, the APA is inapposite because
25 plaintiffs have failed to identify any "final agency action" that they challenge. The Supreme
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27 ¹Counsel for defendants have discussed this motion with counsel for plaintiffs who has
28 informed defendants' counsel that plaintiffs' will oppose this motion.

1 Court has held that the APA does not allow the type of wholesale, “programmatically” challenge
2 plaintiffs seek to bring in this Court. See Norton v. Southern Utah Wilderness Alliance, 542 U.S.
3 55, 64 (2004); cf. Allen v. Wright, 468 U.S. 737, 759-61 (1984) (a federal district court “is not
4 the proper forum” to seek “restructuring of the apparatus established by the Executive Branch to
5 fulfill its legal duties.”).

6 Second, the only plaintiffs in this action are two advocacy organizations that have failed
7 to identify any individual veterans with standing to sue and whose direct participation is
8 unnecessary. For that reason, the plaintiff organizations lack Article III standing. See Smith v.
9 Pacific Properties and Dev. Corp., 358 F.3d 1097, 1101 (9th Cir. 2004).

10 Third, to the extent plaintiffs do allege harm from concrete agency actions, policies, or
11 procedures related to veterans benefits, Congress, in the Veterans’ Judicial Review Act
12 (“VJRA”), Pub. L. No. 100-687, 102 Stat. 4105 (1988), has unambiguously barred district courts
13 from hearing such challenges and, instead, crafted an exclusive review process through the VA, a
14 specially created Article I court, and the Federal Circuit. See 38 U.S.C. §§ 502, 511(a). Plaintiffs
15 attempt to state a facial constitutional challenge to the VJRA itself, but that challenge fails to
16 state a claim upon which relief may be granted. See Defendants’ Memorandum in Support of
17 Motion to Dismiss at 14-23. For example, plaintiffs’ facial challenge to a statute that limits the
18 fees veterans may pay attorneys who represent them at the earliest stage of the VA adjudicatory
19 process is foreclosed by binding Supreme Court and Ninth Circuit precedents that upheld a more
20 restrictive fee limitation. See e.g. Walters v. National Ass’n of Radiation Survivors, 473 U.S.
21 305 (1985). Finally, plaintiffs also claim that the VA is failing to meet recently returning
22 veterans’ statutory entitlement to free health care for two years, but this claim also fails as the
23 relevant statute makes it plain on its face that it creates no such entitlement.

24 In sum, defendants’ motion to dismiss identifies numerous threshold jurisdictional and
25 other legal problems with plaintiffs’ complaint, all of which can be resolved without fact-finding
26 or discovery. In effect, plaintiffs’ lengthy Complaint reflects a variety of policy disagreements,
27 but it does not present any claim cognizable in this Court as opposed to the halls of Congress, or
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1 the exclusive judicial and administrative review system that Congress has created.

2 3. Plaintiffs' Discovery Requests

3 On October 19, 2007, plaintiffs served a First Amended First Set of Requests for
4 Production of Documents on defendants (Attachment A, hereto) consisting of 129 separate
5 requests, seeking an enormous range of material purportedly related (often very tangentially) to
6 how the VA provides services to veterans with PTSD. For example, plaintiffs seek complete
7 claim files for several categories of veterans (Request numbers 31, 32 and 38) as well as all
8 documents containing certain categories of information about all PTSD-related claims (Request
9 numbers 4-17), that appears to require a review of all such claim files. In essence, in their
10 requests plaintiffs seek every document maintained by the VA (as well as some in the custody of
11 other the Defense Department and the Court of Appeals for Veterans Claims) related in any way
12 to claims for benefits or health care by veterans suffering from PTSD. As explained in the
13 Declaration of Thomas G. Bowman, the Chief of Staff of the Department of Veterans Affairs
14 (Attachment B, hereto, "Bowman Decl."), VA staff have attempted to estimate the cost of
15 searching for and producing all documents responsive to plaintiffs' requests and have concluded
16 that these costs would be enormous – searching and producing documents in response to twenty
17 seven of the requests will cost more than \$ 1 million each, and of those, responding to 21 will
18 cost in excess of 2 \$ million each. Bowman Decl. ¶ 7.

19 On November 2, 2007, plaintiffs served a deposition notice seeking to depose forty-seven
20 current and former employees of the VA and other government entities, beginning on January 8,
21 2008 and continuing into April of 2008. (Attachment C, hereto). Plaintiffs' proposed deponents
22 include the Acting Secretary of Veterans Affairs, numerous other senior VA officials, (including
23 the Deputy Secretary, the General Counsel and the Inspector General), the Attorney General of
24 the United States Department of Justice, a senior official of the Government Accountability
25 Office, and the current and former Chief Judges of the United States Court of Appeals for
26 Veterans Claims. Plaintiffs' deposition notice demands that all deponents produce any
27 documents they have that are responsive to plaintiffs' document requests, including documents
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1 found “in each deponent’s working files, computer work stations, or other personal files,”
 2 Attachment C at 1. Moreover, all of these depositions are noticed for San Francisco, even though
 3 many of the deponents do not reside or work in the Northern District of California.

4 ARGUMENT

5 **I. The Court Has the Discretion to Defer the Initiation of Discovery Pending** 6 **Resolution of a Motion to Dismiss Challenging the Court’s Subject Matter** 7 **Jurisdiction**

8 It is of course well settled that district courts have sweeping discretion to control the
 9 nature and timing of discovery. Herbert v. Lando, 441 U.S. 153, 177 (1979) (“[J]udges should
 10 not hesitate to exercise appropriate control over the discovery process.”). Under Rule 26(c) of
 11 the Federal Rules of Civil Procedure, courts have discretion to issue protective orders upon a
 12 showing of good cause. Rule 26(c) provides, in pertinent part, that:

13 Upon motion by a party or by the person from whom discovery is sought,
 14 accompanied by a certification that the movant has in good faith conferred
 15 or attempted to confer with other affected parties in an effort to resolve the
 16 dispute without court action, and for good cause shown, the court in which
 17 the action is pending * * * may make any order which justice requires to
 18 protect a party or person from annoyance, embarrassment, oppression, or
 19 undue burden or expense, including . . . (1) that the disclosure or discovery
 20 not be had.

21 Fed. R. Civ. P. 26(c). Courts have consistently exercised such discretion to order a stay of all
 22 discovery where it appears that the case can be resolved through a dispositive motion. See e.g.
 23 Jarvis v. Regan, 833 F.2d 149, 155 (9th Cir. 1987); B.R.S. Land Investors v. United States, 596
 24 F.2d 353, 356 (9th Cir. 1979); Petrus v. Bowen, 833 F.2d 581, 583 (5th Cir. 1987) (“trial court
 25 has broad discretion and inherent power to stay discovery until preliminary questions that may
 26 dispose of the case are determined”); Patterson v. United States, 901 F.2d 927, 929 (11th Cir.
 27 1990); Hahn v. Star Bank, 190 F.3d 708, 719 (6th Cir. 1999).

28 A stay is particularly appropriate where the dispositive motion challenges the court’s
 subject matter jurisdiction. Thus, the Supreme Court has noted that “[i]t is a recognized and
 appropriate procedure for a court to limit discovery proceedings at the outset to a determination
 of jurisdictional matters.” United States Catholic Conference v. Abortion Rights Mobilization,
Inc., 487 U.S. 72, 79-80 (1988). Where a motion to dismiss presents questions of law for which

1 factual discovery is neither necessary nor appropriate, as is typically the case where the defendant
2 challenges the court's subject matter jurisdiction, discovery should be stayed pending a
3 resolution of the motion. See Wagh v. Metris Direct Inc., 363 F.3d 821, 829 (9th Cir. 2003)
4 (discovery at the pleading stage is only appropriate where factual issues are raised by a Rule
5 12(b) motion.); Florsheim Shoe Co. v. United States, 744 F.2d 787, 797 (Fed. Cir. 1984); Rae v.
6 Union Bank, 725 F.2d 478, 481 (9th Cir. 1984). See generally 6 Moore's Federal Practice §
7 26.105[3][c]. The obvious rationale for entering a protective order when disposition of a motion
8 may obviate the need for discovery is to conserve the parties' time and resources. See Scroggins
9 v. Air Cargo, Inc., 534 F.2d 1124, 1133 (5th Cir. 1976).

10 **II. The Court Should Grant a Protective Order Staying Plaintiffs' Discovery Requests** 11 **Pending a Ruling on Defendants' Motion to Dismiss**

12 Here, principles of sound case management counsel in favor of a short stay of discovery
13 to permit a ruling on defendants' Motion to Dismiss, which will avoid the waste of the Court's
14 and the parties' resources, with minimal prejudice to plaintiffs. First, defendants' Motion to
15 Dismiss raises strong jurisdictional defenses to plaintiffs' claims. Assuming jurisdiction in this
16 Court, plaintiffs' facial challenge to the constitutionality of the VJRA can be resolved without
17 the need for discovery. See Rae v. Union Bank, supra 725 F.2d at 481. Nor need the Court have
18 to conclude that defendants' motion will be successful in order to grant a stay. When a court can
19 conclude that a defendants' motion to dismiss "does not appear to be without some degree of
20 foundation in law and there is a possibility that defendant may prevail," a stay of discovery is
21 appropriate. Ameritel Inns v. Moffat Brothers, 2007 WL 1792323, *4 (D. Idaho 2007). See also
22 Johnson v. New York Univ. School of Educ., 205 F.R.D. 433, 434 (S.D.N.Y. 2002) (stay of
23 discovery appropriate where dispositive motion has "substantial grounds"); GTE Wireless, Inc. v.
24 Qualcomm, Inc., 192 F.R.D. 284, 287 (S.D. Cal. 2000) (stay where defendants's motion has
25 around a "fifty percent chance of success).

26 Nor is this a case where the probable result of a favorable ruling on a defendants' motion
27 to dismiss will be an order granting plaintiffs leave to amend to address a pleading defect, thus
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1 justifying the continuation of discovery in the interim. See e.g. In Re Valence Technology
2 Securities Litigation, 1994 WL 758688 (N.D. Cal. 1994). Plaintiffs' 278-paragraph complaint
3 includes numerous allegations invoking every relevant authority, hence, if defendants' motion to
4 dismiss is granted, it is doubtful plaintiffs will be able to cure any defects in their allegations.
5 Finally, a brief stay in discovery will not unduly prejudice plaintiffs since defendants' Motion to
6 dismiss will be argued on December 14, 2007 and discovery can be addressed shortly after a
7 ruling.

8 A stay is particularly appropriate here given the enormous burden that would be imposed
9 by plaintiffs' sweeping Requests for Production of Documents as well as their proposed
10 deposition schedule. As another judge of this Court has recognized, "staying discovery may be
11 particularly appropriate . . . where discovery tends to be broad, time-consuming and expensive."
12 In Re Netflix Antitrust Litigation, 506 F.Supp.2d 308, 321 (N.D. Cal. 2007). As with the
13 antitrust claim at issue in NetFlix, the discovery plaintiffs seek here also promises to be "a
14 sprawling, costly and hugely time-consuming undertaking." NetFlix, supra 506 F.Supp 2d at
15 321, quoting Bell Atlantic v. Twombly, 127 S.Ct. 1955, 1967 n. 6 (2007).

16 As explained in the Bowman Declaration, employees of the VA have made preliminary
17 inquiries into the estimated cost, in time and funds, to search for and produce non-privileged
18 documents in response to plaintiffs' 129 Requests for Production. Bowman Decl. ¶ 7.² Mr.
19 Bowman briefly explains the burden that these requests impose on the VA, which maintains 57
20 Regional Offices, 209 Vets Centers, 153 hospitals, 135 nursing homes, 724 Community Based
21 Outpatient Clinics, and 46 Domiciliary Residential Rehabilitation Treatment Programs, all of
22 which are likely to have records relevant to the provision of services to veterans who suffer from
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24 ²Given the exceptionally broad scope of plaintiffs' requests and the limited time available
25 for VA staff to conduct these inquiries, the responses received are, admittedly, no more than
26 rough estimates of the cost in time and money to respond to the requests. See Bowman Decl. ¶ 7.
27 In addition, VA staff attempted to calculate the cost of responding to each of plaintiffs' requests
28 as written, even though VA would assert overbreadth and relevancy objections to many of these
requests. Nevertheless, these calculations do provide an approximate estimate of the aggregate
cost of responding to the vast majority of plaintiffs' requests. Id.

1 PTSD. Bowman Decl. ¶ 8c; 10. The VA provides numerous and significant services to veterans
2 with PTSD, and consequently the staff at its approximately 1300 care-providing facilities will be
3 required to search for documents responsive to PTSD issues, such as “diagnostic criteria for
4 PTSD applied by VA.” (Request number 33). Id. ¶ 10. As Mr. Bowman notes, responding to
5 these requests “would significantly burden the VA health system and distract employees,
6 particularly health care providers, from delivering health care services to veterans.” Id. This
7 diversion from providing services to veterans is particularly serious given that disability claims
8 have increased 45% from 2000 to 2007. Id. ¶ 14.

9 Additionally, all of plaintiffs’ requests seek “documents,” which plaintiffs define to
10 include any tangible thing on which a “communication” has been recorded, and typically make
11 no attempt to identify the personnel who may have authored such communications. Bowman
12 Decl. ¶ 8a. Consequently, each request will require a search of emails (communications, by
13 definition) , thus requiring a review of some or all of VA’s 320,000 e-mail accounts. Id. This
14 will impose a significant burden, because “in order to conduct a search of the active e-mail
15 system for messages containing particular words or phrases, each mailbox would need to be
16 searched separately,” and hence, searching email records will be inordinately time consuming.
17 Id.

18 At least eight of plaintiffs’ requests (Request numbers 16, 17, 31, 32, 38, 103, 104 and
19 115) will undoubtedly require a search of individual claim files, which are maintained in VA’s
20 57 Regional Offices as well as at its Records Management Center, and another nineteen (Request
21 numbers 1-15, 21, 96-98) may require such searches of individual files. Bowman Decl. ¶ 8b.
22 Searches of such paper files would require VA to write and run a computer program to attempt to
23 locate the relevant claim files, physically retrieve the files and then assign staff to review them
24 for responsive documents. Bowman Decl. ¶ 8c. To take one example, VA estimates that the cost
25 of searching files for death certificates (Request number 115) will require over 73,000 staff-
26 hours, costing \$ 2.5 million. Bowman Decl. ¶ 8c.

27 Based on the numerous separate inquiries made by VA staff as to the burden in time and
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1 expense to search various paper files and electronic data bases for plaintiffs' requests, it is
2 estimated that twenty-seven of plaintiffs' 129 requests will each impose in excess of \$ 1 million
3 in costs on VA and in the case of twenty of those requests, the cost will exceed \$ 2 million.
4 Bowman Decl. ¶ 7. As Mr. Bowman explains, this diversion of resources will directly and
5 significantly impact the VA's mission of providing health care and benefits to the veterans it
6 serves. See Bowman Decl. ¶¶ 10-15. For example, responding to the requests "would divert
7 many of [VA's] regional office employees from their primary mission of delivering benefits to
8 veterans and their survivors to searching records and reviewing files." Id. at ¶ 15. The burden of
9 responding to plaintiffs' requests goes far beyond imposing administrative burdens and
10 inconvenience on the VA; it will have an immediate adverse impact on veterans and their
11 families.³

12 Finally, the requests also seek the production of medical treatment files relating to mental
13 health services, which records are exceptionally sensitive and are subject to statutory
14 confidentiality protections and potentially covered by the psychotherapist-patient privilege.
15 Bowman Decl. ¶ 9. Even if steps are taken to protect veteran confidentiality (steps which will
16 further add to the time and expense of responding), there is always the possibility that veteran
17 confidentiality will be compromised. As Mr. Bowman notes, "Vet Center program
18 administrators are concerned that such a disclosure would undermine the Vet Center Program's
19 hard won trust with the combat veteran population and could cause serious barriers to care for
20 new veterans needing readjustment counseling services." Id. Plaintiffs' excessively broad
21 requests, which make no effort to balance the need for the materials sought against the damage
22 that disclosure will cause, should not be permitted until threshold legal issues have been
23 resolved.

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26 ³Defendants' objections to the extremely burdensome nature of plaintiffs' discovery
27 requests are offered in support of their request for a stay of discovery pending a ruling on their
28 motion to dismiss. In the event that some or all of plaintiffs' claims survive the motion to
dismiss, defendants reserve the right to reassert these and other objections to plaintiffs' document
production requests and deposition notices.

CONCLUSION

For all of the foregoing reasons, the Court should grant defendants' Motion for Protective Order and stay discovery until after a ruling on defendants' Motion to Dismiss. A Proposed Order is attached.

Dated November 9, 2007

Respectfully Submitted,

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 15 VETERANS FOR COMMON SENSE, and
 VETERANS UNITED FOR TRUTH, INC.

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA

18 VETERANS FOR COMMON SENSE, and
 19 VETERANS UNITED FOR TRUTH, INC.,

20 Plaintiffs,

21 v.

22 R. JAMES NICHOLSON, Secretary of Veterans
 23 Affairs, *et al.*,

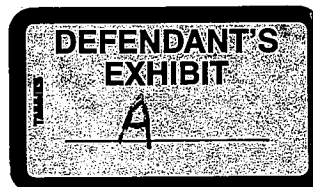
24 Defendants.

Case No. C-07-3758-SC

**VETERANS FOR COMMON SENSE
 AND VETERANS UNITED FOR
 TRUTH, INC.'S FIRST AMENDED
 FIRST SET OF REQUESTS FOR
 PRODUCTION OF DOCUMENTS
 TO ALL DEFENDANTS**

(Class Action)

Complaint Filed July 23, 2007



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1 **PROPOUNDING PARTY: VETERANS FOR COMMON SENSE and VETERANS UNITED**
2 **FOR TRUTH, INC.**

3 **RESPONDING PARTIES: R. JAMES NICHOLSON, et al.**

4 **SET NUMBER: ONE**

5 Pursuant to Federal Rule of Civil Procedure 34, Plaintiffs Veterans for Common Sense
6 (“VCS”) and Veterans United for Truth, Inc. (“VUFT”) request that each of the named defendants
7 (collectively “Defendants”) separately produce for inspection and copying the documents and things
8 set forth below that are in its possession, custody, or control, or in the possession, custody, or control
9 of its attorneys and/or accountants, its investigators, and any persons acting on their behalf, at the
10 offices of Morrison & Foerster, 101 Ygnacio Valley Road Suite 450, Walnut Creek, California,
11 94596 or another place as may be mutually agreed upon within thirty (30) days.

12 **DEFINITIONS**

13 Unless otherwise indicated, the following definitions shall apply.

14 1. “COMMUNICATION” or “COMMUNICATIONS” means, unless otherwise specified,
15 any of the following: (a) any written letter, memorandum, DOCUMENT, or any other writing;
16 (b) any telephone call between two or more PERSONS, whether or not such call was by chance or
17 prearranged, formal or informal; and (c) any conversation or meeting between two or more
18 PERSONS, whether or not such contact was by chance or prearranged, formal or informal, including,
19 without limitation, conversations or meetings occurring via telephone, teleconference, video
20 conference, electronic mail (e-mail), or instant electronic messenger.

21 2. “CONCERNING” means constituting, summarizing, memorializing, referring to, and/or
22 relating to.

23 3. “DOCUMENT” or “DOCUMENTS” means any tangible thing upon which any
24 expression, COMMUNICATION or representation has been recorded by any means including, but
25 not limited to, handwriting, typewriting, printing, photostatting, photographing, magnetic impulse, or
26 mechanical or electronic recording and any non-identical copies (whether different from the original
27 because of notes made on such copies, because of indications that said copies were sent to different
28 individuals than were the originals, or because of any other reason), including but not limited to

1 working papers, preliminary, intermediate or final drafts, correspondence, memoranda, charts, notes,
2 records of any sort of meetings, invoices, financial statements, financial calculations, diaries, reports
3 of telephone or other oral conversations, desk calendars, appointment books, audio or video tape
4 recordings, e-mail or electronic mail, electronic folders, microfilm, microfiche, computer tape,
5 computer disk, computer printout, computer card, and all other writings and recordings of every kind
6 that are in your actual or constructive possession, custody or control.

7 4. "IDENTIFY" or "IDENTITY" means:

8 a. with respect to a PERSON, to state the PERSON's full name, current or last
9 known employer, that employer's address and telephone number, the PERSON's title and/or position
10 with that employer, and the PERSON's current or last known home address and telephone number;

11 b. with respect to a DOCUMENT, to state the type of DOCUMENT (i.e., letter,
12 memorandum, telephone note, computer floppy or hard disk, magnetic tape, etc.), the title of the
13 DOCUMENT (if any), the date it was created, the author, all intended recipients including the
14 addressee and any and all copyees, a brief description of the subject matter of the DOCUMENT, the
15 present and/or last known location of the DOCUMENT, and to IDENTIFY all present or last known
16 person in possession, custody or control of the DOCUMENT;

17 c. with respect to a COMMUNICATION to state the name and affiliation of all
18 PERSONS participating in, or present for, the COMMUNICATION, the date of the
19 COMMUNICATION, and whether it was conducted in person or by other means (such as telephone,
20 correspondence, e-mail), and whether it was recorded (e.g., stenographically or by audio or
21 videotape);

22 d. with respect to a MEETING to state the names and affiliations of all
23 PERSONS participating in, or present for, the MEETING, the date of the meeting, and the location of
24 the meeting, and the purpose of the meeting.

25 5. "MEETING" or "MEETINGS" means any coincidence of, or presence of, or telephone,
26 television, radio, or other electronic communication between or among persons, whether such was by
27 chance or prearranged, informal or formal.

1 12. "CLINICIAN'S GUIDE" means the publication entitled VA Clinician's Guide (Lewis
2 R. Couloso, ed., Matthew Bender & Co. Inc. 2006), and earlier or later versions of that edition of the
3 Clinician's Guide.

4 13. "DEPARTMENT OF DEFENSE" or "DoD" means the United States Department of
5 Defense, and all its offices, departments, organizations, administrations, boards, commissions, task
6 forces, management, and past and present employees and service members.

7 14. "DEPARTMENT OF THE AIR FORCE" means the United States Department of the
8 Air Force, and all its offices, departments, organizations, administrations, boards, commissions, task
9 forces, management, and past and present employees and service members.

10 15. "DEPARTMENT OF THE ARMY" means the United States Department of the Army,
11 and all its offices, departments, organizations, administrations, boards, commissions, task forces,
12 management, and past and present employees and service members.

13 16. "DEPARTMENT OF THE NAVY" means the United States Department of the Navy,
14 and all its offices, departments, organizations, administrations, boards, commissions, task forces,
15 management, and past and present employees and service members, including the United States
16 Marine Corps.

17 17. "DOLE/SHALALA REPORT" means the Report of the President's Commission on
18 Care for America's Wounded Returning Warriors, published July 2007 by Co-Chairs Robert Dole
19 and Donna Shalala.

20 18. "DSM" means any edition of the Diagnostic and Statistical Manual of Mental
21 Disorders, published by the American Psychiatric Association.

22 19. "DVB" or "DEPARTMENT OF VETERANS BENEFITS" means the Department of
23 Veterans Benefits within the VA and all its offices, departments, organizations, administrations,
24 boards, commissions, task forces, management, and past and present employees.

25 20. "GAO" means the United States Government Accountability Office and all its
26 predecessors, offices, departments, organizations, administrations, boards, commissions, task forces,
27 management, and past and present employees.

1 21. "INSTITUTE OF MEDICINE" means the Institute of Medicine, National Academy of
2 Sciences panel and all of its current and past employees and members.

3 22. "OPERATION ENDURING FREEDOM" or "OEF" means Operation Enduring
4 Freedom, the official name given to military operations in Afghanistan, and the nations and bodies of
5 water around it.

6 23. "OPERATION IRAQI FREEDOM" or "OIF" means Operation Iraqi Freedom, the
7 official name given to military operations in Iraq and in the nations and bodies of water near it,
8 beginning in the year 2003.

9 24. "PERSONALITY DISORDER DISCHARGE" or "PDD" means the separation from
10 military service of a PERSON under Army Regulation 635-200, Chapter 5-13, Navy Military
11 Personnel Manual 1910-122, Marine Corps Separation and Retirement Manual Chapter 6, Section 2,
12 Subsection 6203, Air Force Regulation AFI 36-3208, or any similar DoD regulations, including DoD
13 Directive 133.2.14 (December 21, 1993), and any actions by the VA based on a PDD or a personality
14 disorder finding or diagnosis.

15 25. "PTSD" means post-traumatic stress disorder, as described in the DSM and VA
16 Regulations referencing the DSM.

17 26. "SCDDC" means service-connected death or disability compensation, including
18 dependency and indemnity compensation, as described in the Complaint.

19 27. "TDIU" means a claim for and/or VA rating of total disability based on individual
20 unemployability.

21 28. "VA" or "DVA" means the United States Department of Veterans Affairs, and all its
22 offices, departments, organizations, administrations, boards, consultants, commissions, task forces,
23 management, and past and present employees.

24 29. "VETERANS AFFAIRS COMMITTEES" means the members of the House or Senate
25 Veterans Affairs Committees, their staff, and any persons acting on their behalf.

26 30. "VETERANS BENEFITS ADMINISTRATION" or "VBA" means the Veterans
27 Benefits Administration within the VA and all its offices, departments, organizations,
28 administrations, boards, commissions, task forces, management, and past and present employees.

1 31. "VETERANS HEALTH ADMINISTRATION" or "VHA" means the Veterans Health
2 Administration within the VA and all its offices, departments, organizations, administrations, boards,
3 commissions, task forces, management, and past and present employees.

4 32. "VAIG" means the Inspector General of the Veterans Administration and all its offices,
5 departments, organizations, administrations, boards, commissions, task forces, management, and past
6 and present employees.

7 CONSTRUCTION

8 The following rules of construction shall also apply.

9 1. "All" or "each" shall be construed as "all and each."

10 2. "Any" should be understood to include and encompass "all"; "all" should be understood
11 to include and encompass "any."

12 3. "And" or "or" shall be construed either disjunctively or conjunctively as necessary to
13 bring within the scope of the discovery request all responses that might otherwise be construed to be
14 outside of its scope.

15 4. The use of the singular form of any word shall include the plural and vice versa.

16 INSTRUCTIONS

17 1. In the event Defendants produce original documents for inspection and copying, such
18 production shall be as the documents are kept in the usual course of business.

19 2. In lieu of production for inspection and copying, Defendants may produce the requested
20 documents by mail or delivery of true copies thereof to Morrison & Forester at the aforesaid address,
21 and make the originals available for inspection at a mutually agreed-upon location, during normal
22 business hours and upon reasonable notice. The documents copied shall be copied as they are kept in
23 the normal course of business, and any titles, labels, or other descriptions on any box, folder, binder,
24 file cabinet, or other container shall be copied as well.

25 3. Each document is to be produced, along with all non-identical copies, drafts, alterations,
26 and translations thereof, in its entirety, without abbreviations or redactions.

27 4. If any part of a document is responsive to any of the following requests, the entire
28 document shall be produced.

1 5. If Defendants withhold any of the requested documents from production under a claim of
2 privilege or other protection, it must serve within thirty (30) days of the service of this request a list
3 of such withheld documents ("privilege log") indicating, for each document withheld, the following
4 information if known or available to Defendants: (i) the date composed or date appearing on the
5 document; (ii) the author; (iii) the number of pages; (iv) the number of copies made; (v) the identity
6 of all persons or entities who saw the original document or saw or received a copy of such document,
7 and the job titles of each such person; (vi) the subject matter; and (vii) the basis for claim of privilege
8 or other immunity asserted. The privilege log should be sufficiently detailed to permit Plaintiffs to
9 determine whether to make a motion with respect thereto.

10 6. If Defendants are aware of the existence of any requested items that they are unable to
11 produce, specify in writing and serve upon the undersigned a list indicating the identity of such
12 documents within thirty (30) days of the service of this request. Such identification should, for each
13 such document, set forth whether the document: (i) has been destroyed; (ii) has been lost, misplaced,
14 or stolen; or (iii) has never been, or is no longer, in the possession, custody, or control of the
15 responding party, in which case the name and address of any person or entity known or believed by
16 Defendants to have possession, custody or control of that document or category of documents should
17 be identified. In each such instance, each Defendant is to identify the document by author, addressee,
18 date, subject matter, number of pages, attachments or appendices, all persons to whom it was
19 distributed, shown, or explained, date and manner of destruction or other disposition, the reason for
20 destruction or other disposition, and persons destroying or disposing of the document.

21 7. If Defendants contend that any of the following requests is objectionable in whole or in
22 part, Defendants shall state with particularity each objection, the basis for it, and the categories of
23 information and documents to which the objection applies, and Defendants shall respond to the
24 request insofar as it is not deemed objectionable.

25 8. If Defendants find the meaning of any term in these requests unclear, Defendants shall
26 assume a reasonable meaning, state what the assumed meaning is, and respond to the request
27 according to the assumed meaning.

1 9. The following requests shall be deemed to be continuing. In accordance with Federal
2 Rule of Civil Procedure 26(e), Plaintiffs request that if, after answering the requests, Defendants
3 acquire additional knowledge or information regarding documents or things responsive to the
4 requests, Defendants shall produce such documents or provide Plaintiffs with such additional
5 knowledge or information.

6 10. Unless otherwise specified, each request calls for all documents created, received, or
7 dated between January 1, 2000 and the date of your response to the request.

8 **REQUESTS FOR PRODUCTION**

9 **PREAMBLE TO ALL REQUESTS:** All DOCUMENTS CONCERNING any one or more
10 of the following:

11 **REQUEST FOR PRODUCTION NO. 1:**

12 Lists, databases, computer systems or printouts showing pending SCDDC claims based on
13 PTSD or mental health disorders, including, without limitation, those containing information
14 regarding the stage of proceeding (e.g., regional office, BVA, CAVC, etc.) and/or similar lists
15 maintained, generated, dated, or printed between January 1, 2000 and the present.

16 **REQUEST FOR PRODUCTION NO. 2:**

17 Lists, databases or printouts of all resolved SCDDC claims based upon PTSD or mental health
18 disorder sorted, including, without limitation, information CONCERNING the stage of proceeding
19 (e.g., regional office, BVA, CAVC, etc.) at the time of resolution, and/or similar lists maintained,
20 generated, dated, or printed between January 1, 2000 and the present.

21 **REQUEST FOR PRODUCTION NO. 3:**

22 Circulars, directives, letters, VA Fast letters, policy directives or other written
23 COMMUNICATIONS concerning rules, procedures or practices for evaluating and/or adjudicating
24 PTSD claims.

25 **REQUEST FOR PRODUCTION NO. 4:**

26 The number of PTSD claims currently pending at each regional office of the VA, and the
27 number of days each claim has been pending starting from the original filing date.

1 **REQUEST FOR PRODUCTION NO. 5:**

2 The number of SCDDC claims pending at each regional office of the VA, and the number of
3 days each claim has been pending starting from the original filing date.

4 **REQUEST FOR PRODUCTION NO. 6:**

5 Beginning with the filing of a Notice of Disagreement, the number of days each PTSD claim
6 appeal has been pending starting from the original filing date.

7 **REQUEST FOR PRODUCTION NO. 7:**

8 Beginning with the filing of a Notice of Disagreement, the number of days each SCDDC
9 claim has been pending at the BVA starting from the original filing date.

10 **REQUEST FOR PRODUCTION NO. 8:**

11 Beginning with the Notice of Appeal, the number of days each SCDDC appeal has been
12 pending starting from the original filing date.

13 **REQUEST FOR PRODUCTION NO. 9:**

14 Beginning with the Notice of Appeal, the number of days each PTSD appeal has been
15 pending starting from the original filing date.

16 **REQUEST FOR PRODUCTION NO. 10:**

17 The number of days required to adjudicate PTSD claims resolved at VA regional office and
18 average time of each between 2000 and present, beginning on the date of receipt of the claim.

19 **REQUEST FOR PRODUCTION NO. 11:**

20 The number of days required to adjudicate SCDDC claims resolved at VA regional office and
21 average time of each between 2000 and present, beginning on the date of receipt of the claim.

22 **REQUEST FOR PRODUCTION NO. 12:**

23 The number of days required to decide each resolved PTSD claim appeal, beginning on the
24 date of the Notice of Disagreement, and average time, between 2000 and present.

25 **REQUEST FOR PRODUCTION NO. 13:**

26 The number of days required to decide each resolved SCDDC claim appeal, beginning on the
27 date of the Notice of Disagreement, and average time, between 2000 and present.

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1 **REQUEST FOR PRODUCTION NO. 14:**

2 The number of days required to resolve every PTSD claim appeal to the CAVC, beginning on
3 the filing of the Notice of Appeal, and average time between 2000 and present.

4 **REQUEST FOR PRODUCTION NO. 15:**

5 The number of days required to resolve every SCDDC claim appeal to the CAVC, beginning
6 on the filing of the Notice of Appeal, and average time between 2000 and present.

7 **REQUEST FOR PRODUCTION NO. 16:**

8 The average number of days for VA regional offices to complete action on remands of PTSD
9 claims from the BVA, and from the CAVC between 2000 and present.

10 **REQUEST FOR PRODUCTION NO. 17:**

11 The average number of days for VA regional offices to complete action on remands of
12 SCDDC claims from the BVA, and from the CAVC between 2000 and present.

13 **REQUEST FOR PRODUCTION NO. 18:**

14 Examples or incidents involving a failure or delay in providing medical diagnosis or treatment
15 to a veteran claiming he or she has PTSD, and all MEETINGS and COMMUNICATIONS
16 CONCERNING the same, including letters to and from elected officials; veterans service officers,
17 and the press.

18 **REQUEST FOR PRODUCTION NO. 19:**

19 COMMUNICATIONS between DEFENDANTS and the executive branch, including the
20 Office of the President of the United States, CONCERNING VA annual budgets and/or supplemental
21 appropriations between 2002 and present.

22 **REQUEST FOR PRODUCTION NO. 20:**

23 Policies, practices or procedures CONCERNING implementation of or compliance or
24 noncompliance with the two-year medical care statute identified in Paragraph 91 of the Complaint.

25 **REQUEST FOR PRODUCTION NO. 21:**

26 The grant rate for PTSD claims at the regional office level, BVA, CAVC, and/or Federal
27 Circuit between 2000 and present, with the date sorted by combined degree of disability (CDD) in
28 increments of 10 percent from 000 to 100.

1 **REQUEST FOR PRODUCTION NO. 22:**

2 Reports, papers, research and studies CONCERNING PTSD by the National Center for Post-
3 Traumatic Stress Disorder.

4 **REQUEST FOR PRODUCTION NO. 23:**

5 The filing and/or allegations contained in the Complaint herein, and any amended complaints,
6 if any.

7 **REQUEST FOR PRODUCTION NO. 24:**

8 The discharge of soldiers from the Iraq or Afghanistan theaters of combat based upon the
9 alleged existence of a personality disorder, and policies and procedures related to personality disorder
10 discharges ("PDDs"), and all MEETINGS and COMMUNICATIONS CONCERNING the same.

11 **REQUEST FOR PRODUCTION NO. 25:**

12 COMMUNICATIONS between Defendants and the Department of the Army or the
13 Department of Defense CONCERNING the subject of personality disorder discharges.

14 **REQUEST FOR PRODUCTION NO. 26:**

15 The VA's acceptance or non-acceptance of Personality Disorder Discharges from the military
16 branches for purposes of determining a veteran's or veterans' eligibility for medical care and/or
17 SCDDC for PTSD.

18 **REQUEST FOR PRODUCTION NO. 27:**

19 The diagnosis, epidemiology, assessment, treatment, co-morbidities, treatment outcomes,
20 and/or psychopharmacology of PTSD in general and/or as handled by the VA.

21 **REQUEST FOR PRODUCTION NO. 28:**

22 The two VA-10M contracts of PTSD.

23 **REQUEST FOR PRODUCTION NO. 29:**

24 Efforts or attempts by Defendants to have PTSD removed, changed, or reclassified as a
25 disorder under any edition of the DSM and/or in any other context.

26 **REQUEST FOR PRODUCTION NO. 30:**

27 The interpretation or application of regulations pertaining to personality disorder discharges,
28 including Army Regulation 635-200, Chapter 5-13 (Separation Because of Personality Disorder),

1 Navy Military Personnel Manual 1910-122, Marine Corps Separation and Retirement Manual
2 Chapter 6, Section 2, Subsection 6203, Air Force Regulation AFI 36-3208, or any similar DoD
3 regulations, including DoD Directive 133.2.14 (December 21, 1993).

4 **REQUEST FOR PRODUCTION NO. 31:**

5 The IDENTITY and claim files for all veterans with PTSD claims or symptoms who have
6 asserted that their consent to personality disorder discharges was not knowing or voluntary, and all
7 COMMUNICATIONS CONCERNING the same.

8 **REQUEST FOR PRODUCTION NO. 32:**

9 The complete claim files of the veterans listed on Attachment "A."

10 **REQUEST FOR PRODUCTION NO. 33:**

11 Diagnostic criteria for PTSD applied by the VA, and all changes since 2004.

12 **REQUEST FOR PRODUCTION NO. 34:**

13 Screening protocols or checklists for PTSD prepaid, received or used by the VA, and all
14 changes made since 2004.

15 **REQUEST FOR PRODUCTION NO. 35:**

16 Statistical data and reports concerning suicides or attempted suicides by veterans with PTSD
17 or other mental health disorders, the VA's policies or practices CONCERNING suicide or threatened
18 suicides, and all MEETINGS and COMMUNICATIONS CONCERNING the same.

19 **REQUEST FOR PRODUCTION NO. 36:**

20 Survey or statistical data or reports concerning unreported or under-reported cases of PTSD or
21 mental health disorders amongst veterans and the reasons or explanations for the same.

22 **REQUEST FOR PRODUCTION NO. 37:**

23 Congressional testimony by YOU concerning PTSD and drafts, reports, correspondence,
24 summaries, and comments CONCERNING the same.

25 **REQUEST FOR PRODUCTION NO. 38:**

26 The claim files and death certificates of all veterans who have attempted suicide or committed
27 suicide since January 1, 2000.

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1 **REQUEST FOR PRODUCTION NO. 39:**

2 The availability or lack of availability of medical care and treatment for veterans with
3 symptoms of or a diagnosis of PTSD or other mental disorders at each VA outpatient clinic and
4 hospital.

5 **REQUEST FOR PRODUCTION NO. 40:**

6 Protocols and procedures for the exchange of information between the VBA and the VHA
7 CONCERNING veterans filing SCDDC claims based on PTSD, and all MEETINGS and
8 COMMUNICATIONS CONCERNING the same.

9 **REQUEST FOR PRODUCTION NO. 41:**

10 Assessments, audits, analyses, critiques or evaluations of the VHA's health care system for
11 PTSD and other mental health disorders.

12 **REQUEST FOR PRODUCTION NO. 42:**

13 The incidence and manifestations of PTSD or mental health disorders amongst members of
14 the Reserves called to active duty in Iraq or Afghanistan, including, without limitation, veterans'
15 under VA or private care, and YOUR tracking of medical problems experienced by members of the
16 Reserves who served in OEF/OIF.

17 **REQUEST FOR PRODUCTION NO. 43:**

18 The complete investigation and prosecution files regarding Lawrence Gottfried and Jill
19 Rygalski, as identified in Paragraphs 231 and 232 of the Complaint, and any other persons known or
20 suspected to have tampered with or destroyed any document or portion of a veteran's claim file.

21 **REQUEST FOR PRODUCTION NO. 44:**

22 The IDENTITY of all veterans whose claims were affected by the illegal actions of Lawrence
23 Gottfried or Jill Rygalski, as described in the Complaint, and the claim files of each.

24 **REQUEST FOR PRODUCTION NO. 45:**

25 The complete investigation files of the Department of Justice and the VA relating to Jill
26 Rygwalski and Lawrence Gottfried, and any similar investigations of other VA employees.

1 **REQUEST FOR PRODUCTION NO. 46:**

2 The complete investigation and prosecution files of all other VA employees known or
3 suspected to have tampered with or destroyed documents in VA claim files.

4 **REQUEST FOR PRODUCTION NO. 47:**

5 Regarding bonuses to management level VA employees, the bonus amounts, names of
6 recipients, dates of awards, supporting justifications of awards, and name of person who signed the
7 approval of award between 2002 and present.

8 **REQUEST FOR PRODUCTION NO. 48:**

9 The criteria for the award of incentive bonuses to VA employees and productivity or
10 performance goals, standards, data, and reports.

11 **REQUEST FOR PRODUCTION NO. 49:**

12 The minimum qualifications for each class or type of VA mental health specialist or
13 professional.

14 **REQUEST FOR PRODUCTION NO. 50:**

15 Errors or erroneous practices regarding the tracking or recording of dates CONCERNING
16 veteran health care appointments as shown in the Patient Appointment Information System, all
17 corrections made thereto, and MEETINGS and COMMUNICATIONS CONCERNING the same.

18 **REQUEST FOR PRODUCTION NO. 51:**

19 All data fields, definitions, and operational manuals CONCERNING databases used by the
20 VA relating to the adjudication of PTSD claims including, without limitation, any and all original
21 claims, appeals at regional offices, appeals at the BVA, appeals to the CAVC, and the delivery of
22 health care to veterans at VA hospitals or outpatient clinics.

23 **REQUEST FOR PRODUCTION NO. 52:**

24 All data fields, definitions, and operational manuals CONCERNING databases used by the
25 VA regarding the timing and disposition of veteran appeals by the BVA, including, without
26 limitation, the Veterans Appeals Control and Locator System.

1 **REQUEST FOR PRODUCTION NO. 53:**

2 Patterns or examples of abuse of the VA's record purpose disallowance procedure, and all
3 MEETINGS and COMMUNICATIONS CONCERNING the same.

4 **REQUEST FOR PRODUCTION NO. 54:**

5 Record purpose disallowances or any denial of a SCDDC claim based upon the claimant's
6 failure to provide information requested by the VA within a specified time period.

7 **REQUEST FOR PRODUCTION NO. 55:**

8 Studies, audits, or reports CONCERNING problems or issues associated with remands of
9 SCDDC claims by the BVA or CAVC, including, without limitation, delays or improper claim
10 development by VA regional offices, failing to address and correct continuing failures of the regional
11 offices to make the same or similar errors, and the issue of multiple remands respecting the same
12 claim or same veteran.

13 **REQUEST FOR PRODUCTION NO. 56:**

14 Allegations or evidence of retaliation against VA employees or witnesses, including, without
15 limitation, any release of information or speech activities CONCERNING the VA, medical care and
16 treatment for veterans or the adjudication of SCDDC claims.

17 **REQUEST FOR PRODUCTION NO. 57:**

18 The institution or conduct of special or supplemental reviews of SCDDC claims by the VA
19 Central Office, including reviews of approvals of grant or denial of service connection for PTSD or
20 TDIU, "second signature" requirements, or special review of prior grants of service connection, and
21 all MEETINGS and COMMUNICATIONS CONCERNING the same.

22 **REQUEST FOR PRODUCTION NO. 58:**

23 Document preservation instructions and measures based upon the filing of this action, any
24 reported violations of such instructions or measures, and all COMMUNICATIONS CONCERNING
25 the same.

26 **REQUEST FOR PRODUCTION NO. 59:**

27 Congressional inquiries regarding the care or treatment of SCDDC claims of veterans with
28 PTSD or mental health disorders and all responses to the same.

1 **REQUEST FOR PRODUCTION NO. 60:**

2 Any analysis of possible measures to reduce VA budget outlays for SCDDC and/or mental
3 health care, including re-review of previously granted SCDDC or PTSD claims, and changes in
4 eligibility, substantive requirements or rating criteria.

5 **REQUEST FOR PRODUCTION NO. 61:**

6 Instances of alleged or confirmed misconduct or improper actions by a VA employee,
7 regarding productivity, production or timeliness respecting a veteran or a veteran's claim, including,
8 without limitation, dismissals or disciplinary action taken.

9 **REQUEST FOR PRODUCTION NO. 62:**

10 Disputes between any Union and the VA concerning alleged misconduct regarding the
11 productivity, production and timeliness of VA employees.

12 **REQUEST FOR PRODUCTION NO. 63:**

13 Changes or proposed changes in the requirements or rules for attorneys or agents to practice
14 before the VA, BVA or CAVC, and all MEETINGS and COMMUNICATIONS CONCERNING the
15 same.

16 **REQUEST FOR PRODUCTION NO. 64:**

17 The VA's investigation and actions taken in response to claims of malpractice or other
18 veterans' complaints about service officers or representatives.

19 **REQUEST FOR PRODUCTION NO. 65:**

20 The VA's central office's supervision, statistical analysis of, or monitoring of grants of
21 service connection for PTSD and appeals of PTSD grant decision or requests for increased ratings at
22 its regional offices and all actions taken with respect to regional offices exhibiting higher than
23 average grant rates or any perceived statistical abnormalities.

24 **REQUEST FOR PRODUCTION NO. 66:**

25 The substantive content of application and problems experienced with the Clinician's Guide
26 provisions regarding PTSD, including, without limitation, Chapter 14 regarding PTSD.

1 **REQUEST FOR PRODUCTION NO. 67:**

2 The production or productivity standards, goals, or requirements for personnel involved in
3 deciding SCDDC claims at regional offices and at the BVA, and for employees assigned to provide
4 health care for veterans and all MEETINGS and COMMUNICATIONS CONCERNING the same.

5 **REQUEST FOR PRODUCTION NO. 68:**

6 Studies, reports, analyses, or predictions of the number and percentages of existing and future
7 veterans from OEF/OIF likely to file SCDDC and or PTSD claims.

8 **REQUEST FOR PRODUCTION NO. 69:**

9 Studies, reports, analyses or predictions of the numbers and percentages of veterans from
10 OEF/OIF likely to seek health care for PTSD or other mental health disorders.

11 **REQUEST FOR PRODUCTION NO. 70:**

12 The adequacy of past, present and future staffing levels at the DVB and VHA to handle
13 anticipated numbers of returned or returning OEF/OIF veterans, and all MEETINGS and
14 COMMUNICATIONS CONCERNING the same.

15 **REQUEST FOR PRODUCTION NO. 71:**

16 Reports, studies, information and examples of the issuance of less than honorable discharges
17 to soldiers exhibiting symptoms of PTSD or mental health disorders by the armed services, and/or
18 their eligibility for SCDDC and VA medical care.

19 **REQUEST FOR PRODUCTION NO. 72:**

20 Any link between PTSD and violent or illegal behavior or conduct by soldiers, including
21 reports, studies, information and examples.

22 **REQUEST FOR PRODUCTION NO. 73:**

23 Data CONCERNING the incidence of, estimates, projections or instances of suicides and
24 attempted suicides amongst OIF/OEF veterans.

25 **REQUEST FOR PRODUCTION NO. 74:**

26 MEETINGS and COMMUNICATIONS within the VA or between the VA and any third
27 party CONCERNING the June 2007 Report of the Department of Defense Task Force on Mental
28 Health.

1 **REQUEST FOR PRODUCTION NO. 75:**

2 The DOLE/SHALALA REPORT, and all MEETINGS and COMMUNICATIONS
3 CONCERNING the same.

4 **REQUEST FOR PRODUCTION NO. 76:**

5 Those DOCUMENTS that mention Plaintiffs or Plaintiffs' Counsel.

6 **REQUEST FOR PRODUCTION NO. 77:**

7 The DoD Task Force On Mental Health dated June 2007, and all COMMUNICATIONS and
8 MEETINGS CONCERNING the same.

9 **REQUEST FOR PRODUCTION NO. 78:**

10 Reports I, II, III and IV of the Mental Health Advisory Team (MHAT) for OEF and/or OIF by
11 the office of the Surgeon General and all COMMUNICATIONS CONCERNING the same.

12 **REQUEST FOR PRODUCTION NO. 79:**

13 COMMUNICATIONS and MEETINGS between the Defendants and the Department of
14 Medicine CONCERNING PTSD or its medical definition, symptoms, rating, diagnosis, or treatment.

15 **REQUEST FOR PRODUCTION NO. 80:**

16 Plans or proposals to privatize medical care for veterans in general or for PTSD and/or mental
17 health disorders, and all COMMUNICATIONS CONCERNING the same.

18 **REQUEST FOR PRODUCTION NO. 81:**

19 COMMUNICATIONS and MEETINGS of the VA's Seamless Transition Task Force also
20 known as Task Force on Seamless Transition, as well as minutes, reports, surveys, recommendations,
21 opinions, projects and working files, and all MEETINGS and COMMUNICATIONS
22 CONCERNING the same.

23 **REQUEST FOR PRODUCTION NO. 82:**

24 COMMUNICATIONS and MEETINGS between the Defendants and the Congress, other
25 members of the Bush Administration and/or the VAIG CONCERNING actual or predicted budget
26 deficits and/or supplemental appropriations for FY 2005, FY 2006, or FY 2007.

1 **REQUEST FOR PRODUCTION NO. 83:**

2 Consultant or third-party studies, evaluations or reports CONCERNING mental health
3 services for veterans, including, but not limited to, services for PTSD, current patient load, claim load
4 and costs, as well as projected patient load, claim load and costs, and all MEETINGS and
5 COMMUNICATIONS CONCERNING the same.

6 **REQUEST FOR PRODUCTION NO. 84:**

7 COMMUNICATIONS and MEETINGS between DEFENDANTS and Altarum Institute of
8 Ann Arbor, Michigan CONCERNING mental health services for veterans.

9 **REQUEST FOR PRODUCTION NO. 85:**

10 PTSD studies and evaluations of PTSD regulations conducted by the Institute of Medicine
11 and all COMMUNICATIONS and MEETINGS regarding the same.

12 **REQUEST FOR PRODUCTION NO. 86:**

13 Rules, practices, regulations, or guidelines CONCERNING how the VA addresses conflicting
14 diagnoses or opinions between doctors or medical personnel employed by the VBA and the VHA
15 regarding a diagnosis of a mental disorder, including PTSD, and MEETINGS and
16 COMMUNICATIONS CONCERNING the same.

17 **REQUEST FOR PRODUCTION NO. 87:**

18 COMMUNICATIONS and MEETINGS between Defendants and the Veterans Disability
19 Benefits Commission CONCERNING SCDDC, medical care for veterans, PTSD or the content of
20 the Commission's Reports.

21 **REQUEST FOR PRODUCTION NO. 88:**

22 The Veterans Disability Benefits Commission Report entitled "Honoring the Call to Duty,"
23 and all COMMUNICATIONS CONCERNING the report and/or its recommendations.

24 **REQUEST FOR PRODUCTION NO. 89:**

25 COMMUNICATIONS and MEETINGS CONCERNING the following GAO reports:
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GAO REPORT #	DATE
GAO-02-806	August 2, 2002
GAO-05-125	February 2005
GAO-05-287	February 2005
GAO-05-160	March 2005
GAO-05-444T	March 17, 2005
GAO-05-1052T	September 28, 2005
GAO-06-207T	October 27, 2005
GAO-06-149	December 9, 2005
GAO-06-362	March 31, 2006
GAO-06-397	May 2006
GAO-06-794R	June 30, 2006
GAO-06-119T	September 28, 2006
GAO-07-66	November 2006
GAO-07-98	December 2006
GAO-07-410R	May 16, 2007
GAO-07-906R	May 25, 2007
GAO-07-985T	June 12, 2007
Testimony (DoD and VA Observations on Efforts to Improve Health Care and Disability Evaluations for Returning Servicemembers)	September 26, 2007

REQUEST FOR PRODUCTION NO. 90:

COMMUNICATIONS and MEETINGS CONCERNING the following VA Inspector General reports:

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OIG REPORT #	DATE
Rpt. #01-02124-71	March 21, 2002
Rpt. # 04-02499-63	January 6, 2005
Rpt. # 04-02974-90	February 25, 2005
Rpt. # 04-03359-105	March 16, 2005
VAOIG Semiannual Report to Congress	April 1, 2005-September 30, 2005
Rpt. # 05-00765-137	May 19, 2005
Rpt. # 05-00839-156	June 24, 2005
Rpt. # 05-01226-211	September 29, 2005
Rpt. # 05-02531-18	November 3, 2005
Rpt. # 05-01838-41	December 8, 2005
Rpt. # 06-00012-49	January 5, 2006 VA
Rpt. # 05-02926-64	January 30, 2006
Rpt. # 05-00734-67	January 31, 2006
Rpt. # 05-01229-71	February 2, 2006
Rpt. #05-03053-77	February 3, 2006
Rpt. # 05-01514-96	March 3, 2006
Rpt. # 05-03219-103	March 14, 2006
VAOIG Semiannual Report to Congress	April 1, 2006-September 30, 2006
Rpt. # 06-00511-131	April 17, 2006
Rpt. # 05-03096-137	May 2, 2006
Rpt. #05-01818-165	July 12, 2006
Rpt. # 05-03281-168	July 17, 2006
Rpt. # 06-00741-173	July 21, 2006
Rpt. # 05-01232-174	July 24, 2006

OIG REPORT #	DATE
Rpt. #05-3571-187	August 11, 2006
Rpt. # 06-01706-209	September 14, 2006
Rpt. # 06-00008-237	September 29, 2006
Rpt. # 06-03479-07	October 19, 2006
Rpt. # 06-01721-32	November 27, 2006
Rpt. # 07-00641-40	December 6, 2006
Rpt. # 06-01133-39	December 8, 2006
Rpt. # 06-02822-45	December 15, 2006
Rpt. # 07-00157-97	March 14, 2007
Rpt. # 07-01349-127	May 10, 2007
Rpt. # 07-00616-199	September 10, 2007
Rpt. #07-00616-199	September 10, 2007

REQUEST FOR PRODUCTION NO. 91:

The interpretation and application of the Medical Care Statute as defined in Paragraph 91 of the Complaint, and procedures, policies, guidelines and MEETINGS CONCERNING the same.

REQUEST FOR PRODUCTION NO. 92:

Record retrieval problems and delays relating to the DVA's request of records from the U.S. Army and Joint Services Records Research Center and other federal agencies or sources in connection with SCDDC or PTSD claims.

REQUEST FOR PRODUCTION NO. 93:

The standards, requirements and time frame for the conduct of a Compensation and Pension examination, as described in paragraphs 98-99 of the Complaint.

1 **REQUEST FOR PRODUCTION NO. 94:**

2 The organizational tree or structure of the DVA, including the DVB, NCA (National
3 Cemetery Association), Readjustment Counseling Services, VBA, BVA, each outpatient clinic or
4 hospital, and the IDENTITY of each person holding each position.

5 **REQUEST FOR PRODUCTION NO. 95:**

6 Shortcomings, deficiencies, problems, or comments CONCERNING the Rating Guide and/or
7 its application to PTSD claims, and all MEETINGS and COMMUNICATIONS CONCERNING the
8 same.

9 **REQUEST FOR PRODUCTION NO. 96:**

10 The number of appeals, and percentage of claimants seeking a hearing at each stage of the
11 Complete Claim Cycle Period, as defined in the Complaint, starting with the Regional Office.

12 **REQUEST FOR PRODUCTION NO. 97:**

13 The number and percentage of SCDDC and PTSD claims remanded by the BVA and CAVC
14 between 2000 and present.

15 **REQUEST FOR PRODUCTION NO. 98:**

16 The number and content of subpoenas and/or subpoenas *duces tecum* issued by the VA, and
17 the percentage of claims where subpoenas were issued between 2000 and present.

18 **REQUEST FOR PRODUCTION NO. 99:**

19 Audit reports for each regional office, outpatient clinic and hospital, and MEETINGS and
20 COMMUNICATIONS CONCERNING the same.

21 **REQUEST FOR PRODUCTION NO. 100:**

22 COMMUNICATIONS and MEETINGS between Defendants and staff or members of the
23 House or Senate Veterans Affairs Committees CONCERNING PTSD, SCDDC, the rating guide,
24 health care for veterans, personality disorder discharges, suicide, and/or adjudication or health care
25 system delay.

1 **REQUEST FOR PRODUCTION NO. 101:**

2 Instances in which Defendants failed to spend funds appropriated by Congress for mental
3 health care and services or medical care for veterans, including, without limitation, the dates,
4 amounts, and totals.

5 **REQUEST FOR PRODUCTION NO. 102:**

6 Suicide prevention, detection, screening, and/or treatment programs administered by YOU or
7 under contract with YOU.

8 **REQUEST FOR PRODUCTION NO. 103:**

9 The military records and VA claim files of all veterans known by you to have committed
10 suicide, including, but not limited to any of the veterans listed on Attachment "A" whose names are
11 followed by an asterisk.

12 **REQUEST FOR PRODUCTION NO. 104:**

13 The military service and medical records of all military personnel who received personality
14 disorder discharges between January 1, 2000 and present.

15 **REQUEST FOR PRODUCTION NO. 105:**

16 Studies, analyses, or discussion of the effect of any VA strategic, program, or policy decisions
17 or alternatives upon the VA budget, and all MEETINGS and COMMUNICATIONS CONCERNING
18 the same.

19 **REQUEST FOR PRODUCTION NO. 106:**

20 The VA's Monthly Performance Reviews from January 1, 2002 to the present.

21 **REQUEST FOR PRODUCTION NO. 107:**

22 Projections, estimates, scenarios, or discussions of the expected changes in the veteran
23 population as a result of OEF/OIF, including, without limitation, projected impacts upon the VA
24 budget, adjudication system, and health care delivery system, and all MEETINGS and
25 COMMUNICATIONS CONCERNING the same.

1 **REQUEST FOR PRODUCTION NO. 108:**

2 Past, present and future staffing and hiring plans for mental health services for veterans,
3 including, without limitation, VA regional offices, VA medical centers and outpatient clinics, and
4 unfilled positions and all MEETINGS and COMMUNICATIONS CONCERNING the same.

5 **REQUEST FOR PRODUCTION NO. 109:**

6 Time frames and/or delays for obtaining stressor verification information regarding PTSD
7 claims such as deck logs from the Naval Historical Society or military records from the Armed
8 Services or other repositories.

9 **REQUEST FOR PRODUCTION NO. 110:**

10 DOCUMENTS that mention any of the authorities in the Appendix to the Complaint. *See*
11 Complaint pp. 70-73.

12 **REQUEST FOR PRODUCTION NO. 111:**

13 DOCUMENTS received by or authored by David Chu, Under Secretary for Personnel and
14 Readiness, U.S. Department of Defense, respecting any proposed reduction of veterans' and retirees'
15 benefits and/or increases in weapon programs, and all MEETINGS and COMMUNICATIONS
16 CONCERNING the same.

17 **REQUEST FOR PRODUCTION NO. 112:**

18 Names and the IDENTITY of all Iraq and Afghanistan veterans as maintained as part of the
19 Gulf War Master Record.

20 **REQUEST FOR PRODUCTION NO. 113:**

21 The lists, compilations, printouts, or files showing the IDENTITY of Iraq and Afghanistan
22 war veterans as compiled by the DoD and/or VA between 2000 and present.

23 **REQUEST FOR PRODUCTION NO. 114:**

24 Death certificates for all deceased Iraq and Afghanistan veterans whose cause of death or
25 contributory cause of death is listed as suicide.

26 **REQUEST FOR PRODUCTION NO. 115:**

27 Copies of all death certificates for veterans, as shown in dependency and indemnity
28 compensation portion of the CPMR (the Compensation and Pension Service Master Record),

1 including, without limitation, active and terminated records, where such certificates show suicide or
2 possible suicide as a cause or contributing cause of death.

3 **REQUEST FOR PRODUCTION NO. 116:**

4 Projections prepared by Price Waterhouse Coopers, YOUR budget staff, or other contractors
5 CONCERNING the past, present and/or future number, type, diagnosis, and expenditures associated
6 with OIF and OEF and SCDDC and/or PTSD claims.

7 **REQUEST FOR PRODUCTION NO. 117:**

8 Data and information concerning PTSD claims and/or claimants or recipients as stored in the
9 VETSNET computer system.

10 **REQUEST FOR PRODUCTION NO. 118:**

11 The IDENTITY of all active service members from OIF/OEF that have committed suicide.

12 **REQUEST FOR PRODUCTION NO. 119:**

13 A list of all active armed services suicides and computer printouts showing the IDENTITY of
14 soldiers serving in Iraq and/or Afghanistan and a list of servicemembers or survivors receiving
15 Service Member Group Life Insurance.

16 **REQUEST FOR PRODUCTION NO. 120:**

17 Surveys, data, studies, compilations, or analyses of information CONCERNING mental
18 health problems or disorders amongst OIF and OEF veterans or soldiers.

19 **REQUEST FOR PRODUCTION NO. 121:**

20 VA Monthly Performance Reviews prepared by the Office of Performance Analysis and
21 Integrity between 2000 and present.

22 **REQUEST FOR PRODUCTION NO. 122:**

23 Minutes, summaries, memoranda, and videotapes of regional office director MEETINGS and
24 teleconferences, and/or the Office of Field Operations.

25 **REQUEST FOR PRODUCTION NO. 123:**

26 COMMUNICATIONS and MEETINGS CONCERNING the August 21, 2007 Litigation
27 Hold Memo, including, without limitation, e-mails or other COMMUNICATIONS sent to Michael
28

1 G. Daugherty or Christopher McNamee regarding good faith cost estimates and other information
2 and responses thereto.

3 **REQUEST FOR PRODUCTION NO. 124:**

4 Allegations, statements, reports, charges or discussions of whether or not the VA applies or
5 has claim processing quotas for adjudication personnel or quotas or other limitations upon the grant
6 of SCDDC for PTSD or other disabilities or conditions.

7 **REQUEST FOR PRODUCTION NO. 125:**

8 Reports, drafts, correspondence, analyses and other COMMUNICATIONS CONCERNING
9 studies prepared by the Institute for Defense Analyses and/or David Hunter or VA disability or
10 SCDDC payments, and all MEETINGS and COMMUNICATIONS CONCERNING the same.

11 **REQUEST FOR PRODUCTION NO. 126:**

12 The working files and computer files, including, without limitation, e-mails of all witnesses
13 listed in the Initial Disclosures of any parties who are or become the subject of deposition notices
14 and/or subpoenas in this action.

15 **REQUEST FOR PRODUCTION NO. 127:**

16 The success rates for VA claims and appeals to the BVA, CAVC, and/or Federal Circuit for
17 claimants representing themselves compared to claimants represented by veterans service officers,
18 agents, and attorneys.

19 **REQUEST FOR PRODUCTION NO. 128:**

20 Those documents identified in Section B of your initial disclosures dated October 18, 2007.

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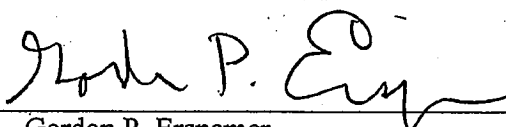
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1 **REQUEST FOR PRODUCTION NO. 129:**

2 Those documents responsive to these requests that are maintained in the personal or working
3 files of each witness listed on Defendants Initial Disclosures dated October 18, 2007.

4 Dated: October 19, 2007

GORDON P. ERSPAMER
ARTURO J. GONZALEZ
HEATHER A. MOSER
BILL D. JANICKI
STACEY M. SPRENKEL
MORRISON & FOERSTER LLP

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8 By: 
9 Gordon P. Erspamer

10 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 101 Ygnacio Valley Road, Suite 450, California 94596. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on the date hereof, I served a copy of:

VETERANS FOR COMMON SENSE AND VETERANS UNITED FOR TRUTH, INC.'S FIRST AMENDED FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS

- BY FACSIMILE [Code Civ. Proc sec. 1013(e)] by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone number (925) 946-9912 to the fax number(s) set forth below, or as stated on the attached service list. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

I am readily familiar with Morrison & Foerster LLP's practice for sending facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed at Morrison & Foerster LLP for transmission.

- BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 101 Ygnacio Valley Road, Walnut Creek, California 94596-8130 in accordance with Morrison & Foerster LLP's ordinary business practices. I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

- BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(d)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 101 Ygnacio Valley Road, Walnut Creek, California 94596-8130 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

- BY PERSONAL SERVICE [Code Civ. Proc sec. 1011] by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and delivery at the mailroom of Morrison & Foerster LLP, causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with Morrison & Foerster LLP's practice for the collection and processing of documents for hand delivery and know that in the ordinary

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course of Morrison & Foerster LLP's business practice the document(s) described above will be taken from Morrison & Foerster LLP's mailroom and hand delivered to the document's addressee (or left with an employee or person in charge of the addressee's office) on the same date that it is placed at Morrison & Foerster LLP's mailroom.

Please note: If you check this box, you must follow up the next business day with an amended proof containing the name and signature of the person actually effecting service. This amended proof must be filed with the court.

BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6] by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6.

Steven Y. Bressler, Esq.
Trial Attorney, Civil Division, Federal Programs Branch
United States Department of Justice
P.O. Box 883
Washington, DC 20044

Executed at Walnut Creek, California, this 19th day of October.



Jill Haskins

ATTACHMENT A

Veterans for Common Sense et al. v. Nicholson et al.
No. C 07 3758, U.S.D.C. (N.D. Cal. 2007)

ATTACHMENT A

Please Note: The asterisk (“*”) symbol, as applied below, indicates the individual has committed suicide.

Fname	Lname	City	State
David	Adams	near Chicago	IL
Susan	Avila-Smith		
Justin	Bailey*	Los Angeles	CA
Chris	Bain		
Fred	Ball	Camp Pendleton	CA
Debra	Banaszak*	Iraq	
Douglas	Barber*		AL
Sargent	Binkley	Los Altos	CA
Jesus	Bocanegra	McAllen	TX
Jerry	Boler	Caledonia	MI
Howard	Books	Stacy	MN
Zachary	Bowen*	New Orleans	
Timothy	Bowman*		IL
Edward	Brabazon*	Iraq	
Michael	Bramer*		NC
Greg	Braun*		WI
Jeffrey	Braun*	Iraq	
Kate	Bulson	Muskegon	MI
Charles	Call*		WV
Dominic	Campisi*		PA
Keri	Christensen	near Denver	CO
Don	Clinger	Jacksonville	NC
James Curtis	Coon*	Walter Reed	
John	Cooney	Jacksonville	NC
Jason	Cooper*	Des Moines	IA
Richard	Corcoran*	Fort Bragg	
Justin	Covert*	Butler Township	OH
Darryl	Coyes	Mesa	AZ
Jeans	Cruz	Bronyes	NY
Chris	Dana*	Montana	
Gloria	Davis*		
Robert	Decouteaux*		NY
Brock	Delcambre*	New Iberia	LA
Ken	Dennis*	Renton	WA
Zack	Dick	Somerset	KY
Michael	Dickey*		
James	Dinella	near Chicago	IL

Veterans for Common Sense et al. v. Nicholson et al.
No. C 07 3758, U.S.D.C. (N.D. Cal. 2007)

ATTACHMENT A

Please Note: The asterisk (“*”) symbol, as applied below, indicates the individual has committed suicide.

Fname	Lname	City	State
Josh	Dobbelstein	near Chicago	IL
Mark Stephen	Dobson*	Iraq	
Kevin	Elmer*	Lafayette	LA
David	Fickel*		MN
John R.	Fish*	Paso Robles	CA
Brandon	Floyd*	Fort Bragg	
Chris	Forcum*		OR
John	Frasso*	Nescopeck	PA
Brandon	Floyd	Fort Bragg	
Chris	Forcum		OR
Keli	Frasier	Clifton	CO
Leslie	Frederick*	Tacoma	
Brian	Frost*	Torrington	CT
Christopher	Gearhart	Cape Coral	FL
Mary	Gentile*	Lacey	WA
Ann	Gholz	Vancouver	WA
Michael	Gold	Barrington	VT
Julian	Goodrum	Knoyesville	TN
Michael	Goss	Corpus Christi	TX
Curtis	Greene*	Fort Riley	
Eric Ryan	Grossman*		CA
David	Guindon*	Manchester	NH
Marshall	Gutierrez*		
Robert	Guy*	Iraq	
Byron	Hancock	Bryan	TX
Jason	Harvey		
Kyle	Hemauer*	Afghanistan	
Derek	Henderson*	Louisville	KY
Jeffrey	Henthorn*	Iraq	
Frank	Herrman	Chestnut Ridge	NY
William	Howell*		CO
Kristiaan	Hughes	Fort Knoyes	KY
Robert	Hunt*	Houston	
Rebecca	Jarabek*	Youngstown	OH
James	Jenkins*	San Diego	
Adam	Kelly*	Las Vegas	NV
Bill	Keyes	Albany	NY
Denise	Lannaman*	Queens	NY

Veterans for Common Sense et al. v. Nicholson et al.
No. C 07 3758, U.S.D.C. (N.D. Cal. 2007)

ATTACHMENT A

Please Note: The asterisk (“**”) symbol, as applied below, indicates the individual has committed suicide.

Fname	Lname	City	State
Josh	Lansdale	Kansas City	MO
Ryan	LeCompte	Lower Brule	SD
Samuel	Lee*	Iraq	
Jeffrey	Lehner*		CA
Steven Michael	Logan*		DE
Aleyes	Lotero	Miami	FL
Jeffrey	Lucey*	Belcher	MA
Jacob	Martin		
Kevin	McCarty*		
Andre	McDaniel*	Colorado Springs	CO
Brian	McKeehan*	Fort Eustis	
James	Melchor*	Portsmouth	VA
Brent	Messick	Salt Lake	UT
Dylan	Meyer*	Augusta	GA
Linda	Michel*	[near Albany]	NY
Chad	Miller		
Eric	Miller	Lancaster	SC
James Blake	Miller	Pike County	KY
John	Miner		VT
Willy James	Moore*	Pascagoula	MI
Nicholas	Morin	Temecula	CA
Tom	Nevins	Ahwatukee Foothills	AZ
Bill	Nichols	Jacksonville	NC
Rigoberto	Nieves*	Fort Bragg	
Joshua	Omvig*	Grundy Center	IA
Walter	Padilla*	Colorado Springs	CO
Mike	Parker		
David	Payne*	Norman	OK
Michael	Pelkey*	Fort Sill	OK
Abbie	Pickett		WI
Noah Charles	Pierce*		
Javier	Pina	Linden	CA
Deyester	Pitts	Louisville	KY
Georg-Andreas	Pogany		
David	Potter*	Iraq	NCW
William Neal	Price*	Ogden [Ft. Riley]	KS

Veterans for Common Sense et al. v. Nicholson et al.
No. C 07 3758, U.S.D.C. (N.D. Cal. 2007)

ATTACHMENT A

Please Note: The asterisk (“*”) symbol, as applied below, indicates the individual has committed suicide.

Fname	Lname	City	State
Tina	Priest*	Iraq	
Bernardo	Ratliff*	Columbus	OH
Brandon	Ratliff	Columbus	OH
Brian Jason	Rand*	Jacksonville	NC
Andres	Raya*		CA
Saxxon	Rech*	Lynden	WA
Jessica	Rich*		CO
Adrian	Richard		LA
Benny	Riggins*		
Sean	Rodriguez-Street	Camp Pendleton	CA
John	Ruocco*	Camp Pendleton	CA
O.J. John B.	Santa Maria	Daly City	CA
Rob	Sarra		
Mike	Saye	Mesa	AZ
Gary	Scaggs	Louisville	KY
Jason	Scheuerman*		
Jacob	Schick	Gretna	LA
Donald Louis	Schmidt	Chillicothe	Ill.
Jonathon	Schulze*		MN
Jeremy	Seeley*		KY
Stephen	Sherwood*	Fort Collins	CO
Stephen	Sirko*		
Jeffrey	Sloss*		SC
Corey	Small*	Iraq	
Richard	Smith	Tehachapi	CA
Walter	Smith	Tooele	UT
Alexis	Soto-Ramirez*	Walter Reed	
Thomas	Stroh*	Fort Lewis	WA
Joseph	Suell*	Iraq	
Suzanne	Swift	Fort Lewis	WA
Paul	Thurman		
Michael	Torok*		IL
Jon	Town	Findlay	OH
Richard	Tugwell	Hampton	VA
Andrew	Velez*	Afghanistan	
Travis	Virgadamo*	Las Vegas	NV
Kenneth	Wagner	Highland Springs	VA

Veterans for Common Sense et al. v. Nicholson et al.
No. C 07 3758, U.S.D.C. (N.D. Cal. 2007)

ATTACHMENT A

Please Note: The asterisk (“*”) symbol, as applied below, indicates the individual has committed suicide.

Fname	Lname	City	State
Allen	Walsh	Tucson	AZ
Mark	Warren*	Iraq	
William Ellery	Weiss*	San Diego	CA
Colonel Ted	Westhusing*	Biap	Iraq
Boyd	Wicks, Jr.*	Wilmington	DE
Kyle	Williams*		AZ
Jeremy	Wilson*	[Fort Carson]	CO
Crystal	Witte	Florence	CO
Donald Wade	Woodward*	Lancaster	PA

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Assistant Attorney General
SCOTT N. SCHOOLS
Interim United States Attorney
RICHARD LEPLEY
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DANIEL BENSING D.C. Bar No. 334268
STEVEN Y. BRESSLER D.C. Bar No. 482492
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Attorneys for Defendants Hon. Gordon H. Mansfield, the U.S. Department of Veterans Affairs, Hon. James P. Terry, Hon. Daniel L. Cooper, Hon. Bradley G. Mayes, Hon. Michael J. Kussman, Pritz K. Navara, the United States of America, Hon. Michael B. Mukasey, and Hon. William P. Greene, Jr.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

VETERANS FOR COMMON SENSE and)
VETERANS UNITED FOR TRUTH,)
)
Plaintiffs,)
)
v.)
)
Hon. GORDON H. MANSFIELD, Acting)
Secretary of Veterans Affairs, *et al.*,)
)
Defendants.)
)
)

No. C 07-3758-SC

DECLARATION OF THOMAS G. BOWMAN

I, Thomas G. Bowman, declare:

1. I am employed as the Chief of Staff of the U.S. Department of Veterans Affairs (VA). The information contained in this declaration is based on my personal knowledge and information made available to me in my official capacity.

2. Following my retirement from the Marine Corps as a colonel in October 1999, I

served as senior counsel to the Committee on Government Reform of the U.S. House of Representatives until February 2002, when I joined VA. At VA, I served as Executive Assistant and Acting Assistant Secretary for Public and Intergovernmental Affairs before leaving in June 2003 to serve as State Court Administrator for the Rhode Island Judiciary and Chief of Staff to the Chief Justice of the Rhode Island Supreme Court.

3. I returned to VA in June 2004 to become the Deputy Assistant Secretary for Congressional and Legislative Affairs. In August 2004 I was appointed Deputy Chief of Staff. On October 12, 2005, I was appointed Chief of Staff for VA.

4. In my official capacity I work with the Secretary and Deputy Secretary to manage day-to-day operations of VA, the federal government's second-largest Cabinet department, with more than 247,000 employees at more than 1,300 points of service including Regional Offices, VA medical centers, outpatient clinics, Vet Centers and national cemeteries throughout the country. As Chief of Staff, I am familiar with VA's operations and organizations.

5. I am aware of this litigation and of the defendants' Motion to Dismiss all of the plaintiffs' claims, filed on September 25, 2007, and set for hearing before the Court on December 14, 2007. I am also aware that on October 18 and 19, 2007, the two plaintiff organizations served 129 Requests for Production (RFP) on defendants including VA.

6. I am aware that on October 23, 2007, VA's Department of Justice (DOJ) counsel met with more than 20 VA staff members representing the offices potentially implicated in this lawsuit, including the Chiefs of Staff for both the Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA). The purpose of this meeting was to identify offices within VA likely to have information relevant to the plaintiffs' requests. DOJ counsel requested that the offices identified as potentially having responsive information estimate the cost of responding to plaintiffs' requests in terms of the time required, the monetary expenditure required, and opportunity costs of complying.

7. I have also been advised that, given the ambiguity of some of the plaintiffs' requests, the limited time to respond, the size of the agency and the fact that many different

employees were assigned to the task of developing cost estimates, the assumptions and methodologies used in developing the estimates might vary. Moreover, VA employees attempted to identify the offices most likely to have responsive information but, because of the broad and vague nature of many of the requests, some estimates may not account for all costs associated with the 129 requests. VA staff did not attempt to estimate the costs of responding to certain requests that were patently irrelevant or sought unreleasable information. Nevertheless, based on the good faith estimates provided by VA staff and program offices interpreting the RFPs, I believe that these estimates conservatively capture the rough magnitude of the burden that would be placed on VA if the Department is required to respond to the plaintiffs' broad production requests. We estimate that the cost of complying with 27 of plaintiffs' 129 RFPs is more than \$1 million dollars each and that the cost of complying with 21 of these is estimated at more than \$2 million dollars each.

8. To fulfill plaintiffs' document requests would require many time-consuming electronic and manual searches of computer systems.

a. For example, plaintiffs seek "All DOCUMENTS CONCERNING any one or more of the [requests for production]." See RFP pg. 8. Plaintiffs have defined "document" to include "e-mail or electronic mail." See RFP, Definition 2. Read literally, plaintiffs' requests will require VA to search all of its e-mail boxes for responsive documents. Moreover, plaintiffs make no effort to identify personnel who may be in possession of these items. Given the size of VA and the ubiquitous nature of e-mail, the information sought by plaintiffs could be located anywhere in VA's more than 320,000 e-mail boxes. I am told by VA information technology staff that in order to conduct a search of the active e-mail system for messages containing particular words or phrases, each mailbox would need to be searched separately. Such searches involve connecting to an individual employee's mailbox, conducting a search, and copying any responsive records; a process estimated to take between five and ten minutes per mailbox, excluding the time required for setup and export of messages. I have been

informed that given the ambiguity in the plaintiffs' multiple, broad requests and VA's size, conducting e-mail searches will place a substantial burden on VA's information technology resources. Additionally, each VA employee would be required to read plaintiffs' 129 paragraph request for production and then manually search his or her work space for responsive materials. It is my opinion as Chief of Staff, that conducting such a broad based search will divert valuable resources necessary to provide benefits and services to veterans and survivors.

b. Based on the estimates received, complying with requests 16, 17, 31, 32, 38, 103, 104, and 115 will require a search of individual claims files, which are maintained at VA Regional Offices and VA's Records Management Center. Another nineteen requests (request numbers 1-15; 2; 96-98) may require individual searches of files. VA staff estimate that responding to these requests will cost millions of dollars. For example, in response to DOJ's request for cost estimates of complying with RFP 1, the Board of Veterans' Appeals' (BVA) response provides that BVA's electronic database containing the relevant information lacks the capacity to identify the disease or injury on which of the underlying claim for which dependency and indemnity compensation (DIC) (i.e., compensation for service-connected death) is based. In order to satisfy this request, which seeks databases, lists, and printouts showing pending service connected death or disability compensation claims (SCDDC) based on PTSD or other mental disorders, BVA employees would have to manually search each claims file to identify DIC, cause of death claims, or other compensation claims based on PTSD or other mental disorders. BVA estimates it would cost nearly \$2.4 million to produce the information requested by RFP 1 alone.

c. Similarly, many of VA's records are stored at the agency's 57 Regional Offices and the Records Management Center (RMC) in St. Louis, Missouri. Many of plaintiffs' requests would require electronic and/or manual searches of records at those offices. For example, RFP 115 seeks copies of all death certificates for veterans in DIC

claims in which the death certificates show suicide or possible suicide as a cause or contributing cause of death. Although VA does not have existing reports that would provide that information, it is possible that VBA has responsive materials in claims files (*i.e.* death certificates). Therefore, to comply with plaintiffs' request would require VA to write and run a program to attempt to locate an estimated 439,000 claim files at the Regional Offices and the RMC.¹ Identified files would then have to be retrieved from the Regional Office and RMC file banks by GS-4 file clerks. VBA estimates that the files could be pulled at a rate of 100 per hour (4,390 hours). Once retrieved, GS-10s at each of the 57 Regional Offices and RMC would review the files to identify and copy death certificates that have suicide listed as a contributory cause of death. VBA estimates that at a rate of six per hour, it would take 73,167 hours to review the folders and make the copies. Based on the cost estimate provided to me by VBA, responding to plaintiffs' RFP 115 could cost VBA \$2.5 million. This figure does not reflect the opportunity costs, *i.e.*, lost productivity in adjudicating claims while employees are diverted to reviewing claims files. It is my opinion as the Chief of Staff that diverting resources from claims adjudication will have a detrimental impact on VA's ability to adjudicate benefits claims from veterans and their survivors.

9. In addition to the cost and workload burden on VA, plaintiffs' request also raises serious privacy concerns, especially for those requests seeking medical treatment files related to mental health services. Congress has accorded significant protections to such records, see e.g. 38 U.S.C. §§ 5701, 7332, in view of the potential harm that disclosure may have on patients and the physician-patient relationship. For example, plaintiffs' RFP 31 and 120 potentially involve records held by the 209 Vet Centers nationwide. Vet Centers provide readjustment counseling services to combat veterans to assist in the transition from military to civilian life. Services

¹ This figure reflects VBA's estimate as to the number of claims files that will contain information on veterans' deaths since January 1, 2000. VBA staff based this estimate upon the number of active Dependency and Indemnity Compensation (DIC) files (329,000) plus an estimate of the conforming records from the 1.1 million inactive records in the system.

provided by the Vet Centers includes, among other things, counseling, group counseling, bereavement counseling, and medical referrals. Vet Center program officials have conservatively estimated that Vet Center paper files contain counseling records for more than 2.5 million veterans. In addition, much of this information is potentially covered by the psychotherapist-patient privilege. Vet Center program administrators have stated that producing documents from the Vet Centers would violate VA's 28-year policy guaranteeing strict confidentiality for services rendered by not releasing records without the veteran's consent. Vet Center program administrators are concerned that such a disclosure would undermine the Vet Center program's hard won trust with the combat veteran population and could cause serious barriers to care for new veterans needing readjustment counseling services. Based on the opinions provided by Vet Center program officials, my understanding of the nature of the Vet Center model, and my experience with the veteran community, I believe that requiring VA to produce information related to treatment records for mental health services could have a negative impact on veterans' willingness to seek mental health care services from VA.

10. Plaintiffs' requests for veterans' records and related correspondence will also require a search of records at VA's nearly 1,300 sites of care including 153 hospitals, 135 nursing homes, 724 Community Based Outpatient Clinics, 209 Vet Centers, and 46 Domiciliary Residential Rehabilitation Treatment Programs. Over 5.5 million individual patients are seen at VA facilities each year. VA conducted nearly 54 million outpatient visits and operated 54,000 inpatient beds in fiscal year (FY) 2006. VHA employs 210,000 individuals throughout the healthcare system, 59 percent (123,900) of whom provide direct patient care. Requiring clinicians to search their files for, e.g., information related to "diagnostic criteria for PTSD applied by VA," RFP 33, "document preservation instructions and measures based upon the filing of this action," RFP 58, or specific information about all potential PTSD patients would significantly burden the VA health system and distract employees, particularly health care providers, from delivering health care services to veterans.

11. Recently, VA's patient population has evolved to include Operation Enduring

Freedom /Operation Iraqi Freedom (OEF/OIF) veterans. Of the 751,273 OEF/OIF veterans separated through October 2007, 263,909 have obtained health care in a VA facility since FY 2002. VA operates the nation's only Polytrauma System of Care in support of the needs of severely injured OEF/OIF veterans. Requiring health care providers in VA's Polytrauma Centers to produce documents related to the request for production would distract VA health care providers from delivering the critical level of care necessary for these OEF/OIF veterans.

12. Plaintiffs' first Request for Production of documents would divert enormous staff and resources from VA and would prevent VA from timely providing benefits and health care to veterans and their survivors. The Chief of Staff of VHA has advised me that requiring VA to fulfill the request for production in its present form would have an adverse impact on VHA in the context of VHA's four missions: clinical care, research, education and support to the Department of Defense during national emergencies. To the degree that health care professionals (and their support staff) are involved in the retrieval of information related to this request, care provided to veterans will be significantly delayed and the quality of health care for those veterans will be significantly impacted. Our assessment is that health care professionals (and their support staff) will be significantly involved in the retrieval of information related to this request.

13. Similarly, VA's ability to timely provide veterans benefits through VBA will be significantly and adversely affected by the impact of the labor-intensive reviews and searches that would be required to respond to plaintiffs' request for production. VBA administers programs that provide financial and other forms of assistance to veterans and their survivors including compensation, pension, survivors' benefits, rehabilitation and employment assistance, education assistance, home loan guaranties, and life insurance. Within VBA, the Compensation and Pension Service administers disability compensation and dependency and indemnity compensation benefit programs. This fiscal year, VA will pay compensation and dependency and indemnity compensation benefits totaling nearly \$37.3 billion dollars to over 3.2 million veterans and survivors. VA will also pay disability and death pension benefits totaling nearly

\$3.8 billion dollars to 513,000 veterans and survivors.

14. The time required to search for the information requested by plaintiffs will detrimentally impact VA's responsibilities to claimants. Disability claims from returning war veterans, as well as from veterans of earlier periods, have increased 45 percent between 2000 and 2007. VBA projects that disability claims in 2008 will increase to an estimated 840,000. The increasing claims volume has significantly increased VBA's inventory of pending claims (now over 400,000) and the length of time veterans must wait for decisions on their claims (averaging 177 days in October 2007).

15. Over the past year, VBA has been aggressively hiring additional staff to address its growing workload, improve the timeliness of decisions, and expedite processing of claims from OIF/OEF veterans. This request for production would divert many of our regional office employees from their primary mission of delivering benefits to veterans and their survivors to searching records and reviewing files. Similarly, new employees, who require more than two years to become proficient, would lose valuable training time if tasked with responding to the RFP. Although the subject of this litigation is service connected death and disability compensation, were VBA employees required to search for the information sought in the RFP, all programs administered by VBA would be adversely affected because VBA employees generally adjudicate all types of benefits claims. Overall, this would have a negative effect on our efforts to increase resources devoted to claims processing and expedite OIF/OEF claims.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2007.


THOMAS G. BOWMAN

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13 [see next page for additional counsel for Plaintiffs]

14 Attorneys for Plaintiff(s)
 15 VETERANS FOR COMMON SENSE, and
 VETERANS UNITED FOR TRUTH, INC.

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA

18 VETERANS FOR COMMON SENSE, and
 19 VETERANS UNITED FOR TRUTH, INC.,

20 Plaintiffs,

21 v.

22 GORDON H. MANSFIELD, Acting Secretary of
 Veterans Affairs, *et al.*,

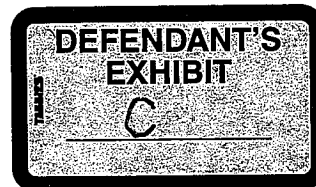
23 Defendants.

Case No. C-07-3758-SC

**PLAINTIFFS' NOTICE OF
 DEPOSITION OF DEFENDANT
 WITNESSES**

(Class Action)

Complaint Filed July 23, 2007



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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiffs VETERANS FOR COMMON SENSE and VETERANS UNITED FOR TRUTH, INC. will take the depositions upon oral examination of Defendants. The depositions will take place at the offices of Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105. The depositions will begin on the dates and times indicated on the attached chart, and will continue from day to day thereafter until completed.

The depositions will be taken before a notary public authorized to administer oaths in the State of California. In addition to being recorded by stenographic method, the deposition testimony may be digitally video recorded. Such video recording may be used by Plaintiffs at trial.

Please take further notice that the deponents are requested to produce copies of all documents responsive to each document request served by Plaintiffs in this action which are found in each deponent's working files, computer work stations, or other personal files, to the extent they have not been identified and produced previously as part of Defendants' production.

Dated: November 2, 2007

GORDON P. ERSPAMER
ARTURO J. GONZALEZ
HEATHER A. MOSER
BILL D. JANICKI
STACEY M. SPRENKEL
MORRISON & FOERSTER LLP

By: 
Gordon P. Erspamer

Attorneys for Plaintiffs

1 **DEPOSITION SCHEDULE**

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Name	Title	Deposition Date & Time
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Ronald Aument Deputy Under Secretary for Benefits, U.S. Department of Veterans Affairs	January 16, 2008 9:30 a.m.
	Gary Baker Director of Business, Veterans Health Administration, U.S. Department of Veterans Affairs	February 26, 2008 9:30 a.m.
	Thomas G. Bowman Chief of Staff, U.S. Department of Veterans Affairs	February 15, 2008 9:30 a.m.
	John Brown Director, Seamless Transition Office	February 5, 2008 9:30 a.m.
	Dr. John Cho Director, Fort Carson Medical Center Fort Carson, Colorado	January 25, 2008 9:30 a.m.
	David Chu Under Secretary for Personnel & Readiness, U.S. Department of Defense	January 15, 2008 9:30 a.m.
	Daniel Cooper Under Secretary, Veterans Benefits Administration, U.S. Department of Veterans Affairs	March 25 & 26, 2008 9:30 a.m.
	Dr. Gerald Cross Principal Deputy Under Secretary for Health, U.S. Department of Veterans Affairs	January 11, 2008 9:30 a.m.
	Dr. Cutolo Chief of Staff, James A. Haley VA Medical Center in Tampa, Florida	January 9, 2008 9:30 a.m.

Name	Title	Deposition Date & Time
Adm. Patrick Dunne	Assistant Secretary of Policy and Planning, U.S. Department of Veterans Affairs	February 27, 2008 9:30 a.m.
Laurie E. Ekstrand	Director of Health Care, U.S. Government Accountability Office	January 10, 2008 9:30 a.m.
Dr. Scott Fairchild	Welcome Home Vets, Inc./ Operation Standup	February 1, 2008 9:30 a.m.
William F. Feeley	Deputy Under Secretary for Health for Operations and Management, U.S. Department of Veterans Affairs	March 14, 2008 9:30 a.m.
Matthew J. Friedman	Executive Director-National Center for PTSD, U.S. Department of Veterans Affairs	March 6, 2008 9:30 a.m.
Lawrence Gottfried	Former U.S. Department of Veterans Affairs attorney	January 30, 2008 9:30 a.m.
William P. Greene, Jr.	Chief Judge of the United States Court of Appeals for Veterans Claims	March 27 & 28, 2008 9:30 a.m.
Paul J. Hutter	General Counsel, U.S. Department of Veterans Affairs	March 11, 2008 9:30 a.m.
Col. Bob Ireland	Psychiatrist, United States Air Force	February 8, 2008 9:30 a.m.
Dr. Ira Katz	Chief Patient Care Services Officer, U.S. Department of Veterans Affairs Deputy	March 7, 2008 9:30 a.m.

Name	Title	Deposition Date & Time
Peter D. Keisler	Acting Attorney General of the United States	April 10 & 11, 2008 9:30 a.m.
Steve Keller	Senior Deputy Vice Chairman, Board of Veterans' Appeals	February 7, 2008 9:30 a.m.
Dr. Steven Knorr	Director of Mental Health, Evans Army Community Hospital, Ft. Carson, Colorado	March 18, 2008 9:30 a.m.
Dr. Michael Kussman	Under Secretary of Health, Veterans Health Administration	April 8 & 9, 2008 9:30 a.m.
Gordon H. Mansfield	Acting Secretary of Veterans Affairs	April 15 & 16, 2008 9:30 a.m.
Bradley Mayes	Director, Compensation & Pension Service, U.S. Department of Veterans Affairs	April 1 & 2, 2008 9:30 a.m.
Jack McCoy	Former Associate Deputy Under Secretary for Benefits, Veterans Benefits Administration, U.S. Department of Veterans Affairs	March 13, 2008 9:30 a.m.
William McLemore	Deputy Assistant Secretary, Intergovernmental Affairs, U.S. Department of Veterans Affairs	January 24, 2008 9:30 a.m.
Mike McLendon	Former Deputy Assistant Secretary for Policy, Planning and Preparedness, U.S. Department of Veterans Affairs	February 12, 2008 9:30 a.m.

Name	Title	Deposition Date & Time
Lois Mittlestaedt	Chief of Staff for the Under Secretary for Benefits, Veterans Benefits Administration, U.S. Department of Veterans Affairs	February 28, 2008 9:30 a.m.
Gen. Robert Mixon	Commander of Fort Carson, Colorado	March 5, 2008 9:30 a.m.
Maj. Scott Moran	Psychiatrist, Walter Reed U.S. Army Hospital	January 23, 2008 9:30 a.m.
Pritz Navara	Former Veteran Service Center Manager, Oakland Regional Office, U.S. Department of Veterans Affairs	February 20, 2008 9:30 a.m.
Frank Q. Nebeker, Esq.	Former Chief Judge, United States Court of Appeals for Veterans Claims	January 29, 2008 9:30 a.m.
George J. Opfer	Inspector General, U.S. Department of Veterans Affairs	March 12, 2008 9:30 a.m.
Dr. Michael Pantaleo	Psychiatrist, U.S. Army	February 29, 2008 9:30 a.m.
Gen. Jeff Phillips	Public Affairs officer, U.S. Department of Defense	March 4, 2008 9:30 a.m.
Lt. Col. Elspeth Ritchie	U.S. Army Psychiatrist	February 13, 2008 9:30 a.m.
Mark Russell	Navy Commander, Iwakuni, Japan	January 8, 2008 9:30 a.m.
Jill Rygwalski	Former U.S. Department of Veterans Affairs attorney	January 31, 2008 9:30 a.m.

Name	Title	Deposition Date & Time
Raymond Sullivan	Executive Director, Office of Information and Technology Field Operations, U.S. Department of Veterans Affairs	February 22, 2008 9:30 a.m.
James P. Terry	Chairman, Board of Veterans Appeals, U.S. Department of Veterans Affairs	April 3 & 4, 2008 9:30 a.m.
William F. Tuerk	Under Secretary of Memorial Affairs, U.S. Department of Veterans Affairs	February 14, 2008 9:30 a.m.
Dr. George Van Buskirk	Chief of Staff, Bay Pines VA Medical Center, St. Petersburg, Florida	January 17, 2008 9:30 a.m.
Michael Walcoff	Associate Deputy Under Secretary of Field Operations, U.S. Department of Veterans Affairs	February 21, 2008 9:30 a.m.
Ulrike Willimon	Veteran Service Center Manager, Oakland Regional Office, U.S. Department of Veterans Affairs	January 18, 2008 9:30 a.m.
Gen. Stephen Xenakis, Ret.	Supervisor, U.S. Army's Medical Centers in the United States	February 6, 2008 9:30 a.m.
Dr. Al Batres	Director, Readjustment Counseling Service, U.S. Department of Veterans Affairs	March 19, 2008 9:30 a.m.

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CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 101 Ygnacio Valley Road, Suite 450, California 94596. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on the date hereof, I served a copy of:

PLAINTIFFS' NOTICE OF DEPOSITION OF DEFENDANT WITNESSES

BY FACSIMILE [Code Civ. Proc sec. 1013(e)] by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone number (925) 946-9912 to the fax number(s) set forth below, or as stated on the attached service list. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

I am readily familiar with Morrison & Foerster LLP's practice for sending facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed at Morrison & Foerster LLP for transmission.

BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 101 Ygnacio Valley Road, Walnut Creek, California 94596-8130 in accordance with Morrison & Foerster LLP's ordinary business practices. I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(d)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 101 Ygnacio Valley Road, Walnut Creek, California 94596-8130 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

BY PERSONAL SERVICE [Code Civ. Proc sec. 1011] by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and delivery at the mailroom of Morrison & Foerster LLP, causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with Morrison & Foerster LLP's practice for the collection and processing of documents for hand delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be taken from Morrison & Foerster LLP's mailroom and hand delivered

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BY PERSONAL SERVICE [Code Civ. Proc sec. 1011] by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and delivery at the mailroom of Morrison & Foerster LLP, causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with Morrison & Foerster LLP's practice for the collection and processing of documents for hand delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be taken from Morrison & Foerster LLP's mailroom and hand delivered to the document's addressee (or left with an employee or person in charge of the addressee's office) on the same date that it is placed at Morrison & Foerster LLP's mailroom.

Please note: If you check this box, you must follow up the next business day with an amended proof containing the name and signature of the person actually effecting service. This amended proof must be filed with the court.

BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6] by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6.

Steven Y. Bressler, Esq.
Trial Attorney, Civil Division, Federal Programs Branch
United States Department of Justice
P.O. Box 883
Washington, DC 20044
Steven.Bressler@usdoj.gov

Executed at Walnut Creek, California, this 2nd day of November, 2007.



Kathy Beaudoin