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February 27, 2008

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Via E-Mail and Telefacsimile

Daniel E. Bensing, Esq.
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 6114
Washington, DC 20001Re: *Veterans for Common Sense, et al. v. Peake*, (N.D. Cal. No. C-07-3758)

Dear Mr. Bensing:

This is in response to your letter to Heather Moser dated February 27, in which you advise us for the first time that Defendants refuse to produce party witnesses (except Mr. Cross) in violation of the Court's Order of February 25. If Defendants desired to seek relief from the Court's Order, they should have sought reconsideration or clarification rather than taking unilateral action on the very eve of the hearing. Defendants' almost complete lack of cooperation on witness arrangements is disturbing, to say the least.

If you do not promptly alter your position, we will be forced to take appropriate action, which will likely include moving to strike the Declarations in Opposition to the Preliminary Injunction Motion and to preclude Defendants from calling such witnesses at the hearing.

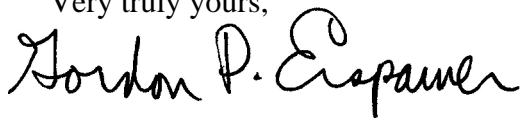
You have also referenced Defendants' production of documents in response to the same Court Order. However, you provide no assurance that your production will be complete. If you are unable to provide such an assurance, we need Defendants to: (1) list all requests as to which their production is incomplete and best estimate as to when your production will be complete; and (2) clarify whether Defendants continue to withhold documents (and how many) based upon your untimely objections, and when we can expect to receive them and a log of withheld documents. We may also move to exclude Defendants from offering documents at the hearing that relate to the withheld documents — the unfairness of offering such documents is obvious.

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Finally, given your lack of cooperation in producing witnesses, our lack of information concerning the volume of Defendants' production, and the lack of information concerning how long you plan to spend on direct or cross-examination, this is to advise you that the ultimate length of the hearing is uncertain, and it may be necessary for the hearing to extend beyond the six-day period discussed in the original telephone conference with the Court. I would suggest that you plan accordingly.

Very truly yours,

A handwritten signature in cursive script that reads "Gordon P. Erspamer". The signature is written in black ink and is positioned below the typed name.

Gordon P. Erspamer

cc: Heather Moser
Sid Wolinsky