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

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN FRANCISCO DIVISION

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

20 Plaintiffs,

21 v.

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

24 Defendants.

Case No. C-07-3758-SC

**CLASS ACTION**

**DECLARATION OF GORDON P.  
 ERSPAMER IN SUPPORT OF  
 PLAINTIFFS' OPPOSITION TO  
 DEFENDANTS' MOTION FOR  
 PROTECTIVE ORDER TO STAY  
 DISCOVERY**

Date: December 14, 2007  
 Time: 10:00 a.m.  
 Place: Courtroom 1, 17th Floor  
 Judge: Hon. Samuel Conti

Complaint Filed: July 23, 2007

1 **ADDITIONAL COUNSEL FOR PLAINTIFFS:**

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1 I, Gordon P. Erspamer, declare:

2 1. I am a partner at Morrison & Foerster LLP, counsel of record for Plaintiffs in this action.  
3 I make this declaration on my own personal knowledge, and if called as a witness to testify, I could and  
4 would testify competently to the facts below.

5 2. Plaintiffs filed the Complaint in this action on July 23, 2007.

6 3. On August 1, 2007, I sent a letter to Steven Bressler, counsel for Defendants, raising the  
7 issues of the need for a Privacy Act protective order, document preservation, and our desire to begin the  
8 meet and confer process as soon as possible. A true and correct copy of my letter to Steven Y. Bressler,  
9 dated August 1, 2007, is attached hereto as Exhibit A.

10 4. On August 23, Sid Wolinsky and I had a telephone conference with Steven Bressler and  
11 Richard Letley, who participated on behalf of Defendants. At that time, I explained the general  
12 sensitivity surrounding the public disclosure of private medical information contained in veterans' claim  
13 files or other medical records, and veterans' legitimate fears of retaliation by the VA, summarizing some  
14 of the examples of retaliation in the *NARS v. Turnage* case, including the carving of a swastika inside the  
15 Star of David on Ronald Abrams' desk at work. However, no agreement was reached at that time  
16 regarding a potential protective order. Defendants' document preservation obligations were also  
17 discussed during this telephone conference.

18 5. On August 28, 2007, I received a letter from Steven Bressler stating the VA's refusal to  
19 agree to a protective order preventing VA access to declarations containing confidential information and  
20 addressing a Privacy Act Protective Order respecting the VA's production of claim files. A true and  
21 correct copy of Mr. Bressler's letter to me, dated August 28, 2007, is attached hereto as Exhibit B.

22 6. On October 4, 2007, the parties held their initial Federal Rule of Civil Procedure 26(f)  
23 conference. At that time, I indicated to Defendants that Plaintiffs had no interest in imposing  
24 unreasonable costs on Defendants. I proposed that both sides try to agree to a random sampling  
25 technique to govern the production of PTSD claim files. I also proposed focusing the preservation and  
26 discovery efforts on a core group of knowledgeable employees at the VA, and focusing initial efforts on  
27 summary-type documents.  
28

1           7.       On October 17, 2007, I sent a letter to Steven Bressler. In that letter, I indicated that  
2 Plaintiffs' preference is to agree upon a list of search names and search terms to govern discovery and  
3 document preservation, and I attached a preliminary proposed list of search terms. I also indicated  
4 Plaintiffs' willingness to focus discovery and preservation efforts on a representative sample of VA  
5 Regional Offices. A true and correct copy of my letter to Steven Y. Bressler, dated October 17, 2007, is  
6 attached hereto as Exhibit C.

7           8.       On October 19, Plaintiffs served Defendants with Plaintiffs' First Amended Request for  
8 the Production of Documents.

9           9.       On October 22, 2007, I received a letter from Steven Bressler in response to my letter of  
10 October 17, 2007. In that letter, Mr. Bressler made no mention of my various suggestions regarding  
11 limiting the scope of discovery in this case, including my proposed list of search terms, and my  
12 suggestions regarding focusing on a representative sample of VA Regional Offices. A true and correct  
13 copy of Mr. Bressler's letter to me, dated October 22, 2007, is attached hereto as Exhibit D.

14          10.      At no time have Defendants raised with me (or any other attorney for Plaintiffs) any  
15 specific objections to any of Plaintiffs' document requests. In addition, Defendants never contacted me  
16 to discuss Plaintiffs' various proposals to limit the cost and burden associated with discovery in this  
17 action.

18          11.      At the time Defendants filed their Motion for Protective Order to Stay Discovery, the  
19 parties were still actively negotiating a protective order to govern rights of privacy and confidentiality,  
20 and Defendants had sent us a draft Privacy Act Protective Order for comment.

21          12.      Defendants failed to respond to Plaintiffs' First Amended Request for the Production of  
22 Documents by the deadline, which by our calculations, was November 21, 2007. At the date of this  
23 declaration, Plaintiffs have still received no response from Defendants, and no objections.

1 I declare under penalty of perjury under the laws of the United States of America and the State of  
2 California that the foregoing is true and correct.

3 Executed this 27th day of November, 2007, at Walnut Creek, California.

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5 /s/ Gordon P. Erspamer  
6 Gordon P. Erspamer  
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