

1 IN THE UNITED STATES DISTRICT COURT
2
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4
5 VIETNAM VETERANS OF AMERICA; SWORDS
6 TO PLOWSHARES; VETERANS RIGHTS
7 ORGANIZATION; BRUCE PRICE; FRANKLIN
8 D. ROCHELLE; LARRY MEIROW; ERIC P.
MUTH; DAVID C. DUFRANE; and WRAY C.
FORREST, individually, on behalf of
themselves and all others similarly
situated,

9 Plaintiffs,

10 v.

11 CENTRAL INTELLIGENCE AGENCY, et al.,

12 Defendants.
13 _____/

No. C 09-0037 CW

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

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

20 BACKGROUND

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

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

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

2 DISCUSSION

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

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

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

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

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

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

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

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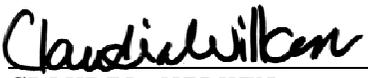
Because the Court declines to stay all discovery, a modification of the Case Management Order is not necessary.

CONCLUSION

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

IT IS SO ORDERED.

Dated: 10/7/2010



CLAUDIA WILKEN
United States District Judge