

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

3
4 VIETNAM VETERANS OF AMERICA;
5 SWORDS TO PLOWSHARES: VETERANS
6 RIGHTS ORGANIZATION; BRUCE PRICE;
7 FRANKLIN D. ROCHELLE; LARRY
8 MEIROW; ERIC P. MUTH; DAVID C.
9 DUFRANE; TIM MICHAEL JOSEPHS; and
10 WILLIAM BLAZINSKI, individually,
11 on behalf of themselves and all
12 others similarly situated,

13 Plaintiffs,

14 v.

15 CENTRAL INTELLIGENCE AGENCY;
16 DAVID H. PETRAEUS, Director of
17 the Central Intelligence Agency;
18 UNITED STATES DEPARTMENT OF
19 DEFENSE; LEON E. PANETTA,
20 Secretary of Defense; UNITED
21 STATES DEPARTMENT OF THE ARMY;
22 JOHN M. MCHUGH, United States
23 Secretary of the Army; UNITED
24 STATES OF AMERICA; ERIC H.
25 HOLDER, Jr., Attorney General of
26 the United States; UNITED STATES
27 DEPARTMENT OF VETERANS AFFAIRS;
28 and ERIC K. SHINSEKI, UNITED
STATES SECRETARY OF VETERANS
AFFAIRS,

 Defendants.

No. C 09-0037 CW

ORDER GRANTING IN
PART, AND DENYING
IN PART,
PLAINTIFFS' MOTION
TO FILE UNDER SEAL
(Docket No. 347)

United States District Court
For the Northern District of California

21 Plaintiffs have submitted an administrative motion seeking to
22 file under seal Exhibits 2, 3, 11, 13, 35, 37, 39, 65, and 69-73
23 attached to the Declaration of Stacey M. Sprenkel in support of
24 their motion for class certification. In their motion, Plaintiffs
25 state that Defendants have designated Exhibits 2, 3, 11, 13, 35,
26 37, 39, and 65 as confidential. In their declaration in support
27 of their motion, Plaintiffs clarify that only a portion of Exhibit
28

1 11 has been designated as confidential and that they seek to file
2 a redacted version of this exhibit in the public record. Sprenkel
3 Decl. ¶ 11. Defendants have filed a declaration in support of
4 Plaintiffs' motion.

5 Because the public interest favors filing all court documents
6 in the public record, any party seeking to file a document under
7 seal must demonstrate good cause to do so. Pintos v. Pac.
8 Creditors Ass'n, 605 F.3d 665, 678 (9th Cir. 2010). This cannot
9 be established simply by showing that the document is subject to a
10 protective order or by stating in general terms that the material
11 is considered to be confidential, but rather must be supported by
12 a sworn declaration demonstrating with particularity the need to
13 file each document under seal. See Civil Local Rule 79-5(a). If
14 a document has been designated as confidential by another party,
15 that party must file a declaration establishing that the document
16 is sealable. Civil Local Rule 79-5(d).

17 Plaintiffs represent that they have designated Exhibits 69-73
18 as confidential because these exhibits contain "information
19 relating to the privacy and/or past, present, or future physical
20 or mental health or condition of persons not specifically made
21 public in the Complaint in this action." Sprenkel Decl. ¶ 2. The
22 exhibits Plaintiffs seek to seal contain sensitive information for
23 putative class members who are specifically identified by name
24 within those exhibits. Id. at ¶¶ 3-7. Accordingly, Plaintiffs
25 have established good cause to seal Exhibits 69-73.

26 Defendants, however, have not established good cause to
27 support the sealing of Exhibits 2, 3, 13, 35, 37, 39 and 65 in
28 their entirety or of portions of Exhibit 11. In their declaration

1 in support of Plaintiffs' motion to seal, Defendants withdraw
2 their confidentiality designation for Exhibit 39. Gardner Decl.
3 ¶ 4. Defendants also do not address Exhibit 65 or provide any
4 reasons to support the sealing thereof. Defendants further
5 indicate that they continue to consider the emails contained
6 within Exhibits 35 and 37 to be confidential, but withdraw their
7 confidentiality designation for the attachments to those emails.
8 Id. at ¶¶ 5-6. Accordingly, Defendants have not established good
9 cause to seal to seal Exhibits 39 or 65 or the attachment portions
10 of Exhibits 35 or 37.

11 Defendants represent that they seek to seal "Exhibits 2, 3,
12 11, and the email portions of 35 and 37," because these exhibits
13 "contain information that is covered by the Privacy Act,
14 including, among other things, sensitive medical information,
15 social security numbers, dates of birth and financial account
16 information as well as personally identifying information for both
17 Plaintiffs and other individuals." Id. at ¶ 6. However, neither
18 Exhibit 2 nor the email portions of Exhibits 35 and 37 contain any
19 such personally identifying or sensitive information. Exhibit 2
20 is an email chain generally discussing testing of chemical and
21 biological agents at particular locations in the 1970s and 1980s,
22 but it does not include protected information linked to any
23 individual. The email portions of Exhibits 35 and 37 contain only
24 general descriptions of the non-confidential attachments thereto
25 and the sender's email signatures. Further, while the third and
26 fourth pages of Exhibit 3 consist of an enlistment form completed
27 by a non-party, which does contain personally identifying
28 information, the remainder of this exhibit contains only general

1 information on the recruitment of test subjects. Finally, the
2 portion of Exhibit 11 that Defendants seek to seal contains an
3 excerpt of the transcript from Plaintiff William F. Blazinski's
4 deposition in which he refers to being diagnosed with leukemia and
5 colitis. However, Plaintiffs do not assert that this is
6 confidential information and have already publicly disclosed this
7 diagnosis in the public record. See Third Amended Compl. ¶ 221.
8 Accordingly, Defendants have not established good cause to seal to
9 seal Exhibits 2, 3 or 11 in their entirety or the email portions
10 of Exhibits 35 or 37. However, Defendants have established good
11 cause to seal the third and fourth pages of Exhibit 3.

12 Defendants represent that "Exhibit 13 contains information
13 that the United States has determined, pursuant to the Protective
14 Order . . . should not be publicly disclosed." Gardner Decl. ¶ 7.
15 Defendants do not provide any other reason to support the sealing
16 of Exhibit 13. Good cause to support sealing cannot be
17 established by generally stating that the material is subject to a
18 protective order or that the party considers the material
19 confidential. Local Rule 79-5(a). Accordingly, Defendants have
20 not established that Exhibit 13 is sealable.

21 For the reasons set forth above, Plaintiffs' motion to file
22 under seal is DENIED to the extent that it pertains to Exhibits 2,
23 11, 13, 35, 37, 39 and 65 and to Exhibit 3 other than pages three
24 and four thereof (Docket No. 347). Plaintiffs' motion is GRANTED
25 to the extent that it pertains to pages three and four of Exhibit
26 3 and to Exhibits 69-73 (Docket No. 347). In accordance with
27 General Order 62, within four days of the date of this Order,
28 Plaintiffs shall electronically file Exhibits 3 and 69-73 under

1 seal and shall file in the public record Exhibits 2, 11, 13, 35,
2 37, 39 and 65 and a redacted version of Exhibit 3.

3 IT IS SO ORDERED.

4 Dated: 2/24/2012


5 CLAUDIA WILKEN
6 United States District Judge
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