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7 **[see next page for additional counsel for Plaintiffs]**

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

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 VETERANS FOR COMMON SENSE, a District of
Columbia Nonprofit Organization; and VETERANS
14 UNITED FOR TRUTH, INC., a California Nonprofit
Organization, representing their members and a class
15 of all veterans similarly situated,

16 Plaintiffs,

17 v.

18 R. JAMES NICHOLSON, Secretary of Department of
Veterans Affairs; UNITED STATES DEPARTMENT
19 OF VETERANS AFFAIRS; JAMES P. TERRY,
Chairman, Board of Veterans Appeals; DANIEL L.
20 COOPER, Under Secretary, Veterans Benefits
Administration; BRADLEY G. MAYES, Director,
21 Compensation and Pension Service; DR. MICHAEL J.
KUSSMAN, Under Secretary, Veterans Health
22 Administration; PRITZ K. NAVARA, Veterans
Service Center Manager, Oakland Regional Office,
23 Department of Veterans Affairs; UNITED STATES
OF AMERICA; ALBERTO GONZALES, Attorney
24 General of the United States; and WILLIAM P.
GREENE, JR., Chief Judge of the United States Court
25 of Appeals for Veterans Claims,

26 Defendants.
27
28

Case No. CV 07 3758 SC

CLASS ACTION

**VETERANS FOR COMMON SENSE
AND VETERANS UNITED FOR
TRUTH, INC.'S INITIAL
DISCLOSURES**

[FED. R. CIV. PROC 26(A)]

CRM: Courtroom 1, 17th Floor
Judge: Hon. Samuel Conti

Complaint Filed: July 23, 2007

1 **ADDITIONAL COUNSEL FOR PLAINTIFFS:**

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11 DISABILITY RIGHTS ADVOCATES
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12 Berkeley, California 94704-1204
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13 Facsimile: 510.665.8511

1 Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Plaintiffs Veterans for
2 Common Sense and Veterans United for Truth, Inc. (collectively, "Plaintiffs") make these initial
3 disclosures and objections ("Initial Disclosures").

4 Plaintiffs' Initial Disclosures are based on information that is presently reasonably available
5 to Plaintiffs. Because Plaintiffs have not yet had the opportunity to engage in discovery, Plaintiffs
6 have not completed their investigation into additional facts, documents, or witnesses which may
7 further support their Complaint. As a result, Plaintiffs reserve the right to present witnesses,
8 documents, and evidence in addition to that which is disclosed herein. Moreover, Plaintiffs recognize
9 their continuing obligation under Federal Rule of Civil Procedure 26(e)(1) to supplement these
10 Initial Disclosures at appropriate intervals, and will do so in a timely manner as Plaintiffs become
11 aware of and/or receive additional relevant information during the course of discovery in this case.

12 By listing witnesses and documents, Plaintiffs do not waive their right to assert any applicable
13 privilege or protection at an appropriate time or to seal appropriate information under a protective
14 order. The documents referenced as part of these Initial Disclosures may include confidential or
15 private information, which will not be produced without the protection of an appropriate protective
16 order entered by the Court.

17 DISCLOSURE

18 I. IDENTITY OF PERSONS LIKELY TO HAVE DISCOVERABLE 19 INFORMATION THAT THE DISCLOSING PARTY MAY USE TO SUPPORT 20 CLAIMS OR DEFENSES

21 Plaintiffs identify the following individual witnesses pursuant to Rule 26(a)(1)(A). Plaintiffs
22 do not consent to Defendants' communications with absent class members and do not consent to or
23 authorize any communications otherwise prohibited by any applicable rule of professional conduct.
24 Defendants' contact with Plaintiffs, their veteran-members, and absent class members regarding this
25 litigation should take place solely through Plaintiffs' counsel of record. Plaintiffs furthermore do not
26 concede that the individuals listed herein necessarily have discoverable information relevant to
27 disputed facts, but have identified such individuals based on a broad reading of Plaintiffs' disclosure
28 obligations:

See Attachment A: Initial Witness Disclosures

1 Plaintiffs cannot complete their witness disclosures at this time due to the need for a
2 protective order. Veterans with mental disorders have a very strong interest in privacy. In addition,
3 witness anonymity is critical to avoid potential retaliation by VA employees, given the history of
4 such abuses. The parties are in the process of negotiating the appropriate protective orders. Once
5 the appropriate orders are in place, Plaintiffs will supplement these disclosures with respect to this
6 section. Moreover, discovery only recently commenced and Plaintiffs expect to identify through
7 discovery additional absent class members and Defendants' employees who are likely to have
8 discoverable information to support Plaintiffs' claims.

9 **II. DESCRIPTION BY CATEGORY AND LOCATION OF DOCUMENTS, DATA**
10 **COMPILATIONS, AND TANGIBLE THINGS IN THE POSSESSION,**
11 **CUSTODY OR CONTROL OF DEFENDANTS WHICH MAY BE USED TO**
12 **SUPPORT CLAIMS OR DEFENSES**

13 Pursuant to Federal Rule of Civil Procedure 26(a)(1)(B), Plaintiffs contemplate using the
14 following categories of documents to support their claims:

15 See Attachment B: Initial Document Disclosures

16 Plaintiffs believe that most or all of these documents are in Defendants' custody or control.
17 If any information is in the custody or control of third parties, however, Plaintiffs will request that
18 information from the relevant third parties. Discovery only recently commenced and Plaintiffs
19 expect to identify through discovery additional categories of relevant documents likely to support
20 Plaintiffs' claims.

21 **III. COMPUTATION OF DAMAGES CLAIMED BY THE DISCLOSING PARTY**

22 Plaintiffs do not seek damages, only injunctive and declaratory relief. Plaintiffs may seek
23 attorneys' fees and costs in an amount to be determined at the time the application is made,
24 depending on the results achieved.

25 **IV. ANY INSURANCE AGREEMENT UNDER WHICH ANY PERSON**
26 **CARRYING ON AN INSURANCE BUSINESS MAY BE LIABLE TO SATISFY**
27 **PART OR ALL OF A JUDGMENT OR TO INDEMNIFY OR REIMBURSE**
28 **FOR PAYMENTS MADE TO SATISFY THE JUDGMENT**

29 Plaintiffs are currently unaware of any insurance agreements under which an insurance carrier
30 may be liable to satisfy all or part of a judgment entered in this action or to indemnify or reimburse
31 for payments made to satisfy the judgment.

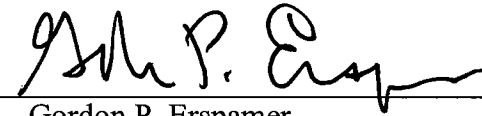
1 **CERTIFICATION**

2 To the best of my knowledge, information and belief, formed after an inquiry that is
3 reasonable under the circumstances, this disclosure is complete and correct, except as noted, as of the
4 date set forth below.

5 Dated: October 18, 2007

6 SIDNEY M. WOLINSKY
7 MELISSA W. KASNITZ
8 JENNIFER WEISER BEZOZA
9 KATRINA KASEY CORBIT
10 DISABILITY RIGHTS ADVOCATES

11 GORDON P. ERSPAMER
12 ARTURO J. GONZALEZ
13 HEATHER A. MOSER
14 BILL D. JANICKI
15 STACEY M. SPRENKEL
16 PAUL J. TAIRA
17 MORRISON & FOERSTER LLP

18 By: 
19 Gordon P. Erspamer
20 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
INITIAL DISCLOSURES**

- 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

1 above will be taken from Morrison & Foerster LLP's mailroom and hand delivered
2 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.

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

- 5 BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6] by electronically
6 mailing a true and correct copy through Morrison & Foerster LLP's electronic mail
7 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.

8
9 **Steven Y. Bressler, Esq.**
10 **Trial Attorney, Civil Division, Federal Programs Branch**
11 **United States Department of Justice**
P.O. Box 883
Washington, DC 20044

12 Executed at Walnut Creek, California, this 18th day of October.

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15 _____
16 Jill Haskins
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ATTACHMENT A

ATTACHMENT "A"
INITIAL WITNESS DISCLOSURES

Name	Contact	Basis for Disclosure
Paul Sullivan	Via Plaintiffs' counsel	Mr. Sullivan is likely to have information regarding the Defendants' practices and procedures and facts concerning Veterans for Common Sense.
Robert Handy	Via Plaintiffs' counsel	Mr. Handy is likely to have information regarding the Defendants' practices and facts concerning Veterans United for Truth.
Steve Robinson	Via Plaintiffs' counsel	Mr. Robinson is likely to have information regarding the Defendants' practices, particularly regarding personality disorder discharges.
James Cook	Via Plaintiffs' counsel	Mr. Cook is likely to have information regarding Defendants' practices, procedures, and facts concerning Veterans United for Truth.
James Nicholson	Via Defendants' counsel	Mr. Nicholson is likely to have historical information regarding all aspects of the planning and operation of the Department of Veterans Affairs.
Gordon Mansfield	Via Defendants' counsel	Mr. Mansfield is likely to have the most recent information on planning and operation of the Department of Veterans Affairs.
James P. Terry	Via Defendants' counsel	Mr. Terry is likely to have information regarding the policies, procedures, budgeting activities, and delays in adjudication of claims at the Board of Veterans Appeals.
Daniel Cooper	Via Defendants' counsel	Mr. Cooper is likely to have information regarding the policies and procedures related to claims processing, including delays in adjudication, by the Veterans Benefits Administration.

ATTACHMENT "A"
INITIAL WITNESS DISCLOSURES

Name	Contact	Basis for Disclosure
Bradley Mayes	Via Defendants' counsel	Mr. Mayes is likely to have information regarding the policies and procedures of Compensation and Pension Service.
Dr. Michael Kussman	Via Defendants' counsel	Mr. Kussman is likely to have information regarding the delivery of medical services by the Veterans Health Administration.
Pritz Navara	Via Defendants' counsel	Mr. Navara is likely to have information regarding the Veterans Service Center, Oakland Regional Office.
Alberto Gonzales	Via Defendants' counsel	Mr. Gonzales is likely to have information regarding the history of enforcement practices of the Department of Justice.
Peter D. Keisler	Via Defendants' counsel	Mr. Gonzales is likely to have information regarding the current enforcement practices of the Department of Justice.
William Greene	Via Defendants' counsel	Mr. Greene is likely to have information regarding the operations of the United States Court of Appeals for Veterans Claims, including information on procedures, budgets, and adjudication delays.
Thomas G. Bowman	Via Defendants' counsel	Mr. Bowman is likely to have information regarding the policies, procedures, and planning of the Department of Veterans Affairs.
Paul J. Hutter	Via Defendants' counsel	Mr. Hutter is likely to have information regarding the legal policies and procedures of the Department of Veterans Affairs.
George J. Opfer	Via Defendants' counsel	Mr. Opfer is likely to have information regarding investigative oversight of the Department of Veterans Affairs.

ATTACHMENT "A"
INITIAL WITNESS DISCLOSURES

Name	Contact	Basis for Disclosure
Christopher McNamee	Via Defendants' counsel	Mr. Daugherty is likely to have information regarding the data preservation practices of the Department of Veterans Affairs.
William F. Tuerk	Via Defendants' counsel	Mr. Tuerk is likely to have information regarding veteran deaths.
Maj. Gen. Robert Mixon	Via Defendants' counsel	General Mixon is likely to have information regarding the discharges of soldiers at Fort Carson on the basis of personality disorder.
Dr. Steven Knorr	Via Defendants' counsel	Dr. Knorr is likely to have information regarding the mental health care of soldiers at Fort Carson, diagnosis of soldiers with personality disorders, and the discharges of soldiers for medical reasons.
Michael Daugherty	Via Defendants' counsel	Mr. Daugherty is likely to have information regarding the data preservation practices of the Department of Veterans Affairs.

In addition, the following list, derived from media reports in the public domain, is comprised of veterans who may have relevant information based on their own experiences with Defendants' policies and procedures:

Name		Residence	
David	Adams	Chicago	IL
Susan	Avila-Smith	Not yet known	
Gamal	Award	Not yet known	
Justin	Bailey	Los Angeles	CA
Chris	Bain	Not yet known	
Fred	Ball	Camp Pendleton	CA
Sargent	Binkley	Los Altos	CA
Jesus	Bocanegra	McAllen	TX

ATTACHMENT "A"
INITIAL WITNESS DISCLOSURES

Name		Residence	
Jerry	Boler	Caledonia	MI
Howard	Books	Stacy	MN
Kevin	Bowman	Duluth	MN
Kate	Bulson	Muskegon	MI
Keri	Christensen	near Denver	CO
Don	Clinger	Jacksonville	NC
John	Cooney	Jacksonville	NC
Darryl	Coyes	Mesa	AZ
Jeans	Cruz	Bronx	NY
Zack	Dick	Somerset	KY
James	Dinella	Chicago	IL
Josh	Dobbelstein	Chicago	IL
Eric S.	Foster	Vancouver	WA
Keli	Frasier	Clifton	CO
Christopher	Gearhart	Cape Coral	FL
Ann	Gholz	Vancouver	WA
Michael	Gold	Barrington	VT
Julian	Goodrum	Knoyesville	TN
Michael	Goss	Corpus Christi	TX
Byron	Hancock	Bryan	TX
Jason	Harvey	Not yet known	
Frank	Herrman	Chestnut Ridge	NY
Kristiaan	Hughes	Fort Knoyes	KY
Bill	Keyes	Albany	NY
Josh	Lansdale	Kansas City	MO
Ryan	LeCompte	Lower Brule	SD
Jason	Leisey	Mountville	PA
Larry	Liskey	Elizabethtown	PA
Don	Lonsway	Portland	ME
Aleyes	Lotero	Miami	FL
Jacob	Martin	Not yet known	

ATTACHMENT "A"
INITIAL WITNESS DISCLOSURES

Name		Residence	
Brent	Messick	Salt Lake	UT
Chad	Miller	Not yet known	
Eric	Miller	Lancaster	SC
James Blake	Miller	Pike County	KY
John	Miner	Not yet known	VT
Nicholas	Morin	Temecula	CA
Tom	Nevins	Ahwatukee Foothills	AZ
Bill	Nichols	Jacksonville	NC
Mike	Parker	Not yet known	
Christopher	Partridge	Vancouver	WA
Abbie	Pickett	Not yet known	WI
Javier	Pina	Linden	CA
Deyester	Pitts	Louisville	KY
Georg-Andreas	Pogany	Not yet known	
Adrian	Quick	Jacksonville	NC
Adrian	Richard	Not yet known	LA
Sean	Rodriguez-Street	Camp Pendleton	CA
Joseph	Roe	Jacksonville	NC
O.J. John B.	Santa Maria	Daly City	CA
Rob	Sarra	Not yet known	
Mike	Saye	Mesa	AZ
Gary	Scaggs	Louisville	KY
Jacob	Schick	Gretna	LA
Donald Louis	Schmidt	Chillicothe	Ill.
Richard	Smith	Tehachapi	CA
Walter	Smith	Tooele	UT
Suzanne	Swift	Fort Lewis	WA
Paul	Thurman	Not yet known	
Jonathan	Town	Findlay	OH
Richard	Tugwell	Hampton	VA
Troy	Turner	Monroefield	West VA

ATTACHMENT "A"
INITIAL WITNESS DISCLOSURES

Name		Residence	
Kenneth	Wagner	Highland Springs	VA
Allen	Walsh	Tucson	AZ
John	Waltz	Hebron	KY
Crystal	Witte	Florence	CO

ATTACHMENT B

**INITIAL DISCLOSURES
ATTACHMENT B
LISTING OF TYPES OF DOCUMENTS**

1. Congressional Hearing Transcripts and Statements
2. Decisions from Other Veterans' Federal Cases
3. Documents Received by FOIA Requests
4. Text of Proposed Legislation
5. Military Regulations and Forms
6. News Articles Relating to Veteran's Medical Care and Benefits
7. Medical and Diagnostic Manual Excerpts
8. Scientific Studies and Journal Articles Relating to Medical Care
9. GAO Reports
10. DVAOIG Reports (Dept. of Veterans Affairs Office of Inspector General)
11. DVA Annual Reports
12. VHA PowerPoint Slides
13. CAVC Caseload Data
14. Legal Authorities and Legislative History
15. Meeting Minutes of Veterans' Disability Benefits Commission
16. Client Documents Received from Individual Veterans and Organizational Plaintiffs
17. Linda Bilmes, "Soldiers Returning from Iraq and Afghanistan: The Long-Term Costs of Providing Veterans Medical Care and Disability Benefits," RWP07-001 (John F. Kennedy School of Government, Harvard University, Faculty Research Working Papers Series, 2007) available at [http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP07-001/\\$File/rwp_07_001_bilmes.pdf](http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP07-001/$File/rwp_07_001_bilmes.pdf). 14, 15, 35, 37, 40, 46, 53
18. U.S. Gov't Accountability Office, VA and DOD Health care: Efforts to Provide Seamless Transition of Care for OEF and OIF Service members and Veterans, GAO 06-794R. (June 2006) available at <http://www.gao.gov/htext/d06794r.html> 15
19. Claim Files for Veterans Who Have Been Refused Medical Care or Attempted or Committed Suicide
20. Patient Appointment Information Transmission (PAIT) system
21. Patient Treatment File (PTF)
22. National Patient Care Database (NPCD)

23. Pending Issue File (PIF) database
24. Beneficiary Identification and Records Locator System (BIRLS)
25. C&P Master Record database
26. Veteran Information Tracker and Adjudication Log (VITAL)
27. VBA corporate data
28. Veterans Appeals Control Locator System (VACOLS)
29. Benefits and Delivery Network (BDN) data
30. Documents regarding budgeting and planning for the provision of medical care to veterans and the adjudication of veterans' claims