

1 GORDON P. ERSPAMER (CA SBN 83364)  
Gerspamer@mofocom  
2 STACEY M. SPRENKEL (CA SBN 241689)  
SSprenkel@mofocom  
3 MORRISON & FOERSTER LLP  
101 Ygnacio Valley Road, Suite 450  
4 P.O. Box 8130  
Walnut Creek, California 94596-8130  
5 Telephone: 925.295.3300  
Facsimile: 925.946.9912

6  
7 SIDNEY M. WOLINSKY (CA SBN 33716)  
SWolinsky@dralegal.org  
MELISSA W. KASNITZ (CA SBN 162679)  
8 MKasnitz@dralegal.org  
JENNIFER WEISER BEZOZA (CA SBN 247548)  
9 JBezoza@dralegal.org  
KATRINA KASEY CORBIT (CA SBN 237931)  
10 KCorbit@dralegal.org  
DISABILITY RIGHTS ADVOCATES  
11 2001 Center Street, Third Floor  
Berkeley, California 94704-1204  
12 Telephone: 510.665.8644  
Facsimile: 510.665.8511

13 [see next page for additional counsel for plaintiffs]

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

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA

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

20 Plaintiffs,

21 v.

22 R. JAMES NICHOLSON, Secretary of Veterans  
23 Affairs, *et al.*,

24 Defendants.

Case No. C-07-3758-SC

**VETERANS FOR COMMON SENSE  
AND VETERANS UNITED FOR  
TRUTH, INC.'S FIRST AMENDED  
FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS  
TO ALL DEFENDANTS**

(Class Action)

Complaint Filed July 23, 2007

1 **ADDITIONAL COUNSEL FOR PLAINTIFFS:**

2 ARTURO J. GONZALEZ (CA SBN 121490)

AGonzalez@mofo.com

3 HEATHER A. MOSER (CA SBN 212686)

HMoser@mofo.com

4 MORRISON & FOERSTER LLP

425 Market Street

5 San Francisco, California 94105-2482

Telephone: 415.268.7000

6 Facsimile: 415.268.7522

7 BILL D. JANICKI (CA SBN 215960)

WJanicki@mofo.com

8 MORRISON & FOERSTER LLP

400 Capitol Mall, Suite 2600

9 Sacramento, California 95814

Telephone: 916.448.3200

10 Facsimile: 916.448.3222

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **PROPOUNDING PARTY: VETERANS FOR COMMON SENSE and VETERANS UNITED**  
2 **FOR TRUTH, INC.**

3 **RESPONDING PARTIES: R. JAMES NICHOLSON, et al.**

4 **SET NUMBER: ONE**

5 Pursuant to Federal Rule of Civil Procedure 34, Plaintiffs Veterans for Common Sense  
6 (“VCS”) and Veterans United for Truth, Inc. (“VUFT”) request that each of the named defendants  
7 (collectively “Defendants”) separately produce for inspection and copying the documents and things  
8 set forth below that are in its possession, custody, or control, or in the possession, custody, or control  
9 of its attorneys and/or accountants, its investigators, and any persons acting on their behalf, at the  
10 offices of Morrison & Foerster, 101 Ygnacio Valley Road Suite 450, Walnut Creek, California,  
11 94596 or another place as may be mutually agreed upon within thirty (30) days.

12 **DEFINITIONS**

13 Unless otherwise indicated, the following definitions shall apply.

14 1. “COMMUNICATION” or “COMMUNICATIONS” means, unless otherwise specified,  
15 any of the following: (a) any written letter, memorandum, DOCUMENT, or any other writing;  
16 (b) any telephone call between two or more PERSONS, whether or not such call was by chance or  
17 prearranged, formal or informal; and (c) any conversation or meeting between two or more  
18 PERSONS, whether or not such contact was by chance or prearranged, formal or informal, including,  
19 without limitation, conversations or meetings occurring via telephone, teleconference, video  
20 conference, electronic mail (e-mail), or instant electronic messenger.

21 2. “CONCERNING” means constituting, summarizing, memorializing, referring to, and/or  
22 relating to.

23 3. “DOCUMENT” or “DOCUMENTS” means any tangible thing upon which any  
24 expression, COMMUNICATION or representation has been recorded by any means including, but  
25 not limited to, handwriting, typewriting, printing, photostating, photographing, magnetic impulse, or  
26 mechanical or electronic recording and any non-identical copies (whether different from the original  
27 because of notes made on such copies, because of indications that said copies were sent to different  
28 individuals than were the originals, or because of any other reason), including but not limited to

1 working papers, preliminary, intermediate or final drafts, correspondence, memoranda, charts, notes,  
2 records of any sort of meetings, invoices, financial statements, financial calculations, diaries, reports  
3 of telephone or other oral conversations, desk calendars, appointment books, audio or video tape  
4 recordings, e-mail or electronic mail, electronic folders, microfilm, microfiche, computer tape,  
5 computer disk, computer printout, computer card, and all other writings and recordings of every kind  
6 that are in your actual or constructive possession, custody or control.

7 4. "IDENTIFY" or "IDENTITY" means:

8 a. with respect to a PERSON, to state the PERSON's full name, current or last  
9 known employer, that employer's address and telephone number, the PERSON's title and/or position  
10 with that employer, and the PERSON's current or last known home address and telephone number;

11 b. with respect to a DOCUMENT, to state the type of DOCUMENT (i.e., letter,  
12 memorandum, telephone note, computer floppy or hard disk, magnetic tape, etc.), the title of the  
13 DOCUMENT (if any), the date it was created, the author, all intended recipients including the  
14 addressee and any and all copyees, a brief description of the subject matter of the DOCUMENT, the  
15 present and/or last known location of the DOCUMENT, and to IDENTIFY all present or last known  
16 person in possession, custody or control of the DOCUMENT;

17 c. with respect to a COMMUNICATION to state the name and affiliation of all  
18 PERSONS participating in, or present for, the COMMUNICATION, the date of the  
19 COMMUNICATION, and whether it was conducted in person or by other means (such as telephone,  
20 correspondence, e-mail), and whether it was recorded (e.g., stenographically or by audio or  
21 videotape);

22 d. with respect to a MEETING to state the names and affiliations of all  
23 PERSONS participating in, or present for, the MEETING, the date of the meeting, and the location of  
24 the meeting, and the purpose of the meeting.

25 5. "MEETING" or "MEETINGS" means any coincidence of, or presence of, or telephone,  
26 television, radio, or other electronic communication between or among persons, whether such was by  
27 chance or prearranged, informal or formal.



1           12. "CLINICIAN'S GUIDE" means the publication entitled VA Clinician's Guide (Lewis  
2 R. Coulso, ed., Matthew Bender & Co. Inc. 2006), and earlier or later versions of that edition of the  
3 Clinician's Guide.

4           13. "DEPARTMENT OF DEFENSE" or "DoD" means the United States Department of  
5 Defense, and all its offices, departments, organizations, administrations, boards, commissions, task  
6 forces, management, and past and present employees and service members.

7           14. "DEPARTMENT OF THE AIR FORCE" means the United States Department of the  
8 Air Force, and all its offices, departments, organizations, administrations, boards, commissions, task  
9 forces, management, and past and present employees and service members.

10          15. "DEPARTMENT OF THE ARMY" means the United States Department of the Army,  
11 and all its offices, departments, organizations, administrations, boards, commissions, task forces,  
12 management, and past and present employees and service members.

13          16. "DEPARTMENT OF THE NAVY" means the United States Department of the Navy,  
14 and all its offices, departments, organizations, administrations, boards, commissions, task forces,  
15 management, and past and present employees and service members, including the United States  
16 Marine Corps.

17          17. "DOLE/SHALALA REPORT" means the Report of the President's Commission on  
18 Care for America's Wounded Returning Warriors, published July 2007 by Co-Chairs Robert Dole  
19 and Donna Shalala.

20          18. "DSM" means any edition of the Diagnostic and Statistical Manual of Mental  
21 Disorders, published by the American Psychiatric Association.

22          19. "DVB" or "DEPARTMENT OF VETERANS BENEFITS" means the Department of  
23 Veterans Benefits within the VA and all its offices, departments, organizations, administrations,  
24 boards, commissions, task forces, management, and past and present employees.

25          20. "GAO" means the United States Government Accountability Office and all its  
26 predecessors, offices, departments, organizations, administrations, boards, commissions, task forces,  
27 management, and past and present employees.

28

1           21. "INSTITUTE OF MEDICINE" means the Institute of Medicine, National Academy of  
2 Sciences panel and all of its current and past employees and members.

3           22. "OPERATION ENDURING FREEDOM" or "OEF" means Operation Enduring  
4 Freedom, the official name given to military operations in Afghanistan, and the nations and bodies of  
5 water around it.

6           23. OPERATION IRAQI FREEDOM" or "OIF" means Operation Iraqi Freedom, the  
7 official name given to military operations in Iraq and in the nations and bodies of water near it,  
8 beginning in the year 2003.

9           24. "PERSONALITY DISORDER DISCHARGE" or "PDD" means the separation from  
10 military service of a PERSON under Army Regulation 635-200, Chapter 5-13, Navy Military  
11 Personnel Manual 1910-122, Marine Corps Separation and Retirement Manual Chapter 6, Section 2,  
12 Subsection 6203, Air Force Regulation AFI 36-3208, or any similar DoD regulations, including DoD  
13 Directive 133.2.14 (December 21, 1993), and any actions by the VA based on a PDD or a personality  
14 disorder finding or diagnosis.

15           25. "PTSD" means post-traumatic stress disorder, as described in the DSM and VA  
16 Regulations referencing the DSM.

17           26. "SCDDC" means service-connected death or disability compensation, including  
18 dependency and indemnity compensation, as described in the Complaint.

19           27. "TDIU" means a claim for and/or VA rating of total disability based on individual  
20 unemployability.

21           28. "VA" or "DVA" means the United States Department of Veterans Affairs, and all its  
22 offices, departments, organizations, administrations, boards, consultants, commissions, task forces,  
23 management, and past and present employees.

24           29. "VETERANS AFFAIRS COMMITTEES" means the members of the House or Senate  
25 Veterans Affairs Committees, their staff, and any persons acting on their behalf.

26           30. "VETERANS BENEFITS ADMINISTRATION" or "VBA" means the Veterans  
27 Benefits Administration within the VA and all its offices, departments, organizations,  
28 administrations, boards, commissions, task forces, management, and past and present employees.



1           5. If Defendants withhold any of the requested documents from production under a claim of  
2 privilege or other protection, it must serve within thirty (30) days of the service of this request a list  
3 of such withheld documents (“privilege log”) indicating, for each document withheld, the following  
4 information if known or available to Defendants: (i) the date composed or date appearing on the  
5 document; (ii) the author; (iii) the number of pages; (iv) the number of copies made; (v) the identity  
6 of all persons or entities who saw the original document or saw or received a copy of such document,  
7 and the job titles of each such person; (vi) the subject matter; and (vii) the basis for claim of privilege  
8 or other immunity asserted. The privilege log should be sufficiently detailed to permit Plaintiffs to  
9 determine whether to make a motion with respect thereto.

10           6. If Defendants are aware of the existence of any requested items that they are unable to  
11 produce, specify in writing and serve upon the undersigned a list indicating the identity of such  
12 documents within thirty (30) days of the service of this request. Such identification should, for each  
13 such document, set forth whether the document: (i) has been destroyed; (ii) has been lost, misplaced,  
14 or stolen; or (iii) has never been, or is no longer, in the possession, custody, or control of the  
15 responding party, in which case the name and address of any person or entity known or believed by  
16 Defendants to have possession, custody or control of that document or category of documents should  
17 be identified. In each such instance, each Defendant is to identify the document by author, addressee,  
18 date, subject matter, number of pages, attachments or appendices, all persons to whom it was  
19 distributed, shown, or explained, date and manner of destruction or other disposition, the reason for  
20 destruction or other disposition, and persons destroying or disposing of the document.

21           7. If Defendants contend that any of the following requests is objectionable in whole or in  
22 part, Defendants shall state with particularity each objection, the basis for it, and the categories of  
23 information and documents to which the objection applies, and Defendants shall respond to the  
24 request insofar as it is not deemed objectionable.

25           8. If Defendants find the meaning of any term in these requests unclear, Defendants shall  
26 assume a reasonable meaning, state what the assumed meaning is, and respond to the request  
27 according to the assumed meaning.



