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9 [See Next Page for Additional Counsel for Plaintiffs.]

10 Attorneys for Plaintiffs  
 VETERANS FOR COMMON SENSE and  
 11 VETERANS UNITED FOR TRUTH, INC.

12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN FRANCISCO DIVISION

15  
 16 VETERANS FOR COMMON SENSE, and  
 VETERANS UNITED FOR TRUTH, INC.,

17 Plaintiffs,

18 v.

19 JAMES B. PEAKE, M.D., Secretary of Veterans  
 20 Affairs, *et al.*,

21 Defendants.

Case No. C-07-3758-SC

**PLAINTIFFS' NOTICE OF  
 APPEAL TO THE UNITED  
 STATES COURT OF APPEALS  
 FOR THE NINTH CIRCUIT OF  
 FINAL JUDGMENT AND ALL  
 RELATED INTERLOCUTORY  
 ORDERS**

Complaint Filed: July 23, 2007  
 Trial Date: April 21, 2008

**FILED**

JUL 25 2008

*See paid*

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

1 **ADDITIONAL COUNSEL FOR PLAINTIFFS:**

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1 NOTICE IS HEREBY GIVEN that Plaintiffs VETERANS FOR COMMON SENSE and  
2 VETERANS UNITED FOR TRUTH, INC. (collectively, "Plaintiffs"), and/or their members, who  
3 are representative of a putative class, hereby appeal to the United States Court of Appeals for the  
4 Ninth Circuit from the final judgment of this Court on June 25, 2008 in the above-captioned case. In  
5 addition to the final judgment, Plaintiffs also appeal all interlocutory orders that gave rise to that  
6 judgment, including but not limited to:

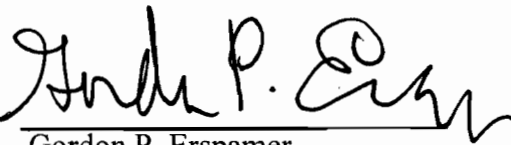
- 7 1) January 10, 2008 Order Granting in Part and Denying in Part Defendants' Motion to  
8 Dismiss; Finding as Moot Motion for Protective Order; and Granting Motion to Seal  
9 Documents;
- 10 2) February 21, 2008 Order Granting in Part and Denying in Part Motion to Seal;
- 11 3) February 29, 2008 Order Granting Motion for Protective Order; Granting Motion for  
12 Leave to file Surreply, and Motion for Stay of Discovery;
- 13 4) All evidentiary Rulings at Hearing on Preliminary Injunction Motion, March 3, 2008  
14 through March 6, 2008;
- 15 5) March 13, 2008 Order Granting Motion to Dismiss;
- 16 6) March 13, 2008 Order Regarding Scope of Discovery;
- 17 7) April 7, 2008 Order Denying Request for Continuance (Final Transcript of Hearing  
18 on Discovery-Related Issues at 21:7 – 22:24);
- 19 8) April 7, 2008 Minute Order Granting in Part and Denying in Part Plaintiffs' Motions  
20 to Compel;
- 21 9) April 10, 2008 Discovery Order;
- 22 10) April 21, 2008 Order on Plaintiffs' Motions in Limine (Final Trial Transcript at  
23 20:19 – 23:24);
- 24 11) April 24, 2008 Order Denying Plaintiffs' Motion to Add Suicide Prevention  
25 Coordinator to Witness List for Trial (Final Trial Transcript at 856:3 – 857:17);
- 26 12) April 28, 2008 Order Denying Plaintiffs' Motion to Exclude Testimony of  
27 Defendants' Undisclosed Rebuttal Witness (Final Trial Transcript at 873:18-876:8);  
28

- 1 13) April 29, 2008 Order Denying Motion to Compel Response to Interrogatory 10
- 2 (Final Trial Transcript at 1143:7-15);
- 3 14) April 30, 2008 Order Denying Motion for Rebuttal Witness to Dr. Berman's
- 4 Testimony (Final Trial Transcript at 1341:9 – 1345:9);
- 5 15) April 30, 2008 Order Denying Motion to Admit Incident Briefs into Evidence (Final
- 6 Trial Transcript at 1349:3 – 1351:1);
- 7 16) All evidentiary Rulings at Trial, April 21, 2008 through April 30, 2008;
- 8 17) June 10, 2008 Order Denying Plaintiffs' Request for Additional Discovery and
- 9 Request for sanctions;
- 10 18) June 25, 2008 Findings of Fact and Conclusions of Law.

11 Pursuant to Ninth Circuit Rule 3-2, attached is a Representation Statement that identifies all  
12 parties to the action, along with the names, addresses, and telephone numbers of their respective  
13 counsel. Pursuant to Ninth Circuit Local Rule 3-4, a Civil Appeals Docketing Statement is being  
14 concurrently filed. Pursuant to Ninth Circuit Local Rule 34-3, Plaintiffs seek an expedited hearing.

15  
16 Dated: July 25, 2008

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21 By:   
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23 Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on July 25, 2008, I served a copy of:

**PLAINTIFFS' NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT OF FINAL JUDGMENT AND ALL RELATED INTERLOCUTORY ORDERS**

**CIVIL APPEALS DOCKETING STATEMENT**

**BY FACSIMILE, [Fed. Rule Civ. Proc. rule 5(b)]** by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone number 415.268.7522 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 [Fed. Rule Civ. Proc. rule 5(b)]** 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, 425 Market Street, San Francisco, California 94105-2482 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.

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**BY OVERNIGHT DELIVERY [Fed. Rule Civ. Proc. rule 5(b)]** by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 425 Market Street, San Francisco, California 94105-2482 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 [Fed. Rule Civ. Proc. rule 5(b)]** 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 above will be taken from Morrison & Foerster LLP's mailroom and hand delivered 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.

**BY ELECTRONIC SERVICE [Fed. Rule Civ. Proc. rule 5(b)]** by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Federal Rules of Civil Procedure rule 5(b).

**By Email & Overnight Mail**  
Mr. Daniel Bensing, Senior Counsel  
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Civil Div., Federal Programs Branch  
20 Massachusetts Ave., NW  
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**Daniel.Bensing@usdoj.gov**

**By Personal Delivery**  
Scott N. Schools, Esq.  
U.S. Attorney's Office  
450 Golden Gate Avenue, 11th Floor  
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.  
Executed at San Francisco, California, this 25th day of July, 2008.

  
\_\_\_\_\_  
Jill R. Haskins

Court of Appeals No. \_\_\_\_\_

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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

*Plaintiffs-Appellants,*

vs.

JAMES B. PEAKE, M.D., Secretary of Veterans Affairs, *et al.*,

*Defendants-Appellees.*

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Appeal from the United States District Court  
Northern District Of California  
District Court No. C-07-3758-SC  
The Honorable Samuel Conti

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**REPRESENTATION STATEMENT**

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*Attorneys for Plaintiffs-Appellants*

VETERANS FOR COMMON SENSE AND VETERANS UNITED FOR TRUTH, INC.

The undersigned represent Plaintiffs-Appellants Veterans for Common Sense and Veterans United for Truth, Inc., in this matter and no other party. The information below shows all of the parties to the action, and identifies their counsel by name, firm, address, and telephone number, where appropriate. (Fed. R. App. P. 12(b); Circuit Rule 3-2(b)).

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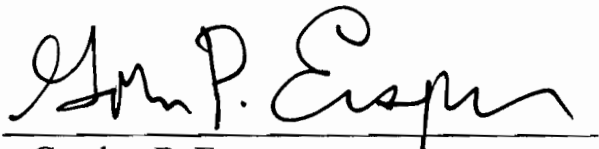
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Dated: July 25, 2008

MORRISON & FOERSTER LLP

By: 

Gordon P. Erspamer

Attorneys for Plaintiffs-Appellants  
Veterans for Common Sense and Veterans  
United for Truth, Inc.