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7 Attorneys for Plaintiffs
 Vietnam Veterans of America; Swords to
 8 Plowshares; Veterans Rights Organization;
 Bruce Price; Franklin D. Rochelle;
 9 Eric P. Muth; David C. Dufrane; Tim Michael
 Josephs; and William Blazinski

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

14 VIETNAM VETERANS OF AMERICA *et al.*,
 15 Plaintiffs,
 16 v.
 17 CENTRAL INTELLIGENCE AGENCY *et al.*,
 18 Defendants.
 19

Case No. CV 09-0037-CW

**DECLARATION OF JAMES P.
 BENNETT IN SUPPORT OF
 PLAINTIFFS' UNOPPOSED
 MOTION FOR APPROVAL OF
 SETTLEMENT REGARDING
 CLAIM FOR ATTORNEYS' FEES
 AND EXPENSES**

Complaint filed January 7, 2009

1 I, James P. Bennett, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am admitted
3 to practice before this Court. I am an associate with the law firm of Morrison & Foerster LLP,
4 counsel of record for Vietnam Veterans of America, Swords to Plowshares: Veterans Rights
5 Organization, Bruce Price, Franklin D. Rochelle, Eric P. Muth, David C. Dufrane, Tim Michael
6 Josephs, and William Blazinski (“Plaintiffs”) in this action. I submit this Declaration in support
7 of Plaintiffs’ Supplemental Brief for Approval of Settlement Regarding Plaintiffs’ Claim for
8 Attorneys’ Fees and Expenses. I make this Declaration based on my personal knowledge and my
9 discussions with support staff working under my direction. If called as a witness, I would testify
10 to the facts set forth below.

11 **A. Attorneys’ Fees**

12 2. Since Plaintiffs filed their fee petition on July 18, 2017, the parties have negotiated
13 at length over numerous telephone conferences and through written correspondence in an attempt
14 to settle the fee request without burdening the Court. The matter of attorneys’ fees was not
15 negotiated by the parties until after the case had otherwise concluded on the merits and final
16 judgment was entered. The parties negotiated at arm’s length to arrive at a fee that all parties
17 concluded is reasonable.

18 3. Since June 30, 2017, Plaintiffs’ counsel have spent considerable time and effort
19 pursuing their right to an award of fees under the Equal Access to Justice Act (“EAJA”). Among
20 other necessary efforts, Plaintiffs’ attorneys have: (1) reviewed time notes for all billers;
21 (2) voluntarily and significantly narrowed the fee request in an effort reduce the burden on the
22 Court; (3) researched EAJA standards; (4) prepared the original fee application, including the
23 opening brief, supporting declarations, itemized spreadsheets of fees and costs, and supporting
24 receipts and documentation; (5) researched and prepared an administrative motion to accept the
25 bill of costs as timely; (6) pursued settlement with Defendants, including preparing and making
26 an initial opening offer, evaluating Defendants’ responses, and calculating new counteroffers in
27 response; (7) preparing the present motion and accompanying declaration; and (8) working with
28 class members and opposing counsel to monitor compliance with the Court’s injunctions.

1 Plaintiffs' counsel have exercised conscientious billing judgment in recording each time entry to
2 the records.

3 4. The settlement amount of \$3,400,000 is reasonable and conservative by any
4 measure. Based on applicable billing rates utilized by Morrison & Foerster, the total fees and
5 costs incurred for the total number of hours expended on this matter if billed to a client would
6 total in excess of \$20 million. After eliminating numerous entries, tasks, and timekeepers as
7 described in Plaintiffs' motion for fees (ECF No. 603 at 17-21), the combined fees and costs
8 amount using the firm's standard billing rates would be \$9,099,464.71. After applying the
9 EAJA's rates for all timekeepers except Gordon Erspamer—as explained in Plaintiffs' motion for
10 attorneys' fees (ECF No. 603 at 17-19)—the combined amount for fees and costs is
11 \$4,515,868.21. Without an enhanced rate for Mr. Erspamer, the combined amount for fees and
12 costs is over \$3.8 million. None of the figures in this paragraph include the time and expenses
13 incurred since June 30, 2017, as described in the paragraph above.

14 5. Plaintiffs' counsel have maintained a class website (edgewoodtestvets.org) since
15 shortly after the complaint was filed in 2009, routinely use it to communicate with class members,
16 and regularly post all significant court filings. Plaintiffs' motion for attorneys' fees and
17 supporting documentation have been available to class members on this website for more than a
18 year. The present motion for approval, supporting documents, and stipulation with opposing
19 counsel will also be posted shortly after they are filed with the Court.

20 **B. Service Awards**

21 6. Bruce Price, Franklin D. Rochelle, Eric P. Muth, David C. Dufrane, Tim Michael
22 Josephs, William Blazinski, Wray Forrest, and Larry Meirow (the “named plaintiffs”) actively
23 participated in this case for nearly ten years and were essential to its success. Each named
24 plaintiff was subjected to a deposition. They searched for and produced documents in response to
25 requests for production. They provided information for numerous court filings and for responses
26 to interrogatories. They participated in mediation and attended court hearings. They pressed
27 members of Congress to act on behalf of the class. They agreed to participate in interviews with
28 the media, reliving their experiences publicly in order to increase awareness and public pressure

1 on the government. And they regularly conferred with class counsel by email and telephone to
2 discuss case developments and provide direction. By participating in this case, the named
3 plaintiffs put their private medical and mental conditions into public scrutiny. They suffered an
4 emotional toll in reliving painful past experiences as test subjects. And they risked potential
5 retribution in bringing claims against the agencies responsible for their medical care and disability
6 benefits.

7 7. William Blazinski was deposed on September 15, 2011. He traveled from his
8 home in Avon, Connecticut for the deposition at the Department of Justice in Washington, D.C.
9 He met with Plaintiffs' counsel in advance of the deposition to prepare. In that deposition,
10 Mr. Blazinski was interrogated about his exposure to chlorobenzyliden malonitrile (tear gas),
11 scopolamine, and physostigme. He described being repeatedly gassed, electrocuted, and drugged
12 with psychoactive substances. He provided information about his medical conditions and
13 diagnoses, including chronic lymphocytic leukemia, ulcerative colitis, high blood pressure, and
14 eczema. He described his attempts to get medical treatment and compensation from the Veterans
15 Administration. Mr. Blazinski provided the same information to class counsel, along with other
16 input for filings with the Court and interrogatory responses. (ECF No. 376.) He also provided
17 documents to Plaintiffs' counsel that were produced in discovery. And he attended mediation in
18 Washington, D.C. in an attempt to resolve the case. Mr. Blazinski was also interviewed by
19 reporters for news stories about the case.

20 8. David Dufrane provided information to class counsel for the Complaint. He
21 searched for documents, records, and correspondence pertinent to the case, which he provided to
22 Plaintiffs' counsel for production in discovery. He provided input for court filings. (ECF
23 No. 603-13.) He communicated with his fellow named plaintiffs before and throughout the
24 lawsuit. He contacted several members of Congress. He provided information for and verified
25 interrogatory responses. Mr. Dufrane was deposed on June 13, 2011. He traveled from his home
26 in Port Henry, New York, to be deposed in the U.S. Attorney's Office in Albany, New York. He
27 met with Plaintiffs' counsel in advance of the deposition to prepare for several hours. He testified
28 about experiments in which the Army administered, sprayed, and gassed him with chemicals and

1 psychoactive substances. He provided information about his flashbacks, chronic headaches,
2 pulmonary disease, and severe breathing, hearing, and dental problems. He testified about his
3 unsuccessful attempts to obtain medical care. Mr. Dufrane also explained that he has spent a
4 hundred hours researching the chemicals to which he was exposed. He provided all the same
5 information to Plaintiffs' counsel in preparation for court filings. He receives partial disability
6 compensation from the VA.

7 9. Wray Forrest provided documents and medical records for this litigation. He was
8 deposed on April 22, 2010. He met with Plaintiffs' counsel to prepare for his deposition. He
9 disclosed his participation in various tests, including gas masks, strobe lights, orally ingested
10 drugs, and injections. He testified about his experiences with post-traumatic stress disorder,
11 pulmonary and cardiac problems, and lung, throat, and lymphatic cancer. Wray Forrest died
12 during the course of this litigation as a result of these conditions. (ECF No. 411.) Upon request,
13 the Court substituted his spouse, Kathryn McMillan-Forrest, in Mr. Forrest's place as a named
14 plaintiff. (ECF No. 485 at 59.) Ms. McMillan-Forrest remained involved in the litigation
15 afterwards, including joining calls with other named plaintiffs and the litigation team and
16 providing declarations for key filings (ECF No. 439-1).

17 10. Tim Josephs attended mediation in Washington, D.C. in 2016. He was deposed on
18 June 1, 2011. He traveled from Oakland, Maryland to the Department of Justice in Washington,
19 D.C. for that deposition. He testified that he objected to the testing at Edgewood, but that his
20 superior officers threatened him and coerced his continued participation in tests that included
21 nerve agents, pyridine-2-aldoxime methane sulfate, scopolamine, Prolixin, Congentin, Artane,
22 injections, and gas masks. He provided information regarding his Parkinson's disease, tremors,
23 hypertension, and strokes. He provided declarations in support of key court filings. (ECF No.
24 386.) He provided information for verified interrogatory responses and court filings. He
25 communicates with class counsel and other class members about the case. He was interviewed
26 several times in the media. He provided documents from his files. Mr. Josephs receives
27 payments from the VA for partial disability.

1 11. Larry Meirow was deposed on June 13, 2011. He met with Plaintiffs' counsel
2 prior to the deposition to prepare. He testified to his experiences at Edgewood, including
3 injections of unknown substances, burning sensations, blackouts, and severe headaches. In his
4 deposition and in preparation for court filings, Mr. Meirow provided information about his
5 medical conditions, including fibromyalgia, joint pain, tremors, numbness, numbness, severe
6 headaches, memory loss, severe headaches, sleeping problems, difficulty swallowing, gallbladder
7 removal, and liver, kidney, and renal conditions. He provided information for the Complaint and
8 for verified interrogatory responses. He produced documents in discovery, including medical
9 records. He contacted his Congressional representative in connection with the issues raised in
10 this case. Mr. Meirow passed away during the course of the litigation. His widow attended
11 Mr. Meirow's deposition, because he had recently had a stroke and his ability to push through the
12 proceeding was uncertain. She remained involved in the litigation after his passing.

13 12. Eric Muth searched for and produced documents for this litigation. He worked
14 with class counsel to review drafts of filings. He provided information for and verified
15 interrogatory responses and a declaration. (ECF No. 603-15.) He disclosed his heart problems,
16 post-surgery for aneurisms in both legs, allergies, sinus issues, emphysema, gastro-intestinal
17 disorders, hearing loss, tinnitus, vestibular dysfunction, brain ischemia, and spinal degeneration.
18 He communicated with other class members, named plaintiffs, and members of Congress.
19 Despite being a recipient of social security disability and VA disability, Mr. Muth testified in
20 deposition about his unfair treatment by the Veterans Administration and U.S. Government. He
21 also delved into uncomfortable topics related to his post-traumatic stress disorder. More
22 specifically, he testified regarding the causes, triggers, and effects of his PTSD and bipolar
23 disorder. He recounted difficult hallucinations and out of body experiences. He also testified
24 regarding his exposures to dangerous chemicals and repeated gassing. Mr. Muth traveled from
25 Milford, Connecticut to Bridgeport, Connecticut for his deposition on July 7, 2011, and he met
26 with Plaintiffs' counsel beforehand to prepare.

27 13. Bruce Price was deposed on May 24, 2011. He traveled from Mountain City,
28 Tennessee to Abingdon, Virginia for the deposition. Although Mr. Price spent decades trying to

1 forget and suppress his memories of Edgewood, he painfully relived and retold those experiences
2 for this case. He testified regarding hallucinations, confusion, severe pain, blood loss, and a
3 blackout lasting for days. He was also questioned regarding his post-traumatic stress disorder,
4 memory loss, and suicidal thoughts. His testimony and the information he provided to counsel
5 recounted his exposure to BZ gas, LSD, sarin gas, ethanol, and a septal implant. Mr. Price met
6 with Plaintiffs' counsel to prepare for his deposition. He communicated with members of
7 Congress. He and his wife, Purdie Mae Price, searched for and produced documents. They
8 provided information for court filings, like the Complaint. Mr. Price provided information for
9 and verified interrogatory responses and a declaration. (ECF No. 603-16.) Although he currently
10 receives disability benefits and healthcare at the VA, with which he is very pleased, Mr. Price
11 stepped forward to help other veterans who are not receiving care.

12 14. Frank Rochelle traveled from Jacksonville, North Carolina, to attend oral
13 argument at the Ninth Circuit Court of Appeal in San Francisco, California; to attend mediation in
14 Washington, D.C.; and to attend his deposition in Washington, D.C. He lobbied members of
15 Congress and the media on behalf of the class. He searched for and produced documents for the
16 litigation. He provided information for and verified interrogatory responses and a declaration.
17 (ECF No. 603-17.) He reviewed and approved court filings. He communicates regularly with
18 class counsel and other class members. He was deposed on June 8, 2011. He testified regarding
19 painful injections, administrations of gas, exposure to CAR-302668 and an unknown substance,
20 nausea, dizziness, difficulty walking, and dangerous hallucinations lasting for days. He was
21 interrogated about his medications and medical treatments, including obstructive lung disorder,
22 anxiety, hearing loss, vision problems, tinnitus, memory loss, and disability benefits. He
23 provided the same information to class counsel. Mr. Rochelle testified that he was concerned he
24 was violating his secrecy oath by stepping forward, and thus risking punishment by the U.S.
25 Government under the Uniform Code of Military Justice, but that it was worth the risk to help his
26 fellow veterans obtain medical care.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that this Declaration was executed in San Francisco, California
3 on this 17th day of August, 2018.

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/s/James P. Bennett
James P. Bennett