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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION

18 VIETNAM VETERANS OF AMERICA, *et al.*,
 19 Plaintiffs,
 20 v.
 21 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 22 Defendants.

Case No. CV 09-0037-CW

**DECLARATION OF KIMBERLY L.
 HERB IN SUPPORT OF
 DEFENDANTS' MOTION FOR
 PROTECTIVE ORDER LIMITING
 SCOPE OF DISCOVERY**

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25 I, Kimberly L. Herb, declare as follows:

- 26
27 1. I am a Trial Attorney in the Federal Programs Branch, Civil Division of the United States
 28 Department of Justice. I am assigned to represent Defendants in this case. I submit this

- 1 declaration in support of Defendants' Motion for Protective Order Limiting Discovery.
2 This declaration is based on my personal knowledge and based upon my review of
3 documents provided to me in my official capacity as counsel in this litigation.
- 4 2. Attached hereto as Exhibit A is a true and accurate copy of what I am informed and
5 believe is a memorandum from the Central Intelligence Agency ("CIA"), dated August 2,
6 1977, produced by Defendants to Plaintiffs in this litigation.
 - 7 3. Attached hereto as Exhibit B is a true and accurate copy of what I am informed and
8 believe is a memorandum from the CIA, dated February 12, 1975, produced by
9 Defendants to Plaintiffs in this litigation.
 - 10 4. Defendants have produced to Plaintiffs a redacted copy of the "Chemical and Biological
11 Tests Repository" or "Chem-Bio Database" as of March 2011.
 - 12 5. The parties met and conferred telephonically regarding a number of discovery disputes,
13 including the scope of discovery in this case, on May 19, 2010.
 - 14 6. The parties also met and conferred in-person on June 30, 2010, per the Court's order.
 - 15 7. On July 12, 2010, Defendants sent Plaintiffs by letter a proposal to limit the scope of
16 discovery in this case.
 - 17 8. On July 20, 2010, Plaintiffs rejected Defendants' proposal of July 12, 2010. A true and
18 accurate copy of this letter is attached hereto as Exhibit C.
 - 19 9. Defendants submitted a second proposal to limit the scope of discovery in this case to
20 Plaintiffs on July 30, 2010.
 - 21 10. On August 4, 2010, Plaintiffs rejected Plaintiffs' second proposal concerning the scope of
22 discovery.
 - 23 11. Attached hereto as Exhibit D is a true and accurate copy of a letter, dated May 10, 2010,
24 from counsel for Plaintiffs to counsel for Defendants concerning additional
25 interrogatories. This letter included a draft set of interrogatories.
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1 12. Attached hereto as Exhibit E is a true and accurate copy of a letter, dated June 23, 2010,
2 from counsel for Plaintiffs to counsel for Defendants requesting additional information on
3 alleged “cut-out” organizations.

4 13. Attached hereto as Exhibit F is a true and accurate copy of Plaintiffs’ Second Set of
5 Requests for Production of Documents to All Defendants, dated May 10, 2010.

6 14. Attached hereto as Exhibit G is a true and accurate copy of Plaintiffs’ Third Set of
7 Requests for Production of Documents to All Defendants, dated July 1, 2010.

8 15. Attached hereto as Exhibit H is a true and accurate copy of Plaintiffs’ Fourth Set of
9 Requests for Production of Documents to All Defendants, dated August 2, 2010.

10 16. Attached hereto as Exhibit I is a true and accurate copy of what I am informed and believe
11 is a memorandum from the Department of Defense, dated September 19, 1977, produced
12 by Defendants to Plaintiffs in this litigation.

13 17. Attached hereto as Exhibit J is a true and accurate copy of what I am informed and believe
14 is an undated memorandum from the CIA, produced by Defendants to Plaintiffs in this
15 litigation.

16 18. DOJ has searched for documents and information pertaining to the allegations concerning
17 it and the Attorney General, namely allegations that they assumed some role in providing
18 notice to test participants.

19 19. Attached hereto as Exhibit K is a true and accurate copy of First Set of Interrogatories to
20 All Defendants, dated November 16, 2009.

21 20. Attached hereto as Exhibit L is a true and accurate excerpt of what I am informed and
22 believe is a report from the Inspector General for the Department of the Army, dated
23 March 10, 1976.

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25 I declare under penalty of perjury that the foregoing is true and correct. Executed in
26 Washington, D.C. on September 15, 2010.

27 /s/ Kimberly L. Herb
28 Kimberly L. Herb