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

17 VIETNAM VETERANS OF AMERICA, *et al.*,
 18 Plaintiffs,
 19
 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' OPPOSITION TO
 PLAINTIFFS' MOTION FOR CLASS
 CERTIFICATION**

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

- 2 1. I am a Trial Attorney in the Federal Programs Branch, Civil Division of the United States
3 Department of Justice. I represent Defendants in this case. I submit this declaration in
4 support of Defendants' Opposition to Plaintiffs' Motion for Class Certification. This
5 declaration is based on my personal knowledge and based upon my review of documents
6 provided to me in my official capacity as counsel in this litigation.
- 7 2. Attached hereto as Exhibit 1 is a true and accurate copy of an excerpt of the National
8 Research Council study, *Possible Long-Term Health Effects of Short-Term Exposure to*
9 *Chemical Agents*, Vol. 1 (1982).
- 10 3. Attached hereto as Exhibit 2 is a true and accurate copy of an excerpt of the Institute of
11 Medicine study *Veterans at Risk: The Health Effects of Mustard Gas and Lewisite* (1993)
12 (VET002_001782-1808).
- 13 4. Attached hereto as Exhibit 3 is a true and accurate copy of a Department of Defense
14 PowerPoint presentation, entitled "*Chemical/Biological Exposure Data Bases*," dated
15 February 21, 2008 (VET103-000026-36).
- 16 5. Attached hereto as Exhibit 4 is a true and accurate copy of a declaration from Lloyd
17 Roberts, dated September 15, 2010.
- 18 6. Attached hereto as Exhibit 5 is a true and accurate copy of the Department of the Army
19 Inspector General report, entitled "Use of Volunteers in Chemical Agent Research"
20 (March 1976).
- 21 7. Attached hereto as Exhibit 6 is a true and accurate copy of an excerpt of the National
22 Research Council study, *Possible Long-Term Health Effects of Short-Term Exposure to*
23 *Chemical Agents*, Vol. 3 (1985).
- 24 8. Attached hereto as Exhibit 7 is a true and accurate copy of excerpts of the June 10, 2011
25 deposition transcript of Department of Defense employee Anthony Lee.
- 26 9. Attached hereto as Exhibit 8 is a true and accurate copy of Colonel Phillip R. Pittman, *An*
27 *Assessment of Health Status Among Medical Research Volunteers Who Served In The*
28 *Project Whitecoat Program At Fort Detrick, Maryland* (2005).

- 1 10. Attached hereto as Exhibit 9 is a true and accurate copy of a February 26, 1953
2 Memorandum from the Department of Defense, commonly known as the “Wilson
3 Memorandum.”
- 4 11. Attached hereto as Exhibit 10 is a true and accurate copy of a June 30, 1953 Memorandum
5 from the Department of the Army, Office of the Chief of Staff, commonly known as the
6 “CS: 385.”
- 7 12. Attached hereto as Exhibit 11 is a true and accurate copy of the March 26, 1963 version of
8 Army Regulation 70-25.
- 9 13. Attached hereto as Exhibit 12 is a true and accurate copy of the July 31, 1974 version of
10 Army Regulation 70-25.
- 11 14. Attached hereto as Exhibit 13 is a true and accurate copy of the January 25, 1990 version
12 of Army Regulation 70-25, with an effective date of February 24, 1990.
- 13 15. Attached hereto as Exhibit 14 is a true and accurate copy of excerpts of the July 6-8, 2011
14 deposition transcript of Department of Defense employee Dr. Michael Kilpatrick.
- 15 16. Attached hereto as Exhibit 15 is a true and accurate copy of excerpts of the July 7, 2011
16 deposition transcript of former Department of Defense employee and former government
17 contractor Martha Hamed.
- 18 17. Attached hereto as Exhibit 16 is a true and accurate copy of Edgewood Arsenal Technical
19 Report, *Long-Term Followup of Medical Volunteers* (March 1972).
- 20 18. Attached hereto as Exhibit 17 is a true and accurate copy of *Human Drug Testing by the*
21 *CIA, 1977, 95th Cong. (1977)* (statement of Deanne C. Siemer).
- 22 19. Attached hereto as Exhibit 18 is a true and accurate copy of the service member test file of
23 service member E, which is subject to the protective order entered in this case.
- 24 20. Attached hereto as Exhibit 19 is a true and accurate copy of the service member test file of
25 plaintiff Tim Josephs (VET034_011012-11095), which is subject to the protective order in
26 this case.
- 27 21. Attached hereto as Exhibit 20 is a true and accurate copy of excerpts of the June 1, 2011
28 deposition transcript of plaintiff Tim Josephs, some portions of which Defendants have

- 1 designated under the protective order in this case, and other portions which Plaintiffs have
2 designated.
- 3 22. Attached hereto as Exhibit 21 is a true and accurate copy of a September 17, 1975 letter to
4 plaintiff Tim Josephs from Dr. C. McClure (VET034-010679), which is subject to the
5 protective order in this case.
- 6 23. Attached hereto as Exhibit 22 is a true and accurate copy of an excerpt from *Chemical*
7 *Weapons Exposure Project Summary of Actions & Projects 1993-2007*,
8 (VET017_000279-280).
- 9 24. Attached hereto as Exhibit 23 is a true and accurate copy of excerpts of from the U.S.
10 Army Medical Department, *LSD Follow-Up Study Report* (October 1980) (VET001-
11 009579-9583)
- 12 25. Attached hereto as Exhibit 24 is a true and accurate copy of excerpts of the June 3, 2011
13 deposition transcript of plaintiff William Blazinski, portions of which both Defendants
14 and Plaintiffs have designated under the protective order in this case.
- 15 26. Attached hereto as Exhibit 25 is a true and accurate copy of excerpts of the January 27,
16 2012 deposition transcript of former Department of Defense contractor Roy Finno.
- 17 27. Attached hereto as Exhibit 26 is a true and accurate copy of the study prepared by Dr.
18 William Page, *Long-Term Health Effects of Exposure to Sarin and Other*
19 *Anticholinesterase Chemical Warfare Agents*, 168 *Military Medicine* 239 (2003)
20 (VET001-003454-460).
- 21 28. Attached hereto as Exhibit 27 is a true and accurate copy of a Department of Veterans
22 Affairs document entitled "Mustard Gas Notification Schedule" (DVA014_001257-1259).
- 23 29. Attached hereto as Exhibit 28 is a true and accurate copy of excerpts of the December 11,
24 2011 deposition transcript of former Department of Defense employee Colonel Fredrick
25 Kolbrener.
- 26 30. Attached hereto as Exhibit 29 is a true and accurate copy of a February 2008 United States
27 Government Accountability Office report, entitled: "Chemical and Biological Defense:
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- 1 DoD and VA Need to Improve Efforts to Identify and Notify Individuals Potentially
2 Exposed During Chemical and Biological Tests” (VET001_014978-VET001_015025).
- 3 31. Attached hereto as Exhibit 30 is a true and accurate copy of a redacted version of a
4 Department of Veterans Affairs’ notification letter related to mustard agent exposures
5 (DVA006_108759-11).
- 6 32. Attached hereto as Exhibit 31 is a true and accurate copy of Section 709 of the National
7 Defense Authorization Act of 2003 (commonly known as the “Bob Stump Act”), Pub.
8 Law 107-314 § 709, 116 Stat. 2458, 10 U.S.C. § 1074 note (2003).
- 9 33. Attached hereto as Exhibit 32 is a true and accurate copy of excerpts of the July 6, 2011
10 deposition transcript of Department of Defense employee Dee Dodson Morris.
- 11 34. Attached hereto as Exhibit 33 is a true and accurate copy of a September 14, 2006 letter to
12 plaintiff Tim Josephs from the Department of Veteran Affairs (VET019-005310-315), and
13 which is subject to the protective order in this case.
- 14 35. Attached hereto as Exhibit 34 is a true and accurate copy of a letter sent by the
15 Department of Veteran Affairs to plaintiff William Blazinski (DVA009_0001-02), and
16 which is subject to the protective order in this case.
- 17 36. Attached hereto as Exhibit 35 is a true and accurate copy of Department of Defense call-
18 logs to its toll-free number for questions concerning chemical and biological exposure
19 (VET001_011998-12052).
- 20 37. Attached hereto as Exhibit 36 is a true and accurate copy of excerpts of the January 24-25,
21 2012 deposition transcript of former Department of Veterans Affairs employee David
22 Abbot.
- 23 38. Attached hereto as Exhibit 37 is a true and accurate copy of excerpts of the June 29, 2011,
24 deposition transcript of Department of Veterans Affairs employee Joe Salvatore.
- 25 39. Attached hereto as Exhibit 38 is a true and accurate copy of a screenshot from the
26 Department of Defense’s Force Health Protection and Readiness website, located at
27 www.fhp.osd.mil/CBExposures/ (last visited March 8, 2012).
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- 1 40. Attached hereto as Exhibit 39 is a true and accurate copy of a screenshot from the
2 Department of Defense's Medical Countermeasures website, located at
3 <http://mcm.fhpr.osd.mil/home.aspx/> (lasted visited March 8, 2012).
- 4 41. Attached hereto as Exhibit 40 is a true and accurate copy of excerpts of the June 9, 2011
5 deposition transcript of Department of the Army employee Lloyd Roberts.
- 6 42. Attached hereto as Exhibit 41 is a true and accurate copy of the March/April 2008 edition
7 of plaintiff Vietnam Veterans of America's publication, *The Veteran*.
- 8 43. Attached hereto as Exhibit 42 is a true and accurate copy of the November/December
9 2008 edition of plaintiff Vietnam Veterans of America's publication, *The Veteran*.
- 10 44. Attached hereto as Exhibit 43 is a true and accurate copy of Plaintiffs' Response to
11 Defendants' Interrogatory Number 7, dated March 11, 2011.
- 12 45. Attached hereto as Exhibit 44 is a true and accurate copy of a March 1993 memorandum
13 from Deputy Secretary of Defense William Perry, commonly referred to as "the Perry
14 Memo" (VET001_011171).
- 15 46. Attached hereto as Exhibit 45 is a true and accurate copy of a screenshot from the
16 Department of Defense's Medical Countermeasure's website, located at
17 [http://mcm.fhpr.osd.mil/cb_exposures/faqs/general_faqs/08-09-
18 08/how_much_information_can_i_divulge_about_my_exposure_since_i_signed_a_secretary_oath.aspx](http://mcm.fhpr.osd.mil/cb_exposures/faqs/general_faqs/08-09-08/how_much_information_can_i_divulge_about_my_exposure_since_i_signed_a_secretary_oath.aspx).(last visited March 8, 2012).
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- 20 47. Attached hereto as Exhibit 46 is a true and accurate copy of a January 11, 2011
21 memorandum from the Deputy Secretary of Defense (VET021_000001).
- 22 48. Attached hereto as Exhibit 47 is a true and accurate copy of a screenshot from the
23 Department of Defense's Medical Countermeasure's website, located at
24 http://mcm.fhpr.osd.mil/cb_exposures/briefings_reports.aspx.(last visited March 8, 2012).
- 25 49. Attached hereto as Exhibit 48 is a true and accurate copy of a March 31, 1992 letter to
26 plaintiff William Blazinski from Robert E. Foster, Department of the Army (VET019-
27 005127-128), which is subject to the protective order in this case.
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1 50. Attached hereto as Exhibit 49 is a true and accurate copy of the service member test file of
2 plaintiff William Blazinski (PLTF 000049-000134), which is subject to the protective
3 order in this case.

4 51. Attached hereto as Exhibit 50 is a true and accurate copy of letter from plaintiff David
5 Dufrane (VET003_001004).

6 52. Attached hereto as Exhibit 51 is a true and accurate copy of excerpts of the June 13, 2011
7 deposition transcript of plaintiff David Dufrane, portions of which both Defendants and
8 Plaintiffs have designated under the protective order in this case.

9 53. Attached hereto as Exhibit 52 is a true and accurate copy of excerpts of the October 11,
10 2011 deposition of Vietnam Veterans of America member D, which are subject to the
11 protective order in this case.

12 54. Attached hereto as Exhibit 53 is a true and accurate copy of a Department of Veterans
13 Affairs notice letter, with an attached Department of Defense fact sheet and set of
14 frequently asked questions.

15 55. Attached hereto as Exhibit 54 is a true and accurate screenshot from the Department of
16 Veterans Affairs website, located at
17 <http://www.warrelatedillness.va.gov/education/exposures/edgewood-aberdeen.asp>. (last
18 visited March 8, 2012).

19 56. Attached hereto as Exhibit 55 is a true and accurate copy of a June 17, 2010 letter from
20 plaintiff Tim Josephs to the Department of Veteran Affairs (VET019_005348-49), which
21 is subject to the protective order in this case.

22 57. Attached hereto as Exhibit 56 is a true and accurate copy of excerpts of the October 12,
23 2011 deposition transcript of Vietnam Veterans of America member A, which is subject to
24 the protective order in this case.

25 58. Attached hereto as Exhibit 57 is a true and accurate copy of excerpts of the October 13,
26 2011 deposition transcript of Vietnam Veterans of America member B, which is subject to
27 the protective order in this case.
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- 1 59. Attached hereto as Exhibit 58 is a true and accurate copy of excerpts of the October 14,
2 2011 deposition transcript of Vietnam Veterans of America member C, which is subject to
3 the protective order in this case.
- 4 60. Attached hereto as Exhibit 59 is a true and accurate copy of the March 8, 2012 declaration
5 of Department of Veterans Affairs employee Dr. Paul Black, which is subject to the
6 protective order in this case.
- 7 61. Attached hereto as Exhibit 60 is a true and accurate copy of email correspondence
8 between then-Department of Veterans Affairs employee David Abbot and Department of
9 Defense employee Dee Dodson Morris, dated October 7, 2005 (VET140-001609-001610).
- 10 62. Attached hereto as Exhibit 61 is a true and accurate copy of email correspondence from
11 Department of Defense employee Dee Morris to then government contractor Roy Finno,
12 dated May 5, 2006 (VET125-047490-47505).
- 13 63. Attached hereto as Exhibit 62 is a true and accurate copy of a paper written by
14 Department of the Army employee Dr. Arthur Anderson, entitled "50 Years of Ethical
15 Human Subjects Research at Fort Detrick," (VET001_009749-9755).
- 16 64. Attached hereto as Exhibit 63 is a true and accurate copy of excerpts of the June 8, 2011
17 deposition transcript of plaintiff Franklin D. Rochelle, which are subject to the protective
18 order in this case.
- 19 65. Attached hereto as Exhibit 64 is a true and accurate copy of excerpts of the July 7, 2011
20 deposition transcript of plaintiff Eric Muth, which Defendants have designated under the
21 protective order in this case.
- 22 66. Attached hereto as Exhibit 65 is a true and accurate copy of excerpts of the May 24, 2011
23 deposition transcript of plaintiff Bruce Price, which Plaintiffs and Defendants have
24 designated under the protective order in this case.
- 25 67. Attached hereto as Exhibit 66 is a true and accurate copy of excerpts of the June 22, 2011
26 deposition of employee of plaintiff Vietnam Veterans of America, Richard Weidman,
27 which Plaintiffs have designated as subject to the protective order in this case.
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- 1 68. Attached hereto as Exhibit 67 is the service member test file of plaintiff Eric Muth (PLTF
2 001119), which is subject to the protective order in this case.
- 3 69. Attached hereto as Exhibit 68 is the service member test file of plaintiff Bruce Price
4 (PLTF 000303), which is subject to the protective order in this case.
- 5 70. Attached hereto as Exhibit 69 is the service member test file of plaintiff Larry Meirow
6 (VET001_002067), which is subject to the protective order in this case.
- 7 71. Attached hereto as Exhibit 70 is the service member test file of plaintiff Franklin D.
8 Rochelle (VET082_003308), which is subject to the protective order in this case.
- 9 72. Attached hereto as Exhibit 71 is a true and accurate copy of a transcript of the September
10 22, 2011 Hearing in this case.
- 11 73. Attached hereto as Exhibit 72 is a true and accurate copy of a transcript of the December
12 15, 2011 Hearing in this case.
- 13 74. Attached hereto as Exhibit 73 is a true and accurate copy of a transcript of the August 4,
14 2011 Hearing in this case.
- 15 75. Attached hereto as Exhibit 74 is a true and accurate copy of excerpts of the July 14, 2011
16 deposition transcript of former Swords to Plowshares employee Elinor Roberts.
- 17 76. Attached hereto as Exhibit 75 is a true and accurate copy of Plaintiffs' November 21,
18 2011 responses to Defendants' Interrogatory Number 18.
- 19 77. Attached hereto as Exhibit 77 is a true and accurate copy of what Defendants understand
20 are survey results compiled by plaintiff Eric Muth of test participants, (PLTF 006302
21 through 006348), and which Plaintiffs have designated under the protective order in this
22 case.
- 23 78. Attached hereto as Exhibit 78 is a true and accurate copy of a letter from plaintiff Tim
24 Josephs to the Department of the Army (VET034_010678), and which is subject to the
25 protective order in this case.
- 26 79. Attached hereto as Exhibit 80 is a true and accurate copy of the service member test file of
27 plaintiff David Dufrane (VET003_000953), which is subject to the protective order in this
28 case.

1 80. Attached hereto as Exhibit 82 is a true and accurate copy of a September 14, 2006 letter
2 from the Department of Veterans Affairs to David Dufrane (VET003_000431-434).

3 81. Attached hereto as Exhibit 83 is a true and accurate copy of documents related to a
4 previous lawsuit filed by plaintiff David Dufrane against the United States.

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6 I declare under penalty of perjury that the foregoing is true and correct. Executed in
7 Washington, D.C. on March 8, 2012.

8
9 /s/ Kimberly L. Herb
10 Kimberly L. Herb

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