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 16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 OAKLAND DIVISION  
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20 VIETNAM VETERANS OF AMERICA, *et al.*,

21 Plaintiffs,

22 v.

23 CENTRAL INTELLIGENCE AGENCY, *et al.*,

24 Defendants.  
 25  
 26

Case No. CV 09-0037-CW

**DEFENDANTS' OPPOSITION TO  
 PLAINTIFFS' STATEMENT OF  
 DISCOVERY DISPUTES, AND  
 MOTION TO SET A BRIEFING  
 SCHEDULE**

1           Despite Defendants’ best efforts to develop a rational schedule for resolving Plaintiffs’  
2 discovery disputes, Plaintiffs have sought to file a discovery dispute statement that fails to comply  
3 with this Court’s Rules and greatly prejudices Defendants. Dkt. 425. Accordingly, as discussed  
4 below, Defendants respectfully request that the Court set a reasonable briefing schedule  
5 concerning the issues identified in Plaintiffs’ discovery dispute statement.

6           On May 16, 2012, Plaintiffs provided to Defendants what purported to be a draft of a joint  
7 statement regarding discovery disputes concerning the magnetic tapes. This seven-page  
8 statement incorporated by reference arguments made in what Plaintiffs refer to as a seven-page  
9 “Supplemental” brief from December 14, 2011 concerning the appropriateness of cost-shifting, a  
10 brief to which Defendants have not had the opportunity to respond.<sup>1</sup> Plaintiffs also provided, for  
11 the first time, a 40-paragraph “Amended and Supplemental” Declaration from John Ashley,  
12 which purports to take issue with matters addressed in the declaration of Julie Parrish — a  
13 declaration which was furnished to the Court and to Plaintiffs more than six weeks ago. *See* Dkt.  
14 400. Finally, Plaintiffs substantively briefed, for the first time, issues related to certain magnetic  
15 tapes that remain in the possession of the Central Intelligence Agency (“CIA”). Although  
16 Plaintiffs referenced this issue during the April 2012 hearing, they failed to identify it in their  
17 motion to compel related to efforts to retrieve data from the six magnetic tapes transferred to the  
18 Department of Defense (“DoD”), Dkt. 404, and Plaintiffs only included a single sentence about  
19 the remaining CIA tapes in their March 26, 2012 reply brief, Dkt. 378, at 14.

20           On May 18, 2012, counsel for Defendants wrote to Plaintiffs and: (1) indicated that their  
21 proposed joint statement failed to comply with the Court’s rules regarding length of submissions;  
22 (2) proposed, given the parties’ mutual interest in resolving this issue quickly, and consistent with  
23 the parties’ recent practice, that the parties jointly request that the Court dispense with joint  
24 statements and proceeding directly to briefing; and (3) proposed a telephonic meet and confer on  
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26           <sup>1</sup> Plaintiffs’ filed their “Supplemental” brief the day before the Court held a hearing on the  
27 discovery disputes concerning, among other things, the magnetic tapes. For that reason,  
28 Defendants did not have an opportunity to respond to the issues addressed in Plaintiffs’ so-called  
“supplement.”

1 May 21, 2012 because Plaintiffs had failed to satisfy the meet-and-confer requirement pursuant  
2 to the Court's standing order. The parties held a telephonic meet and confer on May 21, 2012,  
3 but were unable to resolve these issues. Counsel for Defendants informed counsel for Plaintiffs  
4 that, if they decided to proceed with filing a discovery dispute statement despite the deficiencies  
5 identified by Defendants, that they should represent that Defendants could not agree to file a  
6 statement that failed to comply with the Local Rules. Plaintiffs filed their statement on May 21,  
7 2012. Dkt. 425.

8 Defendants are substantially prejudiced by Plaintiffs' filing. Although Plaintiffs have had  
9 Ms. Parrish's declaration for six weeks, and apparently have used that time to develop a forty-  
10 paragraph declaration from Mr. Ashley, Defendants have had insufficient time to prepare  
11 declarations in response to Mr. Ashley's new declaration. Given that Plaintiffs are raising new  
12 issues in this joint statement regarding the scope of the CIA's search, as well as new challenges to  
13 Ms. Parrish's qualifications and recovery efforts, Defendants need a reasonable amount of time to  
14 respond to these issues. Accordingly, given the impending Memorial Day holiday and the impact  
15 that has on securing new declarations and review by the Defendant agencies, Defendants propose  
16 the following briefing schedule:

- 17 • June 7, 2012: Defendants' Opposition Brief Due.
- 18 • June 14, 2012: Plaintiffs' Reply Brief Due (if any).
- 19 • June 28, 2012: Hearing (if any).

20 This proposed schedule will provide Defendants a reasonable time in which to respond to  
21 Plaintiffs' new arguments and declarations, and will, hopefully, lead to an expeditious resolution  
22 of the issues identified in Plaintiffs' discovery dispute statement.

### 23 CONCLUSION

24 For the foregoing reasons, Defendants respectfully request that the Court set the briefing  
25 schedule as described above.  
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May 21, 2012

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