

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 VIETNAM VETERANS OF AMERICA,
5 et al.,

6 Plaintiffs,

7 v.

8 CENTRAL INTELLIGENCE AGENCY,
9 et al.,

10 Defendants.

Case No. 09-cv-00037-CW

ORDER GRANTING PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES

(Dkt. Nos. 603 & 615)

11 Pursuant to the stipulation regarding Plaintiffs' Motion for
12 Attorneys' Fees and Expenses and service awards, the Court orders
13 the parties to comply with the stipulation and to that extent
14 grants Plaintiffs' motion. The Court finds Plaintiffs'
15 attorneys' stipulated fees to be reasonable. The hours claimed
16 are well-supported and the rates are those allowed under the
17 Equal Access to Justice Act (EAJA). See generally, Docket No.
18 603-2. Plaintiffs' Bill of Costs is sufficiently itemized and
19 the costs they are seeking are statutorily permitted under 28
20 U.S.C. § 1920 or the EAJA. Docket No. 604. The Court further
21 finds Plaintiffs' attorneys' fees to be reasonable because they
22 were substantially discounted from the original total amount of
23 \$20 million down to \$4.5 million using the statutory EAJA rates
24 and discounting hours. This amount was further reduced to the
25 stipulated amount of \$3.4 million.

26 This was a class action. Pursuant to Rule 23(b)(2)(A), "the
27 court may direct appropriate notice to the class" of attorneys'
28

1 fees requests for Rule 23(b)(2) classes. The Court finds that
2 Plaintiffs' counsels' posting of the motion papers on the class
3 website, see Docket 616-1, Declaration of James Bennett, ¶ 5, was
4 sufficient notice for purposes of Rules 23(h) & 23(b)(2)(A).

5 "A class member . . . may object to the motion" for
6 attorneys' fees. Fed. R. Civ. P. 23(h). Plaintiffs Bruce Price,
7 Djina Meirow (on behalf of decedent Larry Meirow), and Frank
8 Rochelle have sent letters expressing various opinions. See
9 Docket Nos. 619, 620 & 621. However, these letters do not appear
10 to object to the attorneys' fees and costs.

11 Service awards to class representatives compensate them for
12 the work they have done for the class, for the financial or
13 reputational risk they have undertaken in bringing the action,
14 and for their willingness to act as a private attorney general.
15 In re Mego Financial Corp. Securities Litig., 213 F.3d 454, 463
16 (9th Cir. 2000); Rodriguez v. West Publishing Corp., 563 F.3d
17 948, 958-959 (9th Cir. 2009). Requests for service awards may be
18 evaluated using the following five factors: (1) the risk to the
19 class representative in commencing a class action, both financial
20 and otherwise; (2) the notoriety and personal difficulties
21 encountered by the class representative; (3) the amount of time
22 and effort spent by the class representative; (4) the duration of
23 the litigation; and (5) the personal benefit, or lack thereof,
24 enjoyed by the class representative as a result of the
25 litigation. Van Vranken v. Atlantic Richfield Co., 901 F. Supp.
26 294, 299 (N.D. Cal. 1995).

27 Plaintiffs have sought a total of \$160,000 total in service
28 awards, or \$20,000 per named Plaintiff for their work in this

1 litigation. Some courts in this district have found payments of
2 \$10,000 or \$25,000 to be "quite high" and outside the \$5,000
3 amount presumed to be reasonable. Harris v. Vector Marketing
4 Corp., No. C-08-5198 EMC, 2012 WL 381202, at * 7 (N.D. Cal. Oct.
5 22, 2014) (summarizing authority). However, the Court finds the
6 circumstances here warrant this amount. Specifically, given the
7 lengthy duration of this litigation spanning almost a decade,
8 Plaintiffs' participation in discovery and hearings, along with
9 their participation with the media, and because their service
10 awards will not prejudice the other class members and is
11 unopposed by Defendant, the Court finds \$20,000 per named
12 Plaintiff to be reasonable and proper here. See In re: Nat'l
13 Collegiate Athletic Ass'n, 14-md-2541-CW, 2017 WL 6040065, at *11
14 (N.D. Cal. Dec. 6, 2017) (approving award of \$20,000); see id. at
15 *11, n.69 (summarizing cases with service awards ranging from
16 \$20,000 up to \$120,000 in instances of a \$415 million dollar
17 settlement fund). Plaintiffs' letters to the Court request that
18 the service awards be higher or that they be tax-free. As noted
19 above, the service awards are higher than what is presumptively
20 reasonable in this District and a higher amount will not be
21 ordered. The request for a change in tax treatment is not within
22 the jurisdiction of the Court.

23 Plaintiffs' letters also request a formal apology and
24 express concerns over whether Defendants will abide by the
25 injunction. These are not valid objections to the motion for
26 attorneys' fees and costs and service awards. Ordering an
27 apology is likewise not within the jurisdiction of the Court. If
28 Defendants do not abide by the injunctions, class counsel will

1 bring that to the Court's attention. Lastly, Plaintiffs' concern
2 that this payment of fees would not constitute an "admission of
3 liability or fault" to the issues litigated here, Docket 615 at
4 2-3, is misplaced. This provision is unrelated to the Court's
5 findings and has "no impact on the injunctions, judgment, and
6 relief ordered by the Court" provided to Plaintiffs here. Id. at
7 2.

8 IT IS SO ORDERED.

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10 Dated: October 4, 2018



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CLAUDIA WILKEN
United States District Judge

United States District Court
Northern District of California