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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 v.
 20 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 21 Defendants.
 22
 23
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Case No. CV 09-0037-CW

**DECLARATION OF KIMBERLY L.
 HERB IN SUPPORT OF
 DEFENDANT CENTRAL
 INTELLIGENCE AGENCY'S
 MOTION FOR JUDGMENT ON THE
 PLEADINGS AND, IN THE
 ALTERNATIVE, MOTION FOR
 SUMMARY JUDGMENT**

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26 I, Kimberly L. Herb, declare as follows:
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- 1 1. I am a Trial Attorney in the Federal Programs Branch, Civil Division of the United States
2 Department of Justice. I am assigned to represent Defendants in this case. I submit this
3 declaration in support of Defendant Central Intelligence Agency's Motion for Protective
4 Order Limiting Discovery. This declaration is based on my personal knowledge and
5 based upon my review of documents provided to me in my official capacity as counsel in
6 this litigation.
- 7 2. Attached hereto as Exhibit A is a true and accurate copy of Plaintiffs' Amended and
8 Supplemental Responses to Defendants' First Set of Interrogatories, dated March 11,
9 2011.
- 10 3. Plaintiffs have not revised or supplemented their response to Defendants' Interrogatory
11 No. 7 in the more than four months following when Plaintiffs originally answered that
12 interrogatory on March 11, 2011.
- 13 4. Attached hereto as Exhibit B is a true and accurate copy of the deposition of Plaintiff Eric
14 Muth, which was conducted on July 7, 2011.
- 15 5. Attached hereto as Exhibit C is a true and accurate copy of the deposition of Plaintiff
16 William Blazinski, which was conducted on June 3, 2011.
- 17 6. Attached hereto as Exhibit D is a true and accurate copy of the deposition of Plaintiff
18 David Dufrane, which was conducted on June 13, 2011.
- 19 7. Attached hereto as Exhibit E is a true and accurate copy of the deposition of Plaintiff Tim
20 Josephs, which was conducted on June 1, 2011.
- 21 8. Attached hereto as Exhibit F is a true and accurate copy of the deposition of Plaintiff
22 Larry Meirow, which was conducted on June 13, 2011.
- 23 9. Attached hereto as Exhibit G is a true and accurate copy of the deposition of Plaintiff
24 Franklin Rochelle, which was conducted on June 8, 2011.
- 25 10. Attached hereto as Exhibit H is a true and accurate copy of the deposition of Plaintiff
26 Bruce Price, which was conducted on May 24, 2011.
- 27 11. Attached hereto as Exhibit I is a true and accurate copy of Plaintiffs' Second Amended
28 Initial Disclosures, dated June 17, 2011.

- 1 12. Attached hereto as Exhibit J is a true and accurate copy of the deposition of Richard
2 Weidman, Executive Director for Policy and Government Affairs for Plaintiff Vietnam
3 Veterans of America (“VVA”); the deposition was conducted on June 22, 2011.
- 4 13. Attached hereto as Exhibit K is a true and accurate copy of the deposition of Bernard
5 Edelman, Deputy Director for Policy and Government Affairs for Plaintiff VVA; the
6 deposition was conducted on June 24, 2011.
- 7 14. Attached hereto as Exhibit L is a true and accurate copy of the deposition of Thomas
8 Berger, Executive Director of Plaintiff VVA’s Veterans Health Council; the deposition
9 was conducted on June 28, 2011.
- 10 15. Attached hereto as Exhibit M is a true and accurate copy of the deposition of Elinor
11 Roberts, former Legal Director of Swords to Plowshares: Veterans Rights Organization;
12 the deposition was conducted on July 14, 2011.
- 13 16. Attached hereto as Exhibit N is a true and accurate copy of the Central Intelligence
14 Agency’s June 7, 2011 Amended and Supplemental Response to Plaintiffs’ Interrogatory
15 Number 11.
- 16 17. Attached hereto as Exhibit O is a true and accurate copy of an email sent by Timothy
17 Blakely, counsel for Plaintiffs, to me on June 15, 2011 wherein Mr. Blakely states that
18 “you request that Plaintiffs withdraw their claim for declaratory relief with respect to
19 secrecy oaths insofar as that claim pertains to the CIA. In support of this request, you cite
20 the CIA’s revised interrogatory response indicating that it has no knowledge on the topic
21 after a reasonable search of its records. Based on that updated response, Plaintiffs have
22 agreed to withdraw their request for Rule 30(b)(6) testimony from the CIA concerning
23 secrecy oaths.”
- 24 18. Plaintiffs are not currently seeking any deposition or document discovery from the CIA
25 specifically concerning the possible administration of secrecy oaths by the CIA.
- 26 19. Plaintiffs do not have any outstanding discovery requests with the Department of Defense
27 or the Department of Veterans Affairs, the only other defendants in this action, that
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1 directly requests information concerning whether the CIA had a role in the alleged
2 administration of secrecy oaths.

3 20. Attached hereto as Exhibit P is a true and accurate copy of a letter sent by me to Gordon
4 Erspamer, counsel for Plaintiffs, on June 28, 2011. A true and accurate copy of the
5 attachment to my letter of June 28, 2011, the declaration of Patricia Cameresi, Information
6 Review Officer, Central Intelligence Agency, is attached hereto as Exhibit Q.

7 21. Attached hereto as Exhibit R is a true and accurate copy of a letter sent by Joshua
8 Gardner, counsel for Defendants, to Gordon Erspamer, counsel for Plaintiffs, on April 26,
9 2011 wherein Mr. Gardner states that “it is clear that there is no merit to this [secrecy
10 oath] claim against the CIA” and “therefore request[s] that [Plaintiffs] withdraw this
11 claim.”

12 22. Attached hereto as Exhibit S is a true and accurate copy of a letter sent by me to Timothy
13 Blakely, counsel for Plaintiffs, on June 13, 2011 wherein I state that the CIA is providing
14 an attached interrogatory response that “the CIA has no information concerning the
15 administration of secrecy oaths or non-disclosure agreements by the CIA or any other
16 Defendant on volunteer service members” and thereby request that “[i]n light of the CIA’s
17 representation in the attached . . . that Plaintiffs withdraw their secrecy oath claim as it
18 pertains to the CIA.”

19 23. Attached hereto as Exhibit T is a true and accurate copy of a letter sent by Joshua
20 Gardner, counsel for Defendants, to Timothy Blakely, counsel for Plaintiffs, on June 17,
21 2011 wherein Mr. Gardner states that Defendants “believe that continuing to maintain the
22 sole claim remaining against the CIA in this case, namely, the constitutionality of alleged
23 ‘secrecy oaths,’ is inconsistent with your obligations under Federal Rule of Civil
24 Procedure II (b)(3) (requiring that factual contentions have evidentiary support).”

25 24. Attached hereto as Exhibit U is a true and accurate copy of the deposition of Dr. James
26 Kilpatrick, which was conducted on July 6–8, 2011.

27 25. Plaintiffs have received approximately a million pages of documents from the other
28 defendants to this action concerning the test programs at issue in this case.

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I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on July 28, 2011.

/s/ Kimberly L. Herb
Kimberly L. Herb