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 8 Plowshares; Veterans Rights Organization;
 Bruce Price; Franklin D. Rochelle; Larry
 9 Meirow; Eric P. Muth; David C. Dufrane; Tim
 Michael Josephs; and William Blazinski

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

14 VIETNAM VETERANS OF AMERICA, *et al.*,
 15
 Plaintiffs,
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 v.
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 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 18
 Defendants.

Case No. CV 09-0037-CW

**DECLARATION OF BEN
 PATTERSON IN SUPPORT OF
 PLAINTIFFS' MOTION TO
 COMPEL RULE 30(B)(6)
 DEPOSITIONS AND PRODUCTION
 OF DOCUMENTS**

Complaint filed January 7, 2009

1 I, Ben Patterson, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am admitted
3 to practice before this Court. I am an associate with the law firm of Morrison & Foerster LLP,
4 counsel of record for Vietnam Veterans of America, Swords to Plowshares: Veterans Rights
5 Organization, Bruce Price, Franklin D. Rochelle, Larry Meirow, Eric P. Muth, David C. Dufrane,
6 Tim Michael Josephs, and William Blazinski (“Plaintiffs”) in this action. I submit this
7 Declaration in Support of Plaintiffs’ Motion to Compel Rule 30(b)(6) Depositions and Production
8 of Documents. I make this Declaration based on personal knowledge. If called as a witness, I
9 would testify to the facts set forth below.

10 2. Attached hereto as Exhibit A is a true and correct copy of Plaintiffs’ Notice of
11 Deposition to the Department of Defense and the Department of the Army Pursuant to Fed. R.
12 Civ. P. 30(b)(6), served on Defendants on May 27, 2011.

13 3. Attached hereto as Exhibit B is a true and correct copy of Plaintiffs’ Notice of
14 Deposition to the Central Intelligence Agency Pursuant to Fed. R. Civ. P. 30(b)(6), served on
15 Defendants on June 15, 2011.

16 4. Attached hereto as Exhibit C is a true and correct copy of a March 21, 2011 letter
17 from Gordon Erspamer, counsel for Plaintiffs, to Joshua Gardner, counsel for Defendants.

18 5. Counsel for the parties have exchanged several letters regarding discovery
19 disputes, including letters dated March 21, 2011; April 1, 2011; April 14, 2011; April 26, 2011;
20 May 11, 2011; June 8, 2011; July 4, 2011; July 21, 2011; July 29, 2011; and August 2, 2011.

21 6. Counsel for the parties met and conferred regarding their discovery disputes
22 telephonically on May 23, 2011; May 26, 2011; August 12, 2011; and August 15, 2011.

23 7. Counsel for the parties met and conferred in person regarding their discovery
24 disputes on August 4, 2011.

25 8. Attached hereto as Exhibit D is a true and correct copy of a document titled
26 Memorandum for the Record: Discussions of MKNAOMI with [redacted], produced by
27 Dr. James Ketchum in response to Plaintiffs’ Rule 45 subpoena, with Bates labels JK10 0016602
28 through JK10 0016604.

1 9. Attached hereto as Exhibit E is a true and correct copy of what I am informed and
2 believe is a January 31, 1975 James Hirsch Memorandum: ORD Research and Development for
3 Intelligence Applications of Drugs, and attachment “Influencing Human Behavior,” produced by
4 Defendants with the Bates labels VET001_009239 through VET001_009247.

5 10. Attached hereto as Exhibit F is a true and correct copy of Plaintiffs’ Amended Set
6 of Requests for Production to All Defendants, served on December 2, 2010.

7 11. Attached hereto as Exhibit G is a true and correct copy of a June 8, 2011 letter
8 from Joshua Gardner, counsel for Defendants, to Timothy Blakely, counsel for Plaintiffs.

9 12. Attached hereto as Exhibit H is a true and correct copy of Defendant Department
10 of Defense and Department of Army’s Objections and Responses to Plaintiffs’ Amended Set of
11 Requests for Admission, served on August 15, 2011.

12 13. Attached hereto as Exhibit I is a true and correct copy of what I am informed and
13 believe is an August 14, 2006 Undersecretary of Health Information Letter, produced by
14 Defendants with the Bates labels VET001_015606 through VET001_015609.

15 14. Attached hereto as Exhibit J is a true and correct copy of what I am informed and
16 believe is an excerpt from an August 30, 2006 “Chemical and Biological Task Force” PowerPoint
17 by Joe Salvatore, produced by Defendants starting at Bates label DVA004 014817.

18 15. During the parties’ August 12, 2011 telephonic meet-and-confer, various discovery
19 issues were discussed. Counsel for Defendants explained that the Defense Technical Information
20 Center (“DTIC”) is the central repository for DOD technical documents. Defendants’ counsel
21 also stated that there may be Edgewood Arsenal technical documents that were sent to DTIC,
22 which may no longer be physically stored at Edgewood. In response to Plaintiffs’ proposal that
23 Plaintiffs would review the documents themselves in the restricted portion of DTIC, counsel for
24 Defendants explained that it would be logistically difficult for Plaintiffs to access the database in
25 a meaningful way – for example, because many of the historical documents are not electronically
26 linked.

27 16. During the parties’ August 15, 2011 telephonic meet-and-confer, various discovery
28 issues were discussed. Counsel for Defendants stated that they have not visited some remote

1 testing sites, including Horn Island, to search for documents because those sites are closed.
2 Defendants' counsel said that technical documents from those sites would likely have been sent to
3 DTIC and/or Edgewood Arsenal. Defendants' counsel also confirmed that, in the course of work
4 by Battelle Memorial Institute ("Battelle") related to the Chem-Bio Database, Battelle sent to
5 DOD documents with individual service member information; Battelle sent other relevant
6 documents it collected regarding the testing programs to DTIC. With respect to emails, counsel
7 for Defendants stated that they have not run keyword searches to gather responsive documents
8 from email custodians' accounts. Defendants took a similar position with respect to Battelle-
9 related emails. Counsel for Defendants also stated that a different contractor than Battelle created
10 and maintains the Chem-Bio database.

11 17. Attached hereto as Exhibit K is a true and correct copy of an August 2, 2011 letter
12 from Joshua Gardner, counsel for Defendants, to Ben Patterson, counsel for Plaintiffs.

13 18. Attached hereto as Exhibit L is a true and correct copy of what I am informed and
14 believe is the June 22, 2011 Hearing Transcript in this matter before Magistrate Judge Elizabeth
15 Preston Deavers in the U.S. District Court for the Southern District of Ohio.

16 19. Attached hereto as Exhibit M is a true and correct copy of a final draft letter from
17 the Department of Veterans Affairs to test subjects notifying them of their participation in the
18 chemical and biological testing programs, dated June 30, 2006, produced by Defendants at Bates
19 labels VET001_014266 through VET001_014271.

20 20. Attached hereto as Exhibit N is a true and correct copy of a July 4, 2011 letter
21 from Gordon Erspamer, counsel for Plaintiffs, to Joshua Gardner, counsel for Defendants
22 regarding Plaintiffs' Requests for Production.

23 21. Attached hereto as Exhibit O is a true and correct copy of what I am informed and
24 believe is a February 17, 2006 email from David Abbott to Dee Dodson Morris, produced by
25 Defendant Department of Veterans Affairs (DVA) with the Bates labels DVA002 025867 through
26 DVA002 025868.

1 22. Attached hereto as Exhibit P is a true and correct copy of what I am informed and
2 believe is a June 12, 2006 email from David Abbott to Dee Dodson Morris, produced by
3 Defendant DVA with the Bates label DVA002 025840.

4 23. Attached hereto as Exhibit Q is a true and correct copy of what I am informed and
5 believe is a May 11, 2005 email from Dee Dodson Morris to Joe Salvatore, produced by
6 Defendant DVA with the Bates label DVA003 006752.

7 24. Attached hereto as Exhibit R is a true and correct copy of Defendants' Response to
8 Plaintiffs' Amended Set of Requests for Production to All Defendants, served on January 6, 2011.

9 25. Attached hereto as Exhibit S is a true and correct copy of Defendants'
10 Supplemental Rule 26(a)(1) Disclosures, dated April 1, 2011.

11 26. Attached hereto as Exhibit T is a true and correct copy of excerpts from the
12 transcript of the July 7, 2011 deposition of Martha Hamed.

13 27. Attached hereto as Exhibit U is a true and correct copy of excerpts from the
14 transcript of the July 6, 2011 deposition of Dee Dodson Morris.

15 28. Attached hereto as Exhibit V is a true and correct copy of excerpts from the
16 transcript of the June 10, 2011 deposition of Anthony Lee.

17 29. Attached hereto as Exhibit W is a true and correct copy of what I am informed and
18 believe are the Minutes for a June 21, 2007 DoD/VA Deployment Health Work Group Meeting,
19 produced by Defendants with the Bates labels VET007_000961 through VET007_000967.

20 30. Attached hereto as Exhibit X is a true and correct copy of excerpts from the
21 transcript of the June 29, 2011 deposition of Joe Salvatore.

22 31. Attached hereto as Exhibit Y is a true and correct copy of what I am informed and
23 believe is a May 19, 2005 email from Lionel West to Joe Salvatore, produced by Defendants with
24 the Bates label VET007_000789.

25 32. Attached hereto as Exhibit Z is a true and correct copy of what I am informed and
26 believe is a June 3, 2005 summary of a DoD/VA meeting regarding Declassification of Chemical
27 and Biological Tests, produced by Defendants with the Bates labels VET007_000754 through
28 VET007_000761.

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Attestation Pursuant to General Order 45, section X.B

I hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/S/) within this efiled document.

/s/ GORDON ERSPAMER

Gordon Erspamer