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14 Attorneys for DEFENDANTS

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

18 VIETNAM VETERANS OF AMERICA, *et al.*,  
 19  
 20 Plaintiffs,  
 21  
 22 v.  
 23 CENTRAL INTELLIGENCE AGENCY, *et al.*,  
 24  
 25 Defendants.

Case No. CV 09-0037-CW

**DECLARATION OF JOSHUA E.  
 GARDNER IN SUPPORT OF  
 DEFENDANTS' OPPOSITION TO  
 PLAINTIFFS' MOTION FOR  
 PARTIAL SUMMARY JUDGMENT  
 AND CROSS-MOTION FOR  
 SUMMARY JUDGMENT**

1 I, Joshua E. Gardner, declare as follows:

- 2 1. I am a Senior Counsel 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 Partial Summary Judgment  
5 and Cross-Motion for Summary Judgment. This declaration is based on my personal  
6 knowledge and my review of documents provided to me in my official capacity as counsel  
7 in this litigation.
- 8 2. Attached hereto as **Exhibit 1** is a true and accurate copy of a report from the National  
9 Research Council entitled *Possible Long-Term Health Effects of Short-Term Exposure to*  
10 *Chemical Agents*, Vol. 1 (1982), Bates labeled PLTF 014140-430. A copy of this  
11 document was identified as Deposition Exhibit No. 911 in this case.
- 12 3. Attached hereto as **Exhibit 2** is a true and accurate copy of excerpts from the transcript of  
13 the July 6, 7 and 8, 2011 deposition of Dr. Michael Kilpatrick, the Department of Defense  
14 and Department of the Army's Rule 30(b)(6) designee.
- 15 4. Attached hereto as **Exhibit 3** is a true and accurate copy of excerpts from the transcript of  
16 the January 27, 2012 deposition of former Department of Defense contractor Roy Finno.
- 17 5. Attached hereto as **Exhibit 4** is a true and accurate copy of excerpts from the transcript of  
18 the June 10, 2011 deposition of Department of Defense employee Anthony Lee.
- 19 6. Attached hereto as **Exhibit 5** is a true and accurate copy of excerpts from the 1976 report  
20 from Department of the Army Inspector General, *Use of Volunteers in Chemical Agent*  
21 *Research*, Bates labeled VET004\_001665.
- 22 7. Attached hereto as **Exhibit 6** is a true and accurate copy of a report from the National  
23 Research Council entitled *Possible Long Term Health Effects of Short Term Exposure to*  
24 *Chemical Agents*, Vol 2 (1984), Bates labeled PLTF 014432-778. A copy of this  
25 document was identified as Deposition Exhibit No. 911 in this case.
- 26 8. Attached hereto as **Exhibit 7** is a true and accurate copy of the September 15, 2010  
27 declaration of Lloyd Roberts, which was previously filed in this case at Dkt. 143.4.  
28

- 1 9. Attached hereto as **Exhibit 8** is a true and accurate copy of the March 1972 report by  
2 Klapper, et al., entitled *Long Term Follow Up of Medical Volunteers*, Bates labeled  
3 VET147-002353-64.
- 4 10. Attached hereto as **Exhibit 9** is a true and accurate copy of excerpts from the September  
5 21, 1977 hearing before the United States Senate Subcommittee on Health and Scientific  
6 Research of the Committee on Human Resources on S.1893, entitled "Human Drug  
7 Testing by the CIA," 95th Congress.
- 8 11. Attached hereto as **Exhibit 10** is a true and accurate copy of an October 1980 report by  
9 McFarling entitled *LSD Follow-Up Study Report*, Bates labeled VET001\_009579-748. A  
10 copy of this document was identified as Deposition Exhibit No. 553 in this case.
- 11 12. Attached hereto as **Exhibit 11** is a true and accurate copy of a report from the National  
12 Research Council report entitled *Possible Long Term Health Effects of Short Term*  
13 *Exposure to Chemical Agents*, Vol 3 (1985), Bates labeled VET013-004999-5104. A copy  
14 of this document was identified as Deposition Exhibit No. 912 in this case.
- 15 13. Attached hereto as **Exhibit 12** is a true and accurate copy of a March 2005 study  
16 published in *Military Medicine* by Pittman, *et al.* entitled *An Assessment of Health Status*  
17 *Among Medical Research Volunteers Who Served in the Project Whitecoat Program at*  
18 *Fort Detrick, Maryland*. A copy of this document was identified as Deposition Exhibit  
19 No. 976 in this case.
- 20 14. Attached hereto as **Exhibit 13** is a true and accurate copy of a March 2003 study  
21 published in *Military Medicine* by Page entitled *Long Term Health Effects of Exposure to*  
22 *Sarin and Other Anticholinesterase Chemical Warfare Agents*, Bates labeled JK23  
23 0028309-16, and identified as Deposition Exhibit No. 992 in this case.
- 24 15. Attached hereto as **Exhibit 14** is a true and accurate copy of a July 2000 study by  
25 Bullman & Kang entitled *A Fifty Year Mortality Follow-Up Study of Veterans Exposed to*  
26 *Low Level Chemical Warfare Agent, Mustard Gas*, Bates labeled DVA012 001497-1502.  
27 A copy of this document was identified as Deposition Exhibit No. 909 in this case.  
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- 1 16. Attached hereto as **Exhibit 15** is a true and accurate copy of a Department of Veterans  
2 Affairs' document entitled "Mustard Gas Notification Schedule," Bates label DVA014  
3 001257-59, and previously identified as Deposition Exhibit No. 844 in this case.
- 4 17. Attached hereto as **Exhibit 16** is a true and accurate copy of excerpts from the 1993  
5 Institute of Medicine publication *Veterans at Risk: The Health Effects of Mustard Gas and*  
6 *Lewisite*. A full copy of this document was identified as Deposition Exhibit No. 895 in  
7 this case.
- 8 18. Attached hereto as **Exhibit 17** is a true and accurate copy of excerpts from the transcript  
9 of the July 7, 2011 deposition of former Department of Defense employee and contractor  
10 Martha Hamed.
- 11 19. Attached hereto as **Exhibit 18** is a true and accurate copy of a February 2008 report from  
12 the Government Accountability Office entitled *Chemical and Biological Defense, DoD*  
13 *and VA Need to Improve Efforts to Identify and Notify Individuals Potentially Exposed*  
14 *During Chemical and Biological Tests*, Bates labeled VET001\_014978-5026.
- 15 20. Attached hereto as **Exhibit 19** is a true and accurate copy of excerpts from the transcript  
16 of the December 12, 2011 deposition of former Department of Defense contractor Fred  
17 Kolbrener.
- 18 21. Attached hereto as **Exhibit 20** is a true and accurate copy of a redacted version of  
19 September 20, 2005 Department of Veterans Affairs' notification letter to World War II-  
20 era test participants, Bates labeled DVA006 108759-61, and identified as Deposition  
21 Exhibit No. 816 in this case.
- 22 22. Attached hereto as **Exhibit 21** is a true and accurate copy of excerpts from the transcript  
23 of the January 24 and 25, 2012 deposition of former Department of Veterans Affairs  
24 employee Dave Abbot.
- 25 23. Attached hereto as **Exhibit 22** is a true and accurate copy of excerpts from the transcript  
26 of the June 29, 2011 deposition of Department of Veterans Affairs employee Joe  
27 Salvatore.
- 28

- 1 24. Attached hereto as **Exhibit 23** is a true and accurate copy of excerpts from the transcript  
2 of the July 6, 2011 deposition of Department of Defense employee Dee Dodson Morris.
- 3 25. Attached hereto as **Exhibit 24** is a true and accurate copy of Section 709 of the National  
4 Defense Authorization Act for Fiscal Year 2003 (“Bob Stump Act”).
- 5 26. Attached hereto as **Exhibit 25** is a true and accurate copy of a May 2004 report from the  
6 General Accounting Office entitled *Chemical and Biological Defense, DoD Needs to*  
7 *Continue to Collect and Provide Information on Tests and Potentially Exposed Personnel*  
8 (2004), Bates labeled VET001\_015053-94. A copy of this document was identified as  
9 Deposition Exhibit No. 200 in this case.
- 10 27. Attached hereto as **Exhibit 26** is true and accurate copy of excerpts from the Department  
11 of Veterans Affairs’ July 15, 2011 Responses to Plaintiffs’ Second Set of Interrogatories  
12 Nos. 16, 19 and 20.
- 13 28. Attached hereto as **Exhibit 27** is a true and accurate copy of a summary prepared by  
14 Department of Veterans Affairs employee Joe Salvatore entitled “Department of Defense  
15 (DoD) Meeting on Outreach to Edgewood Arsenal Veterans,” (June 13, 2006), Bates  
16 labeled VET001\_014012.
- 17 29. Attached hereto as **Exhibit 28** is a true and accurate copy of a summary of a November  
18 29, 2004 meeting between the Department of Defense and the Department of Veterans  
19 Affairs entitled “Department of Defense’s Chemical and Biological Test Release Project  
20 Meeting November 29, 2004,” Bates labeled DVA003 006436-40, and identified as  
21 Deposition Exhibit No.795 in this case.
- 22 30. Attached hereto as **Exhibit 29** is a true and accurate copy of excerpts from the transcript  
23 of the June 9, 2011 deposition of Department of Army employee Lloyd Roberts.
- 24 31. Attached hereto as **Exhibit 30** is a true and accurate copy of a summary of a March 30,  
25 2006 meeting between the Department of Defense and the Department of Veterans Affairs  
26 prepared by former Veterans Affairs employee David Abbot and entitled “The Edgewood  
27 Arsenal Database,” Bates labeled VET007\_001419-20. A copy of this document was  
28 identified as Deposition Exhibit No. 288 in this case.

- 1 32. Attached hereto as **Exhibit 31** is a true and accurate copy of a February 2, 2006 document  
2 entitled “Memorandum for the Record, Meeting on Follow-Up to Information Provided by  
3 House Veterans’ Affairs Committee on Veterans Possible Exposed to  
4 Chemical/Biological Agents,” Bates labeled VET001\_014046.
- 5 33. Attached hereto as **Exhibit 32** is a true and accurate copy of a news release from  
6 Congressman Lane Evans, in his capacity as the ranking Democratic member of the  
7 United States House of Representatives Committee On Veterans’ Affairs, Bates labeled  
8 VET001\_014045.
- 9 34. Attached hereto as **Exhibit 33** is a true and accurate copy of June 26, 2006 memorandum  
10 prepared by Department of Veterans Affairs employee Joe Salvatore entitled “Probable  
11 Inability to Meet Congressional Deadline for Edgewood Arsenal Notification Effort,”  
12 Bates labeled VET007\_000094-95, and identified as Deposition Exhibit No. 349 in this  
13 case.
- 14 35. Attached hereto as **Exhibit 34** is a true and accurate copy of a Department of Veterans  
15 Affairs’ notification letter for Cold War-era test participants and the accompanying  
16 Department of Defense and Department of the Army attachments, Bates labeled  
17 VET001\_014266-71, and identified as Deposition Exhibit No. 264 in this case.
- 18 36. Attached hereto as **Exhibit 35** is a true and accurate copy of the Department of Defense  
19 and Department of Veterans Affairs Deployment Health Work Group Meeting Minutes  
20 for June 21, 2007, Bates labeled VET103\_000063-69. A redacted version of this  
21 document was identified as Deposition Exhibit No. 744 in this case.
- 22 37. Attached hereto as **Exhibit 36** is a true and accurate copy of a December 11, 2006 letter  
23 from Department of Veterans Affairs Secretary Nicholson to Peter S. Gaytan, Bates  
24 labeled VET001\_014009.
- 25 38. Attached hereto as **Exhibit 37** is a true and accurate copy of call-in logs reflecting calls  
26 made to the Department of Defense’s 1-800 number that it established for test  
27 participants, Bates labeled VET001\_011998–12052.
- 28

- 1 39. Attached hereto as **Exhibit 38** is a true and accurate copy of an August 8, 1979  
2 Memorandum from Army General Counsel Jill Wine-Volner, Bates labeled  
3 VET123\_004994-95, and identified as Deposition Exhibit No. 710 in this case.
- 4 40. Attached hereto as **Exhibit 39** is a true and accurate copy of a September 24, 1979  
5 Memorandum from Army General Counsel Jill Wine-Volner, Bates labeled  
6 VET017\_000279-80. A copy of this exhibit was identified as Deposition Exhibit No. 310  
7 in this case.
- 8 41. Attached hereto as **Exhibit 40** is a true and accurate copy of an October 25, 1979  
9 Memorandum from Army Lieutenant Colonel John R. McGiffert, Bates labeled  
10 VET030\_022686-91. A copy of this exhibit was identified as Deposition Exhibit No. 465  
11 in this case.
- 12 42. Attached hereto as **Exhibit 41** is a true and accurate copy of a November 2, 1979  
13 Memorandum from Army, Office Chief of Legislative Liaison, Bates labeled  
14 VET030\_022692-96. A copy of this exhibit was identified as Deposition Exhibit No. 318  
15 in this case.
- 16 43. Attached hereto as **Exhibit 42** is a true and accurate copy of a March 9, 1993  
17 Memorandum from Deputy Secretary of Defense William J. Perry (“Perry Memo.”),  
18 Bates label VET001\_011171-72. A copy of this exhibit was identified as Deposition  
19 Exhibit No. 235 in this case.
- 20 44. Attached hereto as **Exhibit 43** is a true and accurate copy of an excerpt from the  
21 March/April 2008 edition of the Vietnam Veterans of America publication *The Veteran*.
- 22 45. Attached hereto as **Exhibit 44** is a true and accurate copy of an excerpt from the  
23 November/December 2008 edition of the Vietnam Veterans of America publication *The*  
24 *Veteran*.
- 25 46. Attached hereto as **Exhibit 45** is a true and accurate copy of a February 26, 1953  
26 Memorandum from C.E. Wilson, “Use of Human Volunteers in Experimental Research”  
27 (“Wilson Memo”), and identified as Deposition Exhibit No. 95 in this case.  
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- 1 47. Attached hereto as **Exhibit 46** is a true and accurate copy of June 1953 Army Chief of  
2 Staff Memo 385, "Use of Volunteers in Research" ("CS: 385"). A copy of this document  
3 was identified as Deposition Exhibit No. 96 in this case.
- 4 48. Attached hereto as **Exhibit 47** is a true and accurate copy of the 1962 version of Army  
5 Regulation 70-25, and identified as Deposition Exhibit No. 94 in this case.
- 6 49. Attached hereto as **Exhibit 48** is a true and accurate copy of the 1974 version of Army  
7 Regulation 70-25.
- 8 50. Attached hereto as **Exhibit 49** is a true and accurate copy of the 1990 version of Army  
9 Regulation 70-25, and identified as Deposition Exhibit No. 311 in this case.
- 10 51. Attached hereto as **Exhibit 50** is a true and accurate copy of Defendants Department of  
11 Defense and Department of the Army's August 15, 2011 Objections and Responses to  
12 Plaintiffs' Amended Set of Requests for Admission No. 1.
- 13 52. Attached hereto as **Exhibit 51** is a true and accurate copy of the June 28, 2011 declaration  
14 of Patricia Cameresi.
- 15 53. Attached hereto as **Exhibit 52** is a true and accurate copy of Plaintiffs' March 11, 2011  
16 Amended Interrogatory Response to Defendants' Interrogatory No. 7.
- 17 54. Attached hereto as **Exhibit 53** is a true and accurate copy of the January 11, 2011  
18 memorandum from the Deputy Secrecy of Defense entitled, *Release from Secrecy Oaths*  
19 *Under Chemical & Biological Weapons Human Subject Research Programs*, Bates  
20 labeled VET021\_000001-2. A copy of this exhibit was identified as Deposition Exhibit  
21 No. 332 in this case.
- 22 55. Attached hereto as **Exhibit 54** is a true and accurate copy of excerpts from the transcript  
23 of the July 7, 2011 deposition of Plaintiff Eric Muth.
- 24 56. Attached hereto as **Exhibit 55** is a true and accurate copy of excerpts from the transcript  
25 of the June 3, 2011 deposition of Plaintiff William Blazinski.
- 26 57. Attached hereto as **Exhibit 56** is a true and accurate copy of excerpts from the transcript  
27 of the June 13, 2011 deposition of Plaintiff David Dufrane.
- 28



- 1 58. Attached hereto as **Exhibit 57** is a true and accurate copy of excerpts from the transcript  
2 of the June 1, 2011 deposition of Plaintiff Tim Josephs.
- 3 59. Attached hereto as **Exhibit 58** is a true and accurate copy of excerpts from the transcript  
4 of the June 13, 2011 deposition of Plaintiff Larry Meirow.
- 5 60. Attached hereto as **Exhibit 59** is a true and accurate copy of excerpts from the transcript  
6 of the June 8, 2011 deposition of Plaintiff Franklin Rochelle.
- 7 61. Attached hereto as **Exhibit 60** is a true and accurate copy of excerpts from the transcript  
8 of the May 24, 2011 deposition of Plaintiff Bruce Price.
- 9 62. Attached hereto as **Exhibit 67** is a true and accurate copy of a Plaintiff David Dufrane's  
10 Volunteer Participation Agreement, Bates labeled VET001\_006421.
- 11 63. Attached hereto as **Exhibit 68** is a true and accurate copy of Plaintiffs' July 27, 2012  
12 Supplemental Response to Defendants' Interrogatory No. 18.
- 13 64. Attached hereto as **Exhibit 69** is a true and accurate copy of Plaintiffs' August 24, 2011  
14 Response to Defendants' Interrogatory No. 3.
- 15 65. Attached hereto as **Exhibit 70** is a true and accurate copy of the Department of Veterans  
16 Affairs' July 15, 2011 Responses to Plaintiffs' Second Set of Requests for Admissions  
17 Nos. 38-41.
- 18 66. Attached hereto as **Exhibit 71** is a true and accurate copy of a Central Intelligence Agency  
19 memorandum entitled "Behavioral Drugs, and Testing," Bates labeled VET001\_009261-  
20 265. A copy of this exhibit was identified as Deposition Exhibit No. 543 in this case.
- 21 67. Attached hereto as **Exhibit 72** is a true and accurate copy of a Central Intelligence Agency  
22 Office of Inspector General memorandum dated January 31, 1975, and entitled "ORD  
23 Research And Development for Intelligence Applications of Drugs," Bates labeled  
24 VET001\_009239-47. A copy of this exhibit was identified as Deposition Exhibit 542 in  
25 this case.
- 26 68. Attached hereto as **Exhibit 73** is a true and accurate copy of a Central Intelligence Agency  
27 memorandum entitled "Records About Drug Experimentation," Bates labeled  
28 VET022\_000075-77.

1 69. Attached hereto as **Exhibit 74** is a true and accurate copy of a Central Intelligence Agency  
2 document entitled, "Sub-Project No. 125," Bates labeled VET001\_004680.

3 70. Attached hereto as **Exhibit 75** is a true and accurate copy of an October 2008 "Concept of  
4 Operations Plan," prepared for the Office of the Deputy Assistant to the Secretary of  
5 Defense for Chemical and Biological Defense and Chemical Demilitarization Programs,  
6 Bates labeled VET001\_000353-000377.

7 71. Attached hereto as **Exhibit 76** is a true and accurate copy of excerpts of the transcript of  
8 the June 30, 2011 deposition of Department of Veterans Affairs employee Paul Black.

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10 I declare under penalty of perjury that the foregoing is true and correct. Executed in  
11 Washington, D.C. on January 4, 2013.

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13 /s/Joshua E. Gardner  
14 Joshua E. Gardner  
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