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10 Attorneys for Defendants

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **OAKLAND DIVISION**

14 VIETNAM VETERANS OF AMERICA, et al.,

15 Plaintiffs,

16 v.

17 CENTRAL INTELLIGENCE AGENCY, et al.,

18 Defendants.
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Case No. CV 09-0037-CW (EDL)

STIPULATION AND
~~**PROPOSED**~~ **ORDER**
TO STAY FURTHER
BRIEFING AFTER THE
FILING OF PLAINTIFFS'
FEE PETITION TO ALLOW
PARTIES TIME TO
CONTINUE SETTLEMENT
DISCUSSIONS

1 Plaintiffs maintain they are entitled to fees and costs pursuant to the Equal Access to
2 Justice Act (“EAJA”), 28 U.S.C. § 2412. The parties have entered into settlement discussions in
3 an attempt to resolve their fee dispute without judicial intervention. Cartier Decl. ¶ 2. EAJA,
4 however, imposes a deadline on when a fee petition must be filed. In order to permit Plaintiffs to
5 meet this deadline, while also permitting the parties adequate time to pursue a settlement, the
6 parties request and stipulate, subject to the Court’s approval, to a stay of briefing on the fee
7 dispute once Plaintiffs file their initial fee petition, as set forth below. In accordance with Civil
8 Local Rule 6-2(a), this stipulation is supported by the Declaration of Nicholas Cartier (“Cartier
9 Decl.”), filed herewith, and is filed with the proposed order below.

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11 1. A party seeking attorneys’ fees and other expenses must file a fee application within
12 “thirty days of final judgment in the action.” 28 U.S.C. § 2412(d)(1)(B). “Final judgment” for
13 purposes of EAJA is defined as a “judgment that is final and not appealable.” *Id.* § 2412(d)(2)(G).
14 *Id.*; see *Bianchi v. Perry*, 154 F.3d 1023, 1024 (9th Cir. 1998).

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16 2. The Court issued an Amended Judgment in this matter on April 19, 2017. ECF No.
17 598. Defendant’s 60-day period to appeal this judgment expired on June 29, 2017. Thus,
18 Plaintiffs’ application for attorneys’ fees under EAJA is due on July 19, 2017. See 28 U.S.C.
19 § 2412(d)(1)(B).

20
21 3. Plaintiffs intend to file a fee petition on or before this deadline that meets the
22 requirements for a fee petition, as set forth in section 2412(d)(1)(B) of EAJA.

23
24 4. Pursuant to Civil L.R. 7-3, Defendants’ opposition to the fee petition would be due
25 14 days after the fee petition was filed, and Plaintiffs’ reply would be due seven days after that.
26 The parties believe these deadlines will not allow them adequate time to resolve their fee dispute.

1 5. Upon the filing of Plaintiffs' fee petition, the parties request and stipulate that
2 further briefing on the fee petition be stayed to allow the parties adequate time to continue
3 settlement negotiations in an attempt to reach a resolution of the fee dispute. The requested stay
4 will avoid the need to burden the Court with potentially unnecessary filings, and allow the parties
5 to concentrate their resources and energies on pursuing a settlement. Cartier Decl. ¶ 3.

6
7 6. In the event the parties conclude that a negotiated settlement is not possible,
8 Plaintiffs will file a notice to inform the Court, and at their election, Plaintiffs may file a
9 supplemental brief to their fee petition presenting additional legal arguments in support of the
10 petition. Defendants' opposition will be due 60 days after the filing of the notice or supplemental
11 brief, if one is filed, and Plaintiffs' reply, if any, will be due 30 days after the filing of Defendants'
12 opposition.

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14 7. There have been thirty-five previous time modifications in this case. ECF No. 595.
15 The stipulated request will not affect any other dates in the present schedule.

16 Dated: July 12, 2017

Respectfully submitted,

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18 CHAD A. READLER
Acting Assistant Attorney General

19 BRIAN STRETCH
United States Attorney

20 ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

21
22 /s/ Nicholas P. Cartier
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Attorneys for Defendants

Attestation Pursuant to Civil Local Rule 5-1

I, Nicholas Cartier, am the ECF User whose ID and password are being used to file this document.

Date: July 12, 2017

/s/ Nicholas P. Cartier

NICHOLAS CARTIER

GENERAL ORDER NO. 45(X) CERTIFICATION

I attest that I have obtained the concurrence of Benjamin Patterson, counsel for Plaintiffs, in the filing of this document.

/s/ Nicholas Cartier

NICHOLAS CARTIER

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Pursuant to stipulation, it is **SO ORDERED**.

Dated: 7/17/17

