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

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

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16 VIETNAM VETERANS OF AMERICA, *et al.*,
17 Plaintiffs,
18 v.
19 CENTRAL INTELLIGENCE AGENCY, *et al.*,
20 Defendants.

Case No. CV 09-0037-CW

**STIPULATION & ~~PROPOSED~~
ORDER REGARDING
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND
EXPENSES & SERVICE
AWARDS**

Complaint filed January 7, 2009

1 Plaintiffs and Defendant Department of the Army (“Army”) jointly stipulate, subject to
2 the Court’s approval, as follows in order to resolve Plaintiffs’ Motion for Attorneys’ Fees and
3 Expenses (ECF No. 603) and Bill of Costs (ECF No. 604), and to provide for service awards for
4 the named individual Plaintiffs:

5 WHEREAS, pursuant to the Equal Access to Justice Act, a court shall award attorneys’
6 fees, costs, and other expenses to a prevailing party in a civil action brought against a United
7 States agency, unless the court finds that the position of the government was substantially
8 justified or that special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A).

9 WHEREAS, on November 19, 2013, the Court entered a Notice Injunction against the
10 Army (ECF No. 546), on April 4, 2017, the Court entered a Medical Care Injunction against the
11 Army (ECF No. 597), and on April 19, 2017, the Court entered an Amended Judgment in favor of
12 Plaintiffs for their Notice and Medical Care claims (ECF No. 598).

13 WHEREAS, pursuant to the Equal Access to Justice Act, Plaintiffs filed a timely Motion
14 Applying for Attorneys’ Fees and Expenses on July 18, 2017 (ECF No. 603), which included a
15 Declaration in support attaching time entries from Morrison & Foerster’s billing software that
16 reflect hours recorded working on this case, and a timely Bill of Costs (ECF No. 604) with
17 attached supporting exhibits.

18 WHEREAS, Plaintiffs’ Counsel posted these court filings regarding Plaintiffs’ Motion for
19 Attorneys’ Fees and Expenses to the case website <http://edgewoodtestvets.org/> for class members
20 shortly after the documents were filed last July.

21 WHEREAS, pursuant to the Court’s July 17, 2017 Order (ECF No. 602), counsel for the
22 parties have been extensively negotiating at arm’s-length the issues of attorneys’ fees, costs, and
23 service awards since June 1, 2017, in an attempt to reach a fair and reasonable compromise and
24 reduce the burden on the Court by avoiding litigating these issues.

25 WHEREAS, Plaintiffs have submitted a Supplemental Brief, contemporaneously filed
26 herewith, which further supports its request for fees, costs, and service awards for the named
27 Plaintiffs.

1 WHEREAS, in light of the settlement reflected in this stipulation, Defendants do not
2 accept any representation of fact or concede any point of law in Plaintiffs' Supplemental Brief
3 and reserve the right to respond to the motion and supporting briefs in the event this settlement is
4 not approved as submitted.

5 WHEREAS, compliance with all applicable federal, state, and local tax requirements
6 shall be the sole responsibility of Plaintiffs. This stipulation is executed without reliance upon any
7 representation by Defendants as to tax consequences, and Plaintiffs are responsible for the
8 payment of all taxes that may be associated with the settlement payments. Further, nothing in this
9 Stipulation waives or modifies federal, state, or local law pertaining to taxes, offsets, levies, and
10 liens that may apply to this stipulation or the settlement proceeds, and this stipulation is executed
11 without reliance on any representation by Defendants as to the application of any such law.

12 WHEREAS, this stipulation has no impact on the injunctions, judgment, and relief
13 ordered by the Court in the above-captioned matter, or on any actual or potential claims that were
14 brought or could have been brought by Plaintiffs in the above-captioned matter (except for the
15 claim for attorneys' fees, costs, litigation expenses, and service awards as described herein), or on
16 Plaintiffs' right to seek Congressional relief.

17 THEREFORE, the Army has agreed to pay and Plaintiffs have agreed to accept, subject to
18 the Court's approval, in full and complete satisfaction of Plaintiffs' claim for attorneys' fees,
19 costs, litigation expenses, and service awards in the above-captioned matter, incurred as of the
20 date this stipulation is filed, the following: \$3,400,000 for fees and costs to Plaintiffs' Counsel
21 Morrison & Foerster LLP, and \$160,000 total for payment of class representative service awards
22 to be divided equally among the eight named individual Plaintiffs, Bruce Price, Franklin D.
23 Rochelle, Eric P. Muth, David C. Dufrane, Tim Michael Josephs, and William Blazinski, and the
24 heirs of the two deceased Plaintiffs, Wray Forrest and Larry Meiorow. These amounts are
25 inclusive of any interest.

26 THEREFORE, Plaintiffs hereby release and forever discharge Defendants and their
27 successors, the United States of America, and any department, agency, or establishment of the
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1 United States, and any officers, employees, agents, successors, or assigns of such department,
2 agency, or establishment, from any and all past, present, or future claims for attorneys' fees,
3 costs, litigation expenses, and service awards incurred as of the date this stipulation is filed in
4 connection with the above-captioned litigation. In making this payment, no party is making an
5 admission of liability or fault to any other party, and nothing herein shall be construed as an
6 admission of liability or fault. This stipulation shall not be used in any manner to establish
7 liability for fees, amounts, or hourly rates in any other case or proceeding, nor as an indication
8 that Defendants' position or conduct in this litigation lacked substantial justification or otherwise
9 was inappropriate.

10 ACCORDINGLY, in order to finalize this proposed settlement of Plaintiffs' Motion
11 Applying for Attorneys' Fees and Expenses and Bill of Costs, the parties jointly request as
12 follows:

13 1. That the Court approve the proposed settlement of fees, costs, and service awards,
14 and therefore, award fees and costs to Plaintiffs' Counsel Morrison & Foerster LLP in the amount
15 of \$3,400,000, and award \$160,000 total for class representative service awards to the individual
16 named Plaintiffs, to be divided evenly among Bruce Price, Franklin D. Rochelle, Eric P. Muth,
17 David C. Dufrane, Tim Michael Josephs, and William Blazinski, and the heirs of the two
18 deceased Plaintiffs, Wray Forrest and Larry Meirow. These amounts are inclusive of any interest.

19 2. Within 30 days of the date of this Stipulation, Plaintiffs' Counsel and the
20 Plaintiffs receiving service awards will provide to Defendant's counsel any information and
21 document(s) needed to process payment (e.g., IRS W-9 forms, social security numbers of the
22 individuals receiving payments, and bank account information). The parties will confer regarding
23 the logistics of payments, such as whether the government will mail checks or issue electronic
24 money transfers.

25 3. Defendant shall make a good-faith effort to provide for payment to be made to
26 Plaintiffs' Counsel Morrison & Foerster LLP and the eight named individual Plaintiffs, within
27 ninety (90) days from the date of this Stipulation.
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Respectfully submitted,

Dated: August 17, 2018

JAMES P. BENNETT
STACEY M. SPRENKEL
BEN PATTERSON
MORRISON & FOERSTER LLP

By: /s/ James P. Bennett
James P. Bennett

Attorneys for Plaintiffs

Dated: August 17, 2018

NICHOLAS P. CARTIER
CESAR A. LOPEZ-MORALES
U.S. DEPARTMENT OF JUSTICE

By: /s/ Cesar A. Lopez-Morales
Cesar A. Lopez-Morales

Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: October 4, 2018



The Honorable Claudia Wilken

United States District Court

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ATTESTATION

I, James P. Bennett, am the ECF User whose ID and password are being used to file this STIPULATION REGARDING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND EXPENSES & SERVICE AWARDS. In compliance with Local Rule 5-1(i)(3), I hereby attest that Cesar A. Lopez-Morales has concured in this filing.

Dated: August 17, 2018

/s/ James P. Bennett
James P. Bennett