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 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
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14 VIETNAM VETERANS OF AMERICA, *et al.*,
 15 Plaintiffs,
 16 v.
 17 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 18 Defendants.

Case No. CV 09-0037-CW

**PLAINTIFFS' RESPONSE TO
 DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' STATEMENT OF
 DISCOVERY DISPUTES AND
 MOTION TO SET A BRIEFING
 SCHEDULE**

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1 Earlier today, Plaintiffs filed their Supplemental Submission and Defendants' Position
2 Concerning Magnetic Tapes and Motion to Compel (Docket No. 425 ("Submission")) along with
3 the Amended and Supplemental Declaration of John Frederick Ashley ("Ashley Declaration").
4 Pursuant to the Court's April 6, 2012 Order (Docket No. 408), Plaintiffs attempted to seek
5 Defendants' participation in a joint statement concerning the magnetic tapes issue. Plaintiffs
6 submitted their section of the joint statement and the Ashley Declaration to Defendants on
7 May 16, 2012, and requested Defendants' section by May 21, 2012. Defendants refused to
8 provide their section on the ground that Plaintiffs' section and the accompanying Ashley
9 Declaration violated the Court's Standing Order concerning joint statements. Defendants then
10 filed an Opposition to Plaintiffs' Statement of Discovery Disputes and Motion to Set a Briefing
11 Schedule. (Docket No. 426 ("Opposition").)

12 As an initial matter, the Court's April 6 Order did not limit the joint statement to two
13 pages. Regardless, as stated in the Submission, Plaintiffs believe an extended joint statement and
14 amended expert declaration are warranted under the circumstances. Defendants filed the
15 Declaration of Julie Parrish (Docket No. 400-1) ("Parrish Declaration") without leave of Court
16 the day before the April 5, 2012 discovery hearing. Defendants have made clear that they
17 consider that declaration to be dispositive of their discovery obligations concerning the magnetic
18 tapes. Because the Submission is the first occasion Plaintiffs have had to respond to the many
19 issues raised in the Parrish Declaration, it is necessarily longer than the two pages contemplated
20 by the Court's Standing Order. In fact, in the April 24, 2012, May 1, 2012, May 3, 2012, and
21 May 11, 2012 meet and confer letters, both parties devoted numerous single-spaced pages to
22 issues addressed in the Submission. Plaintiffs submitted the amended Ashley Declaration—
23 which is largely duplicative of the December 14, 2011 version of the declaration (Docket No.
24 335) and contains only 13 new, substantive paragraphs—in order to adequately respond to the
25 statements made in the Parrish Declaration and by Defendants in their meet and confer letters.
26 (Docket No. 425-1 ¶¶ 28–40.)

27 In their Opposition, Defendants request formal briefing, but their proposed briefing
28 schedule affords them an excessive amount of time to respond to Plaintiffs' Submission, further

1 delaying resolution of this issue. As stated above, the parties have already exchanged numerous,
2 single-spaced letters addressing most of the issues raised in the Submission. In light of this fact
3 and the fact that Defendants have had a version of the Submission and the Ashley Declaration for
4 almost a week, it is puzzling that Defendants require more than an additional two weeks to file an
5 opposition brief. As Defendants agree, it is in all parties' best interest to resolve this dispute
6 expeditiously. Thus, to the extent the Court believes formal briefing is necessary, Plaintiffs
7 propose the following briefing schedule:

- 8 • May 29, 2012 – Defendants' Opposition Brief Due (limited to eight pages)
- 9 • June 1, 2012 – Plaintiffs' Reply Brief Due (if any) (limited to five pages)

10 To the extent Defendants wish to supplement Ms. Parrish's declaration or offer a new
11 declaration, they should be limited to responding only to the issues raised in the amended Ashley
12 Declaration.

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15 Dated: May 21, 2012

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