1 2 3 4 5 6 7 8 9	CHAD A. READLER    Acting Assistant Attorney General BRIAN STRETCH    United States Attorney ANTHONY J. COPPOLINO    Deputy Branch Director NICHOLAS P. CARTIER    California Bar No. 235858    Trial Counsel    Civil Division, Federal Programs Branch    U.S. Department of Justice    20 Massachusetts Ave., NW    Washington, D.C. 20530    Telephone: (202) 616-8351    Facsimile: (202) 616-8470    E-mail: Nicholas.cartier@usdoj.gov	
10	Attorneys for Defendants	
11	UNITED STATES DIS	TRICT COURT
12	NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION	
13   14		
15	VIETNAM VETERANS OF AMERICA, et al.,	Case No. CV 09-0037-CW (EDL)
16	Plaintiffs,	STIPULATION AND
17	v.	<del>[PROPOSED]</del> ORDER TO STAY FURTHER
18	CENTRAL INTELLIGENCE AGENCY, et al.,	BRIEFING AFTER THE FILING OF PLAINTIFFS'
19	Defendants.	FEE PETITION TO ALLOW PARTIES TIME TO
20		CONTINUE SETTLEMENT DISCUSSIONS
21		Discussions
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Plaintiffs maintain they are entitled to fees and costs pursuant to the Equal Access to

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

- 1. A party seeking attorneys' fees and other expenses must file a fee application within "thirty days of final judgment in the action." 28 U.S.C. § 2412(d)(1)(B). "Final judgment" for purposes of EAJA is defined as a "judgment that is final and not appealable." <u>Id.</u> § 2412(d)(2)(G). *Id.*; *see Bianchi v. Perry*, 154 F.3d 1023, 1024 (9th Cir. 1998).
- 2. The Court issued an Amended Judgment in this matter on April 19, 2017. ECF No. 598. Defendant's 60-day period to appeal this judgment expired on June 29, 2017. Thus, Plaintiffs' application for attorneys' fees under EAJA is due on July 19, 2017. *See* 28 U.S.C. § 2412(d)(1)(B).
- 3. Plaintiffs intend to file a fee petition on or before this deadline that meets the requirements for a fee petition, as set forth in section 2412(d)(1)(B) of EAJA.
- 4. Pursuant to Civil L.R. 7-3, Defendants' opposition to the fee petition would be due 14 days after the fee petition was filed, and Plaintiffs' reply would be due seven days after that. The parties believe these deadlines will not allow them adequate time to resolve their fee dispute.

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

- 6. In the event the parties conclude that a negotiated settlement is not possible, Plaintiffs will file a notice to inform the Court, and at their election, Plaintiffs may file a supplemental brief to their fee petition presenting additional legal arguments in support of the petition. Defendants' opposition will be due 60 days after the filing of the notice or supplemental brief, if one is filed, and Plaintiffs' reply, if any, will be due 30 days after the filing of Defendants' opposition.
- 7. There have been thirty-five previous time modifications in this case. ECF No. 595. The stipulated request will not affect any other dates in the present schedule.

Dated: July 12, 2017 Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

BRIAN STRETCH United States Attorney

ANTHONY J. COPPOLINO Deputy Director, Federal Programs Branch

/s/ Nicholas P. Cartier
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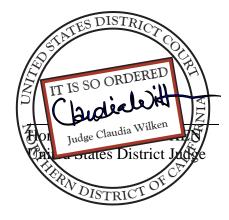
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NO. C 09-37 CW

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 NO. C 09-37 CW STIPULATION AND PROPOSED ORDER TO STAY FURTHER BRIEFING ON PLAINTIFFS' FEE PETITION

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

4 Dated: <u>7/17/17</u>



NO. C 09-37 CW