

**DECLARATION OF JOHN EAKIN**

**EXHIBIT 10**

**PLAINTIFF'S OBJECTION TO REPORT AND  
RECOMMENDATION OF UNITED STATES  
MAGISTRATE JUDGE**

**EAKIN v. AMERICAN BATTLE MONUMENTS  
COMMISSION, *et al***

CIV. A. NO. SA-12-CA-1002-FB(HJB)

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

JOHN EAKIN

Plaintiff,

v.

AMERICAN BATTLE MONUMENTS  
COMMISSION, *et al*

Defendants

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CIV. A. NO. SA-12-CA-1002-FB(HJB)

**DECLARATION OF JOHN EAKIN**

I, JOHN EAKIN, declare as follows:

1. I am the Plaintiff in the above styled action and am represented *pro se*. I am of legal age and reside at 9865 Tower View Road, Helotes, Texas 78023.

2. After hours on January 22, 2015, Defendants filed their Sixth Status Report (Docket Entry 98) announcing that they had identified the remains of Arthur H. "Bud" Kelder and also Defendants' Motion to Strike Plaintiff's Motion to Lift Stay and for Partial Summary Judgment on Issue of Due Process, or, In the Alternative, for an Extension of Time to File Opposition to Plaintiff's Motion for Partial Summary Judgment. (Docket Entry 99).

3. The next morning, Friday, January 23, 2015, personnel of the Army Casualty Office contacted Douglas Kelder and informed him that the remains of Arthur H. "Bud" Kelder had been identified. They further asked him to rescind his power-of-attorney in favor of Plaintiff so that he could make arrangements to accept the remains of Arthur H. "Bud" Kelder. Mr. Kelder was not informed that the government intended to return only a small portion of the

remains of his family member nor was he offered information concerning the specifics of the identification until a formal family briefing proposed for February 16, 2015.

4. Shortly thereafter, Counsel for Defendants telephonically contacted Plaintiff and informed him that Douglas Kelder had rescinded his power-of-attorney and that he was no longer the primary next-of-kin and did not have standing to pursue this litigation. Counsel for Defendants refused to provide to Plaintiff any documentation of the identification of the remains.

5. That same morning, Douglas Kelder notified the representative of the Army Casualty Office that he would not be rescinding his power-of-attorney in favor of Plaintiff. He also requested a copy of all documents pertaining to the identification of Arthur H. "Bud" Kelder and was told that he could not receive it until a formal family briefing proposed for February 16, 2015.

6. Additional discussions between Douglas Kelder and the representative of the Army Casualty Office occurred during the next two days and the "Identification Package" was emailed to Douglas Kelder and Plaintiff at 9:29 p.m. on Saturday, January 24, 2015. At 4:02 a.m. on Sunday, January 25, 2015, Douglas Kelder and Plaintiff received via email a package of release forms from the representative of the Army Casualty Office. Both recipients were told that the forms must be completed prior to release of the remains of Arthur H. "Bud" Kelder, but that they would have 90 days to challenge the identification if they felt it necessary.

7. This Identification Package consisted of 13 individual reports comprising a total of 138 pages. Many of these reports contained highly technical information concerning DNA testing, forensic anthropology and similar sciences.

8. Plaintiff's Response to Defendants' Motion to Strike Plaintiff's Motion to Lift Stay and for Partial Summary Judgment on Issue of Due Process, or, In the Alternative, for an

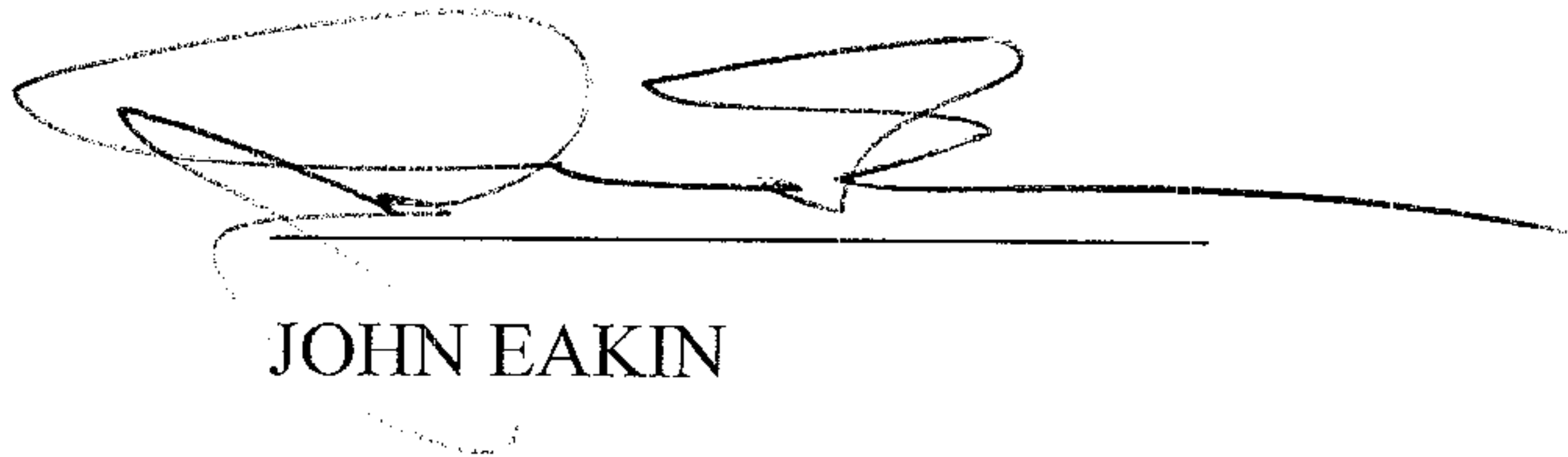
Extension of Time to File Opposition to Plaintiff's Motion for Partial Summary Judgment (Docket Entry 99) was due on January 29, 2015. Plaintiff's response (Docket Entry 101) was filed on January 26, 2015.

9. During the week of January 26, 2015, Plaintiff began to receive piecemeal reports of discrepancies from two experts who reviewed the identification package. These reports centered on

- The inadequacies of Defendant's DNA testing;
- The absence of any data concerning the identification of the associated remains;
- Defendant's failure to exhume the four additional sets of remains; and,
- That it was highly irregular to release only partial remains prior to completion of identification of all related remains.

10. At the time of receipt of the Magistrates' Report and Recommendation, which was unexpected, Plaintiff was preparing an Advisory to the Court advising the Court of the suspect information presented by Defendants. Much of this advisory has been recast in Plaintiff's Objection to the Magistrate Judge's Report and Recommendations.

11. Pursuant to 28 U. S. C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 5th day of February, 2015 at Helotes, Texas



JOHN EAKIN