

**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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CASE NUMBER: SA-12-CA-1002-FB-HB

PLAINTIFF’S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff John Eakin, by his undersigned counsel, requests that Defendants answer the following interrogatories.

DEFINITIONS

1. The word “document(s)” includes all “writings,” “recordings,” and “photographs,” as those terms are defined in Rule 1001 of the Federal Rules of Evidence, and should be construed in the broadest sense permissible. Accordingly, “document(s)” includes, but is not limited to, all written, printed, recorded or graphic matter, photographic matter, sound reproductions, or other retrievable data (whether recorded, taped, or coded electrostatically, electromagnetically, optically or otherwise on hard drive, diskette, compact disk, primary or backup tape, audio tape or video tape) from whatever source derived and however and by whomever prepared, produced, reproduced, disseminated or made. Without limiting the generality of the foregoing, “document(s)” includes the original and any non-identical copy and also every draft and proposed draft of all correspondence, internal memoranda, notes of meetings, telegrams, telexes, facsimiles, electronic mail, reports, transcripts or notes of telephone

conversations, diaries, notebooks, minutes, notes, tests, reports, analyses, studies, testimony, speeches, worksheets, maps, charts, diagrams, computer printouts, and any other writings or documentary materials of any nature whatsoever, whether or not divulged to other parties, together with any attachments thereto and enclosures therewith. In addition, the word “Document(s)” encompasses all forms and manifestations of electronically or optically coded, stored, and/or retrievable information, including but not limited to “email,” “voice mail,” digital images and graphics, digital or analog audiotapes and files, and digital or analog videotapes and files.

2. The word “person(s)” includes not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trusts, groups, and organizations; federal, state, or local governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof.

3. As used herein, any reference to any “person” includes the present and former officers, executives, partners, directors, trustees, employees, attorneys, agents, representatives, and all other persons acting or purporting to act on behalf of the person and also its subsidiaries, affiliates, divisions, and predecessors and successors in interest.

4. The words “you,” “your” or “defendants” refer to defendants, defendant interveners, and their agents, representatives, attorneys, experts, and all other persons acting or purporting to act on behalf of Defendants.

5. The singular of each word shall be construed to include its plural and vice versa, and the root word and all derivations (*i.e.*, “ing,” “ed,” etc.) shall be construed to include each other.

6. The words “and” as well as “or” shall be construed both conjunctively as well as disjunctively.

7. The word “each” shall be construed to include “every” and vice versa.

8. The word “any” shall be construed to include “all” and vice versa.

9. The present tense shall be construed to include the past tense and vice versa.

10. The masculine shall be construed to include the feminine and vice versa.

11. The words “knowledge,” “information,” “possession,” “custody,” and “control” of a person shall be construed to include such person’s agents, representatives, and attorneys.

12. The word “including” shall have its ordinary meaning and shall mean “including but not limited to” and shall not indicate limitation to the examples or items mentioned.

13. The phrase “reflect, refer, or relate to” means reflecting, referring to, relating to, regarding, discussing, concerning, constituting, mentioning, pertaining to, alluding to, or associated with.

14. The words “to present” mean to the date on which you respond to these interrogatories and requests.

15. The term "DoD" means the Department of Defense, Defendant to this action.

16. The term “ABMC” means the American Battle Monuments Commission, Defendant to this action.

17. The term “DPMO” means the Defense POW/Missing Personnel Office of Defendant DoD.

18. The term “JPAC” means the Joint POW/MIA Accounting Command, an agency of Defendant DoD.

INSTRUCTIONS

1. Unless otherwise specified, if your response in regard to a portion of the time period addressed in any interrogatory differs from your response in regard to another portion of such period, provide a response for each such portion and indicate the period of time to which each response relates.

2. Deem any reference to a non-natural person to include the legal predecessors of such non-natural person.

3. When an interrogatory asks you to “describe” or “identify” a document, provide the following information with respect to each such document:

a. The date appearing on such document; or if it has no date, so state and give the date or approximate date such document was prepared, produced, created, or came into being;

b. Any identifying or descriptive code number, file number, title or label of such document;

c. The general nature or description of such document;

d. The name of the person(s) who signed, authored, produced or created such document;

e. The name of the person(s) who prepared such document if different from the name provided pursuant to subpart (d) of this instruction;

f. The name of the person(s) to whom such document was addressed and the name of each such person other than the addressee to whom such document, or copy or reproduction thereof, was given or sent;

g. The name of the person or entity having present possession, custody and/or control of such document;

h. The present location of such document;

i. If such document was, but is no longer in your possession or control, state what disposition was made of such document, the reason for such disposition, and the date thereof.

4. Whether or not any draft, copy, or reproduction of such document contains any script, notation, change, addendum, or the like, not appearing on such document itself, and if so, the answer shall give the description and identification of each such draft, copy or reproduction in accordance with the above subparts (a) through (i).

5. The above information shall be given in sufficient detail to enable any person or party to whom a subpoena or request for production is directed to identify the documents sought to be produced and to enable counsel to determine whether such document, when produced, is in fact the document so described and identified.

6. Notwithstanding any other instruction in this First Set of Interrogatories that is or may be to the contrary, if a document has already been produced by you to the plaintiff, such document may be identified by specifying the Bates numbers or other index reference for all pages of such document.

7. A request that you identify a document is not limited to documents within your possession, and such requests shall extend to documents under your control.

8. When an interrogatory asks you to "identify" a person, the answer shall contain the following information with respect to each such person:

a. The full name, current or last known business and residence addresses, and business and residence phone numbers of such person;

b. The name and address of the agency, employer or entity at which such Person worked and/or to which such person reported;

c. The title(s) and related periods of service for such person with each such agency, employer or entity,

9. When an interrogatory calls for the "description" or "identity" of any "document" you contend to be subject to a privilege against disclosure in response to these interrogatories, provide with respect to each such document or communication the following:

a. The nature of the document you contend is privileged (*e.g.*, letter, memorandum, chart, picture, report, etc.);

b. The number of pages comprising the document and a description of any identifying marks or designations (*e.g.* Bates numbers) if any, on the document;

c. The date of the document which you contend is privileged;

d. The name(s) of the author(s) and of any recipient(s) of the document;

e. The name and address of any person who is not included in your response to subpart (d) with respect to such document and who has access to or has seen, read, or heard any portion of the material in the document that you contend to be privileged; and

f. The nature of the privilege asserted.

10. In answering each of these interrogatories, furnish all information available to you that is relevant or that might lead to the discovery of relevant evidence, including information in

the possession of your attorneys, or their investigators, and all persons acting on your behalf, including but not limited to your employees, agents, officers, or representatives. If you are unable to answer these interrogatories in full after exercising due diligence to supply a complete answer, so state and answer to the extent possible. Specify the reasons for your inability to answer and state whatever information or knowledge you have concerning the unanswered portions.

11. For each interrogatory or part of an interrogatory that you refuse to answer on grounds of burdensomeness, explain in as much detail as possible the basis for your contention.

12. These interrogatories are deemed to be continuing; as such, you are requested to file and serve by way of supplemental answers thereto such additional information as may be required to complete your answers to these interrogatories.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify in detail each person, document or other source of information relied upon in preparation of the Memorandum for the Commander, Joint POW/MIA Accounting Command, subject: Philippines JPAC Incident 425, dated 28 January 2013 and signed by Thomas D. Holland. This memoranda was included in Defendant's Supplemental Admin Record, Bates number 000002.

INTERROGATORY NO. 2

Identify in detail each proposed disinterment, whether accomplished or not, of the unidentified remains of WWII era U.S. Military Servicemembers from any cemetery operated by any agency of the U.S. Government.

Respectfully submitted,

/S/_____
Jefferson Moore
SBN 24030004
Attorney-at-Law
8438 Fountain Circle
San Antonio, Texas 78229
(210)-595-8338
FAX (210)-592-1793
MooreLegal@Gmail.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2014, I forwarded the foregoing request for production to Defendants by email to the following address:

Susan Strawn, Assistant United States Attorney
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
Sstrawn@usa.doj.gov

/S/_____
Jefferson Moore
Attorney-at-Law
8438 Fountain Circle
San Antonio, Texas 78229
(210)-595-8338
FAX (210)-592-1793
MooreLegal@Gmail.com
Attorney for Plaintiff