

**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

PLAINTIFFS’ SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiff John Eakin, through undersigned counsel, submits the following Second Request for Production to Defendants American Battle Monuments Commission (ABMC), Max Cleland, U.S. Department of Defense (DoD), Chuck Hagel, W. Montague Winfield and Johnie E. Webb to be responded to within thirty (30) days of service in accord with Rule 34 of the Federal Rules of Civil Procedure.

DEFINITIONS

1. “Plaintiff” means and refers to the plaintiff in this lawsuit, John Eakin.
2. “Defendants” means and refers to the defendants in this lawsuit, American Battle Monuments Commission, Max Cleland, U.S. Department of Defense, Chuck Hagel, W. Montague Winfield and Johnie E. Webb, individually and collectively, as contextually appropriate, including any persons associated with them or authorized to act on their behalf, including any employees or officials or agencies therein.
3. “You” and “your” means and refers to Defendants and any persons associated with it, including, but not limited to, subsidiaries or affiliated entities, officers, directors,

employees, agents, representatives, predecessors, successors, assigns, attorneys, and/or any of them.

4. The words “relate,” “relating,” “pertain,” “pertaining,” “reference,” “referencing,” “refer,” “referring,” and/or derivatives thereof, whether followed by a preposition or not, have the broadest meaning that may be accorded to them and include, but are not limited to, the following: directly or indirectly mentioning, describing, referring to, pertaining to, being connected with, setting forth, discussing, commenting upon, analyzing, supporting, contradicting, proving, disproving, referring to, constituting, concerning, and/or connected, or reflecting in any way upon the stated subject matter of a given request.

5. “Person” and “persons” mean any individual, corporation, firm, company, partnership, joint venture, association, unincorporated association, governmental or public agency, and/or all other legal entities.

6. “Document,” “documents and things,” and “electronically stored information” (“ESI”) have the fullest meaning and applicable scope as possible under Rule 34 of the Federal Rules of Civil Procedure, Rule 1001 of the Federal Rules of Evidence and as construed by the case law in this Circuit. Those terms include, without limitation, each document, thing, and electronic or computerized records, files, and data in your possession, custody, or control, whether a copy, draft, or original, wherever located physically, electronically, or otherwise, with all exhibits, attachments, appendices, work notes and schedules related thereto.

7. “Communication” includes any form of intended, attempted, or actual oral, written, graphic, electronic, or other representation or articulation from one or more persons to one more persons.

8. “Identify” means:

A. in the case of a natural person, documents that state his or her name, business address, title or position, and/or last known business and home telephone number; and

B. in the case of a non-natural person, documents that state the full name, the address of the principal place of business, the telephone number, and/or the name of its chief executive officer and/or president.

9. The terms “each” and “every” include the term “each and every.” “Any” shall include the term “any and all.”

10. The singular of words includes the plural and the plural includes the singular. Masculine, feminine, or neuter pronouns include the other gender(s).

11. The words “and” and “or” have either a disjunctive or conjunctive meaning so as to bring within the scope of these document requests all information that might otherwise be construed to be outside their scope by use of a more restrictive meaning.

12. “Case file” refers to either a collection of related documents or individual documents pertaining to the designated person or event and includes all supporting or referenced documents.

13. “Family reference sample” or “FRS” means a tissue sample containing DNA and intended to assist in the identification of human remains to determine common ancestry. It may also refer to a text narrative or coded representation of DNA rather than a tissue sample containing DNA.

14. “Field recovery” means the recovery of human remains from other than a designated cemetery.

15. “Unknown” refers to any human remains the identity of which is unknown or which has been designated as non-recoverable even if the identity is known or believed to be

known. Includes remains currently interred in a designated cemetery or stored in a designated identification laboratory.

16. “Knowns” refers to any human remains the identity of which has been determined, correctly or incorrectly.

17. “X numbers” or “X files” are the reference numbers assigned to unidentified remains or the documents pertaining to them.

18. “Grave 717” refers to those persons interred in, or human remains recovered from, Cabanatuan POW Camp Cemetery grave number 717. These persons may be known individually by any of the following names, designations or Manila American Military Cemetery grave locations.

Nichols, Harvey A. 7009171
Gutierrez, Juan E. 20843125
Hanscom, Lawrence 6137280
Bain, Daniel C. 33035131
Collins, Fredrick G. 6578818
Simmons, George G. 19019886
York, George S Civilian
Kovach, John 20500764
Hirschi, Harold S. 19038407
Lobdell, Lloyd J. 20645267
Overbey, Evans E. 13035026
Ruark, John W. 278681
Waid, Charles M. 19049058
Kelder, Arthur H. 36016623
Cabanatuan Burial Roster # 2267 thru 2279 inclusive
Cabanatuan Cemetery unknowns C272 thru C284 inclusive
Manila #2 unknowns X812 thru X824 inclusive
Manila Mausoleum unknowns X4849 thru X4858
Manila American Military Cemetery, formerly known as Ft. McKinley Cemetery,
graves N-2-69, N-14-78, L-14-49, A-12-195, C-5-78, N-5-187, C-9-78, N-14-93,
N-11-97, N-11-190

19. Unless otherwise specified, the requested documents pertain to all deceased U.S. military personnel whose date of death was during the period from January 1, 1941 to December 31, 1945 or other generally recognized duration of World War II.

20. “Arthur H. Kelder” means the late Private Arthur Herman Kelder, U.S. Army service number 36016623.

21. “Central Identification Laboratory” “CIL-HI” .or. “CIL” means the Central Identification Laboratory, a component of and predecessor of JPAC.

INSTRUCTIONS

1. All documents, ESI or other tangible things are to be produced at 8438 Fountain Circle, San Antonio, TX 78229. Documents, ESI or other tangible things impractical to produce at the requested address should be made available in the Western District of Texas at a mutually agreed time and location negotiated by counsel.

2. Plaintiff reserves the right to conduct destructive and/or consumptive testing on documents and tangible things produced to Plaintiff. The time, place and proposed test protocol will be provided to Counsel for Defendants at least fourteen (14) days in advance of any such testing.

3. Data primarily archived by Defendants in an electronic format must be provided to Plaintiff in a similar format usable by Plaintiff. All “electronically stored information” (ESI) must be forensically identical to the original including all metadata and dates of creation or modification. Such data may be provided on portable hard disk drives, solid state (flash) drives, DVD’s or other mutually agreeable format providing no data or information is modified or lost.

4. As used herein, the terms “Document” or “Documents” shall include “things” as well as “ESI.” All documents, things and ESI responsive to a request should be produced,

including, without limitation, each copy of an original that differs in any way from the original, whether such difference is caused by deletions, markings on the front or back, format, or any other cause.

5. While portable document format (.PDF) files are preferred in lieu of any other type of photographic reproduction or copy, the submission on any non-original document includes a waiver of any objection as to the authenticity of said electronic copy as true and original copies of the originals, should such copies be offered into evidence. Submission of such copies or reproductions shall constitute such a waiver and the submitting party is thereafter precluded from tendering an objection. Absent such waiver, only original documents should be submitted.

6. Documents and things produced in response to these requests shall be produced together with copies of file labels, dividers, and other identifying markers with which they were associated in the ordinary course of business.

7. Documents, things and ESI produced in response to these requests shall be produced in their entirety, without abbreviation or expurgation, and without redacting any portion therefrom.

8. Documents, things and ESI produced in response to these requests shall be specifically identified as responding to the appropriate request(s) contained herein and shall be produced in a form that renders the material intelligible, legible, and/or capable of reproduction.

9. If any request herein cannot be complied with in full, it shall be complied with to the extent possible, and you should explain why full compliance is not possible.

10. If there are responsive documents, things or ESI within your possession, custody, or control that are privileged or otherwise cannot be produced, please so state. For each such

document, thing or ESI, please prepare and submit to Plaintiff a log identifying all information that you contend supports your claim that such information must be withheld, including, without limitation, the following: (a) the privilege(s) or reason(s) for withholding production; (b) the nature of the document or thing (letter, memorandum, handwritten notes, software, audio recording, etc.); (c) date; (d) author(s) and recipient(s); each person to whom such information was available; (f) a general description of the subject matter; and (g) “Bates” or production control numbers. Provide said log at the time of production.

11. Documents, things and ESI produced in response to these requests may be responsive to more than one request. The presence of such duplication shall not be interpreted to narrow or limit the scope of each request. Where a document, thing or ESI is responsive to more than one request, only one copy may be produced. However, you must identify each request to which the duplicate document or thing is responsive.

12. If any requested document, thing or ESI is no longer in your possession, custody, or control, state in detail all of the reason(s) why and identify each such responsive document or thing by author, date, subject matter, addressee, audience, and/or recipient, the number of pages and, where applicable, any other indicator of volume or size.

13. These document requests are continuing so as to require supplemental production as required by the Federal Rules of Civil Procedure.

14. Defendants are invited to confer with Plaintiff to discuss a mutually agreeable process for disinterment which will properly respect each individual and family and insure that remains are correctly identified.

REQUESTS FOR PRODUCTION

1. Produce for inspection and testing each of the unidentified remains recovered from Cabanatuan Grave 717 (X812 Manila #2, X814 Manila #2, X815 Manila #2, X816 Manila #2, X818 Manila #2, X820 Manila #2, X821 Manila #2, X822 Manila #2, X823 Manila #2, X824 Manila #2)
2. Produce all documents or tangible things pertaining to human DNA obtained from family members which may assist in identification of the unidentified remains described in request number one, above.
3. Produce all contact and familial relationship information for each and every family member known to Defendants to be related to any person, including knowns and unknowns, whose remains were recovered from Grave 717.
4. Produce disinterment directives directing the disinterment of the remains recovered from Grave 717.
5. Produce proposed protocols or similar documents for the conduct of disinterment of remains recovered from Grave 717, including exhumation, transportation, chain-of-custody, storage and for the collection and independent testing of DNA samples from remains and families.
6. Produce documents and ESI related to the mass casualty incident referenced by the Government in court on April 10, 2014, where 17 service members became casualties.

Respectfully submitted,

/S/ _____
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of May, 2014, I forwarded the foregoing request for production to Defendants by First Class Mail at 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/ _____
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