

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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SA-12-CA-1002 FB (HJB)

ORDER

Before the Court is Plaintiff's *pro se* Motion to Compel Discovery Responses (Docket Entry 72), and Defendants' Response and Motion for a Protective Order (Docket Entry 74). Non-dispositive motions in this case have been referred to the undersigned for ruling pursuant to 28 U.S.C. § 636(b). (Docket Entry 4.)

At a hearing on April 10, 2014, the Court granted limited discovery in this case, allowing the parties to engage in documentary discovery only. (*See* Docket Entries, 62, 63.) Since that time, Defendants have filed a Suggestion of Mootness and Motion to Stay Discovery Pending Decision on Mootness or Other Resolution (Docket Entry 64), indicating that the Secretary of the Army has approved the disinterment for identification of the ten sets of remains associated with Cabanatuan common grave 717, including the remains known as X-816, which are at issue in this case. Defendants state that the disinterments are scheduled to occur between August 1 and August 14, 2014. (*Id.* at 1.)

In his motion to compel, Plaintiff maintains his position that the remains known as X-816 are those of his relative, Private Arthur Kelder. He seeks to have remains X-816 and other remains

buried in common grave 717 tested by his own team of experts, and he asserts that Defendants' examination and testing of these remains will be ineffective or counterproductive. (Docket Entry 72, at 2–4, 6–10.) Plaintiff attached his requests for production which broadly seek “all documents pertaining to the disinterment of WWII era remains” without limit. (Docket Entry 72-2, at 11.) His second set of production requests, however, include a more limited request (No. 5) for “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.” (Docket Entry 72-3, at 8.) Defendants have apparently agreed to produce materials responsive to this request. (See Docket Entry 74, at 4; Docket Entry 74-2, at 1.)

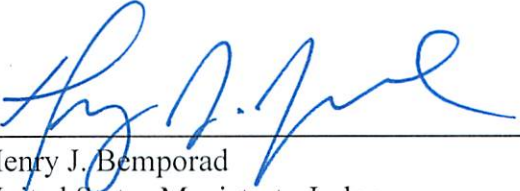
Defendants oppose Plaintiff's broad discovery requests, and they continue to maintain that his case is moot, or should be dismissed for lack of standing. (Docket Entry at 10–11; cf. Docket Entries 47, 64.) They also assert that the decision to disinter the remains in grave 717 renders irrelevant any past decisions regarding disinterment. (*Id.* at 9.) Defendants seek a protective order from further discovery. (*Id.* at 6–9.)

After carefully considering the motion and response, Plaintiff's Motion to Compel (Docket Entry 72) is **GRANTED IN PART**, and **DENIED IN PART**. It is **GRANTED** with regard to the materials that Defendants previously agreed to produce in response to Second Request for Production No. 5. Defendants must produce such documents in its possession **within 14 days of the date of this Order**, and will be under a continuing duty to produce such documents as they come into their possession. All other requests in the Motion to Compel are **DENIED**.

Defendants' Motion for Protective Order (Docket Entry 74) is **GRANTED IN PART** and **DENIED IN PART**. It is **DENIED** with respect to the documents identified in the previous paragraph. Otherwise it is **GRANTED** to the extent that all other discovery in this case is **STAYED** subject to further order after the Court's consideration of Defendant's pending motions to dismiss.

It is so **ORDERED**.

SIGNED on July 28, 2014.



Henry J. Bemporad
United States Magistrate Judge