



DEFENSE POW/MIA ACCOUNTING AGENCY

2300 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2300

31 October 2017

MEMORANDUM FOR RECORD, Science Director, DPAA CIL

SUBJECT: Results of the 18-1PH Field Forensic Review (FFR#2)

BACKGROUND:

On 22 October 2017, during DPAA field activity 18-1PH, Recovery Team One (RT1) conducted a forensic exploration of several above-ground mortuary crypt chambers in the St. Dominic de Guzman Church cemetery yard (site RP-00180), a cemetery burial site correlated with the WWII-01800-G loss incident (and possibly containing remains of 1st Lt. Alexander Nininger) in the Municipality of Abucay, Province of Bataan, Luzon Island, Republic of the Philippines. Under the supervision and direction of DPAA Scientific Recovery Experts (SRE; Dr. Denise To and Dr. Mary Megyesi) and with the assistance of the cemetery caretaker and his staff, RT1 opened five concrete mortuary chambers within an apartment-style crypt complex. The Excavation Proposal approved by DPAA (dtd 6 July 2017) erroneously indicated only four chambers, as two chambers were covered by a single plaque and appeared to be one. Of the five crypt chambers opened on 18-1PH, four chambers were found to contain possible human remains. A Field Forensic Review was conducted on the spot by the SREs with the following results:

1. Aside from the DPAA personnel, the following individuals were present: Mr. Eric Del Rosario (National Museum, Manila), Mr. Jeffrey Valentos (Abucay Health Officer).
2. The apartment-style crypt complex contained what originally appeared to be 10 mortuary chambers (with one section not counted as a crypt chamber by the cemetery staff, and one appearing to be a “double” due to the plaque placed in a centralized location between the two). See Figure 1.
3. All chambers were physically opened by hand tools by the cemetery staff.
4. Crypt chamber #5 (Figure 2) contained human skeletal remains, including cranial and post-cranial elements representing at least two individuals based on duplicated elements (one female and one older male). A male cranium was completely edentulous, and heavy lipping on the vertebral elements indicated an older individual. The morphology of the cranium was consistent with an Asian individual. The length and overall size of all the elements were consistent with individuals of short stature (inconsistent with un-accounted for Americans).
5. Crypt chamber #2 (Figure 3) contained human skeletal remains, including cranial and post-cranial elements representing at least two individuals based on duplicated elements. Both individuals were adults based on epiphyseal fusion. No other biological indicators could be determined, except that the length and overall size of all the elements were consistent with individuals of short stature (inconsistent with un-accounted for Americans).
6. Crypt chamber 10 was covered by a plaque (Figure 4) centered on two chambers (making it appear as a single chamber). The plaque was reportedly placed there sometime after 2006 by



relatives of 1st Lt Alexander Nininger and a group associated with the US Military Academy. Crypt chamber 10 was opened to reveal two chambers, discussed here as 10a and 10b.

7. Crypt chamber 10A (Figure 5) contained a plastic rice bag with remains and sediment, suggesting a previous subsurface burial. The remains included two pair matched tibiae, consistent with a single individual. No other biological indicators could be determined, except that the length and overall size of all the elements were consistent with individuals of short stature (inconsistent with un-accounted for Americans).
8. Crypt chamber 10B (Figure 6) contained human skeletal remains, including cranial and post-cranial elements representing at least one individual. Lipping on the vertebral elements and a complete upper denture (suggesting an edentulous maxilla) indicated an older individual. No other biological indicators could be determined, except that the length and overall size of all the elements were consistent with individuals of short stature (inconsistent with un-accounted for Americans).
9. Crypt chamber 9 was opened enough to identify that it was empty - no skeletal remains were present in this chamber.
10. In conclusion, all skeletal remains assessed were determined to be non-evidentiary and non-probative. No evidence was retained during this FFR.
11. This is Field Forensic Review #2 in the Philippines.

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Date: 2017.10.31
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Denise To, PhD, D-ABFA, RPA
Forensic Anthropologist
Field Sciences Laboratory Manager
Defense POW/MIA Accounting Agency
Scientific Analysis Directorate

FIGURES

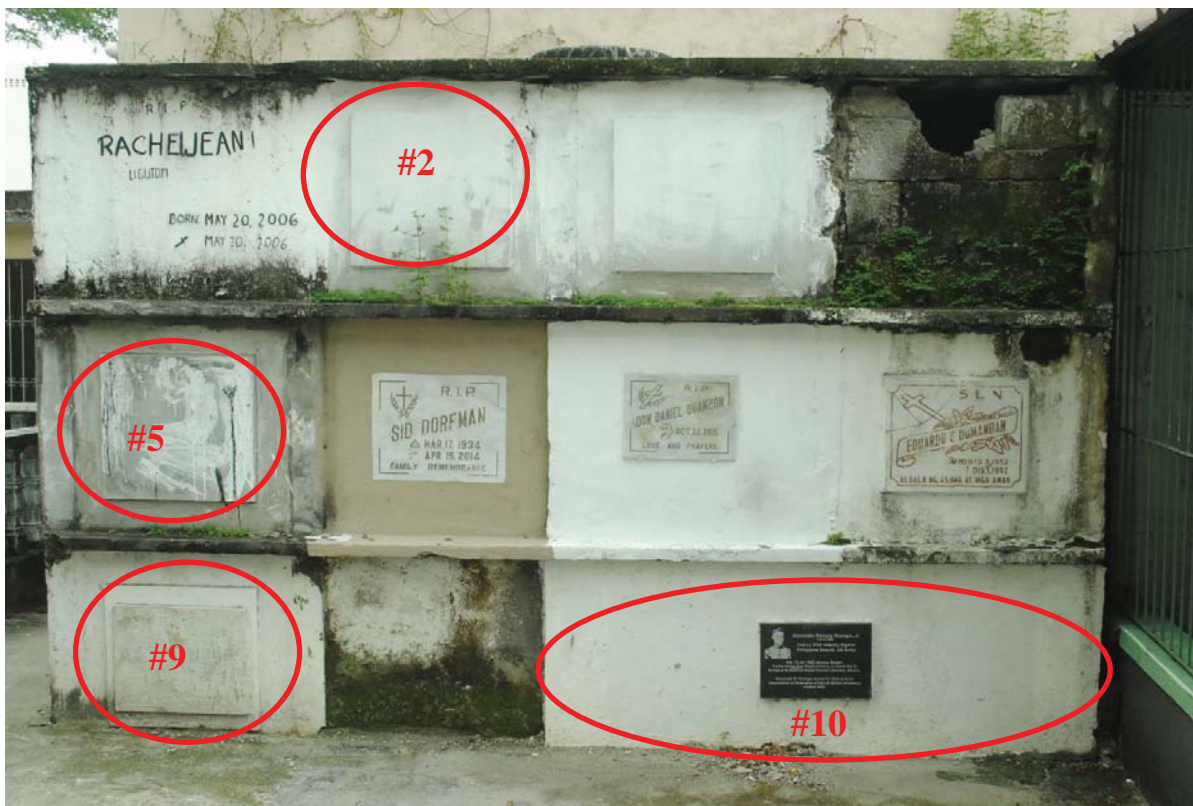


Figure 1. Apartment-style crypt complex at the Abucay Church identified by cemetery caretaker as possibly containing human remains belonging to an American (specific crypts that may contain American remains are circled in red). Crypt numbers were established by the cemetery caretaker.



Figure 2. Human remains found within Crypt Chamber #5.



Figure 3. Human remains found within Crypt Chamber #2.



Figure 4. Plaque located on Crypt Chamber #10A and 10B.



Figure 5. Human remains found within Crypt Chamber #10A.



Figure 6. Human remains found within Crypt Chamber #10B.

JOHN T. BOYT
Seven El Portal
Palos Verdes Estates, CA 90274

November 7, 2017

Mr. Greg Gardner, Chief
Past Conflict Repatriations Branch
AHRC-PDC-R Dept 450 1600 Spearhead Division Ave
Fort Knox, KY 40122

RE: Loren Prescott Stewart
Colonel, U. S. Army, 05881
X3629 Manila #2, and X1298
Reported at American Manila Cemetery grave N 15 19

Dear Mr. Gardiner:


It has come to my attention that certain additional administrative requirements may have been added in recent years and that a new process may exist to formally request that Colonel Stewart's remains be identified and returned to the United States for burial.

Records previously provided to me indicate that Colonel Stewart, despite substantial evidence to the contrary, is still registered by your organization as non-recoverable.

That history notwithstanding I would request the remains be identified – using the DNA sample provided two years ago by Scott Stewart - to supplement the first person accounts previously provided.

This request is being made in my role as both Colonel Stewart's grandson and the designated Next of Kin. My first request was made June 19, 1981

Please contact me should you have questions regarding this material.

Sincerely,

John T. Boyt

Contact information:

Mailing address
Seven El Portal
Palos Verdes Estates, CA 90274

telephone
cell – (213) 700-1400

email
jtboyt@theboytcompany.com





DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
1600 SPEARHEAD DIVISION AVENUE
FORT KNOX, KENTUCKY 40122-5405

December 20, 2017

Past Conflict Repatriations Branch

Ms. Janis S. Fort
29272 Providence Way
Hayward, California 94544-6412

Dear Ms. Fort:

The Past Conflict Repatriations Branch has received your request for the disinterment of Brigadier General Guy O. Fort. We have forwarded this request to the Defense POW/MIA Accounting Agency (DPAA).

I would like to explain the process for a disinterment request so you will know what to expect. The Army Casualty Office forwards the request to the DPAA who will task the appropriate sections to analyze the request and make a recommendation regarding disinterment. DPAA consolidates all recommendations and forwards the request and coordinated recommendations to the Assistant Secretary of Defense (Manpower and Reserve Affairs). The Assistant Secretary of Defense (Manpower and Reserve Affairs) is the final consenting authority.

DPAA's goal for working this request is 240 days. Army Casualty will be in contact you every 180 days, or when there is a major change in status. Please contact us at any time if you would like an update.

If you have any questions regarding this action please contact Mr. Rick Barcenas at 1-800-892-2490 extension 35113.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Gardner", with a large, stylized flourish extending to the left.

Greg Gardner
Chief, Past Conflict Repatriations Branch
Casualty and Mortuary Affairs
Operations Center

Enclosures



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN A. PATTERSON, et al.,

Plaintiffs,

v.

DEFENSE POW/MIA ACCOUNTING
AGENCY, et al.,

Defendants.

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Civil Action No. SA-17-CV-467-XR

**PLAINTIFF JOHN BOYT’S ANSWERS TO
DEFENDANTS’ FIRST SET OF INTERROGATORIES**

TO: DEFENDANTS, by and through its attorneys of record, Galen N. Thorp, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

COMES NOW, Plaintiff John Boyt and hereby responds to Defendants’ First Set of Interrogatories as follows:

GENERAL OBJECTIONS

Plaintiff objects to Definition No. 1 as improper, unduly burdensome, and impractical to the extent it purports to include Plaintiff’s litigation counsel within the definition of “you” and “your.” Plaintiff objects to the definition of "you" or “Plaintiff” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Plaintiff objects to Definition No. 2 as improper, unduly burdensome, and impractical. This definition of “describe in detail” would require Plaintiff to assemble all of its possible evidence, including every evidentiary fact, details of supporting witnesses, and the contents of supporting documents.



Plaintiff objects to Definition No. 6 to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Plaintiffs' investigation and development of facts and circumstances to this action is ongoing. These responses are made without prejudice to, and are not a waiver of, Plaintiffs' right to rely on other facts or documents at trial.

Plaintiffs expressly reserve the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

Plaintiffs object to each instruction, definition, and interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure and the applicable Rules and Orders of the Court.

Plaintiffs object to the Interrogatories to the extent the information requested is already in the possession of the requesting parties, is publicly available, or is equally available from any other parties.

Plaintiffs incorporate by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any objection listed here to that request. Moreover, Plaintiffs do not waive their right to amend their answers.

SPECIFIC OBJECTIONS AND ANSWERS

Subject to and without waiving its General Objections, Plaintiff responds to Defendants' First Interrogatories as follows:

1. Describe in detail the basis for your contention that the remains of Colonel Loren Stewart have already been identified.

ANSWER:

Plaintiff objects to this interrogatory because of the definition given to “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiff. An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Finally, Plaintiff objects to this interrogatory to the extent that “identified” is meant to mean that Plaintiff contends that the DPAA has “identified” Colonel Loren Stewart. That interpretation would make this Interrogatory argumentative and would require the adoption of an assumption, which is improper.

Subject to these objections, and without waiver of same, Plaintiff will answer with reasonable specificity the basis for his contention that the location of Colonel Loren Stewart’s remains is known. U.S. Army Colonel Loren P. Stewart was the Commanding Officer of the 51st Infantry Regiment (PA) when he was killed in action on January 13, 1942. Colonel Stewart had previously served with the 45th Philippine Scouts during his first assignment to the Philippines. It is believed that Colonel Stewart’s remains were originally recovered by members of the Philippine Scouts after they executed a counter-attack against the invading Japanese forces. These members from the Philippine Scouts had originally known Colonel Stewart as an officer with the Scouts and associated that unit with him. U.S. Government documents contain a witness account from Ruben Caragay stating that an American Colonel was buried near Abucay Hacienda, Bataan, Philippine Islands. His statement discusses the Philippine Scouts’ recovery and burial of Colonel Stewart’s remains. This was convincing enough to the recovery personnel that all the subsequent Reports of Interment indicate the remains are believed to be those of a Colonel of the 57th Infantry named Stuart and who died in January 1942 at Abucay Hacienda, Abucay, Bataan, Philippines. Stuart is a common misspelling of Stewart. At the conclusion of hostilities, these remains were exhumed by U.S. Army Graves Registration personnel and given the designation X-3629 Manila #2 Cemetery. Sgt. Abie Abraham personally knew Colonel Stewart and believed that these remains were those of Colonel Stewart. Efforts to positively identify the remains were unsuccessful due to a misspelling of Colonel Stewart’s name as “STUART” on a request for his ante-mortem dental records. Remains X-3629 were ultimately buried as an Unknown in Manila American Cemetery Grave N-15-19 where they presently lie. Loren Stewart was the only Colonel or Lt Colonel or person named Stuart or Stewart who died in the Abucay Hacienda area. There is no other person

who fits with the known facts. There is overwhelming circumstantial evidence to support the identification of Colonel Stewart. The unidentified remains marked as X-3629 are more likely than not those of Colonel Stewart. The only reason that the remains were re-interred as “unidentified” by the U.S. Government was because there was a misspelling of his last name when dental records were requested. Despite this obvious mistake, the Government refused to allow Colonel Stewart’s family to receive his remains.

2. Describe in detail the basis for your contention that the remains designated X-3629 Manila #2 Cemetery are the remains of Colonel Loren Stewart.

ANSWER:

Plaintiff objects because this discovery request has, in substance, been previously propounded in Interrogatory No. 1. Continuous discovery into the same matter constitutes oppression, and Plaintiff further objects on that ground. Plaintiff also objects to the definition of “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiff. An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will answer with reasonable specificity the basis for his contention that the location of Colonel Loren Stewart’s remains is known. U.S. Army Colonel Loren P. Stewart was the Commanding Officer of the 51st Infantry Regiment (PA) when he was killed in action on January 13, 1942. Colonel Stewart had previously served with the 45th Philippine Scouts during his first assignment to the Philippines. It is believed that Colonel Stewart’s remains were originally recovered by members of the Philippine Scouts after they executed a counter-attack against the invading Japanese forces. These members from the Philippine Scouts had originally known Colonel Stewart as an officer with the Scouts and associated that unit with him. U.S. Government documents contain a witness account from Ruben Caragay stating that an American Colonel was buried near Abucay Hacienda, Bataan, Philippine Islands. His statement discusses the Philippine Scouts’ recovery and burial of Colonel Stewart’s remains. This was convincing enough to the recovery personnel that all the subsequent Reports of Interment indicate the remains are believed to be those of a Colonel of the 57th Infantry named Stuart and who died in January 1942 at Abucay Hacienda, Abucay, Bataan, Philippines. Stuart is a common misspelling of Stewart. At the conclusion of hostilities, these remains were exhumed by U.S. Army Graves Registration personnel and given the designation X-3629 Manila #2

Cemetery. Sgt. Abie Abraham personally knew Colonel Stewart and believed that these remains were those of Colonel Stewart. Efforts to positively identify the remains were unsuccessful due to a misspelling of Colonel Stewart's name as "STUART" on a request for his ante-mortem dental records. Remains X-3629 were ultimately buried as an Unknown in Manila American Cemetery Grave N-15-19 where they presently lie. Loren Stewart was the only Colonel or Lt Colonel or person named Stuart or Stewart who died in the Abucay Hacienda area. There is no other person who fits with the known facts. There is overwhelming circumstantial evidence to support the identification of Colonel Stewart. The unidentified remains marked as X-3629 are more likely than not those of Colonel Stewart. The only reason that the remains were re-interred as "unidentified" by the U.S. Government was because there was a misspelling of his last name when dental records were requested. Despite this obvious mistake, the Government refused to allow Colonel Stewart's family to receive his remains.

3. For the detailed basis described in response to Interrogatory No. 2, identify by Bates number or otherwise each specific document on which you rely.

ANSWER:

Plaintiff objects to the definition "identify" because it would require Plaintiff to search through the thousands of documents produced by Defendants to determine what Bates number it has previously been given and creates an undue burden. Additionally, Defendants have the same access to the documents already produced in this case and the information sought is equally available. Plaintiff also objects because this discovery request is so broad and unlimited as to time and scope as to be an unwarranted annoyance and is oppressive and unduly burdensome. To comply with the request would be an undue burden and expense on the Plaintiff. *See United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for "each specific document on which you rely" for the primary fact issue at contention in this lawsuit. Therefore, Plaintiff objects because the interrogatory is overly broad and unduly burdensome on its face. *See Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) ("[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants' requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome." (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) ("Gregg's interrogatory encompasses virtually every factual basis for all of the Defendants' contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case." (citation omitted)). Finally, Plaintiff also objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will describe the primary documents that support his answer to Interrogatory No. 2. The primary documents supporting the detailed basis described in response to Interrogatory No.2 are the Individual Deceased Personnel

Files (IDPF) associated with X-3629 and Colonel Stewart and letters from Abie Abraham (June 1981) and attached maps stating that he believed remains were those of Colonel Stewart. Additionally, DPAA0002926-3063.

4. Do you contend that the remains designated X-3629 Manila #2 Cemetery are the only remains that could plausibly be identified as Colonel Loren Stewart?

ANSWER:

Plaintiff objects to this interrogatory to the extent that the word “plausibly” is used to seek a legal conclusion. Plaintiff also objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to these objections, and without waiver of same, there is always a possibility that some of Colonel Stewart’s remains were comingled or lost so that partial remains taken from another grave could also be those of Colonel Stewart. However, the remains designated X-3629 Manila #2 Cemetery are more likely than not those of Colonel Stewart.

5. Identify each and every individual likely to have information that you might use to support any claim that you make in this action and describe in detail the information that that individual possesses.

ANSWER:

Plaintiff objects because this Interrogatory is overly-broad and burdensome. *See United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for “each and every individual likely to have information that you might use to support any claim that you make in this action and describe in detail the information that the individual possesses.” Therefore, Plaintiff objects because the interrogatory is overly broad and unduly burdensome on its face. *See Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants’ requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiff. Plaintiff also objects to the definition of "your" to the extent these definitions and discovery requests include or

attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will provide the names of individuals that he believes may have information that might support his claims in this lawsuit.

Kelly McKeague, Fern Sumpter Winbush, Jon C. Kreitz, Michael E. Swam, William Matz, Robert J. Dalessandro, John Wessels, Pat Harris, Michael G. Conley, Allison Bettencourt, Edwin Fountain, Mike Knapp, Jennifer Li, Christine Philpot, Jamilyn Smyser, Thomas Sole, Heather Harris, Greg Gardner: All are associated with Defendants and are presumed to be familiar with Defendants' policies, rules, and regulations regarding the disinterment and/or identification of remains at Manila American Cemetery. Plaintiffs, John Eakin, Renee Richardson, Defendants, Jed Henry, Edwin Huffine are familiar with the facts at issue in this case and/or the policies/procedures at issue.

6. Identify each and every document, item of electronically stored information, and tangible thing in your possession, custody, or control that you might use to support any claim in this action.

ANSWER:

Plaintiff objects because this Interrogatory is overly-broad and burdensome. *See United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for "each and every document, item of electronically stored information, and tangible thing" in Plaintiff's possession, custody, or control that "might" be used to support "any" claim. Therefore, Plaintiff objects because the interrogatory is overly broad and unduly burdensome on its face. *See Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) ("[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants' requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome." (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) ("Gregg's interrogatory encompasses virtually every factual basis for all of the Defendants' contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case." (citation omitted)). Plaintiff also objects to the definition of "your" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will describe the primary documents that may be used to support his factual claims in this action. The primary documents that may be used to support Plaintiff's factual claims in this action are the documents on file with

the Court and the Individual Deceased Personnel Files (IDPF) associated with X-3629 and Colonel Stewart. Defendants are in possession of each of these documents. Plaintiff also might rely upon the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, letters from Abie Abraham (June 1981) and attached maps stating that he believed remains were those of Colonel Stewart, reports filed by the DPAA, and declarations prepared by Mr. Eakin. Additionally, DPAA0002926-3063.

7. Identify any and all statements in the Complaint that you believe to be inaccurate.

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to this objection, and without waiver of the same, the material facts stated in the Complaint are believed to be accurate as to Plaintiff's individual claims, but there may be some typos.

8. Identify any and all statements in the expert reports of John J. Eakin and Renee R. Richardson that you believe to be inaccurate.

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to this objection, and without waiver of the same, their expert reports are believed to be accurate as to Plaintiff's individual claims.

9. Identify all sources of information that you reviewed or consulted in responding to these Interrogatories.

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to this objection, and without waiver of the same, the primary documents reviewed were the documents on file with the Court and the Individual Deceased Personnel Files (IDPF) associated with X-3629 and Colonel Stewart. Defendants are in possession of each of these documents. Plaintiff also considered the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, letters from Abie Abraham (June 1981) and attached maps stating that he believed remains were those of Colonel Stewart reports filed by the DPAA, and declarations prepared by Mr. Eakin.

DATED this 11th day of April, 2019.

Respectfully submitted,

/s/ John T. Smithee, Jr.

JOHN T. SMITHEE, JR. (*admitted pro hac vice*)
TX State Bar No. 24098449
TN State Bar No. 36211
LAW OFFICE OF JOHN TRUE SMITHEE, JR.
1600 McGavock St.
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GENDRY & SPRAGUE, PC

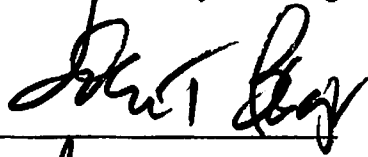
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ATTORNEYS FOR PLAINTIFFS

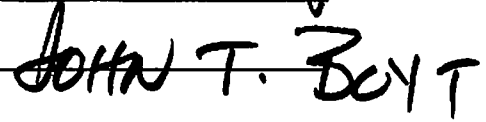
VERIFICATION

My name is John Boyt. I am a Plaintiff in this action. I have reviewed the answers to the interrogatories set out in this document. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Signature: _____



Print Name: _____



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of April 2019, a true and correct copy was delivered as follows:

<p>Galen Thorp U.S. Department of Justice Civil Division, Federal Programs Branch 950 Pennsylvania Ave., NW Washington, DC 20530 202-514-4781 Email: galen.thorp@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>
<p>Mary F. Kruger United States Attorneys Office 601 NW Loop 410, Suite 600 San Antonio, TX 78216 210-384-7300 Fax: 210/384-7322 Email: mary.kruger@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>

/s/ John T. Smithee, Jr.

 John T. Smithee, Jr.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN A. PATTERSON, et al.,

Plaintiffs,

v.

DEFENSE POW/MIA ACCOUNTING
AGENCY, et al.,

Defendants.

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Civil Action No. SA-17-CV-467-XR

**PLAINTIFF JANIS FORT’S ANSWERS TO
DEFENDANTS’ FIRST SET OF INTERROGATORIES**

TO: DEFENDANTS, by and through its attorneys of record, Galen N. Thorp, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

COMES NOW, Plaintiff Janis Fort and hereby responds to Defendants’ First Set of Interrogatories as follows:

GENERAL OBJECTIONS

Plaintiff objects to Definition No. 1 as improper, unduly burdensome, and impractical to the extent it purports to include Plaintiff’s litigation counsel within the definition of “you” and “your.” Plaintiff objects to the definition of "you" or “Plaintiff” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Plaintiff objects to Definition No. 2 as improper, unduly burdensome, and impractical. This definition of “describe in detail” would require Plaintiff to assemble all of its possible evidence.

Plaintiff objects to Definition No. 6 to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work



product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Plaintiffs' investigation and development of facts and circumstances to this action is ongoing. These responses are made without prejudice to, and are not a waiver of, Plaintiffs' right to rely on other facts or documents at trial.

Plaintiffs expressly reserve the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

Plaintiffs object to each instruction, definition, and interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure and the applicable Rules and Orders of the Court.

Plaintiffs object to the Interrogatories to the extent the information requested is already in the possession of the requesting parties, is publicly available, or is equally available from any other parties.

Plaintiffs incorporate by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any objection listed here to that request. Moreover, Plaintiffs do not waive their right to amend their answers.

SPECIFIC OBJECTIONS AND ANSWERS

Subject to and without waiving its General Objections, Plaintiff responds to Defendants' First Interrogatories as follows:

1. Describe in detail the basis for your contention that the remains of Brigadier General Guy Fort have already been identified.

ANSWER:

Plaintiff objects to this interrogatory because of the definition given to “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiff. An answer would require Plaintiff to provide the equivalent of a narrative account of her case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Finally, Plaintiff objects to this interrogatory to the extent that “identified” is meant to mean that Plaintiff contends that the DPAA has “identified” Brigadier General Guy Fort. That interpretation would make this Interrogatory argumentative and would require the adoption of an assumption, which is improper.

Subject to these objections, and without waiver of same, Plaintiff will answer with reasonable specificity the basis for her contention that the location of Brigadier General Guy Fort’s remains is known. U.S. Army Brigadier General Guy O. Fort commanded the 81st Division (Philippines) and later all guerrilla forces in the Philippine Islands when he was taken prisoner by enemy forces in May of 1942. General Fort is the only American-born general officer to be executed by enemy forces. U.S. Government records contain a sworn witness statement by Ignacio S. Cruz, Governor of Misamis Oriental Province, which recounts the execution and burial of General Fort by enemy forces as retaliation for an attack on enemy forces. At the conclusion of hostilities, Governor Cruz directed the recovery of these remains and turned them over to U.S. Army Graves Registration personnel where they were designated as X-618 Leyte #1 Cemetery. His statement is highly detailed, consistent with other information, and very credible. Examination of the remains associated them with General Fort and provided no evidence to indicate otherwise. General Fort was more likely than not buried as an unknown in Manila American Cemetery Grave L-8-113.

2. Describe in detail the basis for your contention that the remains designated X- 618 Leyte #1 Cemetery are the remains of Brigadier General Guy Fort.

ANSWER:

Plaintiff objects because this discovery request has, in substance, been previously propounded in Interrogatory No. 1. Continuous discovery into the same matter constitutes oppression, and Plaintiff further objects on that ground. Plaintiff also objects to the definition of “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiff. An answer would require Plaintiff to provide the equivalent of a narrative account of her

case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will answer with reasonable specificity the basis for her contention that the remains designated as X-618 Leyte #1 Cemetery are the remains of Brigadier General Guy Fort. U.S. Army Brigadier General Guy O. Fort commanded the 81st Division (Philippines) and later all guerrilla forces in the Philippine Islands when he was taken prisoner by enemy forces in May of 1942. General Fort is the only American-born general officer to be executed by enemy forces. U.S. Government records contain a sworn witness statement by Ignacio S. Cruz, Governor of Misamis Oriental Province, which recounts the execution and burial of General Fort by enemy forces as retaliation for an attack on enemy forces. At the conclusion of hostilities, Governor Cruz directed the recovery of these remains and turned them over to U.S. Army Graves Registration personnel where they were designated as X-618 Leyte #1 Cemetery. His statement is highly detailed, consistent with other information, and very credible. Examination of the remains associated them with General Fort and provided no evidence to indicate otherwise. General Fort was more likely than not buried as an unknown in Manila American Cemetery Grave L-8-113.

3. For the detailed basis described in response to Interrogatory No. 2, identify by Bates number or otherwise each specific document on which you rely.

ANSWER:

Plaintiff objects to the definition “identify” because it would require Plaintiff to search through the thousands of documents produced by Defendants to determine what Bates number it has previously been given and creates an undue burden. Additionally, Defendants have the same access to the documents already produced in this case and the information sought is equally available. Plaintiff also objects because this discovery request is so broad and unlimited as to time and scope as to be an unwarranted annoyance and is oppressive and unduly burdensome. To comply with the request would be an undue burden and expense on the Plaintiff. *See United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiff to provide the equivalent of a narrative account of her case, including every evidentiary fact and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for “each specific document on which you rely” for the primary fact issue at contention in this lawsuit. Therefore, Plaintiff objects because the interrogatory is overly broad and unduly burdensome on its face. *See Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants’ requests, insofar as they seek every fact,

every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Finally, Plaintiff also objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will describe the primary documents that support her answer to Interrogatory No. 2. The primary documents supporting the detailed basis described in response to Interrogatory No.2 is the Individual Deceased Personnel Files (IDPF) associated with X-618. Plaintiff also relies upon the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, reports filed by the DPAA, and declarations prepared by Mr. Eakin. Additionally, DPAA0003092-3165; DPAA0001132-1276.

4. Do you contend that the remains designated X-618 Leyte #1 Cemetery are the only remains that could plausibly be identified as Brigadier General Guy Fort?

ANSWER:

Plaintiff objects to this interrogatory to the extent that the word “plausibly” is used to seek a legal conclusion. Plaintiff also objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to these objections, and without waiver of same, there is always a possibility that some of Brigadier General Guy Fort’s remains were comingled or lost so that remains taken from another grave could be those of Brigadier General Guy Fort. However, the remains designated X-618 Leyte #1 Cemetery are more likely than not those of Brigadier General Guy Fort.

5. Identify each and every individual likely to have information that you might use to support any claim that you make in this action and describe in detail the information that that individual possesses.

ANSWER:

Plaintiff objects because this Interrogatory is overly-broad and burdensome. *See United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiff to provide the equivalent of a narrative account of her case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for “each and every individual likely to have information that you might use to

support any claim that you make in this action and describe in detail the information that the individual possesses.” Therefore, Plaintiff objects because the interrogatory is overly broad and unduly burdensome on its face. See *Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants’ requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiff. Plaintiff also objects to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will provide the names of individuals that she believes may have information that might support her claims in this lawsuit.

Kelly McKeague, Fern Sumpter Winbush, Jon C. Kreitz, Michael E. Swam, William Matz, Robert J. Dalessandro, John Wessels, Pat Harris, Michael G. Conley, Allison Bettencourt, Edwin Fountain, Mike Knapp, Jennifer Li, Christine Philpot, Jamilyn Smyser, Thomas Sole, Heather Harris, Greg Gardner: All are associated with Defendants and are presumed to be familiar with Defendants’ policies, rules, and regulations regarding the disinterment and/or identification of remains at Manila American Cemetery. Plaintiffs, John Eakin, Renee Richardson, Defendants, Barbara Fox, Jed Henry, and Edwin Huffine are familiar with the facts at issue in this case and/or the policies/procedures at issue.

6. Identify each and every document, item of electronically stored information, and tangible thing in your possession, custody, or control that you might use to support any claim in this action.

ANSWER:

Plaintiff objects because this Interrogatory is overly-broad and burdensome. See *United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiff to provide the equivalent of a narrative account of her case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. See *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for “each and every document, item of electronically stored information, and tangible thing” in Plaintiff’s possession, custody, or control that “might” be used to support “any” claim. Therefore, Plaintiff objects because the interrogatory is overly broad and unduly

burdensome on its face. See *Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants’ requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of "your" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will describe the primary documents that may be used to support her factual claims in this action. The primary documents that may be used to support Plaintiff’s factual claims are the Individual Deceased Personnel Files (IDPF) associated with X-618 and X-619. Plaintiff also relies upon the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, reports filed by the DPAA, and declarations prepared by Mr. Eakin. Additionally, DPAA0003092-3165; DPAA0001132-1276; DPAA0004435-4486.

7. Identify any and all statements in the Complaint that you believe to be inaccurate.

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to this objection, and without waiver of the same, the material facts stated in the Complaint are believed to be accurate as to Plaintiff’s individual claims, but there may be some typos.

8. Identify any and all statements in the expert reports of John J. Eakin and Renee R. Richardson that you believe to be inaccurate.

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to this objection, and without waiver of the same, their expert reports are believed to be accurate as to Plaintiff’s individual claims.

9. Identify all sources of information that you reviewed or consulted in responding to these Interrogatories.

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to this objection, and without waiver of the same, the primary documents reviewed were the Individual Deceased Personnel Files (IDPF) associated with X-618. Plaintiff also considered the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, reports filed by the DPAA, and declarations prepared by Mr. Eakin.

DATED this 11th day of April, 2019.

Respectfully submitted,

/s/ John T. Smithee, Jr.

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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

My name is Janis Fort. I am a Plaintiff in this action. I have reviewed the answers to the interrogatories set out in this document. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Signature: Janis Fort
Print Name: Janis Fort

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of April 2019, a true and correct copy was delivered as follows:

<p>Galen Thorp U.S. Department of Justice Civil Division, Federal Programs Branch 950 Pennsylvania Ave., NW Washington, DC 20530 202-514-4781 Email: galen.thorp@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>
<p>Mary F. Kruger United States Attorneys Office 601 NW Loop 410, Suite 600 San Antonio, TX 78216 210-384-7300 Fax: 210/384-7322 Email: mary.kruger@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>

/s/ John T. Smithee, Jr.

John T. Smithee, Jr.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN A. PATTERSON, et al.,

Plaintiffs,

v.

DEFENSE POW/MIA ACCOUNTING
AGENCY, et al.,

Defendants.

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Civil Action No. SA-17-CV-467-XR

**PLAINTIFF JOHN PATTERSON’S ANSWERS TO
DEFENDANTS’ FIRST SET OF INTERROGATORIES**

TO: DEFENDANTS, by and through its attorneys of record, Galen N. Thorp, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

COMES NOW, Plaintiff John Patterson and hereby responds to Defendants’ First Set of Interrogatories as follows:

GENERAL OBJECTIONS

Plaintiff objects to Definition No. 1 as improper, unduly burdensome, and impractical to the extent it purports to include Plaintiff’s litigation counsel within the definition of “you” and “your.” Plaintiff objects to the definition of "you" or “Plaintiff” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Plaintiff objects to Definition No. 2 as improper, unduly burdensome, and impractical. This definition of “describe in detail” would require Plaintiff to assemble all of its possible evidence, including every evidentiary fact, details of supporting witnesses, and the contents of supporting documents.



Plaintiff objects to Definition No. 6 to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Plaintiffs' investigation and development of facts and circumstances to this action is ongoing. These responses are made without prejudice to, and are not a waiver of, Plaintiffs' right to rely on other facts or documents at trial.

Plaintiffs expressly reserve the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

Plaintiffs object to each instruction, definition, and interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure and the applicable Rules and Orders of the Court.

Plaintiffs object to the Interrogatories to the extent the information requested is already in the possession of the requesting parties, is publicly available, or is equally available from any other parties.

Plaintiffs incorporate by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any objection listed here to that request. Moreover, Plaintiffs do not waive their right to amend their answers.

SPECIFIC OBJECTIONS AND ANSWERS

Subject to and without waiving its General Objections, Plaintiff responds to Defendants' First Interrogatories as follows:

1. Describe in detail the basis for your contention that the remains of First Lieutenant Alexander Nininger have already been identified.

ANSWER:

Plaintiff objects to this interrogatory because of the definition given to “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiff. An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Finally, Plaintiff objects to this interrogatory to the extent that “identified” is meant to mean that Plaintiff contends that the DPAA has “identified” First Lieutenant Alexander Nininger. That interpretation would make this Interrogatory argumentative and would require the adoption of an assumption, which is improper.

Subject to these objections, and without waiver of same, Plaintiff will answer with reasonable specificity the basis for his contention that the location of First Lieutenant Alexander Nininger’s remains is known. U.S. Army First Lieutenant Alexander R. “Sandy” Nininger was killed in action on January 12, 1942, while serving in the province of Bataan, Philippine Islands. He was posthumously awarded the Medal of Honor for his actions against the enemy. U.S. Government documents show that 1LT Nininger’s remains were first buried at the Abucay Cemetery in Abucay, Bataan, Philippine Islands. At the conclusion of hostilities, on February 13, 1946, the U.S. Army Graves Registration personnel recovered his remains from the Abucay Cemetery, Soldiers Row, Grave #9 and these remains were immediately designated as X-1130 Manila #2 Cemetery Nininger, Alexander R. When the X-1130 remains were recovered, they were immediately identified as “X-1130 BTB [believed to be] Nininger, Alexander.” This designation stayed with the remains regardless of any subsequent administrative change in the description of the recovery location. On December 8, 1948, a board of officers of the Philippine Command reviewed the available evidence and recommended that remains X-1130 be formally identified as those of 1LT Nininger, Alexander R. Over the next two years, on four more occasions the Philippine Command reiterated their recommendation that X-1130 should be formally identified as those of 1LT Nininger, Alexander R. In all, five recommendations to identify remains X-1130 as 1LT Nininger were disapproved due to an erroneously calculated ante-mortem height which did not match 1LT Nininger’s known height. The tables used in Nininger’s case to convert long bone length to height were inaccurate because the anthropological tables used were created from examinations of a Nineteenth century French population and have proven to be unreliable. The Philippine Command was absolutely convinced that X-1130 was the remains of Nininger. Remains X-1130 were

ultimately buried as “unknown” in Manila American Cemetery Grave J-7-20 where they presently lie. These remains are those of 1LT Nininger, Alexander R.

2. Describe in detail the basis for your contention that the remains designated X- 1130 Manila #2 Cemetery are the remains of First Lieutenant Alexander Nininger.

ANSWER:

Plaintiff objects because this discovery request has, in substance, been previously propounded in Interrogatory No. 1. Continuous discovery into the same matter constitutes oppression, and Plaintiff further objects on that ground. Plaintiff also objects to the definition of “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiff. An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will answer with reasonable specificity the basis for his contention that the location of First Lieutenant Alexander Nininger’s remains is known. U.S. Army First Lieutenant Alexander R. “Sandy” Nininger was killed in action on January 12, 1942, while serving in the province of Bataan, Philippine Islands. He was posthumously awarded the Medal of Honor for his actions against the enemy. U.S. Government documents show that 1LT Nininger’s remains were first buried at the Abucay Cemetery in Abucay, Bataan, Philippine Islands. At the conclusion of hostilities, on February 13, 1946, the U.S. Army Graves Registration personnel recovered his remains from the Abucay Cemetery, Soldiers Row, Grave #9 and these remains were immediately designated as X-1130 Manila #2 Cemetery Nininger, Alexander R. When the X-1130 remains were recovered, they were immediately identified as “X-1130 BTB [believed to be] Nininger, Alexander.” This designation stayed with the remains regardless of any subsequent administrative change in the description of the recovery location. On December 8, 1948, a board of officers of the Philippine Command reviewed the available evidence and recommended that remains X-1130 be formally identified as those of 1LT Nininger, Alexander R. Over the next two years, on four more occasions the Philippine Command reiterated their recommendation that X-1130 should be formally identified as those of 1LT Nininger, Alexander R. In all, five recommendations to identify remains X-1130 as 1LT Nininger were disapproved due to an erroneously calculated ante-mortem height which did not match 1LT Nininger’s known height. The tables used in Nininger’s case to convert long bone length to height were inaccurate because the anthropological tables used were created from examinations of a

Nineteenth century French population and have proven to be unreliable. The Philippine Command was absolutely convinced that X-1130 was the remains of Nininger. Remains X-1130 were ultimately buried as “unknown” in Manila American Cemetery Grave J-7-20 where they presently lie. These remains are those of 1LT Nininger, Alexander R.

3. For the detailed basis described in response to Interrogatory No. 2, identify by Bates number or otherwise each specific document on which you rely.

ANSWER:

Plaintiff objects to the definition “identify” because it would require Plaintiff to search through the thousands of documents produced by Defendants to determine what Bates number it has previously been given and creates an undue burden. Additionally, Defendants have the same access to the documents already produced in this case and the information sought is equally available. Plaintiff also objects because this discovery request is so broad and unlimited as to time and scope as to be an unwarranted annoyance and is oppressive and unduly burdensome. To comply with the request would be an undue burden and expense on the Plaintiff. *See United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for “each specific document on which you rely” for the primary fact issue at contention in this lawsuit. Therefore, Plaintiff objects because the interrogatory is overly broad and unduly burdensome on its face. *See Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants’ requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Finally, Plaintiff also objects to the definition of “you” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will describe the primary documents that support his answer to Interrogatory No. 2. The primary documents supporting the detailed basis described in response to Interrogatory No.2 are the Individual Deceased Personnel Files (IDPF) of the following individuals and remains: Compton, John C.; Green, Arthur W.; Maynard, David W. Nininger, Alexander R. Jr.; Wilson, Kenneth L. Cheaney, Ira B. (including classified annex); Manila_2_RP_X-1051; Manila_2_RP_X-1052; Manila_2_RP_X-1063; and Manila_2_RP_X-1130. Defendants are in possession of each of these documents and have equal access to them. Plaintiff also relies upon the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, reports filed by the DPAA., and declarations prepared by Mr. Eakin. Additionally, DPAA0004487-

0004792; DPAA0004380-4453; DPAA0002000-2783; DPAA0003064-3077; DPAA0003087-3091; DPAA0003766-3852; DPAA0004073-4077.

4. Do you contend that the remains designated X-1130 Manila #2 Cemetery were originally disinterred from the Abucay churchyard?

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to this exception, and without waiver of same, 1LT Nininger's remains (which you refer to as X-1130 Manila #2 Cemetery) were first buried at the Abucay Municipal Cemetery in Abucay, Bataan, Philippine Islands. It is not clear what you consider to be "Abucay churchyard." At the conclusion of hostilities, on February 13, 1946, the U.S. Army Graves Registration personnel recovered his remains from the Abucay Cemetery, Soldiers Row, Grave #9 and these remains were immediately designated as X-1130 Manila #2 Cemetery Nininger, Alexander R. When the X-1130 remains were recovered, they were immediately identified as "X-1130 BTB [believed to be] Nininger, Alexander." This designation stayed with the remains regardless of any subsequent administrative change in the description of the recovery location.

5. Do you contend that the remains designated X-1130 Manila #2 Cemetery are the only remains that could plausibly be identified as First Lieutenant Alexander Nininger?

ANSWER:

Plaintiff objects to this interrogatory to the extent that the word "plausibly" is used to seek a legal conclusion. Plaintiff also objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, the remains designated as X-1130 Manila #2 Cemetery are those of First Lieutenant Alexander Nininger. It is possible that other remains with a separate designation could include partial remains of First Lieutenant Alexander Nininger.

6. Do you contend that the remains identified as First Lieutenant Ira Cheaney and buried at West Point are unlikely to be the remains of First Lieutenant Alexander Nininger?

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to this objection, and without waiver of same, yes, because the remains designated as X-1130 Manila #2 Cemetery are believed to be those of First Lieutenant Alexander Nininger.

7. Identify each and every document that supports your response to Interrogatory No. 4.

ANSWER:

Plaintiff objects to the definition “identify” because it would require Plaintiff to search through the thousands of documents produced by Defendants to determine what Bates number it has previously been given and creates an undue burden. Additionally, Defendants have the same access to the documents already produced in this case and the information sought is equally available. Plaintiff also objects because this discovery request is so broad and unlimited as to time and scope as to be an unwarranted annoyance and is oppressive. To comply with the request would be an undue burden and expense on the Plaintiff. This interrogatory asks for “each and every document that supports” Plaintiff’s response to another interrogatory concerning a primary fact issue in dispute. Therefore, Plaintiff objects because the interrogatory is overly broad and unduly burdensome on its face. Plaintiff also objects to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will describe the primary documents that support their answer to Interrogatory No. 4. The primary documents supporting the detailed basis described in response to Interrogatory No. 4 are the Individual Deceased Personnel Files (IDPF) of the following individuals and remains: Compton, John C.; Green, Arthur W.; Maynard, David W. Nininger, Alexander R. Jr.; Wilson, Kenneth L. Cheaney, Ira B. (including classified annex); Manila_2_RP_X-1051; Manila_2_RP_X-1052; Manila_2_RP_X-1063; and Manila_2_RP_X-1130. Defendants are in possession of each of these documents. Plaintiff also relies upon the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, reports filed by the DPAA, and declarations prepared by Mr. Eakin. Additionally, DPAA0004487-0004792; DPAA0004380-4453; DPAA0002000-2783; DPAA0003064-3077; DPAA0003087-3091; DPAA0003766-3852; DPAA0004073-4077.

8. Identify each and every individual likely to have information that you might use to support any claim that you make in this action and describe in detail the information that that individual possesses.

ANSWER:

Plaintiff objects because this Interrogatory is overly-broad and burdensome. *See United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for “each and every individual likely to have information that you might use to

support any claim that you make in this action and describe in detail the information that the individual possesses.” Therefore, Plaintiff objects because the interrogatory is overly broad and unduly burdensome on its face. See *Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants’ requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiff. Plaintiff also objects to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will provide the names of individuals that he believes may have information that might support his claims in this lawsuit.

Kelly McKeague, Fern Sumpter Winbush, Jon C. Kreitz, Michael E. Swam, William Matz, Robert J. Dalessandro, John Wessels, Pat Harris, Michael G. Conley, Allison Bettencourt, Edwin Fountain, Mike Knapp, Jennifer Li, Christine Philpot, Jamilyn Smyser, Thomas Sole, Heather Harris, Greg Gardner, Johnie Webb: All are associated with Defendants and are presumed to be familiar with Defendants’ policies, rules, and regulations regarding the disinterment and/or identification of remains at Manila American Cemetery. Plaintiffs, John Eakin, Renee Richardson, Defendants, Jed Henry, and Edwin Huffine have information concerning the remains at issue in this case and/or the policies/regulations at issue.

9. Identify each and every document, item of electronically stored information, and tangible thing in your possession, custody, or control that you might use to support any claim in this action.

ANSWER:

Plaintiff objects because this Interrogatory is overly-broad and burdensome. See *United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiff to provide the equivalent of a narrative account of his case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. See *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for “each and every document, item of electronically stored information, and tangible thing” in Plaintiff’s possession, custody, or control that “might” be used to support “any” claim. Therefore, Plaintiff objects because the interrogatory is overly broad and unduly

burdensome on its face. *See Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants’ requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiff also objects to the definition of "your" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiff will describe the primary documents that may be used to support his factual claims in this action. The primary documents supporting Plaintiff’s factual claims are the Individual Deceased Personnel Files (IDPF) of the following individuals and remains: Compton, John C.; Green, Arthur W.; Maynard, David W.; Nininger, Alexander R. Jr.; Wilson, Kenneth L. Cheaney, Ira B.; Manila_2_RP_X-1051; Manila_2_RP_X-1052; Manila_2_RP_X-1063; and Manila_2_RP_X-1130. Defendants are in possession of each of these documents. Plaintiff also might use the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, reports filed by the DPAA, and declarations prepared by Mr. Eakin. Additionally, DPAA0004487-0004792; DPAA0004380-4453; DPAA0002000-2783; DPAA0003064-3077; DPAA0003087-3091; DPAA0003766-3852; DPAA0004073-4077.

10. Identify any and all statements in the Complaint that you believe to be inaccurate.

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to this objection, and without waiver of the same, Plaintiff states that while government documents describe Lt. Nininger’s burial in both the Abucay Churchyard and also in the Abucay Municipal Cemetery, they now believe the burial was in the Abucay Municipal Cemetery. This is based upon information contained in a previously classified government annex to the IDPF of Ira B. Cheaney. Both locations are described in the government burial documents and in at least one instance are described as being one and the same location. Beyond this clarification, Plaintiff believes the material facts in the Complaint are accurate as to Plaintiff’s individual claims, but there may be some typos.

11. Identify any and all statements in the expert reports of John J. Eakin and Renee R. Richardson that you believe to be inaccurate.

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to this objection, and without waiver of the same, their expert reports are believed to be accurate as to Plaintiff's individual claims.

12. Identify all sources of information that you reviewed or consulted in responding to these Interrogatories.

ANSWER:

Plaintiff objects to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to this objection, and without waiver of the same, the primary documents reviewed were the documents on file with the Court and the Individual Deceased Personnel Files (IDPF) of the following individuals and remains: Compton, John C.; Green, Arthur W.; Maynard, David W. Nininger, Alexander R. Jr.; Wilson, Kenneth L. Cheaney, Ira B. (including classified annex); Manila_2_RP_X-1051; Manila_2_RP_X-1052; Manila_2_RP_X-1063; and Manila_2_RP_X-1130. Defendants are in possession of each of these documents. Plaintiff also considered the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, reports filed by the DPAA, and declarations prepared by Mr. Eakin.

DATED this 11th day of April, 2019.

Respectfully submitted,

/s/ John T. Smithee, Jr.

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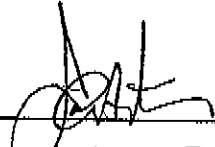
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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

My name is John Patterson. I am a Plaintiff in this action. I have reviewed the answers to the interrogatories set out in this document. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Signature: _____



Print Name: _____

JOHN PATTERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of April 2019, a true and correct copy was delivered as follows:

<p>Galen Thorp U.S. Department of Justice Civil Division, Federal Programs Branch 950 Pennsylvania Ave., NW Washington, DC 20530 202-514-4781 Email: galen.thorp@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>
<p>Mary F. Kruger United States Attorneys Office 601 NW Loop 410, Suite 600 San Antonio, TX 78216 210-384-7300 Fax: 210/384-7322 Email: mary.kruger@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>

/s/ John T. Smithee, Jr.

 John T. Smithee, Jr.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN A. PATTERSON, et al.,

Plaintiffs,

v.

DEFENSE POW/MIA ACCOUNTING
AGENCY, et al.,

Defendants.

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Civil Action No. SA-17-CV-467-XR

**PLAINTIFFS RUBY MARIE ALSBURY, RAYMOND BRUNTMYER, JUDY HANSEN
HENSLEY, AND DOUGLAS ARTHUR KELDER’S ANSWERS TO
DEFENDANTS’ FIRST SET OF INTERROGATORIES**

TO: DEFENDANTS, by and through its attorneys of record, Galen N. Thorp, United States
Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

COMES NOW, Plaintiffs Marie Alsbury, Raymond Bruntmyer, Judy Hansen Hensley, and
Douglas Arthur Kelder and hereby responds to Defendants’ First Set of Interrogatories as follows:

GENERAL OBJECTIONS

Plaintiffs object to Definition No. 1 as improper, unduly burdensome, and impractical to
the extent it purports to include Plaintiffs’ litigation counsel within the definition of “you” and
“your.” Plaintiffs object to the definition of "you" or “Plaintiff” to the extent these definitions and
discovery requests include or attempt to discover party communications, attorney-client
communications, work product, attorney work product, and the identity of consulting only experts
which are exempt from discovery.

Plaintiffs object to Definition No. 2 as improper, unduly burdensome, and impractical. This
definition of “describe in detail” would require Plaintiffs to assemble all of their possible evidence,



including every evidentiary fact, details of supporting witnesses, and the contents of supporting documents.

Plaintiffs object to Definition No. 6 to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Plaintiffs' investigation and development of facts and circumstances to this action is ongoing. These responses are made without prejudice to, and are not a waiver of, Plaintiffs' right to rely on other facts or documents at trial.

Plaintiffs expressly reserve the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

Plaintiffs object to each instruction, definition, and interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure and the applicable Rules and Orders of the Court.

Plaintiffs object to the Interrogatories to the extent the information requested is already in the possession of the requesting parties, is publicly available, or is equally available from any other parties.

Plaintiffs incorporate by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any objection listed here to that request. Moreover, Plaintiffs do not waive their right to amend their answers.

SPECIFIC OBJECTIONS AND ANSWERS

Subject to and without waiving its General Objections, Plaintiffs respond to Defendants' First Interrogatories as follows:

1. Describe in detail the basis for your contention that the remains of Private Robert Morgan have already been identified.

ANSWER:

Plaintiffs object to this interrogatory because of the definition given to "describe in detail." It would be unduly burdensome for Plaintiffs to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiffs. An answer would require Plaintiffs to provide the equivalent of a narrative account of their case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) ("Gregg's interrogatory encompasses virtually every factual basis for all of the Defendants' contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case." (citation omitted)). Plaintiffs also object to the definition of "your" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Finally, Plaintiffs object to this interrogatory to the extent that "identified" is meant to mean that Plaintiffs contends that the DPAA has "identified" Private Robert Morgan. That interpretation would make this Interrogatory argumentative and would require the adoption of an assumption, which is improper.

Subject to these objections, and without waiver of same, Plaintiffs will answer with reasonable specificity the basis for their contention that the location of Private Robert Morgan's remains are known. U.S. Army Private Robert R. Morgan survived the infamous Bataan Death March and imprisonment at Camp O'Donnell, but ultimately succumbed to disease and malnutrition on January 1, 1943, while confined in Cabanatuan POW Camp, near Cabanatuan, Nueva Ecija, Luzon, Philippine Islands. Private Morgan was buried in communal grave number 822 as one of the five U.S. service members who died on that day. At the conclusion of hostilities, U.S. Army Graves Registration personnel exhumed the remains in the camp cemetery. Four service members from Grave 822, including Private Morgan, were ultimately buried as Unknowns in the Manila American Cemetery in Plot 2, Row 15, Manila No. 2. The unidentified remains recovered from Cabanatuan Grave 822 include those of Private Morgan. Additionally, the DPAA has concluded that the comingled remains recovered from Cabanatuan Communal Grave 822 likely include those of Robert Morgan and has disinterred these remains for DNA testing.

2. Describe in detail the basis for your contention that the remains of Technician 4th Class Lloyd Bruntmyer have already been identified.

ANSWER:

Plaintiffs object to this interrogatory because of the definition given to “describe in detail.” It would be unduly burdensome for Plaintiffs to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiffs. An answer would require Plaintiffs to provide the equivalent of a narrative account of their case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiffs also object to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Finally, Plaintiffs object to this interrogatory to the extent that “identified” is meant to mean that Plaintiffs contends that the DPAA has “identified” Technician 4th Class Lloyd Bruntmyer. That interpretation would make this Interrogatory argumentative and would require the adoption of an assumption, which is improper.

Subject to these objections, and without waiver of same, Plaintiffs will answer with reasonable specificity the basis for their contention that the location of Technician 4th Class Lloyd Bruntmyer’s remains are known. Technician 4th Class Lloyd Bruntmyer survived the infamous Bataan Death March and imprisonment at Camp O’Donnell, but ultimately succumbed to disease and malnutrition on November 1, 1942, while confined in Cabanatuan POW Camp, near Cabanatuan, Nueva Ecija, Luzon, Philippine Islands. Technician 4th Class Bruntmyer was buried in communal grave number 704 as one of the ten U.S. service members who died on that day. At the conclusion of hostilities, U.S. Army Graves Registration personnel exhumed the remains in the camp cemetery. Eight service members from grave 704, including Technician 4th Class Bruntmyer, were ultimately buried as Unknowns in the Manila American Cemetery. The unidentified remains recovered from Cabanatuan Grave 704 include those of Technician 4th Class Bruntmyer. Additionally, the DPAA has concluded that the comingled remains from Cabanatuan Communal Grave 704 likely include those of Lloyd Bruntmyer and has disinterred these remains for DNA testing.

3. Describe in detail the basis for your contention that the remains of Private First Class David Hansen have already been identified.

ANSWER:

Plaintiffs object to this interrogatory because of the definition given to “describe in detail.” It would be unduly burdensome for Plaintiffs to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiffs. An answer would require Plaintiffs to provide the equivalent of a narrative account of their case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting

documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiffs also object to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Finally, Plaintiffs object to this interrogatory to the extent that “identified” is meant to mean that Plaintiffs contends that the DPAA has “identified” Private Robert Morgan. That interpretation would make this Interrogatory argumentative and would require the adoption of an assumption, which is improper.

Subject to these objections, and without waiver of same, Plaintiffs will answer with reasonable specificity the basis for their contention that the location of Private First Class David Hansen’s remains are known. U.S. Army Private First Class David Hansen survived the infamous Bataan Death March and imprisonment at Camp O’Donnell, but ultimately succumbed to disease and malnutrition on June 28, 1942, while confined in Cabanatuan POW Camp, near Cabanatuan, Nueva Ecija, Luzon, Philippine Islands. PFC Hansen was buried in communal grave number 407 as one of the approximately seventeen U.S. service members who died on that day. At the conclusion of hostilities, U.S. Army Graves Registration personnel exhumed the remains in the camp cemetery. Six service members from grave 407, including PFC Hansen, were ultimately buried as Unknowns in the Manila American Cemetery. The unidentified remains recovered from Cabanatuan Grave 407 include those of PFC Hansen. Additionally, it appears that the DPAA also believes that the comingled remains from Cabanatuan Communal Grave 407 include those of David Hansen and plan to disinter these remains.

4. Describe in detail the basis for your contention that the remains of Private Arthur Kelder that have been identified are still in the possession of the U.S. Department of Defense.

ANSWER:

Plaintiffs object to this interrogatory because of the definition given to “describe in detail.” It would be unduly burdensome for Plaintiffs to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiffs. An answer would require Plaintiffs to provide the equivalent of a narrative account of their case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiffs also object to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiffs will answer with reasonable specificity the basis for their contention that the location of Private Arthur Kelder's remains are known and that the U.S. Department of Defense still has possession of the remaining balance of his remains. U.S. Army Private Arthur H. "Bud" Kelder survived the infamous Bataan Death March and imprisonment at Camp O'Donnell, but ultimately succumbed to disease and malnutrition on November 19, 1942, while confined in Cabanatuan POW Camp, near Cabanatuan, Nueva Ecija, Luzon, Philippine Islands. Private Kelder was buried in communal grave number 717 as one of the fourteen U.S. service members who died on that day. At the conclusion of hostilities, U.S. Army Graves Registration personnel exhumed the remains in the camp cemetery. The ten from Grave 717 who could not be identified, including Private Kelder, were ultimately buried as Unknowns in the Manila American Cemetery. Beginning in 2014, in response to a petition for Mandamus filed by Private Kelder's acting next-of-kin, the graves of the ten Unknowns buried in the Manila American Cemetery and three of the four Knowns buried in the U.S. were exhumed for identification. Each of the remains originally buried in Cabanatuan Grave 717 were virtually anatomically complete when exhumed. In 2015, the Kelder family received only his skull, three long bones and a few other minor bones for burial. The family was informed that the Department of Defense had used only mitochondrial DNA rather than more advanced DNA identification techniques to identify and properly re-associate these remains. The balance of Private Kelder's remains are in the custody of Defendant Department of Defense or have not yet been exhumed. The lack of proper re-association and identification of the remains reflects the inadequacies of Defendants' identification laboratory capacity and capability. To date, only partial remains of eight of the ten Unknowns exhumed from the Manila American Cemetery have been returned to their families for burial. Army Regulation 638-2, ¶ 8-8, states that deceased personnel must be identified as quickly as possible by employing all well-known means and scientific resources and dictates that multiple remains from a single incident will be processed for identification simultaneously. The unidentified remains recovered from Cabanatuan Grave 717 that are being kept by Defendants include those of Private Kelder. Defendants have in their possession the balance of Private Kelder's remains.

5. Identify each and every individual likely to have information that you might use to support any claim that you make in this action and describe in detail the information that that individual possesses.

ANSWER:

Plaintiffs object because this Interrogatory is overly-broad and burdensome. *See United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiffs to provide the equivalent of a narrative account of their case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for "each and every individual likely to have information that you might use to support any claim that you make in this action and describe in detail the information that the individual possesses." Therefore, Plaintiffs object because the interrogatory is overly broad and unduly burdensome on its face. *See Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) ("[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants' requests, insofar as they seek every fact, every

piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiffs also object to the definition of “describe in detail.” It would be unduly burdensome for Plaintiff to have to respond to this interrogatory with all material facts, circumstances, incidents, acts, omissions, events, data, and assumptions characterizing or constituting the thing being described. Using this definition, the interrogatory is over broad and seeks the compilation of data and outside research outside the knowledge of Plaintiffs. Plaintiffs also object to the definition of “your” to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiffs will provide the names of individuals that they believe may have information that might support their claims in this lawsuit.

Kelly McKeague, Fern Sumpter Winbush, Jon C. Kreitz, Michael E. Swam, William Matz, Robert J. Dalessandro, John Wessels, Pat Harris, Michael G. Conley, Allison Bettencourt, Edwin Fountain, Mike Knapp, Jennifer Li, Christine Philpot, Jamilyn Smyser, Thomas Sole, Heather Harris, Greg Gardner, Johnie Webb: All are associated with Defendants and are presumed to be familiar with Defendants’ policies, rules, and regulations regarding the disinterment and/or identification of remains at Manila American Cemetery. Plaintiffs, John Eakin, Debbie Christian, Jennifer Russell, Renee Richardson, Defendants, Jed Henry, and Edwin Huffine are familiar with the facts at issue in this case and/or the policies/procedures at issue.

6. Identify each and every document, item of electronically stored information, and tangible thing in your possession, custody, or control that you might use to support any claim in this action.

ANSWER:

Plaintiffs object because this Interrogatory is overly-broad and burdensome. *See United States v. Renault, Inc.*, 27 F.R.D. 23 (S.D.N.Y. 1960) (holding that interrogatories which ask for all evidence that would be presented in trial were overly broad and therefore unduly burdensome). An answer would require Plaintiffs to provide the equivalent of a narrative account of their case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007). This interrogatory asks for “each and every document, item of electronically stored information, and tangible thing” in Plaintiff’s possession, custody, or control that “might” be used to support “any” claim. Therefore, Plaintiffs object because the interrogatory is overly broad and unduly burdensome on its face. *See Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants’ requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist.

LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)). Plaintiffs also object to the definition of "your" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery.

Subject to these objections, and without waiver of same, Plaintiffs will describe the primary documents that may be used to support their factual claims in this action. The primary documents that may be used to support Plaintiffs’ claims are the documents on file with the Court and the Individual Deceased Personnel Files (IDPF) associated with Cabanatuan Communal Graves 704, 822, 407, and 717. Additionally, the burial records may be used as well, which Defendants have in their possession. Plaintiffs also might use the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, reports filed by the DPAA, and declarations prepared by Mr. Eakin. Emails discussing Gordon case by Johnie Webb (April 2014). Additionally, photos of disinterment of remains associated with Grave 717 and other disinterments. DPAA0000001-1131; DPAA0001277-1999; DPAA0003166-3202; DPAA0003326-3553; DPAA0004046-4072; DPAA0003865-3989; DPAA0003078-3086; DPAA0003554-3765; DPAA0004135-4313; DPAA0004078-4100; DPAA0004315-4379.

7. Identify any and all statements in the Complaint that you believe to be inaccurate.

ANSWER:

Plaintiffs object to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to this objection, and without waiver of the same, the material facts in the Complaint are believed to be accurate as to Plaintiffs’ individual claims, but there may be some typos. Additionally, some facts have changed since the Complaint was filed, which Defendants are aware of - several remains at issue have been disinterred.

8. Identify any and all statements in the expert reports of John J. Eakin and Renee R. Richardson that you believe to be inaccurate.

ANSWER:

Plaintiffs object to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to this objection, and without waiver of the same, their expert reports are believed to be accurate as to Plaintiffs’ individual claims.

9. Identify all sources of information that you reviewed or consulted in responding to these Interrogatories.

ANSWER:

Plaintiffs object to the definition of "you" to the extent these definitions and discovery requests include or attempt to discover party communications, attorney-client communications, work product, attorney work product, and the identity of consulting only experts which are exempt from discovery. Subject to this objection, and without waiver of the same, the primary documents reviewed were the documents on file with the Court and the Individual Deceased Personnel Files (IDPF) associated with Cabanatuan Communal Graves 704, 822, 407, and 717. Additionally, the burial records were reviewed as well, which Defendants have in their possession. Plaintiff also considered the documents and literature referenced in their most recently filed Complaint, the Expert reports prepared by Mr. Eakin and Ms. Richardson, reports filed by the DPAA, and declarations prepared by Mr. Eakin.

DATED this 11th day of April, 2019.

Respectfully submitted,

/s/ John T. Smithee, Jr.

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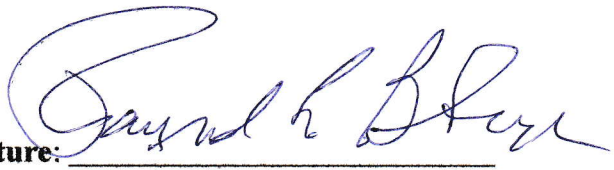
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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

My name is Raymond L. Bruntmyer. I am a Plaintiff in this action. I have reviewed the answers to the interrogatories set out in this document. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Signature: 

Print Name: Raymond L. Bruntmyer

VERIFICATION

My name is DOUGLAS KELDER I am a Plaintiff in this action. I have reviewed the answers to the interrogatories set out in this document. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Signature: Douglas Kelder
Print Name: DOUGLAS KELDER

VERIFICATION

My name is Judy Husley I am a Plaintiff in this action. I have reviewed the answers to the interrogatories set out in this document. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Signature: Judy Husley
Print Name: Judy Husley

VERIFICATION

My name is Dave Alsbury. I am the designated holder of power of attorney for Plaintiff Ruby Marie Alsbury in this action. I have reviewed the answers to the interrogatories set out in this document. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Signature: _____

A handwritten signature in black ink, appearing to read "Dave J. Alsbury", written over a horizontal line.

Print Name: _____

Dave J. Alsbury

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of April 2019, a true and correct copy was delivered as follows:

<p>Galen Thorp U.S. Department of Justice Civil Division, Federal Programs Branch 950 Pennsylvania Ave., NW Washington, DC 20530 202-514-4781 Email: galen.thorp@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>
<p>Mary F. Kruger United States Attorneys Office 601 NW Loop 410, Suite 600 San Antonio, TX 78216 210-384-7300 Fax: 210/384-7322 Email: mary.kruger@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>

/s/ John T. Smithee, Jr.

 John T. Smithee, Jr.