



the Government did not produce to Menominee, or serve upon Menominee, hard copy documents or a CD containing the 11,500 pages of initial disclosure documents.

3. On or about October 11, 2007, contrary to Menominee's instruction on June 28, 2007, the Government produced a CD to Menominee containing approximately 13,764 pages of documents (the "USA Documents"), many of which were non-responsive to Menominee's discovery requests (the Government also produced two boxes of hard copy documents that were responsive to Menominee's discovery requests). The Government also failed to disclose to Menominee whether any of the USA Documents contained documents that the Government separately made available for Menominee's inspection at the Bureau of Indian Affairs ("BIA") Midwest Regional Office ("MRO").

4. With respect to the documents produced to Menominee for review at the BIA MRO ("MRO Documents"), Menominee requested that the Government affix bates numbers on the documents so that Menominee could easily select documents for copying and so that Menominee would know whether copies of all the documents it selected were provided. The Government refused to utilize bates numbers and instead required Menominee to fill out two blue sheets for each document (or group of documents) requested ("Blue Sheets"). The Government then required Menominee to place one Blue Sheet in front of the first document selected and one Blue Sheet behind the last document selected. A BIA employee, whom Menominee understands to be Sean Hart ("Hart") (a fact witness in this case), would then oversee a document production process that included scanning each page of each document, placing bates numbers on the document (with a BIAF, BIAC, BIAR, or BIAK prefix designation appearing in the upper left-hand corner of the document), and then making a photocopy. Menominee believes that "BIAF" document prefix signified a 638 forestry contract file

document. A “BIAC” document prefix signified a 638 contract file document. A “BIAR” prefix signified a 638 roads contract file document. A “BIAK” prefix signified a Keshena, Wisconsin document from David Congos or Thomas Magnuson’s file. The oral agreement was that BIA would provide a copy of each selected document to Menominee, some of which documents were not made available until several days, weeks, or in some cases months later.

5. Shortly after beginning document review at MRO, Menominee suspended its review of the MRO Documents on October 5, 2007 because of the Government’s revelation that original invoices and supporting documentation (including certain maps) at issue in this litigation were removed from the BIAK files (Congos’s files) by investigators Joe Schwartz (“Schwartz”) and Todd Bucci (“Bucci”), who “reorganized” the original invoices and supporting documentation after those materials were removed from Congos’s files. In an effort to avoid motion practice with respect to the MRO Documents, however, Menominee agreed in December 2007 to resume its review of the MRO Documents at the MRO, notwithstanding the removal of certain documents from those files and the procedure imposed on Menominee by the Government.

6. Menominee’s review of the MRO Documents occurred over a several week period beginning in January 2008, but progress was significantly slowed by the need to take detailed notes of documents in an effort to keep track of the documents it selected for copying, so that it could compare the copied documents to the selected documents (again, the Government refused to bates label this production set prior to Menominee’s selection of a given document).

7. Despite these problems and despite Menominee’s efforts to comply with the Government’s onerous review procedure, on February 1, 2008, after Menominee had spent many hours in conducting its review, the Government announced that it would deny Menominee

further access to the MRO Documents at MRO's office after February 13, 2008. Menominee objected to that position. In response, the Government proposed to "have the entirety of the BIAK boxes copied and produced to [Menominee] within the next few weeks." Menominee objected to this course of action because Menominee had already invested substantial resources in complying with the onerous and complicated procedure imposed by the Government, and it was not about to invest additional resources to *re-review* documents that it has already reviewed and selected for production.

8. On or about February 12, 2008, the Government informed Menominee that it was transporting all of the MRO Documents to Milwaukee, and agreed that Menominee could continue its review of the MRO Documents there. In addition, BIA assured Menominee's counsel that the MRO Documents selected by Menominee up to that point for copying would in fact be produced to Menominee.

9. Menominee dutifully complied with the Government's location change to Milwaukee and continued its review of the MRO Documents in Milwaukee from February 20, 2008 through March 7, 2008, inspecting documents over a six day period during that time period. During one of these document review sessions, counsel for the parties met in another effort to break the impasse created by the Government's desire to dump what the Government estimates to be 80,000 pages of MRO documents on Menominee, a course of action to which Menominee has repeatedly objected. Menominee has insisted that only the documents it selected from the MRO Documents be provided to Menominee. The Government insisted on producing the 80,000 pages.

10. During my review of MRO Documents, I took notes about the contents of certain of those documents. One of those documents is a memorandum dated September 30, 1994 from

Congos to Stuart Mani. In that memorandum, my transcription of what Congos wrote is substantially as follows:

You may wish to remind everyone concerned that MTE has providing [sic] the forestry trust services on Menominee for over twenty years. The only deficiency I have observed, in my ten years as COR, has been the lack of federal funds to perform all the trust service functions promised to Menominee by the Secretary. The Menominee Tribe should receive, by Central Office formula, over \$2,479,000 above their current level of funding.

Menominee is unable to place this document on file with the Court because the Government is withholding it pending resolution of its request that *all* government-produced documents be made subject to a protective order.

11. With respect to the Privacy Act, in accordance with the Court's interim Protective Order, Menominee conducted a full review of its website and, subject to human error, found no Government-produced document on the website subject to the Privacy Act. Furthermore, with the sole exception of Menominee's request for Congos's personnel file, Menominee is not aware of any Request for Production in which Menominee sought materials protected by the Privacy Act (and the Government has identified no such requests). Menominee has specifically informed the Government that it does not want the full 80,000 pages of MRO Documents. Menominee only wants the subset it selected, which, subject to human error, Menominee does not believe contain materials subject to the Privacy Act.

12. Attached hereto as Exhibits are true and correct copies of the following:

- Exhibit 1: Plaintiff's Initial Disclosures;
- Exhibit 2: October 11, 2007 Letter from the United States to Menominee;
- Exhibit 3: United States' Responses to Defendant Menominee Tribal Enterprises' Interrogatories (Sets 1-3) and Requests for Production of Documents (Sets 1-4);
- Exhibit 4: October 9, 2007 Letter from Menominee to the United States;

- Exhibit 5: October 12, 2007 Letter from Menominee to the United States;
- Exhibit 6: February 13, 2008 Letter from Menominee to the United States;
- Exhibit 7: December 27, 2007 – January 3, 2008 email chain between Menominee and the United States;
- Exhibit 8: February 1, 2008 email from the United States to Menominee;
- Exhibit 9: February 8, 2008 – February 12, 2008 email chain between the United States and Menominee;
- Exhibit 10: February 18, 2008 email chain between the United States and Menominee;
- Exhibit 11: March 21, 2008 – March 24, 2008 email chain between the United States and Menominee;
- Exhibit 12: Plaintiff's Third Request for Production of Documents to Defendants Menominee Tribal Enterprises, Marshall Pecore and Conrad Waniger;
- Exhibit 13: United States' Response to Defendant Menominee Tribal Enterprises' Eleventh Set of Requests for Production of Documents;
- Exhibit 14: Defendant Menominee Tribal Enterprises' Fifteenth Set of Requests for Production of Documents to the United States of America;
- Exhibit 15: Defendant Menominee Tribal Enterprises Sixteenth Set of Requests for Production of Documents to the United States of America;
- Exhibit 16: September 9, 1996 Letter from Lawrence Waukau to Larry Morrin;
- Exhibit 17: May 5, 1998 Letter from Marshall Pecore to Bernita Lonetree
- Exhibit 18: Cited Excerpts from the transcript of Marshall Pecore's February 6, 2008 deposition;
- Exhibit 19: August 3, 1998 Letter from Larry Morrin to Lawrence Waukau;
- Exhibit 20: March 1, 1999 Letter from Michael Richter to Todd Kennedy, with attachments;

Exhibit 21: **[REDACTED]**;

Exhibit 22: March 21, 2008 – March 24, 2008 email chain between the United States and Menominee; and

Exhibit 23: United States' Response to Menominee Tribal Enterprises' Ninth Set of Requests for Production of Documents.

I declare under penalty of perjury that the foregoing is true and correct.

Minneapolis, Minnesota

DATE: April 8, 2008

/s/ Joshua Jay Kanassatega

Joshua Jay Kanassatega