U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
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NANCY M.
MAYER-WHITTINGTON
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285 (RCL)
	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

INTERIOR DEFENDANTS' CONSOLIDATED
(1) MOTION FOR EXPEDITED CONSIDERATION;
(2) MOTION TO COMPEL PLAINTIFF EARL OLD PERSON
TO COMPLY WITH THE COURT'S DECEMBER 23, 2002
PRODUCTION ORDER AND TO APPEAR AND TESTIFY AT DEPOSITION;
AND (3) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants" or "Interior"), pursuant to Fed. R. Civ. P. ("Rules") 37(a) and (d), hereby move that this Court enter an order requiring Plaintiff Earl Old Person to comply with the production order entered by this Court on December 23, 2002, and to appear for his deposition. Interior Defendants have been forced to file this motion because Plaintiffs have moved the Court for an order (discussed at pp. 3-4, infra) relieving them of any obligation to make Earl Old Person appear for deposition, based upon their unsupported assertions that Mr. Old Person will not cooperate with discovery.

Because of the urgency of obtaining such discovery from Mr. Old Person, Interior respectfully asks that the Court consider such motion on an expedited basis. The following is Interior's Memorandum of Points and Authorities in support.

Conference With Opposing Counsel

Counsel for Interior Defendants contacted one of Plaintiffs' counsel, Mark Brown, on January 16, 2003 to see if they would consent to the relief sought by this motion, but Plaintiffs' counsel refused.

Background

This motion involves two aspects of discovery directed at Plaintiff Earl Old Person – a duly noticed deposition (see Exhibit 1 hereto) which was scheduled for January 9, 2003, and the Court-ordered production (see Exhibit 2 hereto) of documents due by January 8, 2003.

Deposition Noticed for January 9, 2003. On December 11, 2002, Interior served the First Amended Notice of Deposition - Earl Old Person, which set Mr. Old Person's deposition for January 9, 2003. A copy is attached as Exhibit 1. Mr. Old Person failed to appear. Instead, one day before the scheduled date for the deposition, Plaintiffs filed a motion for a protective order, described below.

Court-Ordered Document Production (Due January 8, 2003). On June 5, 2002, Interior Defendants served their Request for the Production of Documents, Dated June 5, 2002, a copy of which is attached as Exhibit 3. Plaintiffs failed to comply, and instead, on July 5, 2002, Plaintiffs filed a motion seeking a protective order staying Interior's discovery. On July 16, 2002, Interior Defendants filed a motion to compel production of the requested documents. The motions were duly briefed. On December 23, 2002, this Court entered an Order (Exhibit 2 hereto) denying Plaintiffs' motion for a protective order and granting Interior Defendants' motion to compel. The Order (at 1-2) stated as follows with regard to those motions:

> ORDERED that plaintiffs' motion for protective order [1373] be DENIED. It is further

> ORDERED that defendants' motion to compel discovery [1386] be GRANTED. Accordingly, it is further
>
> ORDERED that within ten (10) days from the date of this Order, plaintiffs shall comply with Interior Defendants' Request for Production of Documents, dated June 5, 2002, by producing to Interior Defendants the documents requested therein.

The due date (calculated under Rule 6(a)) for Plaintiffs to produce the documents was January 8, 2003.

Mr. Old Person's Failure to Produce Documents or Appear for Deposition. Mr. Old Person neither produced documents nor appeared for his deposition. Rather, on January 8, 2003 – the date on which the Court's order required Mr. Old Person to produce the documents, and one day before the scheduled deposition – Plaintiffs and their attorneys filed two papers containing four motions.[1] Plaintiffs' first filing (docket number 1718) (collectively, "Plaintiffs' Motion to Remove Earl Old Person") included (1) a motion (by Plaintiffs other than Mr. Old Person) to remove Mr. Old Person as a named Plaintiff; and (2) a motion by Plaintiffs' attorneys to withdraw as his counsel. Plaintiffs' second filing (docket number 1719) (collectively, "Plaintiffs' Motion for Protective Order")[2] included (1) a motion to stay the Court's Order of December 23, 2002 as it regards Mr. Old Person's production of documents; and (2) a motion for a protective order to prevent the deposition of Mr. Old Person. Contemporaneously herewith, Interior has

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[1] Plaintiffs other than Mr. Old Person served responsive documents or written objections on January 8, 2003.

[2] The full title of Plaintiffs' second filing (docket number 1719) is "Plaintiffs' Consolidated Motions to Modify or In the Alternative Stay the Production Order of December 23, 2002 As It Pertains Solely to Named Plaintiff, Earl Old Person, Motion for Protective Order to Prevent the Deposition of Mr. Old Person and Memorandum of Points and Authorities in Support Thereof."

filed oppositions to each of the above filings. Interior's Opposition to the Plaintiffs' Motion to Remove Earl Old Person explains why the Court should deny that motion, or at least not rule on it until discovery of Mr. Old Person is completed. Interior's Opposition to the Plaintiffs' Motion for Protective Order demonstrates that no protective order is justified (see below).

Argument

I. No Basis Exists to Excuse Mr. Old Person From His Discovery Obligations

Plaintiffs' Motion for Protective Order seeks to delay or avoid Mr. Old Person's obligation to comply with the Court's document production order of December 23, 2002, and his obligation to appear for a deposition. Plaintiffs argue that Mr. Old Person did not produce documents because Plaintiffs' counsel has not been able to "contact" him, and that, if the Motion to Remove Earl Old Person is granted, discovery allegedly would not be necessary. See Plaintiffs' Motion for Protective Order at 2.

Interior's Opposition to the Motion for Protective Order ("Opp. to Mo. for Prot. Order") demonstrates that Plaintiffs' Motion for Protective Order is insufficient to justify deferring or quashing discovery of Mr. Old Person. The arguments in our Opposition will not be repeated in detail here, but only summarized. First, Plaintiffs failed to meet their heavy burden of showing "good cause" (see Rule 26(c)) for a protective order. See Opp. to Mo. for Prot. Order at 3-4. The insufficiency of Plaintiffs' showing is heightened by the law in this circuit which imposes special duties on a class representative to comply with discovery. As the D.C. Circuit has stated, the "[f]ailure of a representative plaintiff [in a class action] to respond to discovery or to keep class counsel informed of his whereabouts is a serious matter which ought to be discouraged by appropriate sanctions." Dellums v. Powell, 566 F.2d 231, 236 (D.C. Cir. 1977). Mr. Old

Person's non-compliance with discovery and alleged non-contact with class counsel violates his duty. Plaintiffs offer no good excuse for this.

Second, the highly unusual circumstances surrounding Mr. Old Person's sudden refusal to comply with discovery or even allegedly to have contact with class counsel raise serious, urgent questions regarding whether Mr. Old Person's non-participation is because of purely personal reasons or because of the way in which the case is being handled or is proceeding, and whether he has knowledge of, for example, antagonistic interests among class members or class representatives.[3] See Opp. to Mo. for Prot. Order at 6; see also Interior's Opposition to the Plaintiffs' Motion to Remove Earl Old Person at 8-9. If such antagonistic interests exist, the class representatives may no longer meet the "adequate representation" requirement of Rule 23(a)(4), and modification of the class (e.g., formation of subclasses) might be appropriate. Discovery into such class-related issues is always appropriate, and, even though the class already has been certified, the Court remains obliged to ensure that the class requirements of Rule 23 remain satisfied. See Opp. to Mo. for Prot. Order at 6; see also Interior's Opposition to the Plaintiffs' Motion to Remove Earl Old Person at 5-6. Thus, the failure of Mr. Old Person to comply with discovery obligations does not justify deferring or removing his discovery obligations, but, rather, makes discovery of his knowledge all the more urgent and necessary.

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[3] For example, Mr. Old Person suddenly ceased his participation in the case just when the parties filed their January 6, 2003 plans for "fixing the system" and for an historical accounting, and just when Mr. Old Person was to be questioned in deposition. The coincidence of these events – together with prior media reports of Mr. Old Person's disagreement with lead named Plaintiff Elouise Cobell – raise serious questions about whether Mr. Old Person is aware of, for example, disagreements within the class as to the manner in which the class representatives are approaching this case. See Opp. to Mo. for Prot. Order at 2 & 6 n.4; see also Interior's Opposition to Plaintiffs' Motion to Remove Earl Old Person at 7-8.

Finally, even if Mr. Old Person were removed as a class representative, discovery of his knowledge still would be appropriate under appropriate D.C. Circuit precedent. See Opp. to Mo. for Prot. Order at 7 et seq.

Interior Defendants should be permitted to depose Mr. Old Person about the circumstances described above and, because he remains a named Plaintiff with substantive knowledge about the merits of the case, he is properly subject to being deposed about those matters too.[4]

II. The Court Should Enter Appropriate Orders to Ensure That Mr. Old Person Promptly Produces the Required Documents and Appears for His Deposition

Rule 37(b)(2) provides that if a party "fails to obey an order to provide or permit discovery" the Court may "make such orders in regard to the failure as are just."[5] Mr. Old Person failed to obey the Court's December 23, 2002 Order which required that he "comply with Interior Defendants' Request for Production of Documents, dated June 5, 2002, by producing to Interior Defendants the documents requested therein." (Order at 1-2). Thus, Interior Defendants are entitled to relief under Rule 37(b). Interior asks that the Court enter an order specifically

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[4] Because the requested discovery from Mr. Old Person might not be obtained and reviewed in sufficient time to include it in any pertinent motions for summary judgment that Interior files by the January 31, 2003 due date (for summary judgment motions pertaining to the Phase 1.5 trial), Interior might find it necessary to supplement applicable summary judgment motions based upon information learned from discovery of Mr. Old Person.

[5] Although Rule 37(b)(2) goes on to list a number of sanctions that might be included within an order, these are not the exclusive remedies, for the rule states that orders for such sanctions are "among other[]" orders that the Court may enter. At this time, Interior does not seek sanctions, but simply asks the Court to enter orders that will be sufficient to cause Mr. Old Person to comply with his discovery obligations, under the potential penalty of contempt for any further non-compliance.

directing Mr. Old Person to produce the documents requested by a date certain.

Similarly, Rule 37(d) provides that if a party "fails . . . to appear" for a deposition "after being served with a proper notice," "the court . . . may make such orders in regard to the failure as are just" which includes but are not limited to orders for certain of the sanctions listed in Rule 37(b)(2). As shown in Exhibit 1 hereto, on December 11, 2002, Interior Defendants served proper notice of the deposition of Mr. Old Person, setting it for January 9, 2003. Mr. Old Person failed to appear. Although his counsel filed the Motion for Protective Order, that motion has no merit. See Interior's Opp. to Mo. for Prot. Order. Therefore, the Court should enter an order requiring Mr. Old Person to appear for his deposition on a date to be selected by Interior Defendants.

In order to ensure that Mr. Old Person understands that he has no choice but to comply, the Court's Order should warn him that failure to comply may result in punishment for contempt of court. In order to ensure that Mr. Old Person receives due notice, Interior asks that the Court direct Plaintiffs' counsel to serve a copy of the Order upon Mr. Old Person promptly, and to file a certification that they have done so.

III. This Motion Should Be Considered on an Expedited Basis

The facts known by Earl Old Person may be significant not only to issues going to the merits of the case (e.g., that might be used by Interior Defendants in preparation for the Phase 1.5 trial which is only months away, or in summary judgment proceedings related to Phase 1.5), but also going to fundamental class-related issues discussed above. Any information that he has on such matters may have an important impact on upcoming proceedings. For example, if he discloses significant antagonistic interests among the class members and the class

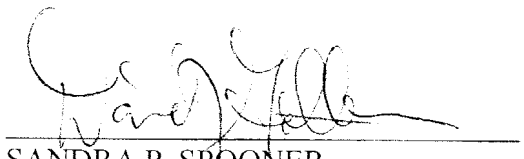
representatives, that may call for an immediate creation of a subclass or other appropriate relief. Any delay in such relief may prejudice such other class members by depriving them of a voice in this case. Thus, delay also would work against the interests of justice. Therefore, Interior requests that the Court consider this matter on an expedited basis.

Conclusion

For the reasons stated above, Interior Defendants respectfully request that the Court enter the proposed orders submitted herewith, requiring Plaintiff Earl Old Person to produce the required documents by a date certain, and to appear and testify at his deposition, under the possible penalty of contempt of court for non-compliance. A proposed order is submitted herewith.

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director



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DAVID J. GOTTESMAN
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(202) 514-7194

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER REQUIRING PLAINTIFF EARL OLD PERSON
TO PRODUCE DOCUMENTS AND APPEAR AND TESTIFY AT DEPOSITION

This matter coming before the Court on the following matters:

> Plaintiffs' Consolidated Motions to Modify or in the Alternative Stay the Production Order of December 23, 2002 As It Pertains Solely to Named Plaintiff Earl Old Person and for a Protective Order to Prevent the Deposition of Mr. Old Person ("Plaintiffs' Motion for Protective Order"); and
>
> Interior Defendants' Consolidated (1) Motion for Expedited Consideration; (2) Motion to Compel Plaintiff Earl Old Person to Comply with the Court's December 23, 2002 Production Order and to Appear and Testify at Deposition,

and any responses thereto, it is hereby

ORDERED that the Plaintiffs' Motion for Protective Order is DENIED. It is further

ORDERED that Interior's Motion for Expedited Consideration is GRANTED. It is further

ORDERED that Interior's Motion to Compel Plaintiff Earl Old Person to Comply with the Court's December 23, 2002 Production Order and to Appear and Testify at Deposition, is hereby GRANTED. It is therefore further

ORDERED that Plaintiff Earl Old Person shall, within five (5) days from the date of this

Order, produce to the Interior Defendants all documents requested in Interior Defendants' Request for the Production of Documents, Dated June 5, 2002. It is further

ORDERED that Plaintiff Earl Old Person shall appear in person and shall testify at a deposition at the offices of Interior Defendants' attorneys, or at such other place as they designate, on a date and at a time selected by the Interior Defendants' attorneys, provided, however, that the deposition date will be at least five (5) days after entry of this Order.

ORDERED that Plaintiffs' counsel shall serve a copy of this Order upon Plaintiff Earl Old Person within two (2) days after entry of this Order, and that Plaintiffs' counsel shall then promptly file with this Court a certification that they have served this Order upon him, or, if they are unable to do so, explaining all pertinent details of why they were unable to do so. It is further

THE COURT ADMONISHES PLAINTIFF EARL OLD PERSON THAT ANY FAILURE ON HIS PART TO COMPLY WITH THIS ORDER MAY RESULT IN HIS BEING PUNISHED FOR CONTEMPT OF COURT.

SO ORDERED this _____ day of _____, 2003.

_____
ROYCE C. LAMBERTH
United States District Judge

cc:

Sandra P. Spooner
John T. Stemplewicz
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
202-318-2372

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
202-822-0068

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on January 16, 2003 I served the foregoing *Interior Defendants' Consolidated (1) Motion for Expedited Consideration; (2) Motion to Compel Plaintiff Earl Old Person To Comply with the Court's December 23, 2002 Production Order and to Appear and Testify at Deposition; and (3) Memorandum of Points and Authorities in Support* by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 822-0068

Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
(202) 318-2372

By U.S. Mail upon:

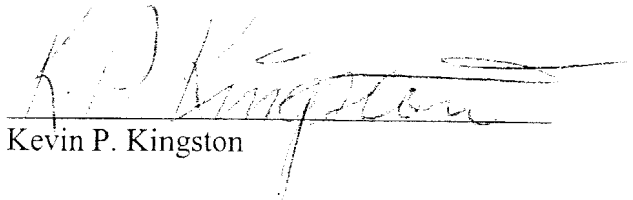
Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

By facsimile and U.S. Mail upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006
(202) 986-8477

By Hand upon:

Joseph S. Kieffer, III
Special Master Monitor
420 7th Street, N.W.
Apartment 705
Washington, D.C. 20004
(202) 478-1958



Kevin P. Kingston

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,)		
	)	(Special Master-Monitor
Defendants.	)	Joseph S. Kieffer, III)
	)	

FIRST AMENDED
NOTICE OF DEPOSITION - EARL OLD PERSON

TO: Mr. Dennis M. Gingold
Mr. Mark Kester Brown
P.O. Box 14464
Washington, D.C. 20044-4464
Fax: 202/318-2372

Mr. Keith Harper
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
Fax: 202/822-0068

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, the Secretary of the Interior and the Assistant Secretary - Indian Affairs shall conduct the oral deposition of Plaintiff **EARL OLD PERSON**, at the offices of Defendants' attorneys, U.S. Department of Justice, Civil Division, 1100 L Street NW, Washington, D.C., **beginning at 9:30 a.m. on January 9, 2003,** and, if necessary, shall continue on further dates to be scheduled, until completed.

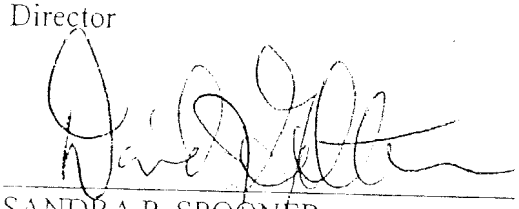
This First Amended Notice of Deposition requires the appearance of the above-named deponent for the entirety of the deposition. The deposition will be recorded by sound-and-visual and stenographic means.

EXHIBIT # 1

This First Amended Notice of Deposition supersedes the prior Notice of Deposition that was served with regard to the above-named deponent.

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director



SANDRA P. SPOONER
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Attorney
DAVID J. GOTTESMAN
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Tel: (202) 514-7194

Dated: December 11, 2002

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on December 11, 2002, I served the foregoing *First Amended Notice of Deposition - Earl Old Person* by facsimile, in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, DC 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, NW
Ninth Floor
Washington, DC 20004
202-318-2372

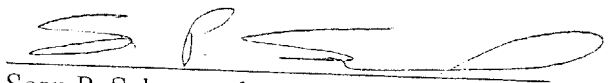
and by U.S. Mail upon:

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

and by U.S. Mail and by facsimile upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., NW
12th Floor
Washington, DC 20006
202-986-8477

Joseph S. Kieffer, III, Esq.
Special Master-Monitor
420 7th Street, NW
Apt 705
Washington, DC 20004
202-478-1958



Sean P. Schmergel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action Number 96-1285 (RCL)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
Defendants.	)	

FILED
DEC 23 2002
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

For the reasons stated in the Report and Recommendation of the Special Master-Monitor on "Motion for Protective Order Seeking (1) Stay of Plaintiffs' Obligation to Respond to Interior Defendants' Request for the Production of Documents, dated June 5, 2002; (2) Stay of Threatened Depositions of the Five Named Plaintiffs; (3) Stay of Rule 11 Motion with Respect to Court-Ordered Attorney's Fees (served June 28, 2002)" and "Defendants' Motion to Compel Discovery and Testimony of Plaintiff Elouise Cobell at Deposition" and "Defendants' Motion for Sanctions Regarding Submission of False or Misleading Affidavits by Plaintiffs' Attorney Dennis M. Gingold," which was filed with this Court on October 22, 2002, it is hereby

ORDERED that plaintiffs' motion for protective order [1373] be DENIED. It is further

ORDERED that defendants' motion to compel discovery [1386] be GRANTED. Accordingly, it is further

ORDERED that within ten (10) days from the date of this Order, plaintiffs shall comply with Interior Defendants' Request for Production of Documents, dated June 5, 2002, by

EXHIBIT # 2

producing to Interior Defendants the documents requested therein. It is further

ORDERED that defendants' motion to compel appearance and testimony of plaintiff Elouise Cobell at deposition [1424] be DENIED as moot; it is further

ORDERED that defendants' motion for an order adopting the Special Master-Monitor's recommendations regarding plaintiffs' production of documents, and ordering plaintiffs' immediate production of documents [1620-1] be DENIED as moot; it is further

ORDERED that defendants' motion to expedite consideration of their motion for an order adopting the Special Master-Monitor's recommendation regarding plaintiffs' production of documents, and ordering plaintiffs' immediate production of documents [1621-1] be DENIED as moot. It is further

ORDERED that defendants' motion for an order (1) adopting those portions of the Special Master-Monitor's recommendation regarding depositions of named plaintiffs, and (2) ordering named plaintiffs to appear and testify at depositions [1626-1] be DENIED as moot. It is further

ORDERED that defendants' motion for expedited consideration of their motion for an order (1) adopting those portions of the Special Master-Monitor's recommendation regarding depositions of named plaintiffs, and (2) ordering named plaintiffs to appear and testify at depositions [1625-1] be DENIED as moot.

SO ORDERED.

Date: 12-23-02

Royce C. Lamberth
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,)		
	)	
Defendants.	)	
	)	

INTERIOR DEFENDANTS' REQUEST
FOR THE PRODUCTION OF DOCUMENTS, DATED JUNE 5, 2002

To: Mr. Dennis M. Gingold
Mr. Mark Kester Brown
1275 Pennsylvania Ave. NW
Ninth Floor
Washington, DC 20004

Mr. Keith Harper
Native American Rights Fund
1712 N. Street, NW
Washington, DC 20036-2976

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants" or "Interior"), pursuant to Fed. R. Civ. P. 34, hereby request that Plaintiffs produce the documents called for by this request, for inspection and copying at the office of Defendants' undersigned counsel, within 30 days from the date of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. The terms "Named Plaintiffs" and "you," as used herein, shall mean and refer to each of the Plaintiffs who were designated as class representatives in this lawsuit, and anyone acting on their behalf.

EXHIBIT # 3

2. The term "Federal Agency," as used herein shall mean any department, bureau, office, agency or other component of the Executive Branch of the federal government of the United States, and any official thereof, including but not limited to the Bureau of Indian Affairs, the Department of the Interior and the Department of the Treasury.

3. The term "IIM Accounts," as used herein, shall have the same meaning as in the Complaint filed in this lawsuit.

4. The term "IIM Funds," as used herein, shall mean the trust funds that the Five Named Plaintiffs contend they beneficially own or are owed, as described in the answer to Interrogatory Numbers 1 and 3 in the Plaintiffs' January 31, 2000, "Supplemental Contention Answers on Behalf of Class to Defendants' Fourth Set of Interrogatories, Requests for Admission and Requests for Production dated October 15, 1999."

5. The term "documents," as used herein, shall mean, refer to and include all written, recorded, graphic or data-stored matters whatsoever, which are in your possession, custody and control or that of your attorneys, accountants or agents. This term includes all such materials, however produced, reproduced, stored or transcribed, whether draft, revision or final, and also all tangibles or intangibles from which written, recorded or graphic matters may be generated, produced or transcribed. This term includes, but is not limited to:

> all advertisements, affidavits, agreements, announcements, appointment books and records, assignments, bank records, bills, books, books of account, brochures, bulletins, cablegrams, calendars, catalogs, certificates, charts, checks (front and back), communications, compilations, computer data or files (whether on tape, disk or any other means of data storage) computer printouts, contracts, correspondence, deposit slips, delivery records, diaries, drafts, drawings, e-mail messages, estimates, faxes, files and file labels, financial statements or reports or analyses or compilations, forms, intraoffice or interoffice communications, instructions, invoices, itemizations, jottings, journals, ledgers, letters, licenses, lists, manuals, memoranda, messages, microfilm, microfiche,

minutes, notes, notations, notices, pamphlets, papers, permits, photographs or depictions, plans, proofs, publications, receipts, recordings (whether written, visual, sound or otherwise), records, reports, sketches, statements, studies, summaries, tapes or disc recordings, telegrams, telex messages, texts, transcripts, videotapes, visual displays, wire transfer orders or receipts, writings and work papers.

This term includes the original document (or a copy thereof if the original is not available to you) and any copies which differ in any way from the original or from each other, by reason of additional writing, notations, underlining or otherwise. Electronically or machine-stored data is to be produced in a legible and readable form.

6. Whenever appropriate herein, the singular form of a word shall be interpreted as the plural, and the plural interpreted as the singular.

7. "And" as well as "or" shall be construed in either the disjunctive or conjunctive form as necessary to bring within the scope of the request any information which may otherwise be construed to be outside its scope.

8. The term "communication" or "communications", as used herein, shall mean and refer to and include any transmission of words or thoughts by a person or between or among two or more persons, including but not limited to spoken words, discussions, conferences, conversations, negotiations, agreements, understandings, interviews, inquiries, promises, correspondence, statements, whether oral or written, and whether transmitted in person or by electronic or other means, including but not limited to radio, telephonic, fax, e-mail or other means.

9. For each document, or portion thereof, that you seek to withhold on the basis of privilege or work product protection, provide a written response identifying the document, and described how and why it is privileged, all in sufficient detail to allow us and the presiding judge

to evaluate the merits of your claim of privilege.

10. The time period covered by this request is from the beginning of the time period for which Plaintiffs seek an accounting, through the time of your production of documents.

11. Pursuant to Fed. R. Civ. P. 34(b), you are requested to segregate documents produced in response hereto according to the paragraph or subparagraph to which they are responsive, or to produce them as they are kept in the ordinary course of business. You are also requested to identify in writing paragraphs or subparagraphs as to which no documents are produced.

12. You are to supplement your responses as required by Fed. R. Civ. P. 26(e).

DOCUMENTS TO BE PRODUCED

1. All letters or other documents that any of the Named Plaintiffs or anyone acting on their behalf ever sent to any Federal Agency, which contain any complaint, demand, request, inquiry, or notification regarding any of the following:

(a) the management, administration or handling of IIM Accounts or IIM Funds;

(b) accountings or any type of explanations, or the lack thereof, regarding IIM Accounts or IIM Funds; and

(c) any other matters that are the subject of paragraphs 3, 19 and 21 (including but not limited to all subparts thereto) of the Complaint filed in this lawsuit.

2. All letters or other documents ever sent by any Federal Agency in response to, or that refer to, any complaint, demand, request, inquiry or notification by any of the Named Plaintiffs with regard to any of the matters described in paragraph 1, above.

3. All other documents that reflect or evidence any communications by, from, or between any of the Named Plaintiffs and any Federal Agency, regarding any of the matters described in paragraphs 1 and 2, above.

4. All other documents that were created or generated by anyone, that refer to any complaint, demand, request, inquiry or notification made by any of the Named Plaintiffs to any

Federal Agency at any time before 1990, with regard to any of the matters described in paragraphs 1 and 2, above. This includes but is not limited to any newspaper or other articles, reports, memoranda, and letters.

5. All account statements, trust statements and any other document with a label or title that has or includes the word "statement," which any of the Named Plaintiffs ever received from any Federal Agency with regard to IIM Accounts or IIM Funds.

Respectfully submitted,

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OF COUNSEL:

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Office of the Solicitor

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on June 5, 2002 I served the Foregoing *Interior Defendants' Request for The Production of Documents, Dated June 5, 2002*, by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
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By U.S. Mail upon:

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Courtesy Copy by Facsimile and U.S. Mail:

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Special Master
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K.P. Kingston

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