UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
v.	)	(Special Master Alan L. Balaran)
GALE A. NORTON, et al.,	)	
Defendants.	)	

OPPOSITION OF THE UNITED STATES TO PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME TO FILE BILLS OF PARTICULARS WITH RESPECT TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE FILED OCTOBER 19, 2001

Under the scheduling order issued by the Special Master on November 4, 2002, plaintiffs are required to file bills of particulars on or before May 1, 2003 against 37 individuals named in plaintiffs' motion of October 19, 2001 for an order to show cause. Plaintiffs have now moved to extend indefinitely the date on which the bills of particulars must be filed. The United States opposes plaintiffs' request for an extension. Plaintiffs have not shown good cause for the requested extension, and the delay sought by plaintiffs would prejudice both the United States and the Named Individuals in their personal capacities.

Plaintiffs' rather succinct motion filed April 4, 2003 notes that the bills of particulars are due the day Trial 1.5 is scheduled to commence and requests an enlargement "because of the heavy schedule facing plaintiffs in preparing for Trial 1.5." If and to the extent plaintiffs are now claiming that the work required in April 2003 to prepare for Trial 1.5 interferes with preparation

of the bills of particulars, the problem is one of plaintiffs' own making, as demonstrated by the following sequence of events:

October 19, 2001 -	Plaintiffs file a motion for an order to show cause directed to Secretary of the Interior, the Assistant Secretary for Indian Affairs and the 37 Named Individuals.
March 15, 2002 -	The Court directs plaintiffs to "start working on a memorandum to supplement your orders to show cause, where you lay out individual defendant by individual defendant specifications of what the contempt proceedings would be for those 39 people so they each have an opportunity to address what the evidence is and what you are citing against any of those 39." [1]
November 4, 2002 -	The Special Master issues a schedule directing plaintiffs to file bills of particulars supporting the October 19. 2001 motion for orders to show cause against the 37 Named Individuals on or before May 1, 2003.
December 4, 2002 -	The Special Master denies plaintiffs' letter request to extend the due date for the bills of particulars until August 4, 2003.

If the plaintiffs did not know the basis for the charges against the 37 Named Individuals, they should not have filed the motion for an order to show cause in October 2001. If they believed that they have a basis for the motion as to one or more of the 37 Named Individuals, they should have been able to articulate their claims in the 13 months which have passed since the Court directed them to prepare specifications. Moreover, plaintiffs have known for five months that the bills of particulars were due May 1, 2003, and have known for four months that the Special Master would not extend the deadline. Plaintiffs have not even attempted to explain why they will not be able to prepare any bills of particulars which they in good faith believe are meritorious by the scheduled due date.

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[1] Transcript of Hearing, March 15, 2002, at 21:8-14.

Further delay in these proceedings prejudices both the United States and the Named Individuals in their personal capacities. As articulated in the opposition to plaintiffs' motion filed by Named Individuals Brooks and others on April 8, 2003, the Named Individuals have due process rights to speedy resolution of the contempt charges plaintiffs have made against them. Further delay also would prejudice the United States in preparing a defense of charges against Named Individuals in their official capacities. With the passage of time, potential witnesses change jobs, memories fade and the evidence grows stale. If plaintiffs believe they have a basis for the charges against the 37 Named Individuals, they should make them now, in bills of particulars. If plaintiffs cannot specify the charges by the May 1, 2003 deadline, they should voluntarily dismiss the motion for an order to show cause, or the Court should enter an order of dismissal.

Respectfully submitted,

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DATED: April 16, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., Plaintiffs, v. GALE NORTON, Secretary of the Interior, et al., Defendants.	Case No. 1:96CV01285 (Special Master Alan L. Balaran)

ORDER

This matter comes before the Court on *Plaintiffs' Motion for Enlargement of Time to File Bills of Particular with Respect to the Misconduct of Various Individuals Identified in Plaintiffs' Motion for Order to Show Cause, Filed October 19, 2001.* Upon consideration of the Opposition, Reply thereto, and the entire record of this case, it is hereby

ORDERED that the Plaintiffs' Motion for Enlargement of Time to file bills of particular is, DENIED; and it is

FURTHER ORDERED that the Plaintiffs file the bills of particular supporting the October 19, 2001 Motion for Order to Show Cause on or before May 1, 2003.

_____
Hon. Royce C. Lamberth
UNITED STATES DISTRICT JUDGE
United States District Court for the
District of Columbia

Date:_____

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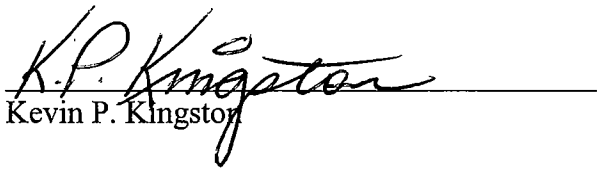
CERTIFICATE OF SERVICE

I certify that on April 17, 2003 I served the foregoing *Opposition of the United States to Plaintiffs' Motion for Enlargement of Time to File Bills of Particulars With Respect to Plaintiffs' Motion for Order to Show Cause Filed October 19, 2001* in the manner stated upon the persons listed on the attached service list.



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