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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DEFENDANTS' MOTION TO COMPEL DISCOVERY

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants" or "Interior"), pursuant to Fed. R. Civ. P. ("Rule" or "Rules") 37(a)(2)(B), hereby move that this Court enter an order requiring Plaintiffs to produce the documents called for in Interior Defendants' Request for the Production of Documents, Dated June 5, 2002 ("Request for Production"). In support of this motion, Interior Defendants state:

On June 5, 2002, Interior Defendants served Plaintiffs with the Request for Production (a copy of which is attached hereto as Exhibit A). Plaintiffs' response was due July 8, 2002. Plaintiffs have not responded to the Production Request, except for filing a motion for protective order on July 5, 2002.[1]

Rule 37(a)(2)(B) provides, in pertinent part:

> (B) . . . if a party, in response to a request for inspection submitted

[1] See Plaintiffs' 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; and (3) Stay of Rule 11 Motion With Respect to Court-Ordered Attorney's Fees, filed July 5, 2002 ("Plaintiffs' Motion for Protective Order").

> under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for . . . an order compelling inspection in accordance with the request.

An order compelling inspection is appropriate here. Interior Defendants submitted a request for inspection (the Production Request) under Rule 34, and Plaintiffs failed to respond that inspection would be permitted. Therefore, under Rule 37(a)(2)(B), an order compelling inspection is appropriate.

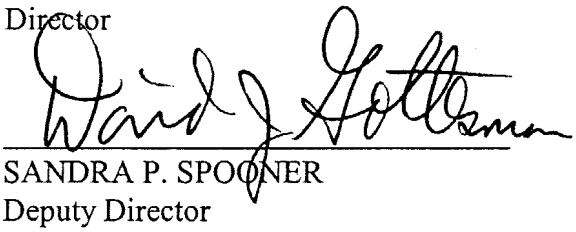
Plaintiffs' Motion for Protective Order, filed July 5, 2002, offers no proper basis upon which to excuse Plaintiffs from complying with the Production Request. Plaintiffs' motion asks that they be excused from complying with any discovery requests because they believe that Interior Defendants have not complied with Plaintiffs' discovery, or because of other alleged bad acts by Defendants, and because Plaintiffs seek a "respite." As shown in Interior Defendants' Opposition to Plaintiffs' Motion for Protective Order, filed contemporaneously herewith, and which is incorporated herein by reference, Plaintiffs' Motion for Protective Order is insupportable, for it shows no legal or factual basis for the extraordinary relief they seek (i.e., a blanket exemption from discovery obligations).

(continued on next page)

Counsel for Interior Defendants called Plaintiffs' counsel to discuss the relief requested in this Motion, and Plaintiffs' counsel said that Plaintiffs do not agree to such relief.

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
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Washington, D.C. 20044-0875
(202) 307-0183

Dated: July 16, 2002

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 COMPELLING PLAINTIFFS
TO COMPLY WITH INTERIOR DEFENDANTS'
REQUEST FOR THE PRODUCTION OF DOCUMENTS

This matter comes before the Court on Defendants' Motion to Compel Discovery. After considering that motion, any responses thereto, and the record of the case, the Court finds that the motion should be GRANTED.

IT IS THEREFORE ORDERED that, within ten (10) days from the date hereof, Plaintiffs shall comply with Interior Defendants' Request for the Production of Documents, Dated June 5, 2002, by producing to Interior Defendants all of the documents requested therein.

SO ORDERED this _____ day of _____, 2002.

_____
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

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Plaintiffs,	)	
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	)	(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 A
Defendants' Motion to

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,

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
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Washington, D.C. 20044-0875
(202) 514-7194

OF COUNSEL:

Sabrina A. McCarthy
Department of the Interior
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.
Washington, D.C. 20036-2976
202-822-0068

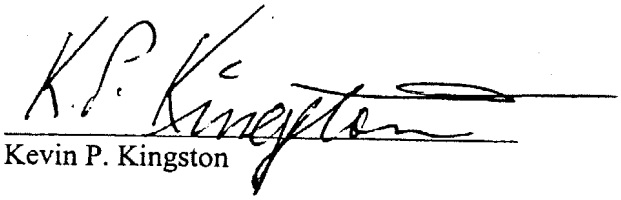
Dennis M. Gingold, Esq.
Mark Kester Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
202-318-2372

By U.S. Mail upon:

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

Courtesy Copy by Facsimile and U.S. Mail:

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



Kevin P. Kingston

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on July 16, 2002 I served the foregoing *Defendants' Motion to Compel Discovery*, 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

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By U.S. Mail upon:

Elliott Levitas, Esq.
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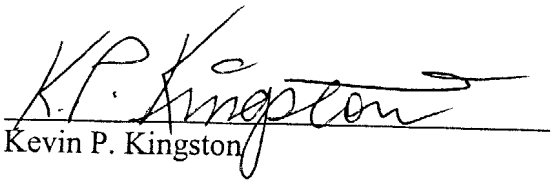
Atlanta, GA 30309-4530

By Facsimile and U.S. Mail:

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

Courtesy Copy by U.S. Mail:

Joseph S. Kieffer, III
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004



Kevin P. Kingston