

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR AN
ENLARGEMENT OF TIME TO FILE COMMENTS TO DEFENDANTS' FIRST
SUBMISSION IN COMPLIANCE WITH MAY 28, 2004 MEMORANDUM
AND ORDER REGARDING HISTORICAL STATEMENTS OF ACCOUNT**

In its Memorandum and Order dated May 28, 2004, the Court required Defendants, before sending any historical statements of account to Individual Indian Money ("IIM") account holders, to submit to the Court "(1) a sample of the actual letter to be mailed with the [prescribed] language inserted; (2) a sample of one of the historical statements of account; and (3) the exact number of historical statements of account and transmittal letters [Defendants] plan to send out." Memorandum and Order at 4. The Court required that "[a]ny sample documents should be redacted to remove all personally identifying information regarding the recipient." Id. at 4 n.2. On June 22, 2004, in compliance with the Court's Order, Defendants submitted, among other documents, a redacted sample transmittal letter and a redacted sample historical statement of account. See Defendants' First Submission In

Compliance With May 28, 2004 Memorandum And Order Regarding Historical Statements Of Account (filed June 22, 2004). The only information redacted from these documents is the name and address of the account holder, the account number, the account balance and transaction amounts,¹ and journal voucher numbers.

The Court's Order permitted Plaintiffs to "within 5 days of receipt of defendants' submission, submit to the Court brief comments or substitute language." Memorandum and Order at 4. Plaintiffs elected not to do so. Instead, on June 25, 2004, they moved for an enlargement of time of "five business days after receipt of the unredacted sample letter and historical statement to file their comments." Plaintiffs' Motion For An Enlargement Of Time To File Comments To Defendants' First Submission In Compliance With May 28, 2004 Memorandum And Order Regarding Historical Statements Of Account ("Motion for Enlargement") (filed June 25, 2004) at 1.

Plaintiffs make no effort whatsoever to explain why they need unredacted copies of the sample historical statement of account and transmittal letter in order to provide "brief comments or substitute language" regarding these sample documents; indeed, it is difficult to fathom how the identity of the account holder (whose account, incidentally, was opened after the class was certified, and who does not appear to have any account created before class certification, and therefore does not fall within the class definition) or the amounts credited to

¹ The account balance and transaction amounts were redacted because these numbers are ordinarily identical for all recipients of a particular tribal judgment or per capita payment.

the account holder's IIM account, could conceivably be relevant to the acceptability of the language related to the account holder's rights in this litigation.² Thus, Plaintiffs offer nothing more than the conclusory statements that they "cannot provide fully informed comments," Motion for Enlargement at 1, and that they are "unable to comment with specificity on the proposed transmission," *id.* at 4. Such statements do not suffice to justify an enlargement of the five-day period within which Plaintiffs were required to submit comments.³

As Plaintiffs have failed to offer any justification for an enlargement of time to file comments, the Court should deny Plaintiffs' Motion for Enlargement. As the deadline for filing such comments has passed, the Court should proceed to "conduct [its] final review of

² Even if Plaintiffs could devise an argument for requiring such information, similar information is readily available to them in the unredacted copies of the historical statements of account and transmittal letters provided to them on November 6, 2002, as government counsel advised Plaintiffs in the June 24, 2004 letter appended to Plaintiffs' Motion For Enlargement.

³ Moreover, Plaintiffs' Motion For Enlargement contains several misrepresentations. Defendants never "claimed that plaintiffs' counsel were no longer entitled to review their own clients' confidential information," or "concealed this information from plaintiffs' counsel" or "refuse[d] to provide . . . historical statements of account to plaintiffs['] counsel," as Plaintiffs now assert. Motion For Enlargement at 2-3. To the contrary, the Court's November 1, 2002 Order permitting Defendants "pursuant to 5 U.S.C. § 552a(b)(11), to provide plaintiffs' counsel with a copy of any historical statements of account provided to any Individual Indian Money account holder," Order at 1 (Nov. 1, 2002), resulted from *Interior Defendants'* motion seeking an order permitting them to provide copies of the historical statements of account to Plaintiffs' counsel. See Interior Defendants' Motion And Supporting Memorandum For Order Permitting The Provision Of Copies Of Historical Statements Of Account To Class Counsel (filed Sept. 10, 2004). Plaintiffs opposed that motion.

[Defendants' submission]," as contemplated in its May 28, 2004 Memorandum and Order.

Memorandum and Order at 4.

Dated: July 9, 2004

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General
PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

/s/ Cynthia L. Alexander
SANDRA P. SPOONER
D.C. Bar No. 261495
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Counsel
CYNTHIA L. ALEXANDER
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

CERTIFICATE OF SERVICE

I hereby certify that, on July 9, 2004 the foregoing *Defendants' Opposition to Plaintiffs' Motion for an Enlargement of Time to File Comments to Defendants' First Submission in Compliance with May 28, 2004 Memorandum and Order Regarding Historical Statements of Account* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

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Case No. 1:96CV01285
(Judge Lamberth)

ORDER

Upon consideration of *Plaintiffs' Motion For An Enlargement Of Time To File Comments To Defendants' First Submission In Compliance With May 28, 2004 Memorandum And Order Regarding Historical Statements Of Account*, Dkt. 2602, Defendants' opposition thereto, and the record in this case, it is hereby

ORDERED that Plaintiffs' motion is DENIED.

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
Fax (202) 514-9163

Dennis M Gingold, Esq.
Mark Brown, Esq.
607 - 14th Street, NW, Box 6
Washington, D.C. 20005
Fax (202) 318-2372

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

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

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
(406) 338-7530