

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

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

---

**DEFENDANTS' MOTION TO STRIKE  
PLAINTIFFS' MOTION TO SHOW CAUSE AGAINST INDIVIDUALS  
OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER  
TO PRECLUDE SERVICE UPON INDIVIDUALS OF  
PLAINTIFFS' MOTION TO SHOW CAUSE AND  
TO RELIEVE OBLIGATION OF INDIVIDUALS TO RESPOND**

**INTRODUCTION**

On January 13, 2004, Plaintiffs moved for an order that Secretary Gale Norton and twelve non-party individuals (the "Named Individuals") show cause why they should not be held in civil and criminal contempt for alleged violations of the temporary restraining order entered June 27, 2003, the preliminary injunction issued July 28, 2003, and the Order of December 21, 1999 ("Plaintiffs' Motion") (Dkt No. 2441). Defendants filed their opposition thereto on January 27, 2004 ("Defendants' Response") (Dkt No. 2451). As part of Defendants' Response, Defendants demonstrated that Plaintiffs' motion 1) failed to identify any orders directed to the Named Individuals; 2) failed to set forth any facts or evidence to support a claim that any of the Named Individuals acted in a personal, as opposed to official, capacity or in any way violated a court order directed to the Defendants; and 3) otherwise failed to identify any basis for finding any of

the Named Individuals personally liable for any acts or omissions. Defendants' Response at 36-37.

Despite Defendants' Response, on January 29, 2004, Plaintiffs filed a "Motion to Treat as Conceded Plaintiffs' Motion for an Order to Show Cause Why the Department of the Interior, Interior Secretary Gale Norton, and Her Senior Managers and Counsel, Should Not Be Held in Civil and Criminal Contempt for Violating Court Orders, Including the Temporary Restraining Order and Preliminary Injunction Entered to Protect Trust Data and Assets (January 13, 2004) with Respect to Citizens Griles, Cason, Tipton, McCallum, Keisler, Schiffer, Kohn, Spooner, Stemplewicz, Gillett and Warshawsky" ("Default Motion") (Dkt No. 2454).<sup>1</sup> Plaintiffs' Default Motion appears to be based solely on the unfounded proposition that the Named Individuals had an individual responsibility to respond separately to Plaintiffs' Motion. Defendants filed their opposition to Plaintiffs' Default Motion on February 6, 2004 ("Default Response") (Dkt No. 2460), pointing out that separate responses by the Named Individuals were unnecessary, unwarranted, and impossible based upon a paucity of individuation in Plaintiffs' underlying motion for order to show cause.<sup>2</sup>

Plaintiffs have now served their Default Motion upon several of the Named Individuals. In addition to being utterly baseless, Plaintiffs' actions vis-à-vis the Named Individuals, are causing procedural chaos, unnecessary burdens on the government and the Named Individuals, and are harassing to the Named Individuals. For these reasons, the Defendants file this motion to

---

<sup>1</sup> Plaintiffs filed a similar motion against Secretary Norton in her individual capacity. (Dkt No. 2453).

<sup>2</sup> Defendants also filed a response to Plaintiffs' motion against Secretary Norton in her individual capacity. (Dkt No. 2459). Secretary Norton submitted a motion for leave to file a separate response in her individual capacity as well as a memorandum in opposition to Plaintiffs' motion for order to show cause against Secretary Norton and Plaintiffs' motion to treat the show cause motion as conceded. (Dkt No. 2471, 2472).

strike, or in the alternative, for a protective order, to protect their interests and those of the Named Individuals in this litigation.

### **DISCUSSION**

Plaintiffs' attempts to charge the Named Individuals with civil contempt can have no purpose other than to harass and to blemish the reputations of the Named Individuals. *See, e.g., Hernandez v. O'Malley*, 98 F.3d 293, 294 (7th Cir. 1996) (Court affirmed dismissal of plaintiff's action to enforce consent decree against State's Attorney in his individual capacity, noting that "[w]e cannot fathom why a person suing to enforce the . . . decree might want to pursue the officeholders in their personal capacities, except for purposes of harassment, which is hardly a reason the court should approve."). Accordingly, the proper remedy is to strike Plaintiffs' Motion to the extent it purports to proceed against the Named Individuals in their individual capacity and to strike Plaintiffs' Default Motion in its entirety.

Alternatively, this Court should enter a Protective Order precluding Plaintiffs from serving either Plaintiffs' Motion or Plaintiffs' Default Motion upon any other of the Named Individuals and entering an order relieving individuals of any obligation to respond. Plaintiffs have not identified any remedy for civil contempt that would be appropriately addressed to the Named Individuals in their individual capacity as opposed to their official capacity since all the actions complained of were undertaken by the Named Individuals in their official capacity. The Defendants timely responded and addressed every issue raised by the Plaintiffs in Plaintiffs' Motion and those issues are now before the Court. No basis exists to proceed against the Named Individuals prior to, or contemporaneously with, adjudicating Plaintiffs' Motion as it pertains to the Defendants.

Plaintiffs apparently believe that this case is best served by requiring the government to retain additional counsel who will file separate briefs and participate in multiple proceedings, all without regard to whether the Defendants themselves are in contempt of court. Diverting the Court's resources, as well as the government's resources, in this manner is inappropriate and potentially harmful to this litigation. The fact that Plaintiffs' motions against the Named Individuals serve no other purpose but to harass those individuals, contrary to the dictates of Rule 11, requires the Court to take affirmative action on their behalf. That action is to issue a protective order preventing Plaintiffs from taking any further actions against the Named Individuals at this time.

### **CONCLUSION**

For the foregoing reasons, Defendants request that the Court strike Plaintiffs' Motion as it pertains to individuals and Plaintiffs' Default Motion in its entirety or, in the alternative, that the Court order Plaintiffs to cease and desist from serving Plaintiffs' Motion or Plaintiffs' Default Motion upon any individuals and that an order be entered relieving the individuals, including Secretary Norton, of any obligation to respond personally.<sup>3</sup> Proposed orders are attached hereto.

Respectfully submitted,

ROBERT D. McCALLUM, JR.  
Associate Attorney General

PETER D. KEISLER  
Assistant Attorney General

---

<sup>3</sup> Pursuant to Local Civil Rule 7(m), counsel for the Defendants conferred with Plaintiffs' counsel, Mr. Dennis Gingold, on February 24, 2004, regarding this motion, and Plaintiffs' counsel stated that Plaintiffs would oppose this motion.

STUART E. SCHIFFER  
Deputy Assistant Attorney General

MICHAEL F. HERTZ  
Director

/s/ Dodge Wells  
Dodge Wells  
D.C. Bar No. 425194  
Tracy L. Hilmer  
D.C. Bar No. 421219  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
P.O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 307-0474

DATED: February 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that, on February 24, 2004 the foregoing *Defendants' Motion to Strike Plaintiffs' Motion to Show Cause Against Individuals or, In the Alternative, for a Protective Order to Preclude Service Upon Individuals of Plaintiffs' Motion to Show Cause and to Relieve Obligation of Individuals to Respond* 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

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
	)	
v.	)	
	)	
GALE A. NORTON, et al.,	)	
	)	
Defendants.	)	
_____	)	

**PROTECTIVE ORDER**

Upon consideration of *Defendants' Motion to Strike Plaintiffs' Motion to Show Cause Against Individuals Or, in the Alternative, for a Protective Order To Preclude Service upon Individuals of Plaintiffs' Motion to Show Cause and To Relieve Obligation of Individuals to Respond* (Dkt No. \_\_\_\_\_), and the entire record in this case, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2004, hereby

ORDERED that Defendants' Motion for Protective Order be, and hereby is, GRANTED; and it is

FURTHER ORDERED that Plaintiffs shall cease and desist from attempting to serve *Plaintiffs' Motion for an Order to Show Cause Why the Department of the Interior, Interior Secretary Gale Norton, and Her Senior Managers and Counsel, Should Not Be Held in Civil and Criminal Contempt for Violating Court Orders, Including the Temporary Restraining Order and Preliminary Injunction Entered to Protect Trust Data and Assets* (Dkt No. 2441) (“Plaintiffs’ Motion) upon any individual; and it is

FURTHER ORDERED that Plaintiffs shall cease and desist from attempting to serve *Plaintiffs' Motion to Treat as Conceded Plaintiffs' Motion for an Order to Show Cause Why the Department of the Interior, Interior Secretary Gale Norton, and Her Senior Managers and Counsel, Should Not Be Held in Civil and Criminal Contempt for Violating Court Orders, Including the Temporary Restraining Order and Preliminary Injunction Entered to Protect Trust Data and Assets (January 13, 2004) with Respect to Citizens Griles, Cason, Tipton, McCallum, Keisler, Schiffer, Kohn, Spooner, Stemplewicz, Gillett and Warshawsky (Default Motion) (Dkt No. 2453)* upon any individual; and it is

FURTHER ORDERED that any individuals identified in Plaintiffs' Motion are relieved of any obligation to respond to Plaintiffs' Motion; and it is

FURTHER ORDERED that any individuals identified in Plaintiffs' Motion are relieved of any obligation to respond to Plaintiffs' Default Motion, or *Plaintiffs' Motion to Treat as Conceded Plaintiffs' Motion for an Order to Show Cause Why the Department of the Interior, Interior Secretary Gale Norton, and Her Senior Managers and Counsel, Should Not Be Held in Civil and Criminal Contempt for Violating Court Orders, Including the Temporary Restraining Order and Preliminary Injunction Entered to Protect Trust Data and Assets (January 13, 2004) with Respect to Citizen Norton (Dkt No. 2453)*.

SO ORDERED

---

Honorable Royce C. Lamberth  
United States District Judge



cc:

Dodge Wells  
Tracy L. Hilmer  
Commercial Litigation Branch  
Civil Division  
P.O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044-0261  
Fax (202) 616-3085

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

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

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

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
	)	
v.	)	
	)	
GALE A. NORTON, et al.,	)	
	)	
Defendants.	)	
_____	)	

**PROTECTIVE ORDER**

Upon consideration of *Defendants' Motion to Strike Plaintiffs' Motion to Show Cause Against Individuals Or, in the Alternative, for a Protective Order To Preclude Service upon Individuals of Plaintiffs' Motion to Show Cause and To Relieve Obligation of Individuals to Respond* (Dkt No. \_\_\_\_\_), and the entire record in this case, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2004, hereby

ORDERED that Defendants' Motion for Protective Order be, and hereby is, GRANTED; and it is

FURTHER ORDERED that Plaintiffs shall cease and desist from attempting to serve *Plaintiffs' Motion for an Order to Show Cause Why the Department of the Interior, Interior Secretary Gale Norton, and Her Senior Managers and Counsel, Should Not Be Held in Civil and Criminal Contempt for Violating Court Orders, Including the Temporary Restraining Order and Preliminary Injunction Entered to Protect Trust Data and Assets* (Dkt No. 2441) (“Plaintiffs’ Motion) upon any individual; and it is

FURTHER ORDERED that Plaintiffs shall cease and desist from attempting to serve *Plaintiffs' Motion to Treat as Conceded Plaintiffs' Motion for an Order to Show Cause Why the Department of the Interior, Interior Secretary Gale Norton, and Her Senior Managers and Counsel, Should Not Be Held in Civil and Criminal Contempt for Violating Court Orders, Including the Temporary Restraining Order and Preliminary Injunction Entered to Protect Trust Data and Assets (January 13, 2004) with Respect to Citizens Griles, Cason, Tipton, McCallum, Keisler, Schiffer, Kohn, Spooner, Stemplewicz, Gillett and Warshawsky (Default Motion) (Dkt No. 2453)* upon any individual; and it is

FURTHER ORDERED that any individuals identified in Plaintiffs' Motion are relieved of any obligation to respond to Plaintiffs' Motion; and it is

FURTHER ORDERED that any individuals identified in Plaintiffs' Motion are relieved of any obligation to respond to Plaintiffs' Default Motion, or *Plaintiffs' Motion to Treat as Conceded Plaintiffs' Motion for an Order to Show Cause Why the Department of the Interior, Interior Secretary Gale Norton, and Her Senior Managers and Counsel, Should Not Be Held in Civil and Criminal Contempt for Violating Court Orders, Including the Temporary Restraining Order and Preliminary Injunction Entered to Protect Trust Data and Assets (January 13, 2004) with Respect to Citizen Norton (Dkt No. 2453)*.

SO ORDERED

---

Honorable Royce C. Lamberth  
United States District Judge

cc:

Dodge Wells  
Tracy L. Hilmer  
Commercial Litigation Branch  
Civil Division  
P.O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044-0261  
Fax (202) 616-3085

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

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

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