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.	)	
	)	

DEFENDANTS' REPLY MEMORANDUM IN FURTHER SUPPORT OF THEIR MOTION TO STRIKE PLAINTIFFS' "EMERGENCY NOTICE"

Defendants have moved to strike an "emergency notice" filed by Plaintiffs because it is wholly lacking in supporting evidence and contains derogatory remarks aimed at Interior officials.[1] Plaintiffs' Notice seeks no relief, and consists of nothing more than two letters that contain unsworn allegations from anonymous sources. In response to our motion, Plaintiffs leave these defects unremedied and again fail to submit anything of substance in support of their notice.[2] Instead, Plaintiffs refer to the anonymous allegations they have submitted as "powerful evidence." Plaintiffs' Opposition at 2. The notice should be stricken.[3]

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[1] See Defendants' Motion to Strike Plaintiffs' "Emergency Notice" (filed May 12, 2004) ("Motion to Strike"); Emergency Notice of Individual Indian Trust Records in Imminent Risk of Destruction and Loss (filed April 28, 2004) ("Plaintiffs' Notice").

[2] See Plaintiffs' Opposition to Defendants' Motion to Strike Plaintiffs' "Emergency Notice" (filed May 24, 2004) ("Plaintiffs' Opposition") at 2.

[3] Plaintiffs' Opposition also lacked a proposed order in violation of Local Civil Rule 7(c), which requires that "each motion and opposition shall be accompanied by a proposed order."

ARGUMENT

Plaintiffs have made their position clear: that unsworn, anonymous and unverifiable allegations should be treated as evidentiary fact. They seek to defend this untenable contention by demanding an *evidentiary rebuttal by Defendants* to every unsupported and anonymous charge Plaintiffs make. See Plaintiffs' Opposition at 3 ("Where is the rebuttal? Where is the disclaimer affidavit . . .? . . . Where is a shred of competent evidence . . .? . . . ."). Simply put, Plaintiffs have it all wrong. Our legal system does not treat *incognito* allegations as "powerful evidence." Nor does it require a defendant to provide an evidentiary response to unsupported and unverifiable hearsay charges cast by a plaintiff.

Factual allegations filed with the Court must have evidentiary support. Fed. R. Civ. P. 11(b) (attorneys or parties filing papers with the Court are certifying that, inter alia, "the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery"). Yet, now challenged to support their bare charges, Plaintiffs have come forward with no substantiation at all. It is thus apparent that Plaintiffs' counsel filed their notice without any inquiry into whether the allegations were true or not, seeking instead to compel Interior to prove or disprove the charges. Plaintiffs' confounded approach must be rejected.

Plaintiffs do not dispute that, in addition to being facially incompetent as an evidentiary matter, their notice also contains unwarranted personal attacks on Interior employees and places inappropriate racial remarks in the record. See Plaintiffs' Notice, Ex. 1 at 2. Instead, they evade the issue by feigning an inability to determine what portions of the anonymous letter attached to their notice contain the derogatory remarks. Plaintiffs' Opposition at 7. Their approach rings hollow, for although we declined to repeat the slurs included in Plaintiffs' Notice, our motion

papers included a precise citation to the exhibit and page that contained the offending language. See Motion to Strike at 3, n. 5 (citing Plaintiffs' Notice, Ex. 1 at 2).

As made clear in our motion papers, because Plaintiffs put forth no evidence and sought no relief, their notice warrants no substantive response and should be stricken. Motion to Strike at 4. Nevertheless, we submitted with our motion the Department of the Interior's ("Interior") response to the union letter that was attached to Plaintiffs' Notice. Id. at 4-5, Exh. 1. We did so for the Court's information, and because the Plaintiffs failed to include it with their notice.[4] Flailing for some basis on which to moor their incompetent notice, they suggest that Interior's response somehow relieves them of the obligation to provide evidentiary support for the factual claims they make. See Plaintiffs' Opposition at 4. It does not. See Fed. R. Civ. P. 11(b)(3). Rather, it demonstrates only that Interior is taking appropriate steps to address issues that arise in connection with its recordkeeping obligations, even when those issues derive from unknown sources and arise in the context of labor posturing.

[4] Plaintiffs' contention that Interior somehow tried to "conceal" its response to the union letter lacks any basis in fact or common sense, particularly given that Plaintiffs themselves omitted Interior's response from the notice they filed with the Court. And, putting aside the dubious suggestion that labor matters falling exclusively within Interior's province must be reported to the Court, Interior informed the Court, in its Seventeenth Quarterly Report, that it had received the union letter and had responded to the allegations raised therein. See Status Report to the Court Number Seventeen (filed May 3, 2004) at 32.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that the Court issue an Order granting their Motion to Strike Plaintiffs' "Emergency Notice."

Dated: June 4, 2004

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that, on June 4, 2004 the foregoing *Defendants' Reply Memorandum in Further Support of Their Motion to Strike Plaintiffs' "Emergency Notice"* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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