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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

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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
	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

REPLY BRIEF IN SUPPORT OF INTERIOR DEFENDANTS' MOTION TO STRIKE "PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF COMMENTS FILED BY PLAINTIFFS ON AUGUST 27, 2003 AND SEPTEMBER 10, 2003 REGARDING THIS COURT'S PRELIMINARY INJUNCTION" OR, IN THE ALTERNATIVE, INTERIOR DEFENDANTS' RESPONSE THERETO

Interior Defendants respectfully submit the following reply brief in support of their motion to strike plaintiffs' notice of supplemental authority ("Plaintiffs' Notice").[1]

Plaintiffs' opposition begins with the remarkable criticism that Interior Defendants did not seek leave to file their alternative request to respond to Plaintiffs' Notice. Pl. Br. at 1 n.1. Insofar as Interior Defendants' principal motion seeks an order striking Plaintiffs' Notice, only offering a response as alternative relief in the event the Court determines not to strike plaintiffs' outrageous pleading, it would make little sense to seek leave to request such alternative relief. As we explain in the motion to strike, Plaintiffs' Notice is the third objectionable pleading plaintiffs have filed, without authority, to attack Interior Defendants' IT submissions. See, e.g., Motion to

[1] Plaintiffs' opposition to the motion to strike correctly notes that the caption of this motion inadvertently referred to plaintiffs' "complaints" filed on August 27, 2003, and September 10, 2003, rather than plaintiffs' "comments" filed on those two dates. Pl. Br. at 1 n.1. We respectfully apologize for any confusion resulting from this typographical error.

Strike at 1 (stating that Plaintiffs' Notice is "not authorized by the rules governing practice and procedure in this Court). Just like Plaintiffs' Notice, the two sets of "comments" submitted by plaintiffs on August 27, 2003, and September 10, 2003, were neither filed pursuant to Court rules nor after seeking leave of this Court to file them.

Given plaintiffs' penchant for submitting materials without reference to Court rules or after seeking leave of Court, their complaint that Interior Defendants failed to seek leave to seek alternative relief truly defines the term "shrill utterance." Regardless, it should not be necessary for the Court to consider our request for alternative relief because the Plaintiffs' Notice is so patently objectionable that it should be stricken pursuant to Rule 12(f), as requested in our motion to strike.

Plaintiffs' opposition to the motion to strike provides yet another example of plaintiffs' continuing practice of submitting materials to the Court without reference to rules of practice by filing a so-called "request" for the Court to order sanctions sua sponte.[2] See Pl. Br. at 1, 2 n.2, 3, 6 ("requests" Court to consider entry of sanctions order sua sponte); see also Plaintiffs' Motion for the Court Sua Sponte to Consider Sanctioning Counsel for Citizen Norton for Filing a Frivolous and Defective Motion in Violation of Federal Rules of Civil Procedure Rule 11(c)(1)(B) (filed Sept. 16, 2003).

Moreover, it speaks volumes that plaintiffs' opposition does not address Interior Defendants' substantive assertions in the motion to strike. While the motion to strike explains

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[2] It is stating the obvious that Interior Defendants dispute every argument advanced by plaintiffs in their "request" for the Court to consider sanctions sua sponte. Insofar as plaintiffs have not chosen to seek such relief pursuant to a motion, however, we will not dignify their arguments with a further response. In so doing, we reserve the right to respond in the event the Court determines to consider plaintiffs' request as a motion filed pursuant to legal authority.

that Plaintiffs' Notice was not filed pursuant to any authority and that it fails – in its two pages of text – to substantiate any of its outrageous charges, plaintiffs' opposition simply discusses the general law disfavoring motions to strike[3] and launches more broadside attacks on Secretary Norton, her "managers," and her counsel. Plaintiffs' failure to address the substantive assertions in our motion to strike further confirms that Plaintiffs' Notice is scandalous and precisely the sort of outrageous pleading to be stricken pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

Conclusion

For the reasons set forth in our motion to strike and the foregoing reasons, Interior Defendants respectfully request that Court issue an order striking Plaintiffs' Notice, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General

PETER D. KEISLER
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

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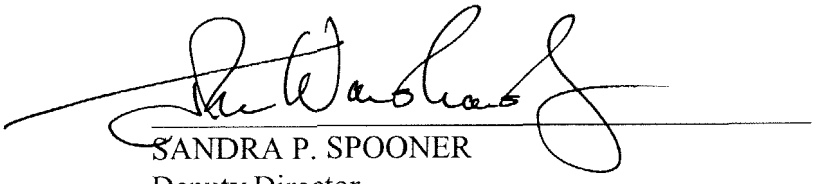
[3] Plaintiffs remonstrate that "[t]his Court has addressed motions to strike allegedly scandalous material in other cases and consistently has denied such motions." Pl. Br. at 2 n.3. Plaintiffs fail to note, however, cases cited by Interior Defendants in the motion to strike where this Court has granted such motions. See Motion to Strike at 2 (citing Johnson v. McDow, 236 B.R. 510, 523 (D.D.C. 1999) (striking "scandalous and highly insulting allegations"); Alexander v. FBI, 186 F.R.D. 21, 53 (D.D.C. 1998) (finding "no evidence to support the claim made by plaintiffs" and striking it from record); Pigford v. Veneman, 215 F.R.D. 2, 4-5 (D.D.C. 2003) (striking unsubstantiated allegations against government counsel)).

J. CHRISTOPHER KOHN
Director



SANDRA P. SPOONER
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Attorney
GLENN D. GILLETT
JOHN WARSHAWSKY (D.C. Bar No. 417170)
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Telephone: (202) 514-7194

October 17, 2003

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on October 17, 2003 I served the foregoing *Reply Brief in Support of Interior Defendants' Motion to Strike "Plaintiffs' Notice of Supplemental Authority in Support of Comments Filed by Plaintiffs on August 27, 2003 and September 10, 2003 Regarding this Court's Preliminary Injunction" Or, in the Alternative, Interior Defendants' Response Thereto* by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Richard A. Guest, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 822-0068

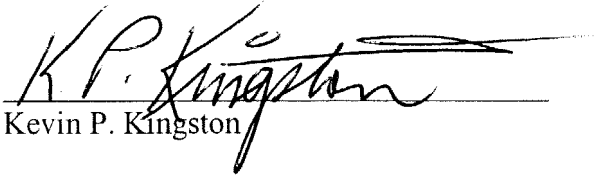
Dennis M. Gingold, Esq.
Mark Kester Brown, Esq.
607 - 14th Street, NW, Box 6
Washington, D.C. 20005
(202) 318-2372

Per the Court's Order of April 17, 2003,
by facsimile and by U.S. Mail upon:

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

By U.S. Mail upon:

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



Kevin P. Kingston