

FILED
GREAT FALLS DIV.

2011 MAY 3 AM 8 08

IN THE UNITED STATES DISTRICT COURT

PATRICK E. DUFFY, CLERK
BY _____

FOR THE DISTRICT OF MONTANA

DEPUTY CLERK

GREAT FALLS DIVISION

CHRISTINE A. COBELL,

Plaintiff,

vs.

KATHLEEN SEBELIUS, in Her
Official Capacity as SECRETARY OF
THE UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendant.

No. CV-10-55-GF-SEH

**MEMORANDUM
AND ORDER**

INTRODUCTION

Plaintiff, Christine A. Cobell, brought this action against Defendant, Kathleen Sebelius, Secretary of the United States Department of Health and Human Services, for damages under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 *et seq.* Answer was filed on December 20, 2010. On April 8, 2011, Plaintiff filed a Motion for a Jury Trial under Fed. R. Civ. P. 39(b). The motion is opposed.

DISCUSSION

No right to a jury trial exists for the ADEA claim. Lehman v. Nakshian, 453 U.S. 156, 162-69 (1981). The jury demand for the Title VII claim is not timely¹ and the Court may not appropriately exercise its discretion to extend the time period for making the demand. Craig v. Atlantic Richfield Company, 19 F.3d 472, 477 (9th Cir. 1994); Russ v. Standard Insurance Company, 120 F.3d 988, 989 (9th Cir. 1997); Bell v. Cameron Meadows Land Company, 669 F.2d 1278, 1285 (9th Cir. 1982).

ORDER

Plaintiff's Rule 39(b) Motion for a Jury Trial² is DENIED.

DATED this 2nd day of May, 2011.



SAM E. HADDON

United States District Judge

¹ Fed. R. Civ. P. 38(b) provides, in pertinent part, that “[o]n any issue triable of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand – which may be included in a pleading – no later than 14 days after the last pleading directed to the issue is served . . .” Rule 38(d) provides, in pertinent part, that “[a] party waives a jury trial unless its demand is properly served and filed.”

² Document No. 18