

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No. 1:96 CV 01285 (TFH)
)	
SALLY JEWELL, Secretary of the Interior, et al.,)	
)	
Defendants.)	
_____)	

AFFIDAVIT OF WILLIAM E. DORRIS

1. I am a partner in the law firm of Kilpatrick Townsend & Stockton, LLP (“Kilpatrick”) and am one of the attorneys representing the plaintiffs in this action. I submit this Affidavit in support of *Plaintiffs’ Motion to Make an Interim Payment to Class Counsel for Settlement Fees, Expenses and Costs.*

The Parties’ Agreements and Legislative Approval

2. The Settlement Agreement provides for the payment of post-settlement attorneys’ fees, expenses and costs at reasonable intervals as ordered by the Court. Settlement Agreement [Dkt 3660-2], ¶ J.4. It also provides that the attorneys be paid for reasonable post-settlement time spent representing the plaintiffs, including but not limited to preparing fee applications, at their actual hourly rates. *Id.*

3. The Settlement Agreement also makes it clear that the amount to be paid for post-settlement attorneys’ fees, expenses and costs is within the Court’s discretion in accordance with

controlling law after considering any objections or responses from class members and defendants. *Id.* at ¶ J.5.

4. Pursuant to the Agreement on Attorneys' Fees, Expenses, and Costs, the parties agreed that Class Counsel could seek to be paid up to \$10 million for attorneys' fees, expenses and costs incurred after December 7, 2009 based on hours worked at the attorneys' actual billing rates, plus actual expenses and costs. Agreement on Attorneys' Fees, Expenses and Costs [Dkt 360-16], ¶ J.5. That agreement also requires Class Counsel to file statements regarding Class Counsel's billing rates, as well as daily time, expense, and cost records in support of any fee petition. *Id.*

5. The Settlement Agreement contemplated that Congress would promptly approve the Settlement Agreement by December 31, 2009, which was referred to as the "Legislation Enactment Deadline." Settlement Agreement [Dkt 3660-2], p. 2 and ¶ A.22. However, when it became apparent that Congress would not act on the legislation prior to December 31, 2009, the parties agreed to amend the Settlement Agreement to extend the Legislation Enactment Date to February 28, 2010. Modification to December 7, 2009 Class Action Settlement Agreement dated December 29, 2010. [Dkt 3660-5], ¶ 6. At the same time, and because it was clear that substantial additional work would be required to obtain Congressional approval of the settlement, the parties amended the Agreement on Attorneys' Fees to increase the maximum amount of post-settlement fees which would be available from \$10 million to \$12 million. Modification to December 7, 2009 Agreement on Attorneys' Fees, Expenses and Costs dated December 29, 2010. [Dkt 3660-17], ¶¶ 3-6.

6. Congress did not act as promptly as expected and the parties continued to extend the deadline for legislation. Though this required more work by Class Counsel in seeking, on

behalf of the plaintiffs, to have the legislation enacted, the \$12 million cap was not increased again.

7. The Claims Resolution Act of 2010, Pub. L. 111-291, 124 Stat. 3064 (2010) (“CRA”), signed into law in December 2010, expressly “authorized, ratified and confirmed” the settlement. CRA, §101(c). It also provided that the Court was to decide the amount of attorneys’ fees in accordance with controlling law, giving due consideration to the special status of the plaintiffs as beneficiaries of a federally created and administered trust. *Id.* at § 101(g)(1). Congress required Class Counsel to provide notice of the terms of the Agreement on Attorneys’ Fees, Expenses and Costs in their fee petitions. *Id.* at § 101(g)(2). Congress also made it clear that the CRA was not intended to affect the enforceability of the agreement on attorneys’ fees. *Id.* at § 101(g)(2)(3).

Class Counsel’s Post-Settlement Work

8. Following the settlement, the attorneys representing the plaintiffs have worked diligently on behalf of the plaintiffs in helping obtain legislative and judicial approval of the settlement, and beginning the distribution of the settlement proceeds. To understand the post-settlement work performed by Class Counsel, it is helpful to divide the post-settlement period into the following four phases:

Legislative and Outreach Phase	December 2009 – November 2010
Judicial Approval Phase	December 2010 – July 2011
Appellate Phase	August 2011 – November 2012
Distribution Phase	November 2012 – continuing

Legislative and Outreach Phase

9. Following the execution of the Settlement Agreement on December 7, 2009, Class Counsel’s two primary tasks were to communicate with the plaintiff classes regarding the settlement and assist in obtaining Congressional approval of the settlement.

10. As part of the outreach to the plaintiff classes, Class Counsel undertook an extensive personal effort to explain the terms of the settlement to the plaintiff classes. Class Counsel traveled thousands of miles throughout the western United States to hold over 25 meetings in person at Indian reservations and other communities to inform individual class members of the terms of the settlement and to answer their questions. The meetings were held across the states of Arizona, California, Idaho, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Wisconsin, Wyoming, and Washington.

11. We also communicated with and attended meetings of tribal organizations, including the National Congress of American Indians (“NCAI”), the Affiliated Tribes of Northwest Indians (“ATNI”), and the United South and Eastern Tribes (“USET”) in order to explain the terms of the settlement and seek their support for it. In addition, we actively communicated directly with tribal leaders throughout the country to explain the terms of the settlement and garner support for it.

12. Throughout this phase, we also reached out to the classes through the press and media. In addition to providing information and interviews to the press and media, we carefully followed all stories on the settlement to ensure, as best we could, that any material inaccuracies were corrected.

13. Class Counsel also responded to a large volume of calls, emails and correspondence with class members regarding the terms of the settlement and eligibility to participate. In addition to calls, emails and correspondence between the attorneys and many individual class members, Kilpatrick maintained a “hot line” call in number and email address manned by an experienced paralegal dedicated to class members in order to more easily

communicate with them. Class Counsel also continued to maintain a website for communicating with class members throughout this phase.

14. In addition to outreach to the Class Members, our other major task during this phase was advocating for the passage of the necessary legislation to authorize and approve the settlement. This work in advocating for the legislation was performed on the plaintiffs' behalf and was work contemplated and necessitated by the Settlement Agreement's requirement that Congress legislatively approve the settlement. Ms. Cobell also requested that Class Counsel actively advocate for the passage of the legislation on behalf of the plaintiffs and was herself actively involved in the process of doing so.

15. Though the parties contemplated that Congressional approval would be a relatively quick process, in reality it proved to be a long and time consuming one, spanning a year of substantial work by Class Counsel. As this phase progressed, Class Counsel became more and more involved in an intensive effort to seek Congressional approval.

16. These extensive efforts in the House and Senate continued into November 2010 and included regular meetings with members of Congress and their staff, daily inquiries regarding the potential developments regarding the legislation, arranging testimony at House and Senate hearings, negotiating modifications to the settlement, and working with Congressional staffers on the drafting of legislation which was ultimately enacted. Our work also involved coordinating efforts with the White House, the Department of Interior and the Department of Justice regarding the legislative effort.

17. At various times during the legislative period, it appeared that the necessary legislation may not be enacted. As a result, we had to consider alternative approaches to settling

the case. This necessitated research, study, strategy sessions by Class Counsel, and discussions with the Department of Justice.

18. Together with Ms. Cobell, and the other attorneys on the team, Class Counsel were ultimately successful in advocating for the passage of the Claims Resolution Act of 2010, including obtaining the unanimous consent of the Senate for the bill in the process.

19. In addition to these two primary tasks of outreach and legislative approval, we also performed a number of other tasks important to the settlement during this phase. For example:

- In December 2009, we petitioned the Supreme Court for certiorari in *Cobell v. Salazar* (“*Cobell XXII*”), 573 F.3d 808 (D.C. Cir. 2009), *cert dismissed*, 130 S. Ct. 3497 (2010), pending Congressional approval of the settlement.
- Working with the notice notice, Kinsella Media, Inc. (“Kinsella”), regarding the notice program.
- Working with the Garden City Group (“GCG”) as the claims administrator after finalizing the contract terms with it.
- We interviewed prospective banks and selected J.P. Morgan to be the depository bank for the settlement funds.
- We regularly advised the court of the status of the settlement.

Judicial Approval Phase

20. Following passage of the legislation in November 2010, our focus shifted to obtaining this Court’s approval of the settlement. Beginning with preparing for the Preliminary Fairness Hearing, which was held on December 21, 2010, and continuing through the Fairness Hearing held on June 20, 2011 and the Court’s entry of its Order Granting Final Approval to

Settlement dated July 27, 2012 [Dkt 3850], Class Counsel worked diligently to ensure that notice and information on the settlement was provided to the plaintiff classes and to advocate for the Court's approval of the settlement.

21. During this judicial approval phase, Class Counsel worked with Kinsella in establishing the most extensive notice program in any class action, which included use of all forms of media, utilization of Native American publications and radio, and translations of notice materials into Native languages. Part of the notice program again had Class Counsel traveling thousands of miles throughout the western United States conducting in-person informational meetings for the plaintiff classes. In all, Class Counsel conducted informational meetings for thousands of class members in 55 in-person meetings on Indian reservations and in other communities with a high density of class members spread out over the following 17 states: Alaska, Arizona, California, Idaho, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. Many of these meetings were held in some of the most geographically remote areas of this country.

22. As part of our efforts to effectively communicate with the classes during this phase, we continued to maintain a Kilpatrick call in number and email address dedicated to class members in order to freely communicate with them. We also continued to respond to a large volume of calls, emails and correspondence regarding the terms of the settlement and eligibility to be a class member. As with the prior phase, we continued to maintain a website for communication with class members. We also continued to meet and work with tribal organizations and tribal leaders in explaining and obtaining support for the settlement.

23. In order to promote accurate and fair information being disseminated through the press and the media, we continued to grant interviews to the press and the media. We also continued to obtain and review publications and editorials regarding the settlement to be advised of concerns in Indian Country and respond to them.

24. Though the CRA had been enacted, Congress continued to be keenly interested in the case. We maintained regular communications with Congressional leaders and their staff to advise them of the status of the settlement, and opposed efforts among some members of the House to undermine the settlement.

25. We also worked with the Claims Administrator, GCG, in establishing procedures for consideration of inquiries from class members, establishing procedures for consideration of claims, and handling communications with class members.

26. This phase naturally entailed the preparation of extensive pleadings and briefs to advocate for this Court's approval of the settlement, some of which were:

- At the outset of this phase, we researched and drafted pleadings seeking and ultimately obtaining preliminary approval of the settlement from the Court, including the motion for preliminary approval of the settlement agreement, the motion to amend the complaint, and the motion to certify the Trust Administration Class, appoint class counsel, approve the Class Representatives and modify the existing class certification order. We also prepared pleadings to initiate the flow of the initial settlement proceeds to fund the notice program, including the motions to have JP Morgan designated as the qualifying bank and the motion to have payments made to the Accounting/Trust Administration Fund.

We continued throughout this phase to work with J.P. Morgan to establish and oversee the administration of the settlement account.

- We researched and prepared a fee petition and motion for award of incentive fees to class representatives and opposed efforts by a former class representative to receive compensation.
- We also prepared a fee petition for Class Counsel's pre-settlement services and fully briefed the issues, in addition to responding to motions for fees by NARF and Mark Brown.
- We opposed efforts by others, including the Quapaw Tribe and the Harvest Institute Freedman Federation ("HIFF"), to intervene in the litigation in an effort to undermine the settlement.
- We researched, drafted and worked with defendants on the joint motion for final approval of the settlement. We also prepared a comprehensive memorandum supporting the final approval of the settlement. This effort also included researching and responding to all objections to the settlement by class members and reviewing potential exclusions by class members.

27. Class Counsel participated in the Fairness Hearing on June 20, 2011 and successfully advocated for the Court's approval of the settlement. Ultimately, the Court approved the settlement in its ruling at the hearing and the entry of its Order Granting Final Approval to Settlement dated July 27, 2012 [Dkt 3850].

Appellate Phase

28. Following the Court determining the settlement to be fair, our focus shifted to the appellate process in light of appeals by four objectors, including Ms. Craven and the Good Bear

appellants, and others. Together, Class Counsel successfully defeated all of the appeals, including:

- The appeal from the denial of the motion to intervene by the Harvest Institute Freedman Federation in *Cobell v. Salazar*, 2011 WL 6941684 (D.C. Cir. 2011) and the requested rehearing *en banc* from that decision, and a petition for certiorari to the Supreme Court. Class Counsel also had to address efforts by HIFF in a federal court in Ohio to restrain implementation of the settlement.
- The appeals from final judgment by Kimberly Craven in *Cobell v. Salazar*, 679 F.3d 909 (D.C. Cir. 2012), *cert denied*, 133 S. Ct. 543 (2012).
- The appeal from final judgment of Carol Good Bear and others in *Cobell v. Salazar*, 2012 WL 1884702 (D.C. Cir. 2012), *cert. dismissed*, 133 S. Ct. 593 (2012), including negotiating a resolution of the Good Bear appeal.
- The appeals from final judgment of Ortencia Ford and Donnelly Villegas, which were withdrawn as a result of Class Counsel's efforts.
- The recently dismissed appeal by Clayton Crowe, No. 12-5346.

29. Throughout all of the appeals, Class Counsel arranged for expedited consideration by the D.C. Circuit. We also arranged for presentation to the D.C. Circuit of an *amicus* brief by the Indian Land Tenure Foundation in the Craven appeal.

30. During this phase, we performed many other tasks, including continuing to maintain a Kilpatrick call in number and email address dedicated to class members in order to freely communicate with them, continuing to work with GCG in responding to inquiries from class members and assisting in the claims process, and responding to efforts by third parties to engage in an Internet scam on class members.

Distribution Phase

31. The distribution phase of this case began after the settlement became final in November 2012. Our primary focus then shifted to representing the plaintiff classes as the Claims Administrator started the distribution process. Some of the major tasks Class Counsel performed during the distribution phase through June 30, 2013 include:

- Obtaining the Court's approval to start the distribution process.
- Working with Kinsella in establishing and implementing a supplementary notice program in accordance with the Settlement Agreement and obtaining court approval thereof.
- Interviewing and obtaining approval of a Special Master under the terms of the Settlement Agreement.
- Reviewing invoices from the Special Master, Kinsella and GCG and obtaining court approval for payment thereof.
- Drafting a motion for, and obtaining, court approval of payments to the Historical Accounting Class ("HAC") members. To date, payments have been delivered to approximately 90% of the HAC class members whose whereabouts are known.
- Traveling for meetings with tribal leaders and class members in Nevada, Oklahoma and New Mexico to assist with the claims process and to identify and resolve areas of concern.
- Preparing motions before this court and the Special Master in order to identify procedures by which settlement funds may be distributed to the heirs of approximately 60,000 deceased class members.

- Communicating regularly with class members to identify and resolve questions and areas of concern and to assist with the claims process.
- Holding meetings with Interior, the Department of Justice and the Special Master in order to monitor the status of the distribution and address areas of concern.
- Holding discussions with tribal leaders in order to identify the location of tens of thousands of class members for whom there is no current address and to resolve issues regarding distributions to the heirs of deceased class members.
- Continuing to maintain a Kilpatrick Townsend call in number and email address dedicated to class members in order to freely communicate with them and responding to a large volume of calls, emails and correspondence regarding the terms of the settlement and eligibility as a class member.
- Continuing to maintain a website for communication with class members.
- Researching and responding to subpoenas, including 200,000 from the State of Oklahoma, and withholding requests from state and tribal governments seeking the identification of class members and payment of funds otherwise due class members. This included moving to quash subpoenas directed to Class Counsel and GCG in the States of Oklahoma and Washington.
- Assisting in responding to lawsuits filed in the States of Ohio and California against Ms. Cobell, GCG and/or Class counsel by *pro se* litigants seeking recovery of settlement funds to which they were not entitled.
- Participating in media outreach, including webinars through NCAI and other tribal organizations, in an effort to advise class members of the status of the claims process and address areas of concern.

- Assisting GCG in responding to inquiries from claimants and assisting in the drafting and preparation of determination letters to class members.
- Assisting with the selection of an administrator for the Indian Scholarship Fund under the terms of the settlement and assisting in the implementation of the Scholarship Fund.
- Reviewing regularly the status of the settlement account maintained at JP Morgan.

Post-Settlement Fees through June 30, 2013

32. A summary of the attorneys' fees, expenses and costs reasonably incurred by Class Counsel on behalf of plaintiffs since December 7, 2009 through June 30, 2013 is attached to the Motion as Exhibit A. It shows fees of \$12,416,829.00 and expenses of \$397,856.33 for a total of \$12,814,685.33 through June 30, 2013.

33. It is recognized that this amount exceeds the \$12 million maximum amount provided for in the Agreement on Attorneys' Fees, Expenses and Costs, as amended. It is also recognized that there is still additional work to be done by Class Counsel to complete the representation of the plaintiffs in this case, which I estimate will be in the range of \$500,000 to \$600,000. In order to ensure that ample funds remain available for attorneys' fees after June 30, 2013, Class Counsel believes that an interim payment of \$11,250,000.00 for post-settlement attorneys' fees, expenses and costs is appropriate, thereby leaving \$750,000.00 of the total of \$12 million remaining in the Settlement Account for work after June 30, 2013. Hopefully, the amount for fees left in the settlement account will also be able to be used to pay at least a portion (up to the \$12 million cap) of the balance of fees incurred through June 30, 2013 which will remain after applying the \$11,250,000.

34. Rates charged by Kilpatrick for its attorneys, paralegals and other staff are determined on an annual basis by the firm's management committee. That committee reviews reports and studies of prevailing rates for attorneys and legal staff to ensure that fees charged are reasonable and in accordance with the legal market in which the attorney or other employee works. Prevailing rates are ascertained by reviewing annual independent third party surveys of law firms similar to our Firm in every region in the United States. The surveys by PwC are an example of reports on which the firm relies. As the firm's Managing Partner and Chairman, I personally participated in and oversaw the firm's process of setting rates for all our attorneys and personnel for the years 2009 – 2012.

35. The hourly billing rates for the relevant years for the firm's attorneys and personnel working on this case and for whom charges are included in the Motion are shown on Exhibit 1 to my Affidavit. Based on my review of the rates shown on Exhibit 1, I am of the opinion that those rates are reasonable for the work performed and, in many instances, are substantially lower than the rates customarily charged in D.C. by individuals with similar experience.

36. Kilpatrick has policies and procedures to ensure accurate, reasonable and current records of work performed on client matters are maintained. Attorneys, paralegals and other staff are required to record their time and enter it on a current basis into the Firm's electronic recordkeeping system. The firm requires that the time be entered on a daily basis and it is closed each week. Monthly, the firm provides a record of those entries and any expenses charged to the matter to the supervising attorneys -- David Smith and myself -- who are required to review each time entry and expense to determine that it is properly charged to the matter and is reasonable given the tasks performed. These policies and procedures were followed on this case.

37. The combined detailed daily time entries for Class Counsel's post-settlement time through June 30, 2013 are attached as Exhibit 2. Because of its size, that exhibit may have to be filed separately in the Court's electronic filing system. The combined time records reflect on a daily basis the person performing the work, the nature of the work performed and the hours worked to the tenth of an hour. In addition to the monthly review, these combined time records have been further reviewed by David Smith and myself to determine that the work is properly chargeable to this case and that the amount of time charged is reasonable for the tasks performed. A detailed listing of Class Counsel's post-settlement expenses and costs through June 30, 2013 is attached as Exhibit 3 and the supporting documentation for those expenses is attached as Exhibit 4. Because of their size, those exhibits may have to be filed in the Court's electronic records as separate exhibits. We have reviewed those expenses to ensure they were necessary and reasonable, and found that they were.

38. In addition to Kilpatrick's work on this matter, Dennis M. Gingold and Geoffrey Rempel have provided me with their post-settlement time entries and expenses. Their affidavits regarding their time entries are being filed. I have included their time and expense records in the combined time and expense records. David Smith and I have reviewed each such time description and expense for reasonableness and exercised our billing judgment. In calculating their charges, I have used Dennis Gingold's rate of \$925 set forth in his affidavit. In my opinion, that is a reasonable rate for an attorney with his experience practicing in D.C. I am also aware that is the rate he actually charged to clients during this period. For Geoffrey Rempel, I have used an hourly rate of \$450 per hour, which is a reasonable rate for an experienced accountant working with attorneys on complex litigation. That is also the hourly rate used for him in the prior fee request.

39. Both Dennis Gingold and Geoffrey Rempel have assigned to Kilpatrick all their interest in payments for their post-settlement work.

40. The hours in the combined time records through June 30, 2013 for timekeepers for whom fees are included total 23,658.8 hours and represent a total of \$12,416,829.00 at the hourly rates on Exhibit 1 and the rates stated above for Mr. Gingold and Mr. Rempel. The total shown in the combined time records of 23,845.7 hours includes 186.9 hours for the timekeepers for whom no fees are included, as discussed in the next paragraph.

The Attorneys' Experience and Work

41. The combined time and expense records include daily descriptions and charges for the work of Dennis Gingold, Geoffrey Rempel, and 64 Kilpatrick attorneys, paralegals and advisors who provided post-settlement services for the plaintiffs. Of the Kilpatrick timekeepers, 29 had time charges valued at more than \$5,000. For the other 35 timekeepers, their time entries are shown in the combined time and expense records and each made a valuable contribution on discrete tasks. However, given their limited role, I have exercised my billing judgment not to charge for their work, which for the 35 people collectively totaled a reduction of \$51,768.

42. Thus, this Motion is supported by fees charged for a total of thirty one timekeepers – Dennis Gingold, Geoffrey Rempel and 29 from Kilpatrick. A description of the experience and work of each of these people follows in the same order used on the summary of the post-settlement timekeepers attached to the Motion as Exhibit A.

43. Dennis Gingold – Mr. Gingold, whose experience is addressed in his affidavit, continued to serve as lead counsel during the post-settlement period until his withdrawal from the case at the start of the distribution phase. In that role, he was responsible for overseeing all of Class Counsel's work for the plaintiffs. He was also responsible for communicating regularly

with Ms. Cobell regarding the case. Mr. Gingold actively participated in the outreach, traveling to many reservations to conduct informational meetings. In his role as lead counsel, he coordinated the legislative efforts, including chairing a daily team conference call to coordinate Class Counsel's efforts, disseminate information, and plan our strategy. These daily conference calls, which began as our legislative efforts became more intense, were necessary because of the number of different important contacts and lines of communication the various attorneys had with legislators and their staff, and the fast and fluid nature of the discussions. His leadership on these calls proved to be invaluable to the overall effort of getting the legislation enacted. He negotiated, along with myself, the final amendments to the agreement that cleared the way for acceptable legislation to be enacted. The Court is well aware that, after passage of the legislation, he actively participated in all of the efforts to obtain judicial approval of the settlement and the defeat of all of the appeals.

44. Geoffrey Rempel – Mr. Rempel, a Certified Professional Accountant, has been part of the litigation team for many years. Given the complicated accounting, financial and distribution issues confronting the team during the post-settlement phase, he continued to play a valuable role, providing expert consultation and advice to Class Counsel. As the person principally responsible for having structured the distribution framework in the settlement agreement, he worked closely with the claims administrator, Interior, its consultant (FTI), and Justice following the settlement regarding the framework for calculations of information regarding the potential distributions. He was also active in preparing the supporting information for the petitions for the class representatives' expenses and attorneys' fees. Mr. Rempel actively worked with the notice contractor to provide her with the necessary information, in addition to reviewing calculations used in the notices. He traveled and participated in many of the

informational meetings in the western U.S. Mr. Rempel was involved in the process of selecting J.P. Morgan and oversaw the establishment and review of the settlement account prior to withdrawing from the case along with Mr. Gingold at the beginning of the distribution phase.

Kilpatrick Partners

45. David C. Smith – Mr. Smith is a partner in Kilpatrick, now resident in its Washington, D.C. office. He has been practicing law for 29 years since graduating from Wake Forest University School of Law in 1984, having been admitted to the North Carolina bar in 1984 and the Maine bar in 1986. He was admitted *pro hac vice* in this action in 2005 and has devoted a majority of his time on it since then. In connection with him relocating from the Winston-Salem office to the D.C. office, he joined the District of Columbia and Maryland bars in 2011, and this Court in 2011. He is also admitted to practice before numerous other federal courts, including the United States Court of Appeals for the DC Circuit and the Supreme Court of the United States. He practices principally in the areas of Complex Business Litigation and Native American Affairs. He has been recognized in *The Best Lawyers in America* for Commercial Litigation each year since 2011. He has served as an adjunct professor of law at Wake Forest University School of Law, Washington and Lee University School of Law, and Notre Dame Law School teaching Native American Law.

Following the settlement, Mr. Smith has been the Kilpatrick partner most involved in representing the plaintiffs. As a result, he has been involved in all strategic decisions and most of the post-settlement services performed by Kilpatrick. He has taken the lead in drafting or supervising the drafting of the pleadings prepared by the firm and filed in this Court with only limited exceptions. Mr. Smith has been the partner with day-to-day supervision responsibility for the work of the Kilpatrick associates and paralegals. He worked closely with the notice

contractor and actively participated in the outreach, traveling to many meetings in the western U.S. During the distribution phase, he has been the point person coordinating with the notice contractor, the claims administrator, the Special Master, Interior and Justice.

46. William E. Dorris – As indicated, I am a partner in Kilpatrick. I have practiced law for over 34 years, principally representing parties involved in large construction projects and government contracts, including extensive work in litigating cases against the federal government. I have been licensed since 1979 in the states of Kentucky (inactive) and Georgia, and was admitted *pro hac vice* in this action in 2005. I have been listed in *The Best Lawyers in America* in Construction Law for many years.

Following the settlement, my role has been to provide overall coordination of the efforts of Kilpatrick and to serve as the point person in coordinating our work with Mr. Gingold and Mr. Rempel. I have, therefore, been involved in most of the work being done by the firm for the plaintiffs. I actively participated in the outreach, traveling to several reservations in the west with Ms. Cobell and others in both the Spring of 2010 and 2011. I was also involved in the drafting and review of the notice and informational materials. I actively participated in advocating the settlement to Congress and, together with Mr. Gingold, drafted and negotiated with Congressional staff the final amendment to the settlement agreement to conform it to legislation that would be acceptable to the parties and Congress. I assisted in the drafting and editing of the pleadings seeking the preliminary and final approval of the settlement, and the pleadings regarding all of the attorneys' fees motions. I also took the lead in opposing the Quapaw tribe's efforts to intervene. I participated in the Fairness Hearing and, during the appellate phase, I was the principal contact with the appellants' attorneys on efforts to resolve the appeals. I helped Adam Charnes and Rich Dietz in their work on the appeals, editing briefs,

providing background on the settlement negotiations, and helping them prepare for the oral argument. I have been actively involved during the distribution phase in addressing issues as they have arisen, such as the issues caused by the receipt of subpoenas and withholding orders, and the issues with distributions to the estates of deceased class members. Together with Mr. Harper, I have worked with Interior on establishing the Indian Scholarship Fund. I have also been in regular contact with class members and the claims administrator regarding questions. Together with Mr. Smith, I have regularly reviewed the status of the settlement account at JP Morgan.

47. Keith Harper – Mr. Harper is a partner with Kilpatrick and head of the Native American Practice Group. He began working on this litigation prior to its filing in 1996, while employed with the Native American Rights Fund (NARF). Prior to NARF, Mr. Harper was law clerk to the Honorable Lawrence W. Pierce of the U.S. Court of Appeals for the Second Circuit. In July 2006, he joined Kilpatrick as a partner. Mr. Harper is a member of the Cherokee Nation of Oklahoma. He was licensed to practice law in the State of New York in 1995 and the District of Columbia in 1997. He is admitted to practice before the Supreme Court of the United States and numerous other federal trial and appellate courts, including this Court. He practices principally in the areas of litigation and Native American Affairs. He is a Past President of the Native American Bar Association of Washington, D.C. He has been recognized in *The Best Lawyers in America* in Native American Law each year since 2008. He has also served as an Adjunct Professor of Law at Catholic University Columbus School of Law and American University Washington College of Law where he taught Federal Indian Law.

Mr. Harper's role in the post-settlement period has been significant. He worked tirelessly to communicate with tribes, tribal leaders, tribal organizations, and class members regarding the

terms of the settlement and garner their support for it. He also traveled extensively to meetings with tribes and tribal organizations, and many of the informational meetings for class members. He was very involved in the strategy sessions during the legislative phase and in analyzing potential amendments to the settlement agreement. Mr. Harper actively participated in the judicial approval phase and during the appellate phase by drafting and editing briefs, providing information and insights regarding the issues, responding to the objections, and by participating in the Fairness Hearing. He has continued to work on a regular basis during the distribution phase on the issues involving complicated Native American legal questions. Together with Mr. Dorris, he has worked with Interior regarding the establishment of the Indian Scholarship program.

48. Adam H. Charnes – Mr. Charnes is a partner in Kilpatrick and is resident in its Winston Salem office. He graduated summa cum laude from Princeton University in 1988 and magna cum laude from Harvard Law School in 1991. He clerked for the Honorable J. Harvie Wilkinson, III, on the U.S. Court of Appeals for the Fourth Circuit and Justice Anthony M. Kennedy on the United States Supreme Court. He was licensed in Pennsylvania (currently inactive) in 1993, the District of Columbia in 1994, and the State of North Carolina in 2003. He was admitted to practice before the United States Supreme Court in 1997 and the United States Court of Appeals for the D.C. Circuit in 1993. From 2002 – 2003 he was the Principal Deputy Assistant Attorney General for the Office of Legal Policy at the United States Department of Justice. He was awarded the Attorney General’s Distinguished Service Award in July 2003. He currently practices principally in the area of appellate advocacy. For several years he has been recognized in *The Best Lawyers in America* for Appellate Law and Commercial Litigation, as

well as being listed in *Chambers USA: America's Leading Lawyers for Business* in the area of General Commercial Litigation.

Mr. Charnes' primary responsibilities following the settlement were in (a) taking the lead in handling all constitutional and class action procedural issues, including arguing those issues at the Fairness Hearing and (b) serving as lead appellate counsel in successfully defeating all of the appeals arising out of the settlement. As a result of these roles, he was frequently involved during the legislative phase in advising on the constitutionality of potential alternatives.

49. Elliott H. Levitas – Throughout most of the post-settlement work, Mr. Levitas was Counsel to Kilpatrick and has recently become Senior Counsel. He has been licensed to practice law in the State of Georgia since 1955 and in the District of Columbia since 1984. He is also admitted to practice before the United States Supreme Court. Mr. Levitas served as a Representative from DeKalb County in the Georgia General Assembly from 1966-1975, and served in the United States House of Representatives, representing Georgia's 4th Congressional district, from 1975-1985. He has practiced principally in the areas of governmental relations and complex litigation, and for a number of years has been listed in *The Best Lawyers in America* for Governmental Relations. He has served as an Adjunct Professor of Law at Emory University School of Law. He has worked on this litigation since March 1999.

Mr. Levitas' principal contribution during the post-settlement phase has been that of a strategist for the legal team. Throughout the legislative phase, he was deeply involved in all of the discussions and strategy regarding approaches to achieving the passage of the Act, in addition to making numerous contacts with members of Congress and their staffs. He was also actively involved in the judicial approval phase in analyzing the constitutional and other challenges to the settlement, and in developing responses to the primary objections to the

settlement. He continued during the appellate phase to help craft the strategy and arguments in response to the objectors' appeals.

50. Robert C. Harmala – Mr. Harmala is a partner in Kilpatrick and is resident in its Washington, D.C. office. He has been practicing law for 18 years since being admitted to the California bar in 1995 and the D.C. bar in 1996. He focuses his practice on government relations primarily at the federal level. Mr. Harmala was actively and extensively involved in the legislative phase of the post-settlement phase as one of the primary points of contact with Democratic members of Congress, their staffs and the Administration, in addition to helping develop plaintiffs' strategy for getting the settlement approved by Congress.

51. Craig E. Bertschi – Mr. Bertschi is a partner with Kilpatrick and resident in its Atlanta office. He has been practicing law for 23 years since graduating from the University of Georgia School of Law and being admitted to the Georgia bar in 1990. Mr. Bertschi focuses his practice on class actions and he brought a wealth of class action experience to the to the *Cobell* post-settlement legal team. He worked throughout the post-settlement time period on a wide variety of class action issues. During the legislative period, Mr. Bertschi provided advice on how various proposed modifications in order to obtain legislative approval would potentially affect the fairness of the settlement. After Congress passed the Claims Resolution Act of 2010, Craig's involvement increased as he was involved in preparing the motion for preliminary approval, reviewing and commenting on the notice plan, consulting on the motion for Class Representatives' awards, reviewing and revising the fee petition, preparing and overseeing the preparation of significant portions of the motion for final approval, responding to the objections to the settlement, helping the team prepare for the issues to be addressed at the Fairness Hearing, attending the Fairness Hearing and helping analyze the Supreme Court's *Dukes* decision which

was issued during the Fairness Hearing, and assisting in the drafting of proposed orders as a result of the Fairness Hearing. Craig was also involved in working with Adam Charnes and others on the appellate team on various issues regarding the Class Action Fairness Act and due process issues. Mr. Bertschi was also consulted on the discussions with the appellants' attorneys to try to resolve the appeals more quickly.

52. G. William Austin – Mr. Austin is a partner in Kilpatrick and resident in its Washington, D.C. office. After graduating from the University of Virginia Law School in 1979, he joined Kilpatrick in 1980 and has been practicing law for 33 years. For the last eleven of those years, he has been significantly involved in litigating individual Indian and tribal trust cases. He is a member of the D.C., Georgia and Virginia bars, and is admitted to practice before this and numerous other federal courts. Mr. Austin's primary contributions after the settlement involved working with various tribes during the legislative phase to obtain their active support for the settlement and conducting numerous informational meetings for class members to inform them of the settlement in the states of Washington, Oregon and California during the notice period in 2011.

53. Cindy D. Hanson – Ms. Hanson is a partner in Kilpatrick and is resident in its Atlanta office. She has been practicing law for 19 years since graduating law school from Columbia University in 1994. She is admitted to the bars of New York (1994), New Jersey (1994) and Georgia (1998), in addition to numerous state and federal courts. Her practice is focused on the defense of class actions. Ms. Hanson contributed to the post-settlement team as a class action specialist who was able to provide insights from her experiences in countless other class action settlements. Her main contributions were analyzing and responding to the objections based on the Class Action Fairness Act presented to Congress in March 2010, preparing sections

of the motion for preliminary approval, advising on issues raised by the Class Representatives' proposed incentive awards, responding to objections to the settlement (including research and analysis of the notice and opt out issues), analysis of the *Dukes* decision, and consultation regarding b2 class notice issues raised during the appellate phase.

54. Miles J. Alexander – Mr. Alexander is a partner with Kilpatrick and is resident in its Atlanta office. He has been practicing law for 58 years after being admitted to the Georgia bar in 1955. Mr. Alexander is a highly regarded trademark and unfair competition attorney. He is a frequently selected party and court appointed mediator in alternative dispute resolution matters. He is a member of the CPR/INTA panel of "Distinguished Neutrals" and frequently serves as mediator, arbitrator and special master in major disputes for resolution through ADR procedures. Mr. Alexander's principal contribution following the settlement was overseeing and conducting a thorough mooted of the appellate arguments, including organizing mock appellate oral arguments. He was also involved in analyzing actions to be taken regarding fraudulent websites which were seeking to prey on class members.

55. C. Allen Garrett, Jr. – Mr. Garrett is a partner in Kilpatrick and is resident in its Atlanta office. He has been practicing law for 18 years, having been admitted to the practice in New York bar in 1995 and to the Georgia bar in 1998. Mr. Garrett has significant experience in appellate matters and in class actions, and assisted in preparing counsel for the appellate arguments by serving on the mock appellate panels in the mooted process.

56. Emil Herich – Emil Herich is a counsel in Kilpatrick and is resident in its Los Angeles office. He is a seasoned litigator and has practiced law for 29 years since being admitted to the California bar in 1984. Mr. Herich prepared, filed and successfully argued to

quash a summons in a case filed in 2013 in a California state court by an individual whose claim had been rejected by the Claims Administrator.

Kilpatrick Associates

57. M. Alexander Pearl – Alex Pearl was an associate with Kilpatrick until 2012, when he departed to teach at Florida International University School of Law. He has been licensed in Oklahoma since 2007 and in the District of Columbia since 2009. Mr. Pearl, a member of the Chickasaw Nation of Oklahoma, focused his practice on Native American Affairs. He worked on the approval by Congress of the settlement, meeting with Congressional leaders and staff, responding to inquiries by members of Congress, and assisting in the drafting of legislation. He met with tribal organizations in order to garner support for the settlement and was part of a group of attorneys from Kilpatrick that held meetings with White House staff to coordinate efforts for legislative approval. He communicated frequently with class members and participated in meetings with class members in the states of South Dakota, Montana, Nebraska, Idaho, Wyoming and Oklahoma. In addition, he participated in the research and drafting of motions, including the motions for preliminary approval and final approval of the settlement, and various motions related to them.

58. Richard D. Dietz – Mr. Dietz is an appellate specialist. He became a partner in Kilpatrick in 2013 and is resident in its Winston Salem office. During his post-settlement work, he was the primary associate assisting Mr. Charnes in the preparation of the appellate briefs and motions, and is therefore being shown as an associate here. He has practiced law for eleven years since graduating from Wake Forest School of Law in 2002. He was admitted to the North Carolina bar in 2002 and the D.C. bar in 2007. Mr. Dietz worked on the petition for certiorari from the decision in *Cobell v. Salazar* (“*Cobell XXIF*”), 573 F.3d 808 (D.C. Cir. 2009), *cert*

dismissed, 130 S. Ct. 3497 (2010) pending settlement, the appeal from the denial of the motion to intervene by the Harvest Institute Freedman Federation in *Cobell v. Salazar*, 2011 WL 6941684 (D.C. Cir. 2011) and the requested rehearing *en banc* from that decision, responses to procedural and constitutional arguments by objectors to final approval, the appeals from final judgment by Kimberly Craven in *Cobell v. Salazar*, 679 F.3d 909 (D.C. Cir. 2012), *cert denied*, 133 S. Ct. 543 (2012) and Carol Good Bear and others in *Cobell v. Salazar*, 2012 WL 1884702 (D.C. Cir. 2012), *cert. dismissed*, 133 S. Ct. 593 (2012), and the recently dismissed appeal by Clayton Crowe, No. 12-5346.

59. Justin M. Guilder – Mr. Guilder was an associate with Kilpatrick and resident in its Washington, D.C. office prior to leaving the firm in 2011. He joined Kilpatrick after graduating from George Washington University Law School in 2006, and was one of the principal associates working on this litigation at the trial level. Mr. Guilder was admitted to practice law in Virginia in 2006 and the District of Columbia in 2008. During the post-settlement phase, Mr Guilder worked directly with the notice contractor, Kinsella Media, on the notice program, identified and coordinated public meetings regarding the settlement to advise class members of its terms and to assist them with the claims process, participated in meetings with class members in Arizona, New Mexico, Oregon, Washington, North Dakota, Montana and Alaska, assisted in the Congressional approval of the settlement including communicating with key members of Congress and their staff, handling communications with the legislative counsel for the Joint Committee on Taxation, and garnering support for the settlement from tribal organizations, including the National Congress of American Indians. In addition, he handled inquiries from class members and performed research and helped draft pleadings relating to the

motion for preliminary approval, the motion for final approval, the motion for incentive payments for the Class Representatives, and the petition for attorney's fees.

60. Thurston H. Webb – Mr. Webb is an associate in Kilpatrick's Winston Salem office. Following his graduation from Wake Forest University School of Law in 2009, he served as a law clerk to Judge Thomas D. Schroeder of the U.S. District Court for the Middle District of North Carolina and Judge Susan H. Black of the U.S. Court of Appeals for the Eleventh Circuit. He was admitted to practice law in North Carolina in 2009. Mr. Webb assisted in the research and briefing in the appeals by Ms. Craven, Ms. Good Bear and the Harvest Institute. He further performed research in order to assist class counsel in responding to withholding requests received from the State of Washington.

61. Mark H. Reeves – Mr. Reeves is an associate in Kilpatrick's Augusta, Georgia office. After graduating from Vanderbilt University School of Law in 2004, he clerked at the U.S. Court of Appeals for the Eleventh Circuit for the Hon. R. Lanier Anderson, III. He has been licensed to practice in Georgia since 2005. Mr. Reeves worked extensively during the last two trials of this case prior to the settlement. Following the settlement, he participated in the research and drafting of motions before the district court including the class notice requirements as set forth in the motion for preliminary approval, the petition for fees by Class Counsel, and the request for incentive payments by the Class Representatives, the opposition to the motion to intervene by the Harvest Institute, the opposition to the motion to intervene by the Quapaw Tribe, and the opposition to the motion for attorney's fees filed by the Native American Rights Fund. He further assisted in preparing Class Counsel for argument before the D.C. Circuit in the Craven appeal through a mock oral argument.

62. Dustin T. Greene – Mr. Greene is an associate with Kilpatrick and has been admitted to practice law in the State of North Carolina in 2008. Mr. Greene performed research and drafting related to the petition for certiorari in *Cobell XXII*, the petition for fees by Class Counsel, the opposition to the Motion to Intervene by HIFF, and the opposition to the Motion to Intervene and petition for fees by NARF. He further researched alternatives to Congressional approval of the settlement in the event it was not successful.

63. Daniel G. Schulof – Mr. Schulof was an associate with Kilpatrick and resident in its Atlanta office. He was admitted to practice in Georgia in 2007. Mr. Schulof performed research relating to the petition for approval of fees for Class Counsel and the alternatives to Congressional approval of the settlement should it not be successful.

64. James J. Hefferan, Jr. – Mr. Hefferan was an associate with Kilpatrick and resident in its Winston Salem office. He has been admitted to practice in North Carolina since 2003. Mr. Hefferan assisted in research of alternatives to Congressional approval of the settlement in the event it was not successful, and provided research in connection with the petition for fees by Class Counsel and the request for an incentive award for Class Representatives.

65. Bradley Roehrenbeck - Mr. Roehrenbeck was an associate in Kilpatrick and in its Winston Salem office and had been practicing law since 2005. He performed research and drafting related to the petition for certiorari before the Supreme Court in *Cobell XXII*, the petition for fees by Class Counsel, the opposition to the Motion to intervene by the Harvest Institute, and the opposition to the Motion to intervene by the Native American Rights Fund.

66. Daniel M. Vandergriff – Mr. Vandergriff is an associate with Kilpatrick and is resident in its Winston Salem office. He was admitted to practice in North Carolina in 2010.

Mr. Vandergriff primarily performed cite checking of various briefs at the trial and appellate levels, including the brief in support of the Motion for Final Approval, the brief in response to the Good Bear appeal, and the opposition to the Petition for Certiorari in the Craven appeal.

67. Chad D. Hansen – Chad Hansen became a partner in Kilpatrick in 2013 and is resident in its Winston Salem office. He was an associate while working on this matter and is thus being shown as an associate here. He has been practicing law for 9 years since being admitted to the North Carolina bar in 2004. In addition to focusing his practice on complex business litigation, Mr. Hansen has also served for several years as an adjunct professor teaching Native American Law at the Wake Forest University School of Law. In 2011, he performed research and drafted portions of briefs regarding issues in the pre-settlement fee petitions for Class Counsel and NARF.

68. Douglas M. McManamon – Doug McManamon is an associate in Kilpatrick and is resident in the San Francisco office. He has been practicing law for 9 years and is a member of the bars of California and Colorado. Mr. McManamon researched and responded to a subpoena issued in late 2012 by a California state agency.

Kilpatrick Government Relations Advisor

69. John Loving – Mr. Loving is a senior government relations advisor with Kilpatrick. He has been involved in public policy and lobbying for more than 16 years, including working for several years in the House and the Senate on Republicans' staffs. Mr. Loving tracked the progress of the various bills and issues in Congress on a daily and sometimes hourly basis. He was the primary point of contact for Congressional Republicans and their staff, and was the chief strategist for advocating the passage of the legislation to the Republicans in Congress. Mr. Loving also traveled throughout Indian Country during the outreach and notice

efforts, and worked on the communications to the classes through the media. He was also the primary contact with Congress following passage of the legislation.

Kilpatrick Paralegals

70. Time for the work of four paralegals who assisted the attorneys in the post-settlement work is included in the Motion. We organized the work of the paralegals by having one responsible for manning the beneficiary hotline and email, and another serving as the day-to-day paralegal for the attorneys on the case. Joe Burns in our Winston-Salem office manned the Cobell beneficiary hotline. Alexis Applegate in the D.C. office had worked on the case for many years and was the principal paralegal assisting the attorneys from the start of the post-settlement period through early June 2010 when she left to go to law school. Ms. Applegate returned later to assist in helping identify the contacts for the outreach meetings. Shawn Chick, also in the D.C. office, took over as the principal paralegal assisting the attorneys in early June 2010 and continues in that role today. Kevin Nelson, a paralegal in our D.C. office, worked on the case in late 2011 and early 2012, handling and organizing correspondence primarily with class members, and reviewing and redacting expenses to delete the personal information of the attorneys.

Post-Settlement Expenses and Costs

71. Since December 8, 2009, Class Counsel has advanced expenses and incurred costs and obligations which were reasonably necessary for the prosecution of this action. The total amount of the expenses and costs supporting the Motion is \$397,856.33 as reflected on Exhibit A to the Motion, and as detailed and supported by Exhibits 3 and 4 to my Affidavit. All of these charges were reasonable and necessary in prosecuting this case and are in keeping with customary billing practices to other clients.

72. The expenses are organized into four categories: (a) Travel; (b) Computerized Research; (c) Outreach and Informational Meetings; and (d) Additional Expenses. The categories and sub-categories are largely self-explanatory and need no further description, but a few merit a brief explanation.

73. The “travel expenses” were largely incurred in the personal outreach Class Counsel undertook in the Springs of 2010 and 2011 to travel throughout the western U.S. to explain the terms of the settlement to individual class members. Travel expenses to conferences where Class Counsel spoke on the settlement or attended meetings with Indian leaders regarding it are included, in addition to some travel locally in connection with the case.

74. The “computerized research” category includes charges for our research on Westlaw and Lexis in connection with our post-settlement work. The amount included reflects the sizeable volume discounts our firm receives from both companies since we do not operate our computerized research as a profit center and seek only to pass through charges to recoup our costs.

75. The “outreach and informational meetings” category includes special expenses and obligations we incurred in connection with conducting the outreach and informational meetings, in addition to the travel expenses. Ben Friedman was an individual Mr. Gingold engaged to accompany Class Counsel on outreach and informational meetings in Indian Country, principally throughout the Sioux regions. Mr. Friedman had spent considerable time in those areas and was especially effective in helping arrange and conduct those sessions. The “interpreters” sub-category includes individuals engaged by Class Counsel to help translate during meetings with Navajo class members. Mr. Friedman and the interpreters will be paid upon Class Counsel’s receipt of payment. The “meeting facility” expense was for the cost of

facilities to conduct informational meetings where space was not available for free. It also includes charges paid to tribes for copying the informational materials, passing out flyers, and setting up the rooms for the meetings. The majority of the shipping charges are for sending materials to and from the informational meetings and are included in that category for that reason. Some of the shipping charges were unrelated to the outreach and informational meetings, but were all for purposes of representing the plaintiffs' interests.

76. The "additional expenses" category includes the remaining categories of expenses incurred by Class Counsel and included in the Motion. The charges for document reproduction are almost entirely for copies made on Kilpatrick's copiers and are charged at the rate the firm customarily charges for copies, which is 15 cents for a copy of letter size paper. The standard charges set by the firm for copies are designed to cover the firm's costs and the firm does not run its photocopying as a profit center, seeking only to recoup its costs. Finally, William McAlister assisted Class Counsel in monitoring and responding to press and media stories at various times during the post-settlement period. Given his prior work for the plaintiffs during many years prior to the settlement, he was able to quickly and effectively perform his services, and expertly assisted Class Counsel in their outreach and communications with the classes via the press and media. He will be paid when Class Counsel receives payment.

Billing Judgment and Adjustments

77. In addition to reviewing time entries for privileged and protected material, David Smith and I also reviewed all of the time for reasonableness. We exercised our billing judgment by either deleting entries in their entirety or by decreasing the amount charged for particular entries. Altogether, we decreased the amount of post-settlement fees through June 30, 2013 by a total of \$2,654,693. That is, prior to our exercising our billing judgment, the amount of post-

settlement fees recorded by Class Counsel through June 30, 2013 was \$15,071,522, as opposed to the \$12,416,829 included in the combined time records.

78. The most significant single billing adjustment involved work by Dennis Gingold after the settlement through June 14, 2010 in reviewing his pre-settlement time. From December 18, 2009 through June 14, 2010, he worked 1,125.1 hours spread over 154 different days performing the following task which he described generally as “review/prepare time for fee petition per settlement agreement, e.g., redaction of names, facts re privilege/confidentiality issues.” I was frequently in D.C. during that period and saw first-hand this work by him and discussed it at length with him. It was a massive undertaking to review in detail over 48,000 hours of time for the fourteen years from December 1995 through December 2009.

79. This work By Mr. Gingold was required because of the defendants’ insistence in the settlement discussions that Class Counsel present daily time entries for all our pre-settlement work, despite our contingent fee agreements with the plaintiffs and this Circuit adopting the common fund approach to compensating class counsel. *See* Agreement on Attorneys’ Fees, Expenses and Costs dated December 7, 2009, ¶ 4.c. In my opinion, time reasonably incurred in performing this work is properly billable. However, in my discussions with Mr. Gingold, we agreed that it would be appropriate to substantially reduce this time.

80. In my opinion, it is reasonable to charge 1.5 to 2 hours to review Mr. Gingold’s time for each month (keeping in mind that the amount of time per month varies), or a total of approximately 18 to 24 hours for each year. For the fourteen years involved, this results in a range of 250 to 336 hours. In an earlier fee application, Judge Lamberth awarded only 25% of such charges by Mr. Gingold. *See* Memorandum Opinion [Dkt 3222] at 35. Of the 1,125.1 hours recorded by Mr. Gingold, 25% equal 281.2 hours. That amount is within the range I

consider to be reasonable for billing for this effort, and I have made an adjustment to his time only to include 281.2 hours of that work by him. Accordingly, I have decreased by 75% the time Mr. Gingold spent reviewing his pre-settlement time for a total decrease of 843.9 hours or \$780,607.50. In my opinion, the remaining 281.2 hours at \$925 per hour for a total of \$260,110 represents a reasonable amount for the extensive work Mr. Gingold performed reviewing over 48,000 hours of his pre-settlement time spread across fourteen years.

81. Another significant adjustment was that we deleted all the fees for work on the motion requesting the Court to require an appeal bond posted by one of the objector-appellants. That motion was determined to have substantive deficiencies and I do not believe the plaintiff classes should be charged anything for the work in connection with it.

82. In addition to these two more significant adjustments, we made many other smaller adjustments to delete or reduce the time being charged.

83. We also exercised our billing judgment in reviewing the expenses charged to this matter. I deleted any expenses which were not, in my opinion, reasonably charged to the plaintiff classes. In all, we deleted \$159,285.41 in such expenses and they are not included in the expenses requested in the Motion. A large portion of those deleted expenses were for outside counsel we engaged to advise us in connection with inquiries from the Subcommittee on Indian Affairs of the House Natural Resources Committee. Though we incurred these attorneys' fees only because of our involvement in this case and the plaintiffs benefitted indirectly by the work of special counsel, in my opinion, the work of special counsel was more for the benefit of Class Counsel. Accordingly, I deleted those expenses from the Motion.

84. In my opinion, the total on Exhibit A to the Motion of \$12,814,685.33 is a reasonable amount for the work of Class Counsel in representing the plaintiffs after the

settlement through June 30, 2013. It includes time reasonably spent working for the plaintiffs at the actual rates being charged for the individuals, which rates are in keeping with the rates charged by attorneys and paralegals of similar skill, experience and reputation in D.C. Each of these expenses was reasonably and necessarily incurred in our representation.

85. Kilpatrick is entitled to receive all of the amounts to be paid to Class Counsel for post-settlement fees.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 9, 2013.

/s/

WILLIAM E. DORRIS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing AFFIDAVIT OF WILLIAM E. DORRIS was served on the following via facsimile, pursuant to agreement, on this 10th day of September, 2013.

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
406.338.7530 (fax)

/s/ William E. Dorris