

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELOUISE PEPION COBELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	1:96CV01285 (TFH)
)	
KEN SALAZAR, Secretary of the Interior, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**PLAINTIFFS’ UNOPPOSED MOTION TO MODIFY
ASPECTS OF CLASS ACTION ADMINISTRATION**

Plaintiffs hereby move this Court to (1) modify certain of the Trust Administration deadlines set forth in this Court’s Order of December 11, 2012 [Dkt. No. 3923] (the “ Trust Administration Order”), (2) direct the Claims Administrator, Garden City Group (“GCG”), to accept as timely all claim forms postmarked by March 30, 2013, (3) allow GCG to pay valid claims of lien or, where appropriate, a bankruptcy trustee instead of a class member, and (4) permit the Honorable Richard A. Levie (ret.) to hire and pay the staff at JAMS while performing his work as Special Master.

I. TRUST ADMINISTRATION DEADLINES

1. Pursuant to this Court’s order, see Order on Joint Motion for Preliminary Approval of Settlement Agreement dated December 21, 2010 (Dkt. No. 3667), Kinsella Media, LLC, the Notice Contractor, successfully implemented the most comprehensive and thorough notice program in class action litigation.

2. Pursuant to ¶ E.4.e.1 of the *Class Action Settlement Agreement* dated December 7, 2009, as amended (“Settlement Agreement”) and ¶ 16 of this Court’s *Order Granting Final Approval to Settlement* dated July 27, 2011 [Dkt. No. 3850] (“Final Approval Order”), the Notice Contractor was required to undertake a supplementary notice campaign (the “Supplementary Notice Program”) as soon as practicable following the commencement of the distribution of funds to the Historical Accounting Class in order to target additional potential claimants and provide information related to the Trust Administration Class distribution. The Notice Contractor built upon its prior program and, once again, recommended a thorough notice program directed to potential Trust Administration Class members living in Native American population centers. On December 11, 2012 this Court approved the Supplementary Notice Program. Trust Administration Order at ¶ 3.

3. Both notice campaigns have been very successful. The Trust Administration Order provided that any Trust Administration claim be postmarked by March 1, 2013. *Id.* at ¶ 4(a). To date, GCG has received approximately 460,000 total claims. Approximately 130,000 or 28% of the claim forms have been received between the March 1 deadline and the present date. The majority of those were postmarked by March 1.

4. This Court in its Trust Administration Order set forth a timetable for review of claims by GCG and the Special Master. In light of the large volume of recent claims, and given that timely claims have been received by GCG several weeks after the March 1 deadline due to delays in the mails, it is requested that the order be modified to allow GCG 15 additional days to make an initial determination of eligibility. In addition, because it is anticipated that some claimants will be required to submit additional documentation to support their claims, it is requested that all claimants have an additional 30 days to respond to any initial determination by

GCG that a claimant is ineligible to participate as a Trust Administration Class member. The new proposed schedule would be as follows:

(a) That, pursuant to ¶ E.4.e.4 of the Settlement Agreement, the Claims Administrator shall make an initial determination of eligibility for members of the Trust Administration Class no later than **May 1, 2013**.

(b) That, pursuant to ¶ E.4.e.4 of the Settlement Agreement, all individuals who request reconsideration of the Claims Administrator's determination of eligibility shall do so in writing by a signed letter mailed to the Claims Administrator and postmarked no later than **July 1, 2013**.

(c) That, pursuant to ¶ E.4.e.5 of the Settlement Agreement, based on requests for reconsideration, the Claims Administrator shall make a second determination of eligibility for members of the Trust Administration Class no later than **August 1, 2013**.

(d) That, pursuant to ¶ E.4.e.5 of the Settlement Agreement, any appeals made from the second determination of eligibility by the Claims Administrator shall be made in writing by a signed letter delivered to the Claims Administrator and postmarked no later than **September 4, 2013**.

II ACCEPTING CLAIMS POSTMARKED BY MARCH 30, 2013

5. Of the claim forms received through the present date by GCG, approximately 1,700 were postmarked after March 1, 2013. The parties believe that, given the duration of this case and the importance of this settlement, as many individual Indians who are eligible to participate should have the opportunity to do so. Many of the individual Indian beneficiaries are of limited economic means and live at a great distance from the nearest post office. Therefore, delays in submitting a claim form are understandable.

6. This Court has considerable discretion to accept claim forms that are otherwise untimely. *See Hartman v. Powell*, 2001 WL 410461, *1 (D.C. Cir. 2001). In a class action such as the present, “courts have equitable powers to manage the litigation in order to promote judicial economy and fairness to litigants.” *De Ascensio v. Tyson Foods, Inc.*, 342 F.3d 301, 313 (3d Cir. 2003). This includes the acceptance of untimely claims. *See generally In re Cendant Corp. Prides Litig.*, 233 F.3d 188, 195 (3d Cir. 2000).

7. Accordingly, the Plaintiffs respectfully request that GCG be directed to accept as timely claims postmarked by March 30, 2013. Accepting claims postmarked by that date will not cause delays in the consideration of timely claims under the schedule set forth herein.

III. PAYMENT OF VALID CLAIMS OF LIEN OR TO BANKRUPTCY TRUSTEES

8. The Trust Administration Order provided that settlement payments shall be paid by GCG to living class members, to the estates of deceased class members, or, in specified circumstances, deposited in to class members’ IIM accounts.

9. GCG has received notices of claims of lien from state and tribal governments, usually related to child support payments owed by class members. In addition, in some cases a notice has been received that a class member is in bankruptcy.

10. Under the present terms of the Trust Administration Order, GCG does not have authority to satisfy valid claims of lien or to pay settlement funds to a bankruptcy trustee.

11. It is requested that GCG be allowed to pay funds owed to a class emmeber to holders of valid claims of lien and to pay funds owed to a class member to a lawfully appointed bankruptcy trustee.

IV. AUTHORITY OF SPECIAL MASTER TO HIRE AND PAY STAFF

12. On December 19, 2012, this Court appointed the Honorable Richard A. Levie (ret.) as Special Master. *See* Order Appointing Special Master [Dkt. No. 3928] at ¶ 1.

13. As the Special Master's work progresses, it may necessitate his utilization of the staff at JAMS. It is requested that he be permitted to hire and pay JAMS for that service and that expense be paid out of the accounting/Trust Administration Fund pursuant to ¶ 4 of the Order Appointing Special Master.

Respectfully submitted, this 5th day of April, 2013.

/s/ David C. Smith
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' UNOPPOSED MOTION TO MODIFY ASPECTS OF CLASS ACTION ADMINISTRATION was served on the following via facsimile, pursuant to agreement, on this 5th day of April 2013.

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