

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

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

**PLAINTIFFS’ UNOPPOSED MOTION TO APPROVE PAYMENTS TO MEMBERS OF
THE TRUST ADMINISTRATION CLASS**

Plaintiffs, in accordance with the *Class Action Settlement Agreement* dated December 7, 2009, as amended (“Settlement Agreement”), and this Court’s *Order Granting Final Approval to Settlement* dated July 27, 2011 [Dkt. No. 3850] (“Final Approval Order”), request that this Court approve commencement of payments to members of the Trust Administration Class. In support thereof, Plaintiffs respectfully show the Court as follows:

1. Final Approval of the Settlement occurred on November 24, 2012, in accordance with ¶ A.13 of the Settlement Agreement. *See Order on Pls.’ Unopposed Mot. to Approve Payments to Members of the Historical Accounting Class* [Dkt. No. 3923] (the “*HAC Distribution Order*”) 1, Dec. 11, 2012.

2. With this Court’s approval, Plaintiffs established an account for the Accounting/Trust Administration Fund (the “*Cobell Settlement Account*”) at J.P. Morgan Chase & Co. (“J.P. Morgan”), the Qualifying Bank as defined in ¶ A.29 of the Settlement Agreement. *See Order Designating J.P. Morgan as Qualifying Bank* [Dkt. No. 3668], Dec. 21, 2010.

3. Defendants have deposited into the *Cobell* Settlement Account funds totaling \$1,509,771,651.00, consisting of a deposit of \$20,000,000.00 on January 5, 2011, pursuant to this Court's Order dated December 21, 2009 [Dkt. No. 3666], and a deposit of \$1,489,771,651.00 on November 27, 2012, pursuant to ¶ E.2.d of the Settlement Agreement and ¶ 11 of the Final Approval Order. All interest earned has accumulated in the Settlement Account.

4. On December 11, 2012, this Court ordered commencement of payments to members of the Historical Accounting Class by the Claims Administrator, The Garden City Group, Inc. ("Garden City"), no later than December 24, 2012. *See HAC Distribution Order* ¶ 2. Garden City, in fact, commenced the Historical Accounting Class payments on December 14, 2012.

5. The Settlement Agreement at ¶ E.4.e.1 and ¶ 16 of the Final Approval Order provided for a Supplementary Notice Program to target additional claimants and to provide additional information related to the Trust Administration Class distribution. The Supplementary Notice Program was to commence as soon as practicable after distribution of payments to the Historical Accounting Class commenced. On December 11, 2012, this Court approved the Supplementary Notice Program prepared by the Notice Contractor, Kinsella Media, Inc. *See HAC Distribution Order* ¶ 3. It, in fact, commenced on December 28, 2012, and continued for 30 days thereafter, utilizing both Native American and general media. *See* Decl. of Katherine Kinsella ¶¶ 6, 12 (attached as Exhibit A).

6. The Settlement Agreement at ¶ E.4.e set forth procedures for the self-identification of potential Trust Administration Class Members. This Court's HAC Distribution Order set forth a timeline for submission of documentation by claimants, for review of that documentation and an initial determination of eligibility by Garden City, for submission of additional documentation by claimants, reconsideration by Garden City and appeals from any

adverse determination. *HAC Distribution Order* ¶ 4. Those deadlines were extended for good cause pursuant to this Court's Order of April 10, 2013. *See Order on Pls.' Unopposed Mot. to Modify Aspects of Class Action Administration* [Dkt. No. 3950] ¶ 1. The procedures for self-identification of Trust Administration Class Members have been completed and any appeals from adverse determinations by Garden City are pending before the Special Master appointed by this Court. *See Order Appointing Special Master* [Dkt. No. 3928] ¶ 1(e), Dec. 19, 2012; *see also* Decl. of Jennifer M. Keough ¶¶ 3, 4 (attached as Exhibit B).

7. By order dated May 28, 2014, this Court authorized the commencement of Trust Administration Class payments prior to the expiration of appeals by claimants from adverse determinations. *See Order on Pls.' Mot., Without Opp'n from Defs., to Allow Commencement of Trust Administration Class Distributions Prior to Expiration of Appeals* [Dkt. No. 4044]. This Court specifically explained that prior to commencement of those payments, "the Plaintiffs shall present to the Court a proposed order setting forth the amount of the distribution, and all amounts being withheld from distribution including projected expenses, claims subject to pending appeals, and the Reserve Fund set forth in the Settlement Agreement." *Id.*

8. The Settlement Agreement provides that the Interior Defendants are to assist Garden City "with respect to the preparation and creation of (i) the Contact Information for Stage 2 participants and (ii) the Assigned Value calculations and related Assigned Value percentages" as set forth in the Agreement. Settlement Agreement ¶ E.4.c. As explained at the May 30, 2014 Status Conference, substantial work has been required with respect to the correction and clarification of Class Member records provided by Interior Defendants and the identification and location of Class Members in order for the Trust Administration Class distribution to commence. *See Pls.' May 30, 2014 Status Report to the Court* [Dkt. No. 4048]. Questions were raised regarding the March 2014 property ownership update provided by the Interior Defendants and its

potential effect on class membership status. Interior addressed that issue in June and July of 2014 and, on or about August 30, 2014, after consultation with Garden City and Class Counsel, prepared the Assigned Value Calculations and Assigned Value percentages for Trust Administration Class Members and transferred the Class Member data to Garden City (the “Trust Administration Class data”). Under the terms of the Settlement Agreement, Garden City and Class Counsel may rely on the information provided by the Interior Defendants in making distributions to Class Members. Settlement Agreement ¶ E.1.f.

9. The Parties and Garden City reasonably believe that there is available for distribution to members of the Trust Administration Class \$941,587,623.06, which amount includes all interest earned in the Settlement Account, with the baseline payment being \$869 after application of the Trust Adjustment Fund provided for at § 101(j) of the Claims Resolution Act of 2010, Public Law 111-291, 111th Cong. (2010). Keough Decl. ¶¶ 6, 8. In accordance with ¶ E.4.e.7 of the Settlement Agreement and this Court’s May 28, 2014 Order, Plaintiffs respectfully move the Court to allow Garden City to immediately commence payments to members of the Trust Administration Class based on the following conditions:

a. That Garden City is allowed to distribute payments to members of the Trust Administration Class to the persons and in the amounts as set forth in the Trust Administration Class data provided by the Interior Defendants.

b. That Garden City be allowed to distribute those payments using address information provided to Garden City directly by the Class Member or his or her authorized representative or, in the alternative, contact information provided by Interior.

c. That where a Trust Administration Class Member is identified as whereabouts unknown as defined in ¶ E.1.i of the Settlement Agreement but has an open IIM

account at the time of distribution, and Garden City has no current address for that Class Member, his or her payment be deposited in the Class Member's IIM account.

d. That where a Trust Administration Class Member is identified as whereabouts unknown as defined in ¶ E.1.i of the Settlement Agreement and has an open IIM account at the time of distribution, but Garden City believes it has a current address for that Class Member, it may mail that payment to the Class Member's last known address. *See Special Master Order No. 5* [Dkt. No. 4023]. If the mailing is returned as undeliverable and no forwarding address information is available from the US Postal Service regarding the Class Member, the payment will be deposited into the Class Member's open IIM account.

e. That all payments for Class Members identified by Interior as minors, non-compos mentis, under legal disability or adults in need of legal assistance shall be deposited in the individual's IIM account. If an IIM account is not open for that Class Member, one shall be opened for that individual.

f. That all payments for Class Members who are deceased be made payable to the estate of each deceased Class Member and distributed to the personal representative, administrator or executor of the estate of that Class Member or to his or her heirs in accordance with existing or future orders of this Court or the Special Master.

g. That if Garden City reasonably determines, based on information provided by the Interior Defendants, that any Class Member received a greater Historical Accounting Class payment than that to which he or she was entitled, Garden City be authorized to offset that additional amount against the Class Member's Trust Administration Class payment. Said additional funds shall be deposited in the Settlement Account and held as part of the set aside for appeals by claimants referenced in ¶ 10.d of this Motion.

h. That if Garden City reasonably determines, based on information provided by the Interior Defendants, that any Class Member received, by reason of this distribution, a greater share of the Trust Administration Class distribution than that to which he or she was entitled by reason of the existence of a duplicate account or accounts or for any other reason, and Garden City is able to recoup all or part of that excess payment, including through cancellation of a non-negotiated payment, said funds shall be deposited into the Settlement Account. If said excess payment was deposited in the Class Member's IIM Account and remains in that Account, it will be transferred by the Interior Defendants to the Settlement Account.

i. That if Garden City reasonably determines, based on information provided by the Interior Defendants, that one previously believed to be a Class Member is not a Class Member and that individual has been issued an Historical Accounting or Trust Administration Class payment, Garden City may take efforts to recoup those payments, including through cancellation of non-negotiated payments, and the funds received shall be deposited into the Settlement Account. If said improper payment(s) was deposited in an IIM Account and remains in that Account, it will be transferred by the Interior Defendants to the Settlement Account.

j. That if individuals become new Trust Administration Class Members after the Trust Administration Class calculation has been completed, whether through a successful appeal of an adverse determination by Garden City or for any other reason, those individuals will receive an amount corresponding to similarly situated individuals who were included in the original Trust Administration Class calculation and the Trust Administration Class allocation will not be recalculated.

k. That all payments mailed to a Class Member and returned due to an insufficient address shall be deposited in that Class Member's IIM Account if permitted under the terms of the Settlement Agreement and orders of this Court; if such a deposit in an IIM

Account is not so permitted, such returned payments shall be deposited in a Remainder Account at the Qualifying Bank. Payments to Class Members from the Remainder Account shall be in accordance with procedures established by the Special Master.

l. Garden City is authorized to remit amounts otherwise due Class Members in accordance with legally valid demands for payment including, but not limited to, monetary liens, garnishments, or income withholding orders issued pursuant to federal, state, local, or tribal law, including 42 U.S.C. § 666.

10. In addition to amounts that this Court has previously ordered or that Plaintiffs are requesting in this Motion be distributed to members of the Historical Accounting Class, and those amounts designated as Pre-Settlement Class Counsel fees that this Court has set aside for future distribution, the following material amounts are being withheld from the current distribution in accordance with ¶ E.4.b.2 of the Settlement Agreement and this Court's May 28, 2014 Order:

a. Claims administration fees and expenses already incurred from October 2013 to the present, and future fees and expenses from August 2014 through August 2018 (an additional four years) in the amount of \$55,380,389.02.

b. \$12,000,000 to cover post-settlement fees and expenses of Class Counsel. *See Settlement Agreement ¶ K.4; Agreement on Attorneys' Fees, Expenses and Costs* [Dkt. No. 3660-16] ¶¶ 3-5, Dec. 7, 2009 (as modified on December 29, 2009).

c. \$1,857,127.33 for existing and potential future expenses of the Special Master through the completion of the Claims Administration process.

d. \$2,900,000 to cover appeals by claimants, plus any offset amounts from ¶ 9.g of this Motion.

e. \$3,500,000 as a Reserve Fund, as provided in ¶ E.4.e.6 of the Settlement Agreement, to cover Class Members who did not receive notice of Trust Administration Class distributions, who come forward after Trust Administration Class distributions.

11. Paragraph E.4.e.6 of the Settlement Agreement further provides for the eventual termination of the Reserve Fund. The parties agree that those eligible to participate in the Reserve Fund must present claims in writing to Garden City postmarked no later than 12 months from the date of this Court's Order authorizing the distribution of the Trust Administration Class payments.

12. Finally, the Interior Defendants have identified 101 additional members of the Historical Accounting Class who had balances in their accounts as of September 30, 2009, and who had not previously been identified. Plaintiffs request approval for disbursement of the \$1,000 Historical Accounting payment to each of these individuals from the Settlement Account.

Respectfully submitted this the 10th day of September, 2014.

/s/ David C. Smith
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' UNOPPOSED MOTION TO APPROVE PAYMENTS TO MEMBERS OF THE TRUST ADMINISTRATION CLASS was served on the following via facsimile, pursuant to agreement, on this 10th of September, 2014.

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

/s/ David C. Smith

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

ELOUISE PEPION COBELL, et al.,

Plaintiff,

v.

**KEN SALAZAR, Secretary of
the Interior, et al.,**

Defendant.

No. **1:96CV01285(TFH)**

**DECLARATION OF
KATHERINE KINSELLA**

I, Katherine Kinsella, being duly sworn, hereby declare as follows:

1. I am the Founder and former President of Kinsella Media, LLC (“KM”), a legal notification firm in Washington, D.C. that specializes in the design and implementation of notification programs to reach unidentified putative class members primarily in consumer and antitrust class actions, and claimants in bankruptcy and mass tort litigation. My business address is 2120 L Street, NW, Suite 860, Washington, D.C. 20037. My telephone number is (202) 686-4111.
2. I submit this declaration at the request of Plaintiffs’ Counsel in connection with the Order Granting Final Approval to the Settlement issued by the Court on July 27, 2011 in *Cobell v. Salazar* No. 1:96CV01285 pending in the United States District Court for the District of Columbia. A declaration detailing the proposed Supplementary Notice Program was filed with the Court on December 10, 2012. This declaration outlines the implementation of said Supplementary Notice Program and the measures taken to provide the best notice of the upcoming claims-filing deadline that was practicable under the circumstances.

3. This declaration is based upon my personal knowledge and upon information provided by Class Counsel, the Claims Administrator, The Garden City Group (“GCG”), vendors, and my staff. The information is of a type reasonably relied upon in the fields of advertising, media, and communications.

Summary of Conclusions

4. The Court-approved Supplementary Notice Program was implemented to inform Trust Administration Class Members of the upcoming claims-filing deadline.
5. In my view, the Supplementary Notice Program, as approved by the Court, provided the best notice practicable under the circumstances of this case.
6. The two-part Supplementary Notice Program ran over 30 days and included:
 - a) Broad notice through the use of paid media;
 - b) Earned media notice through a national press release.

Notice Program Implementation

7. KM designed a Supplementary Notice Program utilizing Native American and general media to provide Class Members with multiple opportunities to receive notice.

Print

Local and National Native American Publications

8. The Publication Notice appeared in local and national Native American publications and provided opportunities for Class Members to receive information about the claims-filing deadline. It highlighted the claims-filing deadline and provided the Settlement’s toll-free telephone number and Informational Website where Class Members could get more information about the Settlement. The

Print Implementation Report detailing where and when the print media placements appeared is attached as Exhibit 1.

Radio

Native American and Community Radio

9. Spots aired on both Native-owned and general market radio stations across the U.S. on or near the Allotted Lands. Additional surrounding areas received coverage, extending the message to geographic areas that most likely have Class Members. General market metro and/or non-metro radio were used to provide broad coverage to reach Class Members including heirs that may no longer live within Native American areas. The Radio Implementation Report detailing where and when spots aired is attached as Exhibit 2.

Online Notice

Native American Focused Websites

10. Internet banner advertisements were placed on national and local Native American-focused websites where available. As in the original Notice Program, KM designed Internet banner advertisements to alert Class Members to the claims-filing deadline by using a bold headline. When users clicked on the banner advertisement, they were connected automatically to the Informational Website that contained complete information about the claims process. The Online Implementation Report detailing online activity and, where possible, the number of impressions delivered is attached as Exhibit 3.

11. On December 28, 2012, the text of the landing page of the Settlement Website www.IndianTrust.com was updated to inform Trust Administration Class Members of the upcoming claims-filing deadline.

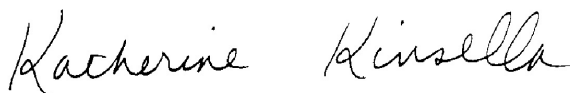
Earned Media Notice

12. On December 28, 2012 at the start of the Supplementary Notice Program, Class Counsel distributed a press release to national print outlets and tribal newspapers to support the paid media program.

Conclusion

13. Based on my experience in developing notice plans and preparing notice materials for numerous class actions, it is my opinion that the Supplementary Notice Program described above is the best notice practicable under the circumstances, and it is consistent with the methodology and approach undertaken and approved by the Court for the original Notice Program.

I declare under penalty of perjury that the foregoing is true and correct. If called as a witness, I could and would competently testify thereto.



Katherine Kinsella

September 3, 2014

Date

EXHIBIT 1

Notice Program Implementation Report - Print

Cobell v. Salazar



Media Name	Run Date	Verbal Conf. Comment	Tearsheet Conf. Comment	Status
A Cheyenne Voice	1/11/13	Back Page (16)	Back Page (16)	Physical tearsheet received
A Cheyenne Voice	1/18/13	9	9	Physical tearsheet received
A Cheyenne Voice	1/25/13	DNR	DNR	DNR
A Cheyenne Voice	2/1/13	8	8	Physical tearsheet received
Absentee Shawnee News	1/1/13	20	20	eTearsheet received
Ak-Chin O'odham Runner	1/4/13	10	10	eTearsheet received
Ak-Chin O'odham Runner	1/18/13	11	11	eTearsheet received
Ak-Chin O'odham Runner	2/1/13	18	18	eTearsheet received
Anishinaabeg Today	1/9/13	16	16	eTearsheet received
Apache Messenger fka Peridot Chronicle	1/30/13	A6	A6	eTearsheet received
Apache Messenger fka Peridot Chronicle	1/9/13	C4	C4	eTearsheet received
Apache Messenger fka Peridot Chronicle	1/16/13	C4	C4	eTearsheet received
Apache Messenger fka Peridot Chronicle	1/23/13	C4	C4	eTearsheet received
Au-Authm Action News	1/17/13	2	2	Physical tearsheet received
Au-Authm Action News	1/4/13	9	9	Physical tearsheet received
Au-Authm Action News	2/7/13	12	12	Physical tearsheet received
Bay Mills News (print)	JAN	5	5	Physical tearsheet received
Bois Forte News	2/1/13	4	4	Physical tearsheet received
Char-Koosta News	1/3/13	2	2	Physical tearsheet received
Char-Koosta News	1/17/13	2	2	Physical tearsheet received
Char-Koosta News	1/24/13	2	2	Physical tearsheet received
Char-Koosta News	1/10/13	8	8	Physical tearsheet received
Cherokee One Feather	2/7/13	32	32	eTearsheet received
Cherokee One Feather	2/21/13	32	32	eTearsheet received
Cherokee One Feather	2/14/13	40	40	eTearsheet received
Cherokee One Feather	1/31/13	DNR	DNR	DNR
Cherokee Phoenix	2/1/13	4	4	eTearsheet received
Cheyenne & Arapaho Tribal Tribune	1/1/13	2	2	eTearsheet received
Cheyenne & Arapaho Tribal Tribune	1/15/13	9	9	eTearsheet received
Cheyenne & Arapaho Tribal Tribune	2/1/13	11	11	eTearsheet received
Chickasaw Times	1/1/13	23	23	eTearsheet received
Coeur D'Alene Council Fires	1/1/13	5	5	Physical tearsheet received
Cokv-Tvlvme	2/1/13	10	10	eTearsheet received
Comanche Nation News	1/1/13	3	3	eTearsheet received
Confederated Umatilla Journal	1/1/13	10	10	eTearsheet received
DeBahJiMon	1/1/13	20	20	eTearsheet received
First Nations News	1/1/13	12	Back Cover	Physical tearsheet received
First Nations News	1/15/13	Back Cover	Back Cover	Physical tearsheet received
First Nations News	2/2/13	DNR	DNR	DNR
Ft Apache Scout	1/11/13	7	7	Physical tearsheet received
Ft Apache Scout	1/25/13	9	9	Physical tearsheet received
Ft Apache Scout	2/8/13	9	9	Physical tearsheet received
Ft Peck Journal	2/7/13	11	11	Physical tearsheet received
Ft Peck Journal	1/24/13	20	20	Physical tearsheet received
Ft Peck Journal	1/31/13	20	20	Physical tearsheet received
Ft Peck Journal	1/17/13	24	24	Physical tearsheet received
Gah'nahvah/Ya Ti'	2/1/13	can not confirm	can not confirm	pub sent email copy but no issue to prove it ran
Gallup Independent	1/15/13	6	6	Physical tearsheet received
Gallup Independent	1/9/13	8	8	Physical tearsheet received
Gallup Independent	1/29/13	Sports 6	Sports 6	Physical tearsheet received
Gallup Independent	1/23/13	Sports 8	Sports 8	Physical tearsheet received

Media Name	Run Date	Verbal Conf. Comment	Tearsheet Conf. Comment	Status
Gila River Indian News	1/7/13	3	3	eTearsheet received
Gila River Indian News	2/1/13	3	3	eTearsheet received
Grand Traverse Band News	2/1/13	24	24	eTearsheet received
Hocak Worak	1/18/13	13	13	Physical tearsheet received
HowNiKan	2/1/13	5	5	eTearsheet received
Indian Journal	1/10/13	Democrat-A6+Journal-A7	Democrat-A6+Journal-A7	eTearsheet received
Indian Journal	1/24/13	Democrat-B4+Journal-A9	Democrat-B4+Journal-A9	eTearsheet received
Indian Journal	1/31/13	Democrat-B6+Journal-A9	Democrat-B6+Journal-A9	eTearsheet received
Indian Journal	1/17/13	Democrat-B8+Journal-B4	Democrat-B8+Journal-B4	eTearsheet received
Indian Time	2/7/13	16	16	eTearsheet received
Indian Time	1/17/13	23	23	eTearsheet received
Indian Time	1/24/13	28	28	eTearsheet received
Indian Time	1/31/13	32	32	eTearsheet received
Kalihwisaks News	2/7/13	8A	8A	eTearsheet received
Kalihwisaks News	1/10/13	9A	9A	eTearsheet received
Kalihwisaks News	1/24/13	12A	12A	Physical tearsheet received
Keetoowah News	FEB	6	6	eTearsheet received
Keetoowah News	1/1/13	9	9	eTearsheet received
Klah-Che Min	1/30/13	19	19	eTearsheet received
Konowa Leader	1/17/13	8	8	eTearsheet received
Konowa Leader	1/24/13	8	8	eTearsheet received
Konowa Leader	1/10/13	10	10	eTearsheet received
Konowa Leader	1/31/13	10	10	eTearsheet received
Kukadze'eta Towncrier	1/4/13	15	15	Physical tearsheet received
Lakota Country Times	1/23/13	A5	A5	eTearsheet received
Lakota Country Times	1/30/13	A5	A5	eTearsheet received
Lakota Country Times	1/9/13	A7	A7	eTearsheet received
Lakota Country Times	1/16/13	C2	C2	eTearsheet received
Menominee Nation News	2/11/13	10	10	Physical tearsheet received
Menominee Nation News	1/14/13	12	12	Physical tearsheet received
Menominee Nation News	1/28/13	20	20	Physical tearsheet received
MHA Times	1/9/13	12	12	Physical tearsheet received
MHA Times	1/16/13	12	12	Physical tearsheet received
MHA Times	1/23/13	12	12	Physical tearsheet received
MHA Times	1/30/13	12	12	eTearsheet received
Muscogee Nation News	1/15/13	2	2	eTearsheet received
Muscogee Nation News	2/1/13	6	6	eTearsheet received
Muscogee Nation News	2/15/13	6	6	eTearsheet received
Muscogee Nation News	1/1/13	10	10	eTearsheet received
Native American Times	1/7/13	2	2	eTearsheet received
Native American Times	1/14/13	2	2	eTearsheet received
Native American Times	1/21/13	2	2	eTearsheet received
Native American Times	1/28/13	2	2	eTearsheet received
Native Sun	1/16/13	A8	A8	Physical tearsheet received
Native Sun	1/23/13	A8	A8	Physical tearsheet received
Native Sun	1/30/13	A9	A9	Physical tearsheet received
Native Sun	1/9/13	B6	B6	Physical tearsheet received
Navajo Times	1/24/13	A8	A8	Physical tearsheet received
Navajo Times	1/10/13	B10	B10	Physical tearsheet received
Navajo Times	1/31/13	C3	C3	Physical tearsheet received
Navajo Times	1/17/13	C6	C6	Physical tearsheet received
Navajo-Hopi Observer	1/9/13	2	2	Physical tearsheet received
Navajo-Hopi Observer	1/30/13	11	11	Physical tearsheet received
Navajo-Hopi Observer	1/23/13	2A	2A	Physical tearsheet received
Navajo-Hopi Observer	1/16/13	5A	5A	Physical tearsheet received
News from Indian Country	1/15/13	11	11	eTearsheet received

Media Name	Run Date	Verbal Conf. Comment	Tearsheet Conf. Comment	Status
Osage Tribal News	1/1/13	17	17	eTearsheet received
Poarch Creek News	2/1/13	27	27	eTearsheet received
Rawhide Press	1/15/13	10	10	Physical tearsheet received
San Carlos Apache Moccasin	1/9/13	A6	A6	eTearsheet received
San Carlos Apache Moccasin	1/16/13	A6	A6	eTearsheet received
San Carlos Apache Moccasin	1/23/13	A6	A6	eTearsheet received
San Carlos Apache Moccasin	1/30/13	A6	A6	eTearsheet received
Seminole Producer	1/6/13	B1	B1	eTearsheet received
Seminole Producer	1/13/13	B1	B1	eTearsheet received
Seminole Producer	1/20/13	B1	B1	eTearsheet received
Seminole Producer	1/27/13	B1	B1	eTearsheet received
Seminole Tribune	1/25/13	8C	8C	Physical tearsheet received
Sho Pai News	1/21/13	17	17	Physical tearsheet received
Sho-Ban News	1/17/13	3	3	Physical tearsheet received
Sho-Ban News	1/24/13	3	3	Physical tearsheet received
Sho-Ban News	1/31/13	11	11	Physical tearsheet received
Sho-Ban News	1/10/13	B4	B4	Physical tearsheet received
Sicangu Sun Times	1/15/13	9	9	Physical tearsheet received
Smoke Signals	2/1/13	16	16	eTearsheet received
Smoke Signals	2/15/13	16	16	Physical tearsheet received
Smoke Signals	1/1/13	DNR	DNR	DNR
Sota Iya Ye yapi	1/9/13	can not confirm	can not confirm	Pub states ad ran but did not send a copy or charge for placement
Sota Iya Ye yapi	1/16/13	can not confirm	can not confirm	Pub states ad ran but did not send a copy or charge for placement
Sota Iya Ye yapi	1/23/13	can not confirm	can not confirm	Pub states ad ran but did not send a copy or charge for placement
Sota Iya Ye yapi	1/30/13	can not confirm	can not confirm	Pub states ad ran but did not send a copy or charge for placement
Southern Ute Drum	1/11/13	10	10	eTearsheet received
Southern Ute Drum	1/25/13	10	10	eTearsheet received
Southern Ute Drum	2/8/13	14	14	eTearsheet received
Spilyay Tymoo	1/9/13	7	7	eTearsheet received
Spilyay Tymoo	1/23/13	9	9	eTearsheet received
Spilyay Tymoo	2/6/13	9	9	eTearsheet received
Squol Quol	1/1/13	32	32	eTearsheet received
Ta'c Tito'oqan	1/1/13	16	16	eTearsheet received
This Week From Indian Country	1/2/13	49, inside back cover	49, inside back cover	Physical tearsheet received
This Week From Indian Country	1/16/13	49, inside back cover	49, inside back cover	Physical tearsheet received
This Week From Indian Country	1/23/13	49, inside back cover	49, inside back cover	Physical tearsheet received
This Week From Indian Country	1/30/13	49, inside back cover	49, inside back cover	Physical tearsheet received
Tohono O'odham Nation Runner	1/4/13	6	6	eTearsheet received
Tohono O'odham Nation Runner	1/18/13	6	6	eTearsheet received
Tohono O'odham Nation Runner	2/1/13	11	11	eTearsheet received
Tribal Observer	FEB	15	15	eTearsheet received
Turtle Mountain Times	1/7/13	2	2	eTearsheet received
Turtle Mountain Times	1/28/13	8A	8A	Physical tearsheet received
Turtle Mountain Times	1/7/13	8B	8B	Physical tearsheet received
Turtle Mountain Times	1/14/13	8B	8B	Physical tearsheet received
Turtle Mountain Times	1/21/13	8B	8B	Physical tearsheet received
Two Rivers Tribune	1/8/13	16	16	eTearsheet received
Two Rivers Tribune	1/15/13	16	16	eTearsheet received
Two Rivers Tribune	1/22/13	16	16	eTearsheet received

Media Name	Run Date	Verbal Conf. Comment	Tearsheet Conf. Comment	Status
Two Rivers Tribune	1/29/13	16	16	eTearsheet received
Ute Bulletin	1/3/13	DNR	DNR	DNR
Wewoka Times	1/9/13	8	8	eTearsheet received
Wewoka Times	1/16/13	10	10	eTearsheet received
Wewoka Times	1/23/13	10	10	eTearsheet received
Wewoka Times	1/30/13	12	12	eTearsheet received
White Mt Apache Independent	1/11/13	B3	B3	Physical tearsheet received
White Mt Apache Independent	1/18/13	B3	B3	Physical tearsheet received
White Mt Apache Independent	1/25/13	B3	B3	Physical tearsheet received
White Mt Apache Independent	2/1/13	B3	B3	Physical tearsheet received
Wiikwedong Dazhi-Ojibwe	1/1/13	Front Page	Front Page	eTearsheet received
Win Awenen Nisitotung	1/18/13	2	2	eTearsheet received
Wind River News	1/10/13	8	8	Physical tearsheet received
Wind River News	1/17/13	8	8	Physical tearsheet received
Wind River News	1/24/13	8	8	Physical tearsheet received
Wind River News	1/31/13	12	12	Physical tearsheet received
Winnebago Indian News	1/5/13	6	6	eTearsheet received
Winnebago Indian News	2/16/13	7	7	eTearsheet received
Winnebago Indian News	1/19/13	10	10	eTearsheet received
Yakama Nation Review	1/4/13	9	9	Physical tearsheet received
Yakama Nation Review	1/25/13	9	9	Physical tearsheet received
Yakama Nation Review	2/1/13	7	7	Physical tearsheet received
Yakama Nation Review (bonus ad)	2/15/13	7	7	Physical tearsheet received

EXHIBIT 2

Notice Program Implementation Report - Radio*Cobell v. Salazar*

Station	Scheduled Activity	Number of Spots	Status
KCNP	:30 PSA Announcemet	unknown	Public service announcements, no confirmation of schedule
KCUW	:30 Spot	40	All spots ran as scheduled
KEYA	:30 PSA Announcemet	unknown	Public service announcements, no confirmation of schedule
KGLP Radio	:30 Spot	43	All spots ran as scheduled (+ 3 at no cost)
KGVA Radio	6x/day - 1 month	150	All spots ran as scheduled
KIDE	:60 Spot	40	All spots ran as scheduled
KILI	:30 or :60 Spot	unknown	Station reports receiving the spot but have not confirmed activity
KINI	:60 Spot	40	All spots ran as scheduled
KMHA	4x/day - 1 month	112	All spots ran as scheduled
KSUT/KUTE Radio	:30 Spot	40	All spots ran as scheduled
KUYI Radio	:30 Spot	50	All spots ran as scheduled
KWRK/KTNN Radio	:30 Spot	40	All spots ran as scheduled
KWSO	:60 Spot	83	All spots ran as scheduled (+ 43 at no cost)
Native One Radio	Earthsongs	4	Aired in each weekly program as scheduled
Native One Radio	National Native News	20	Aired daily in program as scheduled
Native One Radio	Native America Calling	20	Aired daily in program as scheduled
General Market	:60 Spot	19,731	Delivered 101.6% of units purchased and 99.2% of planned audience.

EXHIBIT 3

Notice Program Implementation Report - Online*Cobell v. Salazar*

Website	Scheduled Activity	Delivered Activity	Status
Indian Country Today	Homepage Rotation	4 weeks	Appeared as scheduled
Indianz.com	Run of Site	8 weeks	Appeared as scheduled
Native Voice One	Web Stream	168 :30 spots	Appeared as scheduled
Navajo Times	Homepage Rotation	4 weeks	Appeared as scheduled
News from Indian Country	Homepage Rotation	4 weeks	Appeared as scheduled
NHO Times	Homepage Rotation	4 weeks	Appeared as scheduled
Powwow Network	Run of Network	1,125,000 impressions	Appeared as scheduled
Seminole Producer	Run of Site	4 weeks	Appeared as scheduled
Sho-Ban News	Run of Site	4 weeks	Appeared as scheduled
Two Rivers Tribune	Run of Site	4 weeks	Appeared as scheduled
White Mt Apache Independent	Homepage Takeover	4 weeks	Appeared as scheduled
American Indian Report	Run of Site	4 weeks	Appeared as scheduled
Native American Times	Run of Site	4 weeks	Appeared as scheduled
Buffalo's Fire	Run of Site	4 weeks	Appeared as scheduled

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., as an individual, and on behalf of all others similarly situated,

Plaintiffs,

v.

SALLY JEWELL, Secretary of the Interior, et al.,

Defendants.

) Case No. 1:96 CV 01285

) **DECLARATION OF JENNIFER M. KEOUGH IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION TO APPROVE PAYMENTS TO MEMBERS OF THE TRUST ADMINISTRATION CLASS**

I, Jennifer M. Keough, declare as follows:

1. I am the Chief Operating Officer of The Garden City Group, Inc. ("GCG"). The following statements are based on my personal knowledge and information provided by other GCG employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

1 2. GCG was selected by the Parties and engaged by Plaintiffs in the above-
2 captioned litigation (the “Action”) to serve as the Claims Administrator¹ as described in the
3 Class Action Settlement Agreement (“Settlement Agreement”) dated December 7, 2009, and
4 given Final Approval by this Court in the Order Granting Final Approval to Settlement, dated
5 July 27, 2011 (the “Order”). I submit this Declaration to provide the Court and the Parties to
6 this Action with information regarding the impending Trust Administration Class payments
7 and the status of duties with which GCG has been charged as Claims Administrator as they
8 relate to the claim determination and appeal process.
9

10 **FINAL DETERMINATION OF TRUST ADMINISTRATION CLASS**

11
12 3. Pursuant to the Settlement Agreement, no Trust Administration Class payments
13 shall be made until all Trust Administration Class Members have been substantially identified
14 in accordance with the Settlement Agreement and their respective pro rata interests have been
15 calculated. As noted in the Court’s Order for distribution of the Historical Accounting Class,
16 a timeline was set forth for the submission and review of documentation from claimants.
17 Those deadlines were extended pursuant to the Court’s Order of April 10, 2013. GCG
18 received 382,520 unique claim forms for which it sent determination letters on or before the
19 May 1, 2013 deadline. GCG then received 85,979 requests for reconsideration. GCG sent its
20 second determination to each person who requested reconsideration on August 1, 2013. GCG
21 received 2,451 appeals from its second determinations for review by the Special Master that
22 were postmarked on or before September 4, 2013.
23
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25

26 _____
27 ¹ Capitalized terms used in this Declaration are as defined in this Declaration or in the Class Action Settlement
28 Agreement.

1 4. As some Class Members' eligibility status has changed in the recent Interior
2 Contact Information provided to GCG, 33 additional appeals were received after these
3 individuals were notified of their ineligibility. Based upon an additional 2,307 eligibility statuses
4 changing as determined by Interior's Contact Information for the Trust Administration Class
5 distribution, it is anticipated that GCG may receive additional appeals.

6
7 **TRUST ADMINISTRATION CLASS PAYMENT INFORMATION FROM**
8 **INTERIOR DEFENDANTS**

9
10 5. GCG has received further supplemental files of Contact Information from Interior
11 regarding account holders and potential Settlement Class Members. In total, GCG has received
12 nine sets of data: (1) a file received in December 2009; (2) a file for direct notice mailing
13 received on December 21, 2010; (3) a file received on April 4, 2011, which updated Contact
14 Information previously received and provided potential award amounts and account balances; (4)
15 a file received on September 7, 2012 which contained further updated Contact Information; (5)
16 the Historical Accounting Class Member file from Interior Defendants received on November
17 21, 2012; (6) a file received on August 26, 2013; (7) a supplemental file of additional Historical
18 Accounting Class Members received on January 15, 2014; (8) a file received on March 21, 2014;
19 and lastly (9) the Trust Administration Class Member file from Interior Defendants received on
20 August 29, 2014 ("Trust Administration Distribution File").

21
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23 6. The Trust Administration Distribution File provided to GCG by Interior contains
24 338,360 account holder records that are identified as Historical Accounting Class Members and
25 487,717 records that are identified as Trust Administration Class Members. Of the 487,717
26 Trust Administration Class Members, 64,581 are identified as deceased or an estate Class
27
28

1 Member. Additionally, Interior has identified groups of account holders who are not deceased
2 and upon Court approval will be eligible to receive Settlement payments in their IIM accounts.
3 In specific, 5,048 living Class Members are identified as “restricted” (meaning non-compos
4 mentis, individuals under legal disability or adults in need of assistance); 12,257 living Class
5 Members are identified as minors; and 35,509 living Class Members, who are not of restricted or
6 minor status, are identified as “whereabouts unknown.” The total value of all award payments for
7 Trust Administration Class Members as calculated by Interior is \$941,587,623.06.
8

9 7. As directed by the Settlement Agreement, GCG is to rely on the information
10 contained within the Trust Administration Distribution File to make determinations and
11 distribute awards to the Trust Administration Class, as well as process each of the noted sub-
12 categories’ (“whereabouts unknown,” minor, and restricted) payments in accordance with the
13 Settlement Agreement.
14

15 **TRUST ADMINISTRATION CLASS DISTRIBUTION**
16

17 8. Based on the Trust Administration Distribution File GCG received from Interior,
18 and once approval is received from the Court, GCG will cause to be printed and send
19 approximately 339,126 checks with values ranging from \$869.00 to \$9,341,020.28 to verified
20 living Trust Administration Class Members or their heirs who have a mailable address on record.
21 Additionally, GCG will work with Interior to have \$54,052,624.90 deposited in the appropriate
22 IIM accounts for 17,305 individuals in the Trust Administration Class who are identified to be
23 either minors or of restricted status pursuant to Section E.1.h of the Settlement Agreement.
24 Likewise, for those Class Members who are identified as “whereabouts unknown” and have an
25 open IIM account, GCG will work with Interior to have their awards of approximately
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1 \$14,738,196.36 deposited into the 15,677 IIM accounts where GCG does not have a deliverable
2 address. With the Court's approval, GCG will mail checks to those 19,832 "whereabouts
3 unknown" that have an address on file with GCG, and if a check is returned as undeliverable,
4 GCG will then work with Interior to have the appropriate funds deposited into the Class
5 Member's IIM account.

6
7 9. The remaining Trust Administration Class Members include 45,659 estates where
8 GCG does not have any documents on file for distribution at this time. GCG will continue to
9 work with the Parties, Special Master and Class Members to obtain documents so that
10 distributions can be made to estate representatives or directly to heirs of deceased Class
11 Members.

12
13 10. Finally, there are approximately 50,118 Trust Administration Class Members who
14 do not have contact information within the Trust Administration Distribution File. GCG will
15 continue to research contact information for these Class Members and funds will be held in the
16 account at J.P. Morgan Chase until such time as contact information is obtained or different
17 handling is instructed by the Court or the Parties.

18
19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct.

21
22 Executed this 10th day of September 2014, at Seattle, Washington.

23
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26 
27 Jennifer M. Keough
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

**ORDER APPROVING PAYMENTS TO
MEMBERS OF THE TRUST ADMINISTRATION CLASS**

THIS MATTER came on upon *Plaintiffs’ Unopposed Motion to Approve Payments to Members of the Trust Administration Class* [Dkt. No.]. The parties entered into a *Class Action Settlement Agreement* dated December 7, 2009, as amended (“Settlement Agreement”), which was ratified by Congress in the Claims Resolution Act of 2010, Public Law 111-291, 111th Cong. (2010) (“Claims Resolution Act”), and approved by this Court in its *Order Granting Final Approval to Settlement* dated July 27, 2011 [Dkt. No. 3850] (“*Final Approval Order*”). Final Approval of the Settlement, after expiration of all appeals, occurred on November 24, 2012, in accordance with ¶ A.13 of the Settlement Agreement, and on December 11, 2012, this Court ordered commencement of payments to members of the Historical Accounting Class by the Claims Administrator, The Garden City Group, Inc. (“Garden City”). *See Order on Pls.’ Unopposed Mot. to Approve Payments to Members of the Historical Accounting Class* [Dkt. No. 3923] (the “*HAC Distribution Order*”) 1, Dec. 11, 2012.

The Settlement Agreement provided for further distributions to members of the Trust Administration Class and set forth procedures for the self-identification of potential Trust Administration Class members. This Court's HAC Distribution Order set forth a timeline for submission of documentation by claimants, for review of that documentation and an initial determination of eligibility by Garden City, for submission of additional documentation by claimants, reconsideration by Garden City and appeals from any adverse determination. *Id.* at ¶ 4. Those deadlines were extended for good cause pursuant to this Court's Order of April 10, 2013. *See Order on Pls.' Unopposed Mot. to Modify Aspects of Class Action Administration* [Dkt. No. 3950] ¶ 1. The procedures for self-identification of Trust Administration Class Members have been completed and any appeals from adverse determinations by Garden City are pending before the Special Master appointed by this Court. *See Order Appointing Special Master* [Dkt. No. 3928] ¶ 1(e), Dec. 19, 2012.

By order dated May 28, 2014, this Court authorized the commencement of Trust Administration Class payments prior to the expiration of appeals by claimants from adverse determinations, with a holdback for appeals by claimants. *See Order on Pls.' Mot., Without Opp'n from Defs., to Allow Commencement of Trust Administration Class Distributions Prior to Expiration of Appeals* [Dkt. No. 4044]. In accordance with the terms of the Settlement Agreement, an order was to be submitted for the Court's approval identifying the amount of the Trust Administration Class distribution and amounts being withheld to cover projected expenses, claims subject to pending appeals, and the Reserve Fund set forth in the Settlement Agreement.

The Interior Defendants prepared the Assigned Value Calculations and Assigned Value percentages for Trust Administration Class Members and, on or about August 30, 2014, transferred the Class Member data to Garden City (the "Trust Administration Class data").

A total of \$941,587,623.06 is currently available for distribution, which amount includes the interest earned on funds in the Settlement Account, with the baseline payment being \$869 after application of the Trust Adjustment Fund provided for at § 101(j) of the Claims Resolution Act. The current motion withholds from the distribution, in addition to those amounts Plaintiffs have requested be allocated by this Court for Historical Accounting Class Payments and those amounts designated as Pre-Settlement Class Counsel fees that this Court has set aside for future distribution, present and future fees and expenses in the amount of \$55,380,389.02, \$12,000,000 to cover post-settlement fees and expenses of Class Counsel, \$1,857,127.33 for existing and potential future expenses of the Special Master through the completion of the Claims Administration process, \$2,900,000 to cover appeals by claimants and \$3,500,000 as a Reserve Fund.

This Court has reviewed the Plaintiffs' Motion, approves the request to commence Trust Administration Class Distributions, and Orders as follows:

1. The Trust Administration Class distribution shall be commenced based on the following conditions:

a. Garden City is allowed to distribute payments to members of the Trust Administration Class from the Settlement Account established by Plaintiffs at the Qualifying Bank to the persons and in the amounts as set forth in the Trust Administration Class data provided by the Interior Defendants. Both Garden City and Class Counsel are entitled to rely on the Trust Administration data provided by Defendants in making any distribution.

b. Garden City is allowed to distribute those payments using address information provided to Garden City directly by the Class Member or his or her authorized representative or, in the alternative, contact information provided by the Interior Defendants.

c. Where a Trust Administration Class Member is identified as whereabouts unknown as defined in ¶ E.1.i of the Settlement Agreement but has an open IIM account at the time of distribution, and Garden City has no current address for that Class Member, his or her payment shall be deposited in the Class Member's IIM account.

d. Where a Trust Administration Class Member is identified as whereabouts unknown as defined in ¶ E.1.i of the Settlement Agreement and has an open IIM account at the time of distribution, but Garden City believes it has a current address for that Class Member, it may mail that payment to the Class Member's last known address. If the mailing is returned as undeliverable and no forwarding address information is available from the US Postal Service regarding the Class Member, the payment will be deposited into the Class Member's open IIM account.

e. All payments for Class Members identified by Interior as minors, non-compos mentis, under legal disability or adults in need of legal assistance shall be deposited in the individual's IIM account. If an IIM account is not open for that Class Member, one shall be opened for that individual.

f. All payments for Class Members who are deceased shall be made payable to the estate of each deceased Class Member and distributed to the personal representative, administrator or executor of the estate of that Class Member or to his or her heirs in accordance with existing or future orders of this Court or the Special Master.

g. If Garden City reasonably determines, based on information provided by the Interior Defendants, that any Class Member received a greater Historical Accounting Class payment than that to which he or she was entitled, Garden City is authorized to offset that additional amount against the Class Member's Trust Administration Class payment. Said

additional funds shall be deposited in the Settlement Account and held as part of the set aside for appeals by claimants.

h. If Garden City reasonably determines, based on information provided by the Interior Defendants, that any Class Member received, by reason of this distribution, a greater share of the Trust Administration Class distribution than that to which he or she was entitled by reason of the existence of a duplicate account or accounts or for any other reason, and Garden City is able to recoup all or part of that excess payment, including through cancellation of a non-negotiated payment, said funds shall be deposited into the Settlement Account. If said excess payment was deposited in the Class Member's IIM Account and remains in that Account, it will be transferred by the Interior Defendants to the Settlement Account.

i. If Garden City reasonably determines, based on information provided by the Interior Defendants, that one previously believed to be a Class Member is not a Class Member and that individual has been issued an Historical Accounting or Trust Administration Class payment, Garden City may take efforts to recoup those payments, including through cancellation of non-negotiated payments, and the funds received shall be deposited into the Settlement Account. If said improper payment(s) was deposited in an IIM Account and remains in that Account, it shall be transferred by the Interior Defendants to the Settlement Account.

j. If individuals become new Trust Administration Class Members after the Trust Administration Class calculation has been completed, whether through a successful appeal of an adverse determination by Garden City or for any other reason, those individuals will receive an amount corresponding to similarly situated individuals who were included in the original Trust Administration Class calculation and the Trust Administration Class allocation will not be recalculated.

k. All payments mailed to a Class Member and returned due to an insufficient address shall be deposited in that Class Member's IIM Account if permitted under the terms of the Settlement Agreement and orders of this Court; if such a deposit in an IIM Account is not so permitted, such returned payments shall be deposited in a Remainder Account at the Qualifying Bank. Payments to Class Members from the Remainder Account shall be made under procedures established by the Special Master.

1. Garden City is authorized to remit amounts otherwise due Class Members in accordance with legally valid demands for payment including, but not limited to, monetary liens, garnishments, or income withholding orders issued pursuant to federal, state, local, or tribal law, including 42 U.S.C. § 666.

2. Any Trust Administration Class Member who did not receive notice of the Trust Administration Class distributions and who comes forward after the Trust Administration Class distributions claiming entitlement to funds held in the Reserve Fund authorized by ¶ E.4.e.6 of the Settlement Agreement, must present his or her claim in writing to Garden City postmarked no later than 12 months from the date of this Order. All funds thereafter remaining in the Reserve Fund shall be deposited in the Settlement Account.

3. Garden City is hereby authorized to distribute the Historical Accounting Class payment from the Settlement Account to the 101 additional members of the Historical Accounting Class who had balances in their accounts as of September 30, 2009, and who had not previously been identified.

SO ORDERED this the ____ of September 2014

Honorable Thomas F. Hogan
Senior United States District Judge