

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA  
BEFORE THE SPECIAL MASTER**

ELOUISE 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 AUTHORIZE THE CLAIMS  
ADMINISTRATOR TO PAY TRUST ADMINISTRATION CLASS MEMBERS  
DEEMED “WHEREABOUTS UNKNOWN” BY THE DEPARTMENT OF INTERIOR  
BUT FOR WHOM THE CLAIMS ADMINISTRATOR HAS CONTACT INFORMATION**

Plaintiffs, without opposition from defendants, hereby move the Special Master to authorize the Garden City Group (“GCG”), the Claims Administrator, to make settlement payments upon the Court’s approval of Stage 2 Distributions directly to members of the Trust Administration Class for whom it has contact information, even where these class members are designated as “whereabouts unknown” (“WAU”) by the Department of Interior (“Interior”). In support thereof, Plaintiffs respectfully show the Court as follows:

1. In accordance with the Settlement Agreement, the Department of Interior has provided and continues to provide GCG information regarding the identity of members of the Historical Accounting and Trust Administration Classes. In many cases, Interior has no contact information regarding these class members. Some of these class members are listed on the official list of WAU maintained by Interior. See <http://www.doi.gov/ost/wau/index.cfm>.

2. To date, Interior has provided GCG with the names of 99,056 class members for whom it has no current contact information. Of these, 65,651 are listed on the official Interior WAU list.

3. GCG and Class Counsel, often in coordination with Interior, have engaged in extensive efforts to locate class members for whom Interior has no contact information. This includes an extensive notice program encouraging self-identification, dozens of meetings in Indian Country, and working with tribal representatives, allottee associations and other individuals and entities to assist in locating class members.

4. These continuing efforts to locate class members have been successful. To date, GCG and Class Counsel have located 29,779 class members for whom Interior had no contact information. Of these, 17,141 are on Interior's official WAU list. Over the past year, GCG has mailed correspondence to 9,762 of the 17,141 individuals with only 571 returned as undeliverable.

5. GCG has undertaken reasonable efforts to verify the identity of each such individual and confirm his or her current address.

6. GCG has shared the contact information for those individuals identified on the WAU list with Interior. In light of Interior's fiduciary obligations to trust beneficiaries, it must perform its own due diligence to verify the contact information provided, which includes independently contacting each trust beneficiary. This will take considerable time and effort on the part of Interior.

7. The Settlement Agreement contemplates that the settlement payments for those members of the Trust Administration Class considered WAU by Interior and who have an open Individual Indian Money ("IIM") account will be deposited in that account. Settlement

Agreement at ¶ E.1.i. However, those class members who have provided contact information to GCG cannot reasonably be considered WAU. Moreover, distributing funds to an IIM account where a class member has made an effort to advise GCG of his or her contact information is problematic. First, it will unnecessarily delay payments, requiring a class member to contact the Office of Special Trustee (“OST”) of Interior to receive a payment while other class members are being paid directly. Second, it will create confusion among those class members who have provided their contact information as they would understandably assume payments would be mailed directly. Third, should a class member fail to contact OST to receive a settlement payment, after five years he or she will lose the right to that money and it will be paid to the Scholarship Fund. Accordingly, it is important that where contact information exists for a class member that settlement funds be paid directly as opposed to being deposited in an IIM account.

8. The December 19, 2012 Order Appointing Special Master [Dkt. No. 3928], provides that the Special Master shall have authority “[t]o review and approve the distribution of payments to Trust Administration Class members.” *Id.* at ¶ 1(d).

9. Accordingly, Plaintiffs respectfully request that GCG be authorized to distribute settlement payments to members of the Trust Administration Class who are considered WAU by Interior where GCG has been provided contact information by the class member and it has not subsequently sent a mailing to that address which was returned as undeliverable. Should the mailing of that payment be unsuccessful, then in that event it should be deposited in to his or her IIM account.

10. Class Counsel has discussed this Motion with counsel for defendants, who report that defendants do not oppose this Motion.

Respectfully submitted, this 9<sup>th</sup> day of December, 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 AUTHORIZE THE CLAIMS ADMINISTRATOR TO MAKE PAYMENTS DIRECTLY TO CLASS MEMBERS DEEMED "WHEREABOUTS UNKNOWN" BY THE DEPARTMENT OF INTERIOR FOR WHOM IT HAS CONTACT INFORMATION was served on the following via facsimile, pursuant to agreement, on this 9<sup>th</sup> day of December, 2013.

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/s/ David C. Smith  
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