

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

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

**PLAINTIFFS’ UNOPPOSED MOTION TO SET COMPLETION DATE
FOR THE SETTLEMENT DISTRIBUTIONS, TO APPROVE DEPOSIT
OF ADDITIONAL FUNDS INTO THE REMAINDER ACCOUNT AND
TO AUTHORIZE AN INITIAL PAYMENT TO THE INDIAN
EDUCATION SCHOLARSHIP FUND**

Plaintiffs, without opposition from defendants, move this Court to set November 27, 2017, as the completion date for the distribution of this settlement, approve a deposit of \$21,773,438.50 into the Remainder Account at the Qualifying Bank, and approve an initial payment of \$21,773,438.50 to the Indian Education Scholarship Fund.

1. Completion of the Settlement Distribution by November 27, 2017

The proper and efficient administration of the settlement distribution requires establishment of a date for its completion. In consultation with the Claims Administrator, the Garden City Group, LLC (hereafter “Claims Administrator” or “GCG”), Plaintiffs propose that the Court set November 27, 2017, as the completion date for settlement distributions. As described below, that date is five years after the settlement became final and is consistent with the terms of the Settlement Agreement.

- A. By November 27, 2017, all interested persons will have had more than sufficient time to claim outstanding funds.**

The Settlement Agreement, entered into by the parties on December 7, 2009 [Dkt. No. 3660-3], was approved by the Claims Resolution Act of 2010, Pub. L. No. 111-291, 124 Stat. 3064 (2010), and signed into law on December 8, 2010. Following an extensive and effective notice program, the settlement was approved at the Fairness Hearing on June 20, 2011 as more fully set forth in this Court’s Order Granting Final Approval to Settlement dated July 27, 2011 (the “Final Approval Order”) [Dkt. No. 3850]. The settlement then became final on November 24, 2012, after disposition of all of the appeals from the Final Approval Order. [Dkt. No. 3923]. Defendants transferred the settlement funds to the Qualifying Bank on November 27, 2012. [Dkt. No. 3920 at ¶ 2].

On December 11, 2012, this Court ordered commencement of payments to members of the Historical Accounting Class. [Dkt. No. 3923]. Pursuant to the Settlement Agreement and the Final Approval Order, a Supplementary Notice Program targeting additional claimants and providing additional information related to the Trust Administration Class distribution was ordered [*Id.* at ¶ 3] and successfully implemented. [Dkt. No. 4065-1 at ¶¶ 6–12]. The Settlement Agreement set forth procedures for the self-identification of potential Trust Administration Class Members, which was implemented and completed. [Dkt. No. 4067]. On September 11, 2014, this Court ordered that payments to the Trust Administration Class Members commence. *Id.*

GCG and Class Counsel, with the assistance of Defendants, have expended considerable efforts and resources to locate and distribute the funds to members of both the Historical Accounting Class and the Trust Administration Class. [*See* Dkt. Nos. 4163, 4181, 4224 and 4234]. As of the latest update to this Court, checks for approximately 98% of the Historical Accounting Class funds and 96% of the Trust Administration Class funds have been or are

anticipated to be issued based on existing documentation. [Dkt. No. 4234 at ¶ 1].¹ The Claims Administrator continues to conduct outreach in limited areas where there are greater unclaimed funds. Accordingly, the distribution has been a success and it is possible that some further distributions may be made, but the extent of those distributions are not expected to be significant.

By November 27, 2017, all claimants will have had five years to provide information to GCG on which a distribution can be made. Plaintiffs submit that given the extensive notice and outreach, well beyond those in any other class action, by that date Class Members or their heirs will have had more than sufficient time to identify themselves and submit documentation sufficient to support entitlement to funds. Continuation of the settlement administration beyond that date is not a cost-effective use of funds.

B. The proposed completion date is consistent with other provisions in the Settlement Agreement.

It was always recognized that not all of the settlement proceeds could be distributed to the intended Class Members or their heirs. As a result, the parties designated the Indian Education Scholarship Fund (the “Scholarship Fund”), now known as the Cobell Scholarship Fund, as the *cy pres* recipient of any such undisbursed funds, as follows:

Any excess Accounting/Trust Administration Funds remaining after distribution (*e.g.*, funds not expended on administration), or funds in the Remainder Account, shall be paid to the organization selected as the recipient of the Indian Education Scholarship Fund

Settlement Agreement at ¶ E.4.e(8).

¹ Checks have been issued for 95% of the Historical Accounting Funds and 92% of the Trust Administration Class Funds. GCG, as of October 28, 2016, had obtained through outreach documentation that may permit disbursement to an additional 9,421 Historical Accounting Class Members and 23,183 Trust Administration Class Members. This represents an additional 3% of Historical Accounting Funds and 4% of Trust Administration Funds. *See id.* at ¶ 2.

While the Settlement Agreement thus provides that “after distribution” any excess funds shall be paid to the Scholarship Fund, it does not expressly provide for the distribution’s completion. However, the Settlement Agreement’s provisions regarding funds deposited in IIM accounts for Class Members designated by Interior as “Whereabouts Unknown” (“WAU”) provides guidance. The Settlement Agreement states that, except for persons who are a minor or an adult with certain disabilities, the principal amount of any settlement funds deposited in the IIM accounts of WAUs will be paid to the Scholarship Fund if unclaimed within five years from Final Approval of the settlement (which occurred on November 24, 2012)² or the date Defendants first transferred monies for the Accounting/Trust Administration Fund to the Qualifying Bank (which occurred on November 27, 2012).³

The Settlement Agreement’s five-year period for WAU to claim funds likewise makes sense for other persons who cannot be located. The mere fact that a person has not been officially designated as WAU by Interior should not mean that person’s time to claim his or her settlement funds expires prior to those who have been so designated.

Accordingly, Plaintiffs ask this Court to establish November 27, 2017, as the date by which all Class Members or their heirs must claim their funds by providing the Claims Administrator with sufficient information on which a distribution can be made. Plaintiffs request that the Court’s order expressly provide that any documentation received or postmarked after November 27, 2017, is not to be considered.

² See Settlement Agreement G.2.b; Dkt. No. 3923.

³ See Settlement Agreement E.1.i; Dkt. No. 3920 at ¶ 2. Defendants transferred funds earlier to pay the Notice Contractor and Claims Administrator during the approval process, but none of those funds were for the payment of Class Members. See Dkt. No. 3920 at ¶ 2; Settlement Agreement E.2.b.

The sole exception Plaintiffs request to this procedure is for estates that the Claims Administrator reasonably believes may be pending at the Department of Interior (“Interior”) on that date. While this Court and the Special Master have approved a variety of means for the distribution of settlement funds to the heirs of deceased Class Members, the most common, economical and efficient means is for GCG to use federal probate orders as guidance in the distribution as approved by the Special Master on July 16, 2013. [Dkt. No. 3964]. By utilizing federal probate orders, the heirs of Class Members can avoid potentially prohibitory estate administration fees and Plaintiffs avoid concerns that the funds are not distributed to the proper heirs. However, as Defendants have acknowledged, federal probates take longer to complete than a typical state probate. [Dkt. No. 4083 at p. 21]. Therefore, there are funds that are available for distribution to heirs of some Class Members pending completion of a federal probate. We do not believe heirs of Class Members should be denied participation in the settlement merely because of delays in the probate process.

Accordingly, Plaintiffs request that Defendants be required to identify those Class Members whose estates are being probated by Interior as of November 27, 2017 based on the process outlined in § 4 below. GCG shall maintain those funds to which such Class Members are entitled in the Settlement Account and disburse them based on the terms of such probate orders when completed or such other orders of the Court or Special Master as are applicable.

2. Additional Deposits Into The Remainder Account

In making the distributions, GCG is to rely on Interior’s records to identify Class Members. Settlement Agreement at ¶ E.1.f. Based on the latest information from GCG, it has no contact information from which it can make distributions for 25,403 individuals shown in

Interior's records as living members of the Trust Administration Class, of which 1,242 are also shown in Interior's records as living members of the Historical Accounting Class.

In addition to living Class Members, estates of deceased Class Members open in probate as of the Record Date of the settlement (September 30, 2009), or who died thereafter, are eligible to be included in the settlement. Dkt. No. 3660-2 at ¶¶ A.16 and A.35. At one time, there were as many as 77,408 estates for which GCG had no information or documentation from which it could distribute payments to the heirs of deceased Class Members. However, through the efforts of GCG and Class Counsel, and with the assistance and cooperation of the Defendants, there has been a substantial reduction in the number of undistributable settlement funds for estates.

Based on the latest information from GCG, as of December 21, 2016, there are potentially 9,560 estates in the Trust Administration Class for which GCG lacks documentation to permit it to distribute settlement funds, of which 5,793 of the estates are also eligible to participate in the Historical Accounting Class. Together, these estate accounts, combined with the living members of both classes who have yet to be identified, account for \$43,546,877 held in settlement funds as of December 21, 2016. *See* Declaration of Lori Castaneda ("Castaneda Decl.") at ¶6. (Exhibit 1)

Despite the extensive, time-consuming and expensive outreach efforts to date, and based on what it has learned during those efforts, Class Counsel and GCG do not expect to be able to locate many of the individuals shown in Interior's records as living, and that further efforts to do so are unwarranted or economically prohibitive. GCG believes that many, if not most, of these "living" Class Members are deceased, not Class Members, or the result of duplicate accounts. *Id.* at ¶7.

Likewise, Class Counsel and GCG believe they have exhausted most reasonable and cost-effective efforts to further reduce the number of undistributable estates. It is expected that Interior will provide updated information regarding its probate of estates, which may permit some additional distributions to the heirs of such estates. Other than processing that information when it is received, engaging in the limited outreach described above, and periodically checking various databases for additional contact information on the unlocated Class Members or their heirs, Class Counsel and GCG do not believe that further efforts to locate information on the undistributable individuals and estates is warranted or economically practical. *See* Castaneda Decl. at ¶7.

The funds in the Remainder Account are invested in safe, but higher yielding investments than those in the Settlement Account. *See* Minute Order dated August 15, 2016. If GCG receives information that would permit a distribution from the Remainder Account, then payments from the Remainder Account can be made upon an Order from the Special Master. *Id.* Upon the completion of the distribution, excess funds still in the Remainder Account are to be paid to the Scholarship Fund. Settlement Agreement at ¶ E.4.e(8).

The undistributable funds for individuals and estates are similar in character to the funds in the Remainder Account and Plaintiffs submit they should be afforded similar treatment.⁴ Of the total of \$43,546,877 in funds for which GCG currently has no information upon which to make a distribution, GCG reasonably estimates, based on its prior experience in this distribution, that under even the most optimistic circumstances, no more than 50% of those funds will be able

⁴ Defendants' counsel informed Class Counsel that defendants take no position on plaintiffs' motion insofar as it allows an alternative investment of settlement funds by transferring such funds into the Remainder Account, and base their abstention on Settlement Agreement ¶ E.1.g., which expressly provides that "Defendants shall have no role in, nor be held responsible or liable in any way for, the Accounting/Trust Administration Fund, the holding or investment of the monies"

to be distributed by November 27, 2017. Castaneda Decl. at ¶6. Accordingly, Plaintiffs request that 50% of those funds, or \$21,773,438.50, be transferred to the Remainder Account.

3. Initial Payment to Scholarship Fund

This requested payment to the Remainder Account leaves \$21,773,438.50 in the Settlement Account that the Claims Administrator has no reasonable expectation of being able to disburse to Class Members or their heirs. Rather than wait for another year, Plaintiffs believe that an initial payment to the Scholarship Fund of \$21,773,438.50 is warranted.

The Scholarship Fund is being well managed by Indigenous Education, Inc. (“IEI”) and its operations are overseen by a Board of Trustees appointed under the terms of the Settlement Agreement approved by this Court. In addition, it is guided in its work by well-respected counsel. It is making important and significant contributions to the education of Native American students. To date, the Scholarship Fund has distributed \$5.25 million in scholarships to 972 Native American students and has authorized an additional \$500,000 for Summer 2017 Exhibit 2, Testimony of Melvin E. Monette-Barajas, President and Executive Director, IEI, at December 7, 2016, Hearing before the Senate Indian Affairs Committee, at p. 6. The Scholarship Fund has distributed 846 scholarships at \$5,000 per semester for undergraduate students and 126 scholarships at \$10,000 per semester for graduate and doctoral students. *Id.*; Exhibit 3, Testimony of Turk Cobell, Treasurer, Cobell Board of Trustees, at December 7, 2016, Hearing before the Senate Indian Affairs Committee, at p. 2–3. There is an established, unmet need for scholarships in the Native American community, as evidenced by the administration of the Scholarship Fund. IEI received almost 3600 applications for the 2016 academic year but funds were only available to provide scholarships to approximately 600 students. Exhibit B at p. 3.

Under the terms of the Settlement Agreement and this Court's precedent, upon completion of the distribution the remaining funds, after payment of administrative and other expenses, must go to the Scholarship Fund. Settlement Agreement at ¶ G.2.A; *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98, 122 (D.D.C. 2015)(where the settlement agreement specifically designated a *cy pres* as the recipient of excess funds, that settlement had been approved by the Court and there had been no appeal from that decision, it could not be modified). While the Settlement Agreement anticipates that the *cy pres* will be paid upon completion of the distribution, given the delay in probates it may be many years before the final distribution is made. This Court has in its discretion the ability to allow an interim distribution of funds now to achieve the goals of the settlement. *Barnes v. District of Columbia*, 924 F. Supp. 2d 103, 106 (D.D.C. 2013)(court has broad discretion to manage class actions in an orderly and efficient manner).

Payment of this amount to the Scholarship Fund now permits it to better invest the funds and plan its award of future scholarships.⁵ There is little risk, if any, in doing so since there is little chance those funds will be needed in the distribution and, in any event, the Scholarship Fund has agreed to return to the Claims Administrator any funds that may be needed. *See* Exhibit 4 for Agreement between Plaintiffs and the Scholarship Fund.

4. Conclusion

As a result, Plaintiffs ask the Court to:

⁵ Defendants' counsel informed Class Counsel that defendants take no position on plaintiffs' motion insofar as plaintiffs seek to make a conditional, interim transfer of settlement funds into the Scholarship Fund, and base their abstention on Settlement Agreement ¶ E.1.g., which expressly provides that "Defendants shall have no role in, nor be held responsible or liable in any way for, the Accounting/Trust Administration Fund, the holding or investment of the monies"

(1) Set November 27, 2017 as the completion date for the settlement distribution, with the exception of probates pending at Interior as set forth below, and order that all claimants must submit by that date documentation sufficient to make a distribution or lose all rights to claim any of the settlement proceeds. Any documentation received by GCG after that date or postmarked after that date will not be considered. The only exception to this is those heirs awaiting completion of a federal probate for a Class Member as of that date. Within 30 calendar days after November 27, 2017, the Claims Administrator will provide to Interior a list of deceased Class Members that it reasonably believes had an estate pending in federal probate on November 27, 2017 (“Pending Probates”). Within 60 calendar days of receiving that list from the Claims Administrator, Interior will provide to the Claims Administrator (a) information showing which deceased Class Members on the list have Pending Probates or closed probates and (b) documentation of any closed probates. Interior will thereafter provide the Claims Administrator with information on closed probates when the Pending Probates are closed; and

(2) Approve payment of \$21,773,438.50 to the Remainder Account; and

(3) Approve an initial payment of \$21,773,438.50 to the Scholarship Fund, subject to repayment as provided for in the Agreement between Plaintiffs and the Scholarship Fund.

Plaintiffs have consulted with counsel for Defendants who have indicated that Defendants do not oppose this motion.

Respectfully submitted this 13th day of January, 2017.

/s/ David C. Smith
DAVID COVENTRY SMITH
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' UNOPPOSED MOTION TO SET COMPLETION DATE FOR THE SETTLEMENT DISTRIBUTIONS, TO APPROVE DEPOSIT OF ADDITIONAL FUNDS IN TO THE REMAINDER ACCOUNT AND TO AUTHORIZE AN INITIAL PAYMENT TO THE INDIAN EDUCATION SCHOLARSHIP FUND was served via facsimile, pursuant to agreement, on this 13th day of January, 2017.

Earl Old Person (*Pro se*)
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/s/ David C. Smith
DAVID C. SMITH

1 given final approval by this Court in the Order Granting Final Approval to Settlement, dated
2 July 27, 2011 (the "Order"). I submit this Declaration to provide the Court and the Parties
3 with further information regarding the distribution of Historical Accounting Class ("HAC")
4 and Trust Administration Class ("TAC") payments, as well as the status of unpaid deceased
5 Class Members.

6 3. Since commencing distribution to HAC Members on December 14, 2012 pursuant
7 to the Courts' Order dated December 11, 2012, and to the TAC Members on September 14,
8 2014 in accordance with the Court's Order Approving Payments to Members of The Trust
9 Administration Class dated September 11, 2014, GCG has already distributed
10 \$319,056,162.03 and \$846,027,630.96 to HAC and TAC Members respectively for a total of
11 \$1,165,083,792.99 distributed or 92% of the fund. As previously reported to the Court, GCG
12 is currently working with Class Members or their heirs and anticipates it will be able to pay an
13 additional 4-5% of the Class Funds for a total of 98% of HAC funds and 96% of TAC funds.
14

15 4. In my experience administering like settlements, a 92% payment rate to the entire
16 class is very rare as is exhausting 98% and 96% of the funds as noted above. The unique
17 challenges posed by this Settlement, particularly the fact that such a large portion of the Class
18 Members were deceased and a significant population of living Class Members did not have
19 current contact information, makes this achievement all the more remarkable.
20

21 5. At one time, there were over 77,408 estates for which GCG lacked sufficient
22 information or documentation to permit distribution to the heirs. GCG and Class Counsel,
23 with Interior's assistance, have engaged in extensive and exhaustive outreach efforts spanning
24 over a 4 year period and through December 2016 in an attempt to locate and pay as many
25 Class Members as possible.
26

1 6. At this time, there remain 1,242 living and 5,793 deceased HAC Members and
2 25,403 living and 9,560 deceased TAC Members with a total award value of \$43,546,877
3 without documentation or contact information upon which a distribution can be made.
4 Between March 2016 and October 2016, GCG saw a reduction of this population (both living
5 and deceased) by 17%. Taking into account the fact that the time period and results for the
6 17% reduction occurred in the midst of significant outreach efforts, even if the same results
7 could be extrapolated over the course of the next 12 months, the possibility of distributing
8 even 50% of the remaining funds would be extremely optimistic.

9
10 7. Additionally, based upon information obtained during recent visits to Bureau of
11 Indian Affairs ("BIA") agencies, GCG believes that many of the remaining estate records are
12 duplicates, or for individuals who died many years ago without their estates being probated, or
13 are presently in the process of being probated by the BIA and documentation is not yet
14 available. Similarly, many of the records listed as living in the Data by Interior which have
15 not been paid are likely deceased, duplicate accounts, or because they are without any
16 identifying information except a name GCG is unable to locate. As such, we do not believe
17 that significant further outreach to locate information on the undistributable individuals and
18 estates is warranted or economically practical.

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

22 Executed this 13th day of January 2017, at Seattle, Washington.

23
24
25 

26 Lori L. Castaneda

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TESTIMONY OF

MELVIN E MONETTE-BARAJAS

PRESIDENT AND EXECUTIVE DIRECTOR
INDIGENOUS EDUCATION, INC.

Before the

SENATE COMMITTEE ON INDIAN AFFAIRS

Hearing on

“EXAMINING THE DEPARTMENT OF THE INTERIOR’S LAND BUY-
BACK PROGRAM FOR TRIBAL NATIONS, FOUR YEARS LATER.”

DECEMBER 7, 2016

TESTIMONY OF
MELVIN E MONETTE-BARAJAS
PRESIDENT AND EXECUTIVE DIRECTOR
INDIGENOUS EDUCATION, INC.

Before the
SENATE COMMITTEE ON INDIAN AFFAIRS

Hearing on
“EXAMINING THE DEPARTMENT OF THE INTERIORS LAND BUY-
BACK PROGRAM FOR TRIBAL NATIONS, FOUR YEARS LATER.”

DECEMBER 7, 2016

Chairman Barasso, Vice Chairman Tester, and distinguished Members of the Committee, my name is Melvin Monette-Barajas, I am an enrolled member of the Turtle Mountain Band of Chippewa Indians and I am pleased to appear today representing Indigenous Education, Incorporated (the Organization), the approved administrator for the Cobell Scholarship Program authorized by Congress in *Elouise Pepion Cobell, et al. v. Jewell* (the Cobell Settlement). Indigenous Education, Inc. welcomes the opportunity to assist this committee in its oversight of the Cobell Settlement.

Indigenous Education is a nonprofit scholarship administrator created for the express purposes of administering the Cobell Scholarship Program, following the resignation of two previous organizations. The opportunity to create an organization to give the Cobell Scholarship Program the single-focus necessary to design a scholarship program that focused on students, tribes, institutions and community was born through the aforementioned resignations. Combined, the Organization’s President and Executive Director, and the Director of Scholarship Programs have over 50 years of scholarship and student services experience focused on American Indian and Alaska Native students in higher education. The Organization employs five (5) full-time, one (1) part-time and two (2) seasonal-temporary employees in Albuquerque, New Mexico where scholarship processes are conducted via internet, postal service and telephone as necessary. To date, The Cobell Board of Trustees (CBOT) has authorized and the Organization and a predecessor have awarded more than \$5.25 Million to nearly 1,000 members of 138 US federally-recognized tribes attending 316 nonprofit public and private institutions of higher education as full-time and degree-seeking students pursuing vocational, undergraduate and graduate/professional degrees. In addition, the CBOT has authorized an additional \$500,000 for Summer 2017 term and the Organization will begin accepting applications for the scholarships within the next few months.

I am the Executive Director of Indigenous Education, Inc., and I am both honored and privileged to manage the Cobell Scholarship Program to carry out the wishes of the plaintiffs and the late Elouise Pepion Cobell to provide resources for access to higher education for Native people. I bring to the Organization work in institutions of higher education at the Tribal College level, regional and Research 1 institutions, state government (MN) and nonprofit management, as well as board membership as a scholarship advisor to several organizations. As a personal commitment, my advocacy comes from my own experiences, or lack of experiences, with funding for higher education. I am proud of the work that Indigenous Education, Inc. has accomplished in our first year in existence.

We understand and appreciate the financial needs associated with higher education for American Indian and Alaska Native students who have waited patiently for this scholarship program to be made available to them. We also acknowledge that the incentive to sell shares in Trust land to grow the scholarship corpus carries with it an unintended expectation that the “selling” individual, family or tribe will receive priority for scholarship assistance. To assist in the administration of scholarships, the Organization requests information from applicants that will assist staff in identifying these individuals; however, in understanding the financial aid process and requiring a minimum eligibility for selection, along with deadlines for quality management, not all “sellers” have received or will receive a scholarship without an increase in available scholarship funds. We have heard from tribes, families, and students and we are addressing their concerns while remaining aligned with industry standards and practices.

The Cobell Scholarship Program and Indigenous Education, Inc. as the Administrator

Elouise Cobell and a group of advisors advocated for the inclusion of a scholarship program to assist Native students to access and complete higher education at every level. While it may not have been apparent at the time, we now recognize that the Cobell Scholarship Program may serve as the principal perpetual legacy of the Settlement. This carries with it an awesome responsibility to continuously listen to Native students and communities and remain flexible in our administration of the program.

Having assumed the administration two-thirds of the way through an academic year, the Organization was charged with closing the year for first-year funded students, providing summer term funds to returning and new students, opening a new application and process for year two (2) of the program, designing all materials, and distributing all associated outreach and documents. It was the epitome of the proverbial “hit the ground running” for the organization. At this time, we are completing a review and revision of all processes associated with the scholarship program and in the coming days, will be launching the application process for year three (3) of the Cobell Scholarship Program – the Summer 2017 term and the 2017-2018 Academic Year.

In performing its functions, Indigenous Education, Inc. operates at the direction of its Board of Directors - Melvin E Monette-Barajas (Turtle Mountain Band of Chippewa Indians), Kelly

Fayard (Poarch Creek Band of Indians), Clint Carroll (Cherokee Nation) and under the direction and oversight of the Cobell Board of Trustees. The Organization contracts with Academic Works, the leader in complete scholarship management, in utilizing its platform for applicants and staff. We also contract our website development and maintenance, technology support as needed, and all accounting services.

Indigenous Education, Inc. and the Cobell Scholarship Program Description

The Cobell Board of Trustees sets the minimum eligibility criteria. The eligibility criteria are noted below.

To be considered **eligible** for the Cobell Scholarship Program, **Applicants** must be

- Attending or planning to attend a non-profit public or private institution of higher education that is nationally, regionally and industry accredited; and,
- Able to submit a completed application of self-reported information by the annual stated deadline; and,
- Able to demonstrate academic excellence through submission of a current unofficial transcript and through submission of an Academic Reference; and,
- Able to demonstrate engagement in community as demonstrated through submission of a Community Reference; and,
- Seeking to obtain one of the following:
 - Vocational diploma, certification, certificate or AAS degree; or,
 - Undergraduate AA, AS, BA, BS or Post-baccalaureate degree; or,
 - Master's, Doctoral or Professional degree.
 - Post-doctoral work is considered on an individual basis.

Finalists are selected from a pool of all completed applications by external reviewers and upon selection must be able to demonstrate that they are indeed:

- A degree-seeking students attending a non-profit public or private institution; and,
- Enrolled full-time in academic study through submission of a course registration; and,
- Able to demonstrate financial need by subtracting all known/existing resources from the full cost of attendance with an end result in a positive "unmet need" per the institution's office of financial aid submission of a Financial Need Analysis; and,
- Able to demonstrate US federally-recognized tribal enrollment through the tribe's Office of Tribal Enrollment submission of a Tribal Enrollment Verification.

Awarded scholars are those students who meet all stated deadlines for the post-Finalist status. This group of "Scholars" and "Fellows" will receive multiple distributions throughout the regular academic year depending on the institution's academic calendar. Several of these students are considered "Honorary" because they meet all eligibility and deadlines but have no demonstrated need. Honorary Scholars remain on distribution lists, receive all program updates and can access any student service provided by the organization and funds can be made available to them if their financial situation changes.

Indigenous Education, Inc. and the AY 16/17 Award Data

For the Inaugural Summer Scholarship Program 2016 term, 138 offers were made with 37 of those returning scholars from the 2015-2016 academic year. Recognizing the requirement for 80% of the available scholarship funds to be awarded to undergraduate students and the remaining 20% to graduate students, 101 undergraduates were awarded and 37 graduate students were awarded totaling \$366,318. The Organization funded students with an overall grade point

	Summer Term 2016 - Grade Point Average by Education Level					
Level	<2.9	3.0 – 3.49	3.5 – 4.0	Blanks	Average	Total
Freshmen	13	1	4	0	1.72	18
Sophomore	11	8	12	0	3.22	31
Junior	7	9	11	0	3.09	27
Senior	15	7	3	0	2.85	25
Masters	4	5	21	1 – PSI does not give GPA	3.46	31
Professional	0	1	1	0	3.44	2
Doctoral	0	0	4	0	3.92	4
Total	50	31	56	1	3.16	138

average (GPA) of 3.16 for the Summer term.

The Organization's first regular academic year process is 2016/2017 with Summer 2017 yet to be administered. Applicants were required to submit an online General Application (demographic information), a Tribal Enrollment Form and a Financial Need Analysis to have a complete package on file. The latter two forms will be requested only from Finalists in the future. All information to complete an application package will be self-reported in the future with only Finalists requiring verification.

The Organization received 5540 visitors to the OASIS system of which 582 students were funded. These 582 scholars had a positive unmet need reported by their office of financial aid. Another 58 students are considered "Honorary Scholars" due to no or negative unmet need reported by the financial aid office, and are invited to participate in all scholarship recipient programs. This group of 640 Scholars has a combined average GPA of 3.833 as noted on the following page.

Academic Year 2016 – 2017 GPA by Education Level					
Status	<2.9	3.0 – 3.49	3.5 – 4.0	Average	Total
Freshmen	3	73	98	3.6	174
Sophomore	1	70	82	3.5	153
Junior	1	72	66	3.47	139
Senior	4	52	39	3.42	95
Masters	0	4	41	3.8	45
Professional	0	4	8	3.69	12
Doctoral	0	3	19	3.82	22
Total The	9	278	353	3.42	640

The Organization maintains waiting lists of students who were fully eligible but where all available funds had been exhausted these students can receive awards from returned funds, if any become available.

The Scholars group of 640 students attend 249 institutions, are enrolled in 116 US federally-recognized tribes and study in 35 different major areas. The selected scholars are a diverse group.

Combined Scholarship Data

To date, the Cobell Scholarship Program has provided funded 972 students – 846 undergraduate and 126 graduate students. They have received \$3,719,667.58 in scholarship awards and another \$1,532,748.42 is allocated for Winter quarter and Spring terms and \$500,000 has been authorized for Summer 2017 totaling \$5.75 million in scholarship allocations. These students claim residence in 41 states, attend 316 institutions in 44 states and England (IE will fund students attending foreign institutions so long as they meet all other criteria), and are enrolled in 133 tribes in 20 states. Collectively, 208 students attend(ed) 24 Tribal Colleges and Universities in 11 states; 6 are/were Graduate students, leaving 202 Undergraduate students.

Level of Study	Graduate	Undergraduate	Grand Totals
Number of Scholars	126	846	972
Academic Term	Total Individual Scholarships	Total Individual Scholarships	Total Scholarship Dollars
Sum of Semester-Fall 2015 (previous)	41	288	\$887,294.00
Sum of Semester-Spring 2016 (prev)	37	271	\$830,332.00

Sum of Quarter-Fall 2015 (previous)	1	34	\$62,234.00
Sum of Quarter-Winter 2016 (prev)	1	34	\$55,134.00
Sum of Quarter-Spring 2016 (prev)	1	20	\$31,796.00
Sum of Summer Term 2016 (IEI)	27	106	\$366,318.00
Sum of Semester-Fall 2016 Term (IEI)	74	507	\$1,486,559.00
Sum of Spring 2017 (IEI)	76	522	\$1,532,748.00
Sum of Summer Term 2017 - *Authorized	*20	*160	\$500,000.00
Sum of TOTAL	278 Individual Scholarships	1782 Individual Scholarships	\$5,752,415.00, for 2060 Individual Scholarships

The number of scholars receiving funding through Fall 2016 by state of residency for the top ten states includes:

State of Residency	Graduate Student Count	Graduate Student Awards	Undergrad Student Count	Undergrad Student Awards	Total Student Count	Total Student Awards
MT	8	\$61,664.00	110	\$400,949.22	118	\$462,613.22
NM	12	\$86,588.33	95	\$313,515.51	107	\$400,103.84
SD	5	\$31,318.00	98	\$366,435.67	103	\$397,753.67
ND	6	\$36,683.00	88	\$324,163.50	94	\$360,846.50
AZ	19	\$93,545.33	65	\$224,984.17	84	\$318,529.50
OK	9	\$51,982.50	74	\$277,384.96	83	\$329,367.46
CA	12	\$54,593.16	56	\$197,763.67	68	\$252,356.83
WA	16	\$91,132.66	50	\$150,260.70	66	\$241,393.36
MN	4	\$15,903.00	32	\$138,364.50	36	\$154,267.50
WI	1	\$5,000.00	25	\$81,054.00	26	\$86,054.00

Conclusion

We are proud of what we have accomplished to date and look forward to continuing the essential work of the Cobell Scholarship Program even after the Land Buyback Program has concluded to provide improved educational opportunities for American Indian and Alaska Native students and to enable those students to then improve their own communities.

* * *

Thank you, Mr. Chairman. That completes my testimony, and I would be happy to answer questions from the Committee.

COBELL BOARD OF TRUSTEES
6501 AMERICAS PARKWAY NE STE. 825
ALBUQUERQUE, NM
87110 505.313.0032
COBELLSCHOLAR.ORG

TESTIMONY OF

TURK COBELL

TREASURER, COBELL BOARD OF TRUSTEES

Before the

SENATE COMMITTEE ON INDIAN AFFAIRS

Hearing on

“EXAMINING THE DEPARTMENT OF THE INTERIOR’S LAND BUY-
BACK
PROGRAM FOR TRIBAL NATIONS, FOUR YEARS LATER.”

DECEMBER 7, 2016

TESTIMONY OF
TURK COBELL
TREASURER, COBELL BOARD OF TRUSTEES

Before the
SENATE COMMITTEE ON INDIAN AFFAIRS

Hearing on
“EXAMINING THE DEPARTMENT OF THE INTERIOR’S LAND BUY-BACK
PROGRAM FOR TRIBAL NATIONS, FOUR YEARS LATER.”

DECEMBER 7, 2016

Chairman Barasso, Vice Chairman Tester, and distinguished Members of the Committee, my name is Turk Cobell and I am pleased to appear today on behalf of the Cobell Board of Trustees (CBOT). The CBOT was established under the settlement agreement (the Cobell Settlement) that established the Cobell Scholarship Program and resolved the long-running class action litigation against the Department of Interior and other federal defendants known as *Elouise Pepion Cobell, et al. v. Jewell* (Cobell Litigation). The Cobell Settlement was authorized by Congress on December 8, 2010 – six years ago tomorrow -- and was granted final approval by the Court on November 24, 2012.

The role of the CBOT under the Cobell Settlement is to serve as custodian of the scholarship funds, to govern the Cobell Scholarship Program and to report periodically to the Secretary of Interior and the Lead Plaintiffs on the scholarship activities. As stated, I am Turk Cobell (a member of the Blackfeet Nation), the son of the lead plaintiff, Elouise Cobell, and I am an entrepreneur and also serve as the Treasurer of the CBOT. Other members of the CBOT include Alex Pearl, a citizen of the Chickasaw Nation of Oklahoma, who is an Assistant Professor of Law at Texas Tech University School of Law and Chair of the CBOT; Jeani O’Brien, a member of White Earth Band of the Minnesota Chippewa Tribe, who is a Professor at the University of Minnesota; Pam Agoyo, a member of the Pueblo of Ohkay Owingeh, Pueblo of Cochiti, and Pueblo of Kewa, who is the Director of American Indian Student Services and Special Advisor to the President at the University of New Mexico; and Dorothy “Dory” Nason, a member of the Leech Lake Band of the Minnesota Chippewa Tribe, who is a Professor at the University of British Columbia. I should also mention that Elouise Cobell, the principal plaintiff in the litigation that led to creation of the Cobell Scholarship Program, was honored, posthumously, two weeks by being awarded the Presidential Medal of Freedom.

I am pleased to report that the Cobell Scholarship Program is now well underway and is working extremely well. In fact, in the sixteen months since CBOT first began authorizing scholarship awards, ~~nearly 1800 hundred~~ individual Cobell scholarships have been awarded to almost ~~1000~~ Native American students. The scholarship awards are \$5,000 per semester for

over 1100
over 2100

undergraduates and \$10,000 per semester for graduate and doctoral students. The Cobell scholarship awards to date total more \$5.25 million, and the CBOT has authorized an additional \$500,000 for scholarships for the Summer Term 2017. Thus, the scholarships authorized to date total more than \$5.75 million. Moreover, the quality of the applicants is remarkable. The combined average GPA for students who received scholarships for the current academic year is 3.46.

There is a huge unmet need for these scholarships in the Native American community. Our scholarship administrator, Indigenous Education, Inc. (IEI), received nearly 3600 scholarship applications for the current academic year, but the funds available were only sufficient to provide scholarships to 600 students. There is some good news, however. The Scholarship Program will continue to receive additional funds related to the Land Consolidation Program up to a cap of \$60 million. In addition, the CBOT has invested the funds received conservatively, principally in index funds managed by Vanguard, but the returns to date have been excellent and have provided more funds for scholarships. The availability of additional funding and prudent asset management are both critical because CBOT is required to operate Cobell Scholarship Program as a perpetual fund.

The CBOT did encounter several initial hurdles in administering the Cobell Scholarship Program. The organization originally selected -- before the CBOT was formed -- to handle applications and to administer scholarships resigned before the application process even began. The next organization selected was overwhelmed by the number of applications and was not able to handle scholarship administration in a timely or satisfactory manner. Fortunately, CBOT replaced that organization earlier this year with IEI, led by Melvin Monette-Barajas, who is also testifying today, and IEI has done a superb job in administering the Scholarship Program. Moreover, in conjunction with replacing the prior administrator, CBOT and IEI jointly proposed that the administrative fee be cut in half, from 6% per annum to 3% per annum, and that has been done.

In getting the Cobell Scholarship Program operational and, in particular, in working through the changes in administrators, the CBOT has had the full support of the Lead Plaintiffs, through their counsel Bill Dorris of Kilpatrick Townsend, and the Department of Interior. At Interior, the single most critical person has been the Solicitor, Hilary Tompkins, who has been extraordinarily helpful to the Cobell Scholarship Fund at every turn.

Thank you, Mr. Chairman. That completes my testimony, and I would be pleased to answer any questions that the Committee may have.

FUNDS TRANSFER AGREEMENT

This FUNDS TRANSFER AGREEMENT (this “Agreement”) is entered into as of December 22, 2016 between the Cobell Board of Trustees, a nonprofit corporation formed pursuant to the District of Columbia Nonprofit Corporation Act of 2010 (“CBOT”), and Plaintiffs of the class action litigation entitled *Elouise Cobell et al. v. Sally Jewell et al.* (“Plaintiffs”).

RECITALS

WHEREAS, the Class Action Settlement Agreement dated December 7, 2009, in the *Cobell v. Jewell* litigation, approved by the courts, and Section 101 of the Claims Resolution Act of 2010, P.L. 111-291, provides for the establishment of an Indian Education Scholarship Fund; and

WHEREAS, pursuant to the Settlement Agreement and Legislation an Indian Education Scholarship Fund has been established; and

WHEREAS, pursuant to the Settlement Agreement and Legislation, CBOT has been established to oversee the Scholarship Fund and Program; and

WHEREAS, CBOT and Plaintiffs wish herein to provide for certain arrangements relating to any interim transfer of funds to CBOT for application as provided in the Settlement Agreement and Legislation;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

ARTICLE ONE

Definitions

For purposes of this Agreement, the following terms shall have the following meanings when capitalized:

“Business Day” means any day other than a Saturday, a Sunday or a day on which banking institutions in New York, New York are authorized or permitted by law to be closed.

“CBOT” means Cobell Board of Trustees, a non-profit corporation formed pursuant to the District of Columbia Nonprofit Corporation Act of 2010, established to undertake the management and operation of the Indian Education Scholarship Fund, now known as the Cobell Scholarship Fund, and to oversee the implementation and administration of the Scholarship Program by the Organization in accordance with the Settlement Agreement and Legislation.

“Cobell Litigation” means the action entitled *Elouise Cobell et al. v. Sally Jewell et al.* Civil Action No. 96-1285, pending in the United States District Court for the District of Columbia.

“Cobell Scholarship Fund” means the fund, including any earnings thereon, to be managed by CBOT, to provide funding for the Scholarship Program in accordance with the Settlement Agreement, Legislation and the Implementation Agreement.

“Court” means the United States District Court for the District of Columbia.

“Government” means the United States, acting through the United States Department of the Interior.

“Implementation Agreement” means the Second Amended and Restated Implementation Agreement among the Government, Plaintiffs, CBOT and the Organization Implementing the Class Action Settlement Agreement dated December 7, 2009, in the case entitled *Elouise Cobell et al. v. Sally Jewell et al.* United States District Court, District of Columbia, Civil Action No. 96-1285 and Public Law 111-291 relating to the establishment of an Indian Education Scholarship Fund.

“Legislation” means Section 101 of the Claims Resolution Act of 2010, Public Law 111-291.

“Organization” means the organization referred to in the Implementation Agreement to be a recipient of the Cobell Scholarship Fund proceeds and to implement and administer the Scholarship Program.

“Parties” means CBOT and Plaintiffs.

“Plaintiffs” mean the Class Representatives approved by the Court in the class action litigation entitled *Elouise Cobell et al. v. Sally Jewell et al.* United States District Court, District of Columbia, Civil Action No. 96-1285, acting through Class Counsel at Kilpatrick Townsend & Stockton LLP.

“Remainder Account” means the account Plaintiffs established at the Qualifying Bank referred to in the Settlement Agreement to hold returned and other funds as permitted by Court Order.

“Scholarship Program” means the program administered by the Organization and overseen by CBOT to distribute funds from the Cobell Scholarship Fund in order to provide financial assistance in the form of scholarships to American Indian and Alaska Native students to defray the cost of attendance at both post-secondary vocational schools and institutions of higher education in accordance with the Settlement Agreement, Legislation and the Implementation Agreement.

“Settlement Agreement” means the Class Action Settlement Agreement dated December 7, 2009, in the *Cobell v. Jewell* litigation, and any amendments thereto or as modified by the parties to the litigation.

“Settlement Account” or “Plaintiffs’ Settlement Account” means the account established by Plaintiffs at the Qualifying Bank pursuant to Court Order.

ARTICLE TWO

Interim Transfer of Accounting/Trust Funds; Return of Payments to Plaintiffs

Section 2.1. Interim Payments.

(a) Plaintiffs may seek the Court's approval to make one or more interim distributions to the Cobell Scholarship Fund prior to the completion of the distribution in the Cobell Litigation.

(b) If the Court approves an interim distribution, Plaintiffs shall, promptly after receipt thereof, transfer the approved amount of funds to an account designated in writing by CBOT.

Section 2.2. Return of Payments to Plaintiffs.

(a) CBOT acknowledges that, from and after its receipt of any funds transferred pursuant to Section 2.1(b) (the "Transferred Funds"), that valid requests for settlement agreement payments may exceed the remaining balances of the Settlement Account and the Remainder Account (collectively, the "Excess Required Settlement Agreement Payments"). CBOT shall accept and administer all Transferred Funds subject to its obligation pursuant to Section 2.2(b) to return to Plaintiffs Transferred Funds for application to the payment of Excess Required Settlement Agreement Payments (the "Returned Payments") up to a total amount equal to, but not exceeding, the total amount of all Transferred Funds received pursuant to Section 2.1(b).

(b) CBOT agrees that, within 60 Business Days after its receipt of a written notice in accordance with Section 3.1 (the "Payment Notice") specifying the amount of Returned Payments to be made hereunder, it shall remit such Returned Payments by wire transfer to the Settlement Account. The Payment Notice shall be in substantially the form of Exhibit A.

ARTICLE THREE

Miscellaneous

Section 3.1. Notices.

Any notice or other communication required to be given hereunder shall be in writing and sent by facsimile transmission (with written confirmation of transmission), e-mail (with written confirmation of transmission), reliable overnight delivery service (with proof of service), hand delivery or certified or registered mail (return receipt requested and first-class postage prepaid), addressed as follows:

CBOT:

Cobell Board of Trustees
c/o M. Alexander Pearl
Assistant Professor of Law
Texas Tech University School of Law
1802 Hartford Avenue
Lubbock, TX 79409
Telephone: 806-834-6865
Fax: 806-742-1629
E-Mail: m.alexander.pearl@gmail.com

with a copy (which shall not constitute actual or constructive notice) to:

Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004
Attention: David J. Hensler
Telephone: 202-637-5630
Fax: 202-637-5910
E-Mail: david.hensler@hoganlovells.com

Plaintiffs:

Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4528
Attention: William Dorris
Telephone: 404-815-6104
Fax: 404-541-3183
E-Mail: bdorris@kilpatricktownsend.com

with a copy (which shall not constitute actual or constructive notice) to:

Kilpatrick Townsend & Stockton LLP
Suite 900
607 14th Street, NW
Washington, DC 20005-2018
Attention: David C. Smith
Telephone: 202-508-5865
Fax: 202-585-0052
E-Mail: dcsmith@kilpatricktownsend.com

All such notices or other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 6:00 p.m. (Eastern Time) and such day is a business day in the place of receipt. Otherwise, any such notice or other communication shall be deemed not to have been received until the next succeeding business day in the place of receipt. By notice complying with the foregoing provisions of this Section 3.1, any Party shall have the right to

change its mailing address, e-mail address or facsimile number for notices or other communications to such party, or any of the other information specified in this Section 3.1.

Section 3.2. Amendment; Waiver.

No provision of this Agreement may be amended, supplemented, changed, waived, discharged or terminated orally, but only by an instrument in writing signed by each of the Parties.

Section 3.3. Headings.

Headings of Articles and Sections of this Agreement are for convenience of the Parties only and shall be given no substantive or interpretive effect whatsoever.

Section 3.4. Interpretation.

When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns. Each of the Parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by both Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

Section 3.5. Severability.

If any portion of this Agreement shall be declared void or unenforceable by any court or administrative body of competent jurisdiction, such portion shall be deemed severable from the remainder of this Agreement, which shall continue in all respects valid and enforceable.

Section 3.6. Assignment; Binding Effect.

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party (whether by operation of law or otherwise) without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 3.7. Entire Agreement.

The terms and provisions contained herein (including Exhibit A), together with the provisions of the Implementation Agreement as amended hereby, are the complete agreement of the Parties, and supersede any prior agreement, written or oral, of the Parties with respect to its subject matter.

Section 3.8. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to the principles of conflicts of laws thereof.

Section 3.9. Counterparts.

This Agreement may be executed in counterparts (including by facsimile or other electronic counterparts), each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 3.10 Jurisdiction and Venue.

Any and all disputes and controversies between the Parties arising out of or relating to this Agreement or the breach of this Agreement shall be decided by the Court, and the Parties hereby submit to the exclusive jurisdiction and venue of the Court to decide all such disputes and controversies.

Section 3.11 No Third Party Beneficiaries.

This Agreement is for the exclusive benefit of the Parties and is not for the benefit of any other person or entity. No third party shall have any rights under or interests in this Agreement.

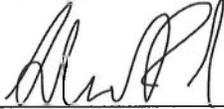
Section 3.12 Termination.

This Agreement shall terminate automatically as of the Business Day after the later to occur of the final payment from the Accounting/Trust Administration Fund and the final payment of unclaimed funds of the Whereabouts Unknown Payments as provided in the Settlement Agreement.

[Signature Pages Follow]

SIGNATURES

For CBOT:



Alexander Pearl
Chairman
Cobell Board of Trustees

December 22, 2016
Date

For Plaintiffs:



William E. Dorris
Kilpatrick Townsend & Stockton LLP
Class Counsel for Plaintiffs

December 22, 2016
Date

EXHIBIT A

**FORM OF
PAYMENT NOTICE**

This Payment Notice, dated [_____], is delivered pursuant to Section 2.2(b) of the Funds Transfer Agreement (the “Agreement”) entered into as of [_____], 2016 between the Cobell Board of Trustees, a nonprofit corporation formed pursuant to the District of Columbia Nonprofit Corporation Act of 2010 (“CBOT”), and Plaintiffs of the class action litigation entitled *Elouise Cobell et al. v. Sally Jewell et al.* (“Plaintiffs”). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

Plaintiffs, by and through their Class Counsel, hereby notify CBOT that (a) Transferred Funds in the total amount of \$[_____] are payable by CBOT to Plaintiffs’ Settlement Account pursuant to Section 2.2(b) of the Agreement and (b) such amount of Transferred Funds shall be applied solely to make Excess Required Settlement Agreement Payments in the same amount.

The payment of such Transferred Funds shall be due on or before 5:00 p.m. Eastern Time on [_____].

[Please make payment of the Transferred Funds by wire transfer of immediately available funds in accordance with the following instructions:

[insert]]

[Add instructions for payment other than by wire transfer]

If you should have questions; please contact [_____] at telephone number [_____] or e-mail [_____] at your earliest convenience.

FOR PLAINTIFFS

Name:
Title:

Date

a. No later than December 17, 2017, the Claims Administrator will provide to the Department of Interior (“Interior”) a list of deceased Class Members that it reasonably believes had an estate pending in federal probate on November 27, 2017 (“Pending Probates”).

b. Within 60 calendar days of receiving the above-described list from the Claims Administrator, Interior will provide to the Claims Administrator (1) information showing which deceased Class Members on the list have Pending Probates or closed probates and (2) documentation of any closed probates.

c. The Claims Administrator will segregate those funds owed to those deceased Class Members with Pending Probates and place them in a separate interest bearing account at the Qualified Bank, which funds shall have the same investment options as approved by the Court for the Remainder Account.

d. Interior will place the Claims Administrator on the service list for the Pending Probates so that the Claims Administrator will receive probate information in the same manner as Interior provides that information to other parties on the service list (such as heirs, executors and their attorneys).

e. The Claims Administrator shall distribute settlement funds based on those probate orders in accordance with the Settlement Agreement and other orders entered by this Court or the Special Master.

f. As provided in the Settlement Agreement, any funds remaining after distribution shall be transferred to the Indian Education Scholarship Fund (the “Scholarship Fund”) upon order of this Court.

g. As provided in the Settlement Agreement, the Claims Administrator, Class Counsel and the Class Representatives may rely on the information provided by Interior.

h. Nothing in this order expands the obligations or existing duties of Interior under the settlement.

3. The sum of \$ 21,773,438.50 shall be transferred to the Remainder Account.

4. The sum of \$ 21,773,438.50 shall be paid to the Scholarship Fund subject to the Agreement between Plaintiffs and the Scholarship Fund that those funds will be transferred back to the Plaintiffs' Settlement Account if Plaintiffs determine those funds are needed in accordance with the Settlement Agreement.

SO ORDERED,

This the ____ day of _____ 2017.

Honorable Thomas F. Hogan
Senior District Court Judge