

No. 11-5205

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, *et al.*,
Plaintiffs-Appellees,

KIMBERLY CRAVEN,
Objector-Appellant,

v.

KENNETH LEE SALAZAR, *et al.*,
Defendants-Appellees.

PLAINTIFFS' RESPONSE TO OBJECTIONS TO BILL OF COSTS

Plaintiffs respectfully respond to Objector-Appellant's objections to the Bill of Costs as follows:

1. Plaintiffs properly included the two memoranda in their separate appendix. Plaintiffs cited the government's memorandum (App. 387) to show there was a disputed question at issue in response to Craven's commonality argument. (Pls.' Br. 51.) Plaintiffs cited their own memorandum (App. 268) in response to Craven's incentive-awards argument to show the substantial costs incurred by named plaintiff Elouise Cobell. (Pls.' Br. 55.) The information cited in these two memoranda was not available in other portions of the trial record.

2. Plaintiffs properly included the excerpts of the trial transcript.

Plaintiffs cited Secretary Babbitt's testimony in response to Craven's commonality argument to show that the government's breaches of trust pervaded the IIM Trust system. (Pls.' Br. 53.) Plaintiffs included Secretary Babbitt's surrounding testimony to provide the entire context of his admissions regarding the government's breaches of trust. (Pls.' Br. 53.)

3. Plaintiffs properly included the two trial exhibits in their separate appendix. Craven contends that those exhibits "were neither submitted to nor relied upon by the district court at the fairness hearing." (Craven Obj. 2.)

However, those trial exhibits were part of the trial record and were relevant to the issues raised in Craven's appeal. (Pls.' Br. 29-30.) Indeed, this Court cited those two exhibits in its published opinion in this case. (Slip Op. 17, 19.)

4. Plaintiffs properly included the notice to class members in their separate appendix. The notice was necessary both to establish that class members were aware of the settlement and informed of their opt-out rights, and to show that the class settlement satisfied the minimal due process requirements established by the Supreme Court. (Pls.' Br. 11, 48.)

5. Plaintiffs properly included the affidavits of the named plaintiffs in their separate appendix. Plaintiffs cited those affidavits in response to Craven's

challenge to the incentive awards to demonstrate why the district court's awards were proper and not an abuse of discretion. (Pls.' Br. 55-58.)

Accordingly, Plaintiffs respectfully request that this Court reject Craven's objections and award Plaintiffs the full \$778.20 in costs requested in Plaintiffs' Bill of Costs.

Respectfully submitted,

/s/ Adam H. Charnes

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DATED: June 11, 2012

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2012, I filed a copy of the foregoing PLAINTIFFS' RESPONSE TO OBJECTIONS TO BILL OF COSTS with the clerk of court using the CM/ECF system and served a copy by first class mail on the following:

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