

**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
REGARDING THE REMAINDER ACCOUNT**

Plaintiffs, without opposition from Defendants¹, hereby request the Court to (a) approve the Remainder Account funds being invested as recommended by J.P. Morgan to obtain a higher yield than funds currently invested in the general Settlement Account, but without significant risk of principal, (b) authorize the deposit of funds from stale and uncashed checks into the Remainder Account, and (c) authorize the Special Master to decide all requests for payment from the Remainder Account by class members or their heirs.

In support of this Motion, plaintiffs respectfully show the Court as follows:

1. The Settlement Agreement provides for a “Settlement Account” in which the Accounting/Trust Administration Fund is to be deposited and from which settlement distributions are to be paid. Settlement Agreement at ¶ A.31. The Settlement Account is held at J.P. Morgan, the Qualifying Bank under ¶ A.29 of the Settlement Agreement.

¹ Defendants’ counsel informed class counsel that defendants take no position on plaintiffs’ motion to allow an alternative investment of the Remainder Account funds, 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”

2. In light of the 2008 financial crisis, the terms of the Settlement Agreement, confirmed by the Claims Resolution Act of 2010, Pub. L. 111-291, 124 Stat. 3067 (2010), provided that funds deposited in the Settlement Account were to be invested in the most secure manner – “collateralized with securities that are U.S. Treasury or other securities that are backed by the full faith and credit of the United States.” Settlement Agreement at ¶ E.1.c. Consistent with the Settlement Agreement, the funds in the Settlement Account have been invested in the J.P. Morgan 100% Treasury Money Market Account. That account had a 0.18% annual net yield as of June 30, 2016.

3. The Settlement Agreement further provided for a separate “Remainder Account” into which “returned” settlement distribution funds may be deposited where there exists no IIM account for that Class Member. Settlement Agreement at ¶¶ E.3.c. and E.4.d. The Remainder Account is to be “interest bearing.” Settlement Agreement at ¶ E.3.c. However, unlike the Settlement Account, the nature of the investments for the Remainder Account are not defined.

4. Given that the concerns in 2008 that lead to the more restricted investment options in the Settlement Agreement approved by Congress are not as significant today and that the great majority of settlement funds have been disbursed, Plaintiffs propose that the Remainder Account be invested in low risk income generating securities that generate a slightly greater return. J.P. Morgan has recommended two options:

- The J.P. Morgan Prime Money Market Fund (JINXX) has approximately \$94.6 billion of assets under management, an annual yield of 0.38% and a AAA S&P and Moody’s & Fitch rating. Investments consist principally of certificates of deposit and time deposits maturing within the next three months.

- The J.P. Morgan Managed Income Fund (JMGIX) has approximately \$5.9 billion under management, an annual net yield of 0.78% and a AA average credit quality. It purchases short term corporate bonds all of which are investment grade. Fact sheets regarding both funds are attached as Exhibits A and B.

5. Plaintiffs believe that permitting greater investment options with respect to the Remainder Account while considering the safety of principal is consistent with prudent management of the settlement funds. Accordingly, Plaintiffs request approval of both the J.P. Morgan Prime Money Market Fund and the J.P. Morgan Managed Income Fund as options for the investment of the Remainder Account.

6. In addition to funds which were returned to the Claims Administrator as undeliverable and which may be deposited into the Remainder Account, there are many checks which have not been cashed and are, due to the passage of time, stale and non-negotiable. At present, there are currently approximately \$7 million in checks which have been issued for more than six months and which are stale and non-negotiable.

7. Though those stale checks have not physically been returned to GCG, plaintiffs submit that they too should be deposited in the Remainder Account. Plaintiffs, therefore, request that for any checks which now or in the future remain uncashed for 180 days after issuance, the Claims Administrator is authorized to stop payment of the check and deposit the funds in the Remainder Account. Plaintiffs also request that any such funds from stale checks deposited in the Remainder Account shall be distributed out of the Remainder Account as provided for in the Settlement Agreement regarding any other funds in the Remainder Account.²

² Any funds remaining in the Remainder Account after the distribution ends are to be paid to the Indian Scholarship Fund established by the Settlement Agreement. Settlement Agreement at § E.4.e(8).

8. The Settlement Agreement provides that when an individual provides documentation to seek payment of funds out of the Remainder Account, “Class Counsel shall file such documentation with the Court or the Special Master as the Court may designate” Settlement Agreement, §§ E.3.c and E.4.d. Plaintiffs request that the Court designate and authorize the Special Master to receive all such documentation and make all decisions regarding requested payments to individuals out of the Remainder Account.

Respectfully submitted this 5th day of August, 2016.

/s/ David C. Smith
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' UNOPPOSED MOTION REGARDING THE REMAINDER ACCOUNT was served on the following via facsimile, pursuant to agreement, on this 5th day of August, 2016.

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