

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	Civil Action No. 96-1285 (JR)
)	
v.)	
)	
DIRK KEMPTHORNE, Secretary of)	
the Department of the Interior,)	
et al.,)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
INTERROGATORIES AND REQUEST FOR DOCUMENTS DATED
FEBRUARY 21, 2007, REGARDING JUDGMENT AND PER CAPITA ACCOUNTS**

Pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure, Defendants provide this response (“Response”) to Plaintiffs’ Interrogatories and Request for Documents Dated February 21, 2007, Regarding Judgment and Per Capita Accounts (“Discovery Set”). This Response reflects Defendants’ good faith diligent efforts to consider and investigate the subjects covered by this Discovery Set and to respond to each part of the Discovery Set within the time allotted under the governing rules. The statements made herein are based upon the information known as of the date of this response and are subject to correction, modification and supplementation if and when additional relevant information becomes known to a Defendant.

The Discovery Set seeks answers to four interrogatories (“Interrogatories”) and demands production of documents responsive to thirty-six enumerated requests (“Document Requests”). Both the Interrogatories and the Document Requests are subject to one or more objections,

which are asserted below. For ease of reference, Defendants shall address the thirty-six Document Requests first and then respond to the four Interrogatories.

RESPONSE TO THE DOCUMENT REQUESTS

Defendants respond to the Document Requests as follows. The section entitled “General Objections to the Document Requests of February 21, 2007” contains objections that apply to each and every one of the Document Requests and are to be read as forming an integral part of the response to each of the thirty-six individual requests.

General Objections to the Document Requests of February 21, 2007

1. These requests are improper in a case based upon the Administrative Procedure Act (“APA”). It is well-established law of the case that the District Court’s jurisdiction is based solely upon the APA. See Cobell v. Kempthorne, 455 F.3d 301, 304 (D.C. Cir. 2006). The APA routinely confines judicial review of agency action to the administrative record. E.g., Commercial Drapery Contractors, Inc. v. United States, 133 F.3d 1, 7 (D.C. Cir. 1998). “The focal point for judicial review” of agency action “should be the administrative record already in existence, not some new record made initially in the reviewing court.” Camp v. Pitts, 411 U.S. 138, 142 (1973) (per curiam). Indeed, in vacating the District Court’s most recent order on IT security in this case, the Court of Appeals cautioned that a “court cannot order programmatic supervision of an agency’s operations, nor can it displace an agency . . . by prescribing ‘particular tasks for Interior to perform based on policies developed’” by the court. 455 F.3d at 317 (quoting Cobell v. Norton, 391 F.3d 251, 258 (D.C. Cir. 2004)). Even as a general matter of trust law, a court will not interfere “to control [trustees] in the exercise of discretion vested in them by the instrument under which they act.” Id. at 305 (quoting Firestone Tire & Rubber Co.

v. Bruch, 489 U.S. 101, 111 (1989)). To the extent the District Court had previously permitted some discovery in this APA case, see Cobell v. Norton, 226 F.R.D. 67 (D.D.C. 2005), that decision is neither instructive nor controlling, because its underlying rationale has been rejected by the Court of Appeals, Cobell v. Kempthorne, 455 F.3d 301, 317 (D.C. Cir. 2006). This Document Request, however, ignores these limitations and demands extensive document discovery without permission from the Court. Some Document Requests even seek records of deliberations and pre-decisional discussions, which is improper. Thus, these Requests fall entirely beyond whatever limited discovery might, in a rare instance, be permitted for cases brought under the APA.

2. There are no evidentiary proceedings scheduled at this time and no conference has been held to set a schedule for whatever limited discovery, if any, might be appropriate for any future trial phase in this case. There are no proceedings of any type open before the Court that require discovery at this time. These Document Requests were propounded after Plaintiffs urged in open court that a June 2007 trial date be set and after the Court had determined that Plaintiffs' trial request was neither sustainable nor acceptable. See Order of January 16, 2007, at 1 [Dkt. 3283]. Consequently, the Document Requests are improper because they seek broad discovery untethered to any scheduled proceeding.

3. The Document Requests are also objectionable, because even if it were assumed that Plaintiffs were entitled to some limited discovery, these Document Requests far exceed any reasonable reading of Federal Rule of Civil Procedure 26. Each and every Document Request seeks production of documents well beyond the proper scope of discovery established by Rule 26. Subparagraph 26(b)(1) provides in pertinent part that:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to *the claim or defense* of any party. . . . Relevant information need not be admissible at trial if the discovery appears *reasonably calculated* to lead to discovery of admissible evidence.”

Fed. R. Civ. P. 26(b)(1) (emphasis added). The District Court has stated that “the only ‘live’ claim in this litigation” is the demand for the accounting mandated by the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4041 *et seq.*). Cobell v. Norton, 226 F.R.D. 67, 76 (D.D.C. 2005). Consequently, the “current scope of this case, and thus of general discovery under Rule 26, is limited to matters relevant to Plaintiffs’ statutory claim that defendants have breached their statutory duty to provide an accurate accounting of all money in the IIM trust held in trust for the benefit of plaintiffs” Id. at 79. The requests, however, seek almost every piece of paper generated in connection with the historical accounting for judgment and per capita accounts, regardless of their actual relevance to the case. It appears instead that Plaintiffs seek to embark on a fishing expedition prohibited by Rule 26 in order to reconstruct and review each and every discrete task of the historical accounting, effectively reenacting the whole undertaking. As but one example, the IIM accounts Plaintiffs focus upon here may date back more than two decades and also include accounts that post-date the defined class, yet there is no date limitation in any of the Document Requests. Therefore, even were this an ordinary civil action and not an APA case, such overreaching discovery runs afoul of Rule 26, and it would also impose unreasonable burdens on Defendants to produce mounds of cumulative, duplicative, and insignificant documents. Discovery is inappropriate in this APA case, and its expense and burden outweigh any benefit of such discovery.

4. These Document Requests are also objectionable because they seek to discover documents relevant only to unnamed IIM account holders, whose individual claims are not

before the Court. This case is a representative class action prosecuted by five individuals in their own right, four of whom also have permission by Order of the Court to pursue their individual claims for the benefit of a class of unnamed IIM account holders. Those unnamed account holders are not co-plaintiffs, nor are they jointly pursuing their own claims in this case. To the contrary, it would destroy the very efficiency of conducting this case as a class action if such individual issues were injected into the case. Therefore, neither the accounts of such unnamed account holders, nor any specifics regarding the historical accounting for their accounts, is relevant to a “claim or defense” in this case. These Document Requests are improper to the extent they seek discovery inconsistent with the class action nature of this case.

5. These Requests are also objectionable because the Requests articulate demands for production that the Court has already ruled to be patently unreasonable and, hence, improper in this case. Plaintiffs improperly demand an unbounded swath of “all versions” of documents “that in whole or part embody, refer, or relate to” several broad topics. When Plaintiffs previously used similar sweeping language, the Court denied Plaintiffs’ motion to compel production, stating:

Similarly meritorious are defendants’ objections that plaintiffs’ requests, in many instances, are overly broad, vague, and impose an undue burden. For example, Plaintiffs’ first request is for ‘[a]ll documents . . . which directly or indirectly relate to, refer to, or embody material regarding the appraisal of individual Indian allotted land and tribal land.’ Notice of Dep. and Req. for Produc. of Docs. at 2 (Aug. 21, 2003). It is the view of this Court that such a request is unreasonable on its face.

Cobell v. Norton, 222 F.R.D. 106, 109 (D.D.C. 2004).

6. The Requests are objectionable to the extent that they seek discovery not for the purpose of obtaining admissible evidence to further a claim or defense on the merits as permitted

by Rule 26, but for the improper purpose of compiling an investigative record to support motions for contempt, both civil and criminal, a strategy that Plaintiffs have previously pursued against numerous civil servants and government officials. It is law of the case that Plaintiffs are not permitted such investigative discovery. See Memorandum and Order of Sept. 2, 2004.

7. The Requests are objectionable and improper to the extent the Requests seek, or could be construed as seeking, information or documents protected by the attorney-client privilege, work product privilege, deliberative process privilege, the right to privacy under applicable law, any joint defense, common interest or party communications privilege, investigative privilege, or any other applicable privilege, doctrine or right that would make the information or documents immune from discovery. Based on the other numerous objections set forth herein, Defendants do not presently intend to produce any documents and so object to conducting any privilege review or providing a privilege log in lieu of production but fully reserve their right to do so if circumstances later warrant. (Notwithstanding the foregoing, should Defendants make any inadvertent production hereunder of information protected by any of these privileges, doctrines, or rights, Defendants reserve their right to assert a privilege and such production shall not be deemed a waiver of the protections that those privileges, doctrines, or rights afford.)

8. The Requests are objectionable and improper, because they seek disclosure of confidential personal, trade and security-sensitive information. First, the Requests are improper to the extent they seek information covered by the Privacy Act of 1971 but outside the scope of the Order entered November 27, 1996, or the scope of any other applicable statute or order. Second, the Requests are improper to the extent that they seek documents containing confidential

business or trade information belonging to third parties, tribes, contractors or the regulated community, or information that, if publicly released, could compromise Defendants' regulatory or enforcement activities. Also, these Document Requests are objectionable and unreasonable to the extent they call for production of any document or data, not covered under the April 22, 2005 protective order, that would result in the unrestricted disclosure of information concerning any of Defendants' computer systems or any security measures or countermeasures relating to such systems that would place the security of such systems at risk. Defendants, therefore, object to requests for such documents and refuse to produce such documents unless and until an appropriate protective order is entered.

9. To the extent the Requests seek any electronic data, including but not limited to e-mail records, that are stored on system back-up tapes, such back-up tapes are used for restoration of information in case of system failure and are not designed nor used to archive or retrieve selected information, and it would be unduly burdensome to attempt to search such tapes. Furthermore, Defendants object to conducting any search of the ZANTAZ e-mail archive for any responsive documents, because such a search, together with the resulting production (1) would duplicate, for the most part, other e-mail stored on the Department of Interior's e-mail systems or would be merely cumulative of any hard copy document production, and (2) would impose an undue burden and expense on Interior to complete. Actual experience acquired during the 2005 hearing on IT security teaches that the ZANTAZ e-mail productions were expensive and time consuming to undertake and resulted in enormous duplication of other e-mail records that were produced by Interior. Defendants, therefore, object to searching for or producing any records

stored on back-up media or any documents from the ZANTAZ archive in response to these Document Requests.

10. The Requests are improper to the extent they seek to require any Defendant to contact and/or discuss issues in this litigation with class members contrary to Court order.

11. The Requests are objectionable and improper to the extent they can be construed to require the production of documents that are in the possession of sovereign Tribes or other third parties, including without limitation contractors and other governmental departments or agencies (such as NARA), or that are in the possession, custody or control of a government official or employee other than in his or her official capacity. Documents in the possession, custody or control of such other entities or individuals – who are not parties – are not discoverable pursuant to these requests. Fed. R. Civ. P. 34. For the same reasons, Defendants object to the definition of the terms “Representative,” “Related Party,” and “Delegates, Entities and their Agents” as over broad.

12. The Requests are improper to the extent they seek the duplicate production of any documents already provided to, or otherwise made available for inspection by, Plaintiffs, including without limitation underlying transaction and ledger documents for the named Plaintiffs made available as part of the “Paragraph 19” production.

13. Defendants object to Plaintiffs’ definition of one term, “Interior Statement of Accounts” for purposes of its Discovery Set but then use of a different term, “INTERIOR STATEMENTS OF ACCOUNT” throughout this Discovery Set. For purposes of their Response, Defendants shall assume that the terms are synonymous.

14. Defendants object to the words “beneficiary” and “beneficiaries” as used in these Requests as confusing and over broad. As made clear in the class certification order, see Order of February 4, 1997, at 2-3, the defined class as certified includes certain IIM account holders, which is neither synonymous nor coextensive with the common meaning of the word “beneficiaries.”

15. Defendants object to the over broad definition for document “versions,” because it seeks production of all copies of documents, including all drafts, no matter how significant or trivial the differences are between them. As so broadly and indiscriminately defined, the term “version” as used herein is improper under Rule 26.

16. The Requests are also objectionable, unduly burdensome and improper on their face to the extent they attempt to impose any other obligation on Defendants that exceeds those specified for document discovery in Federal Rules of Civil Procedure 26 and 34, including without limitation Plaintiffs’ demand that documents be produced and delivered to Plaintiffs’ counsel’s offices by March 26, 2007. Although Defendants object to these Requests in their entirety on numerous grounds, should the Defendants determine that any documents will be produced, they will be produced in a manner and on a date that is reasonable to both sides in this case. To the extent Plaintiffs seek to impose on any Defendant the full cost of retrieving, producing and/or duplicating responsive documents, Defendants – as a prerequisite to producing or making available for inspection and copying responsive documents – may require Plaintiffs to advance their reasonable and fair share of the cost of that undertaking, in an amount and manner agreeable to both sides.

Specific Responses to the Numbered Document Requests

Without waiving the foregoing objections and expressly subject to them, Defendants respond to each individual request as follows:

1. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to contracts, agreements, invoices, billing statements, payments requests, contract deliverables or purchase orders in connection with accounting, auditing or other professional services relating in whole or in part to the preparation of INTERIOR STATEMENTS OF ACCOUNT, including without limitation the collection, compilation, inventory, verification or completeness, accuracy, and reliability of information and calculation of balances for such Statements of Account. This request includes, but is not limited to the following DELEGATES, ENTITIES AND AGENTS: Arthur Andersen; Chavarria, Dunne & Lamey LLC (“CD&L”); Grant Thornton LLP; National Opinion Research Center (“NORC”); KPMG; Deloitte & Touche LLP; Gustavson Associates; Ernst & Young LLP; Bank of America; Historical Research Associates, Inc.; Morgan, Angel & Associates, LLC; Hughes & Bentzen; and Upper Mohawk.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all versions of all documents that in any part refer or relate to the described subjects; and (3) it not only seeks the contract documents for all accounting and other contractor work performed for the Defendants, but also – by requesting all related documents – essentially demands all contract payment records, budgeting materials, and correspondence, as well as all e-mail, phone records, reports, business records, pamphlets, notes, minutes, advertisements, photographs, recordings, books, files, print-outs, calendars, compilations, studies, worksheets, logs, work papers, spreadsheets, journals, and data stored by a computer or on a computer disk, diskette, tape, card or other form of computer memory storage if it relates to virtually any accounting tasks performed under any such contracts at any time in any location nationwide by any number of firms. As set forth, the Request is patently over

broad, unreasonable, and unduly burdensome on its face. Without limiting any foregoing objection, Defendants note that this request is improper under Rule 34 to the extent it seeks to impose a requirement upon any Defendant to seek documents in the custody and control of any accounting firm, Tribe, or other contractor. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

2. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to the Accounting Standards Manual and any policies, procedures, protocols, guidance, and instructions relating in any manner to the preparation of INTERIOR STATEMENTS OF ACCOUNT, including without limitation the collection, compilation, inventory, verification, completeness, accuracy, and reliability of information and calculation of balances for such Statements of Account.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it duplicates and is cumulative of discovery Plaintiffs were already afforded regarding the Accounting Standards Manual (“ASM”) during Phase 1.5; and (3) it not only seeks information directly relating to the ASM, but to every instruction “relating in any manner to the preparation of” tens of thousands of Interior Statements of Account, which essentially constitutes a demand for all correspondence, e-mail, phone records, reports, worksheets, work papers, spreadsheets, journal entries, and data stored by a computer or on a computer disk, diskette, tape, card or other form of computer memory storage if it relates to virtually any accounting tasks performed under the ASM at any time by any person at any location, no matter how trivial or insignificant. As set forth, the Request is patently over broad,

unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

3. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to policies and procedures to ensure that each and every proper trust beneficiary is identified.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is vague, ambiguous and over broad because: (1) it is unbounded as to time; (2) it duplicates and is cumulative of discovery Plaintiffs were already afforded regarding the historical accounting plan and Accounting Standards Manual (“ASM”) during Phase 1.5; (3) it uses the undefined term “trust beneficiary” which has a commonly understood meaning that is not the same as the membership of the plaintiff class as set by the Court; and (4) it seeks all documents that relate or refer to such policies no matter how trivial or insignificant. Thus, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

4. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to actual or purported compliance with accounting standards, or the failure to comply with such standards, in the preparation of the INTERIOR STATEMENTS OF ACCOUNT and the collection, compilation, inventory, verification, completeness, accuracy, and reliability of information and calculation of account balances for such Statements of Account.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it duplicates and is cumulative of discovery Plaintiffs were already afforded regarding the historical accounting plan and the ASM during Phase 1.5; and (3) it seeks sweeping discovery of every document that is either evidence of “actual or purported compliance with accounting standards” or “the failure to comply with such standards,” which on even casual reflection, is tantamount to demanding every piece of paper or electronic entry ever generated in connection with any accounting task undertaken in connection with tens of thousands of Interior Statements of Account, no matter how trivial or insignificant. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

5. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to imputed income, accrued and accruing interest, interest paid, to be paid, or which may be paid, to each trust beneficiary in connection with his or her judgment or per capita account.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is vague, ambiguous and over broad because: (1) it is unbounded as to time; (2) it expressly seeks discovery of pre-decisional documents in an APA case by requesting documents relating to interest “which may

be paid” and implicitly seeks pre-decisional discovery by requesting all other interest calculations before such determinations have been made, adopted, or communicated to account holders; (3) it seeks sweeping discovery of every piece of paper or electronic entry ever generated that in any way relates to imputed income or interest for judgment or per capita accounts, no matter how trivial or insignificant and whether or not paid to any account; and (4) it uses the undefined term “trust beneficiary” which has a commonly understood meaning that is not the same as the membership of the plaintiff class as set by the Court. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

6. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to reports, reviews, opinions, assessments, and studies by any accounting firm, auditing firm, consulting firm or any other contractor or professional service provider, relied on or otherwise available for review or consideration in connection with the preparation of INTERIOR STATEMENTS OF ACCOUNT.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it not only seeks written reviews, reports, opinions and studies by any contractor or professional services firm, but also everything that refers or relates to such documents, regardless of how trivial or insignificant. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request

goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

7. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to notes or memoranda of Defendants or any contractor of Defendants related in any manner to the preparation of the INTERIOR STATEMENTS OF ACCOUNT.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad and imposes an undue burden on the government. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it needlessly seeks duplicate production of all documents responsive to Request No. 6 above; and (3) it seeks sweeping discovery of all notes and memoranda that relate “in any manner” to the preparation of the Statements of Account, as well as every document that refers or relates to any such note or memorandum, regardless of how trivial or insignificant. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

8. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES that in whole or part embody, refer, or relate to correspondence and communications between Defendants and any contractor or third party service provider of Defendants in connection with the preparation of INTERIOR STATEMENTS OF ACCOUNT, and the collection, compilation, inventory, verification, completeness, accuracy, and reliability of information and calculation of balances for such Statements of Account.

RESPONSE: Defendants incorporate by reference their General Objections and their objections and response to Request No. 7 above.

9. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES that in whole or part embody, refer, or relate to the disbursement or distribution of judgment or per capita funds to any Indian, trust beneficiary or any other Person or entity, including but not limited to all checks, signature cards, distribution schedules, judgment documentation, disbursement authorizations or approvals, tribal resolutions, confirmations of receipt, ownership records, enrollment records and rolls, and wire transfers, cash, or other methods of payment.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad and imposes an undue burden on the government. In addition to the reasons set forth in the General Objections, the Request is vague, ambiguous and over broad because: (1) it is unbounded as to time; (2) it seeks sweeping discovery of all manner of documents that relate to any disbursement of judgment or per capita funds, regardless of amount, and regardless of whether it corresponds to any account that is the subject of this litigation; (3) it uses the undefined term “trust beneficiary” which has a commonly understood meaning that is not the same as the membership of the plaintiff class as set by the Court; and (4) it seeks all manner of other documentation if it refers or relates to any disbursement, which essentially constitutes a demand for all correspondence, e-mail, phone records, reports, worksheets, work papers, spreadsheets, journal entries, and data stored by a computer or on a computer disk, diskette, tape, card or other form of computer memory storage, no matter how trivial or insignificant, if it refers or relates to any disbursement of funds. Also, to the extent this Request seeks discovery concerning assets or asset management as opposed to historical accounting, the Request is objectionable as seeking documents beyond the proper scope of this litigation. As set forth, the Request is patently over

broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

10. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to communications and correspondence between any intended recipient of the INTERIOR STATEMENTS OF ACCOUNT, or their parents or guardians, and Defendants.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks production of communications and correspondence with individuals who are not class representatives as well as some who may not be members of the plaintiff class at all; (3) it seeks documents concerning any communication regardless of whether the subject relates to the historical accounting or a statement of account, and no matter how trivial, routine, or insignificant the content; (4) to the extent it seeks production of form letters submitted to the Court and shared with Plaintiffs, it is needlessly duplicative and cumulative; and (5) to the extent it seeks production of correspondence with any named Plaintiffs, it is needlessly duplicative and cumulative. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

11. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to actual or attempted misappropriation or theft of, or the withholding of the payment of funds to any trust beneficiary, from judgment and per capita

account funds, the payment, disbursement, or distribution of such funds to tribes, BIA superintendents and their employees and agents, or nursing home, hospital, hospice, or elderly care administrators and their employees and agents, or the unauthorized payment, disbursement, distribution, or withdrawal of any such funds to any Person or entity, and any investigation of such misappropriation, theft or unauthorized payment or improper withholding of funds.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is vague, ambiguous and over broad because: (1) it is unbounded as to time; (2) it seeks all documents relating to multiple categories of events, including: (a) any actual or attempted theft or misappropriation of “funds”; (b) any withholding of any payment of “funds” to any “trust beneficiary”; and (c) any payment or distribution – authorized or unauthorized – of “funds” to Tribes, BIA superintendents, nursing homes and other persons, regardless of whether (I) the “funds” had ever been deposited in any IIM account (and thus made a trust asset), (ii) the person entitled to said funds is even a member of the plaintiff class, or (iii) the circumstances surrounding such “funds” or “payments” bear any relationship to the historical accounting. To the extent this Request seeks discovery on asset management issues and not the historical accounting, this Request improperly seeks discovery outside the scope of Rule 26. The Request is also improper to the extent it demands a search of documents in the possession of sovereign Tribes. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence. Without limiting any of the foregoing objections, Defendants also note that this Request, because it expressly seeks documents concerning possible criminal conduct, it is

also objectionable to the extent it includes within its scope any documents that are subject to an investigative privilege.

12. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to specific underlying judgments or settlements that are the legal basis for the establishment and funding of each judgment account and per capita distribution.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents relating to “underlying judgments or settlements” for any per capita distribution or judgment account, regardless of whether (I) the “funds” had ever been deposited in any IIM account (and thus made a trust asset), (ii) whether the people entitled to said funds are even members of the plaintiff class, or (iii) the “underlying judgments or settlements” bear any relationship to the historical accounting. To the extent this Request seeks discovery of asset management issues and not the historical accounting, this Request improperly seeks discovery outside the scope of Rule 26. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

13. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or

part embody, refer, or relate to internal communications of Defendants, including all notes, memoranda, letters and electronic communications in connection with the preparation of INTERIOR STATEMENTS OF ACCOUNT and the collection, compilation, inventory, verification, completeness, accuracy, and reliability of information and calculation of balances for such Statements of Account.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is vague, ambiguous, and over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents relating to any “internal communications” that have occurred “in connection with” the Statements of Account regardless of how trivial or insignificant the actual subject of the communication. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

14. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES including all notes, memoranda, and electronic mailings, that in whole or part embody, refer, or relate to the sections of the quarterly status reports to the Court relating to judgment and per capita accounts.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all documents related to the subject regardless of how trivial or insignificant; (3) it seeks documents concerning the Department of the Interior’s Quarterly Status Reports to the Court, which contain no Statements

of Account but reported on Interior's ongoing efforts to conduct the historical accounting; and (4) the contents of Quarterly Reports are not part of the support for any Statements of Account. Moreover, the preparation of the Quarterly Reports are not relevant to a claim or defense nor reasonably calculated to lead to admissible evidence, because the said Quarterly Reports were intended only as a device to provide periodic information to the Court on the status of the historical accounting project and do not themselves constitute part of the historical accounting. Thus, the excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its very subject is not related to a claim or defense, nor is not reasonably calculated to lead to the discovery of admissible evidence.

15. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to judgment and per capita account records that are incomplete, inaccurate, lost, missing, corrupted, modified, or destroyed.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all versions of all documents that in any part refer or relate to the described subjects, regardless of how trivial or insignificant; (3) it seeks discovery concerning any record that is "incomplete, inaccurate, lost, missing, corrupted, modified or destroyed" without regard to whether there is or was a copy or a suitable substitute record available or any adverse impact at all upon the Defendants' ability to discharge the accounting duties prescribed by statute; and (4) it seeks this broad discovery whether or not the loss, damage, inaccuracy and so on bears any material relationship to a claim or defense in this case.

Moreover, this Request is confusing and ambiguous, because it appears to include “incomplete” records even if later completed, and records that at one time may have been “inaccurate” but were “modified” to make them correct. The Request is also over broad, because its wording includes even account records that are intended to be “modified” in the ordinary course. Finally, the Request is over broad to the extent it seeks production of electronic data that are revised and overwritten in the ordinary course of keeping the accounts. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

16. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to correspondence or communications with any third party, including without limitation tribes and financial institutions, in connection with judgment and per capita deposits, withdrawal, accruals, disbursements, distributions, and payments.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad and imposes an undue burden on the government. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it needlessly seeks duplicate production of all documents responsive to Request Nos. 6, 8 and 10 above; and (3) it seeks sweeping discovery of all “correspondence” and “communications” in connection with “per capita deposits, withdrawal, accruals, disbursements, distributions, and payments,” without regard to whether any such transaction is in any way relevant to any Statement of Account and without regard to the class certified by the Court; and (4) it seeks all documents “related” to such “correspondence” or “communications” regardless of how trivial or insignificant. As such, the Request is patently over broad, unreasonable, and unduly

burdensome on its face. Without limiting any foregoing objections, Defendants note that this request is improper under Rule 34 to the extent it seeks to impose a requirement upon any Defendant to seek documents in the custody and control of any third party, including without limitation any bank or other financial institution, accounting firm, Tribe, or other contractor. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

17. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to budgets, appropriations, and other records in connection with funding an accounting, auditing, or reconciliation of judgment and per capita accounts.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. First, this Request is improper to the extent it seeks documents that are matters of public record before the Court or in Congress, for such budget and appropriations documents are readily available to Plaintiffs, without the need for production here. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all versions of all documents that in any part refer or relate to budgets, appropriations or funding, regardless of how trivial or insignificant; (3) it seeks this broad discovery whether or not the funding, budget, or appropriation bears any material relationship to a claim or defense in this case. Moreover, this Request is improper to the extent it seeks production of documents concerning any budget, appropriation or other funding activities that are pre-decisional and thus not a proper subject of discovery. The excessive scope of this Request goes far beyond what is

permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

18. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to: or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to funds expended or to be expended in the accounting, audit, or reconciliation of judgment and per capita accounts.

RESPONSE: Defendants incorporate by reference their General Objections and their objections and response to Request No. 17 above.

19. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to reports, including workpapers in connection with any work related to the preparation of the INTERIOR STATEMENTS OF ACCOUNT. This request includes, but is not limited to the following DELEGATES, ENTITIES AND AGENTS: Arthur Andersen; Chavarria, Dunne & Lamey LLC (“CDL”); Grant Thornton LLP; National Opinion Research Center (“NORC”); KPMG; Deloitte & Touche LLP; Gustavson Associates; Ernst & Young LLP; Bank of America; Historical Research Associates, Inc.; Morgan, Angel & Associates, LLC; Hughes & Bentzen; and Upper Mohawk.

RESPONSE: Defendants incorporate by reference their General Objections and their objections and response to Request Nos. 6 and 7 above, and without limiting any foregoing objections, note that this request is improper under Rule 34 to the extent it seeks to impose a requirement upon any Defendant to seek documents in the custody and control of any accounting firm, Tribe, or other contractor.

20. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to the Palm Springs - Agua Caliente Accounting (Reference January 17, 2001, Historical Accounting Scorecard MM001OSTWDC0006000123 [sic]).

RESPONSE : Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad,

and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents referring or relating to Palm Springs-Agua accounting activity mentioned in a 2001 document, regardless of how trivial or insignificant and regardless of whether any document is relevant to any Statement of Account. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

21. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody: refer, or relate to the Eastern Region Accounting (Reference January 17, 2001 Historical Accounting Scorecard SMM001OSTWDC0006000124).

RESPONSE : Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents referring or relating to Eastern Region accounting activity mentioned in a 2001 document, regardless of how trivial or insignificant and regardless of whether any document is relevant to any Statement of Account. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in

particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

22. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES that in whole or part embody, refer, or relate to the Land Title Records Sampling of Data. (Reference January 17, 2001 Historical Accounting Scorecard SMM001OSTWDC0006000125).

RESPONSE : Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents referring or relating to certain sampling activity mentioned in a 2001 document, regardless of how trivial or insignificant and regardless of whether any document is relevant to any Statement of Account. Also, to the extent this Request seeks discovery concerning assets or asset management as opposed to historical accounting, the Request is objectionable as seeking documents beyond the proper scope of this litigation. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

23. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to the "Office of Historical Trust Accounting - Key Issues, Potential Secretarial Issue Documents." (Reference January 17, 2001 Historical Accounting Scorecard SMM001OSTWDC0006000127).

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents referring or relating to certain accounting issues mentioned in a 2001 document, regardless of how trivial or insignificant and regardless of whether any document is relevant to any Statement of Account. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

24. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to the “data analyses and other tasks” performed by CD&L. (Reference January 17, 2001 Historical Accounting Scorecard SMM001OSTWDC0006000132).

RESPONSE: Defendants incorporate by reference their General Objections and their objections and response to Request No. 23 above.

25. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to the QCR performed by Grant Thornton. (Reference January 17, 2001 Historical Accounting Scorecard SMM001OSTWDC0006000132).

RESPONSE: Defendants incorporate by reference their General Objections and their objections and response to Request No. 23 above.

26. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS

transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to “Office of Trust Risk Management, Individual Indian Monies Historical Accounting Pilot Project (dated October 31 , 2001),” prepared by CD&L, including without limitation (a) agreed upon procedures; (b) “accounting approach (p49);” (c) “data analysis (p.49);” (d) “program to calculate interest earnings (p.50);” (e) “account statements (p.50);” (f) “electronic images and index files of documents used to support the transactions reconciled (p.50);” (g) review and analysis [related to] specific historical transactions [not included in the data provided by OTFM (p55); (h) “Data Validation Results Report (p55); (I) “subsequent postings of interest (p55);” (j) “rolls (p.55);” (k) “Tribal Rolls (p.55);” (l) “Official' roll (p55);” (m) “final judgment settlement documents (p.55);” (n) “adequacy of [support[ing documentation] (p56);” and (o) “interest factors established by the OTFM or Bureau of Indian Affairs (BIA) (p56).” Reference January 17, 2001 Historical Accounting Scorecard SQ0000046-59).

RESPONSE: Defendants incorporate by reference their General Objections and their objections and response to Request No. 23 above.

27. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to “Final Report, Review of IIM Historical Accounting Pilot Project,” prepared by Grant Thornton LLP, including without limitation (a) the final judgment or settlement; (b) all relevant tribal resolutions and distribution plans; (c) related IIM account statements; (d) “two notebooks comprising the ‘final draft’ reports of the judgment account pilot project (p27);” (e) “CD&L’s final draft document reporting on the nine groups of IIM judgment accounts (p27);” (f) “evaluation (p27);” (g) “pilot project working papers (p27);” (h) interview notes from Grant Thornton site visit (p27); (I) “notes [] provided to identify alternative documents and approaches (p32);” (j) “preliminary findings of [] review” related to “disproportionate” interest postings (p32);” (k) “625 [statements that] will require additional work (p33);” (l) “list of documents for tracking search status and location (p34);” (m) “program to calculate interest earnings based on historically declared interest distribution factors provided by the Office of Trust Funds Accounting and average daily account balances (p34);” (n) “working papers of the relevant source documents [] cross-referenced [] to the relevant support (p34);” (o) all documents related the “scope of the CD&L projected [being] limited [to] the search and verification of disbursement data on the IIM judgment accounts. . . .work to obtain the disbursement confirmation from the Department of the Treasury, needed for full reconciliation, was beyond the scope of the pilot project (p35);” (p) “interest rate discrepancies (p38); [sic] (q) “the need for additional documentation to be fully reconciled (p38);” (r) and, all documents identified in Appendix A (p43-44). (Grant Thornton April 8, 2002 Final Report Reference SMMREQ0000022-45).

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents referring or relating to the “Final Report, Review of IIM Historical Accounting Pilot Project,” including some 18 items mentioned in that report, regardless of how trivial or insignificant and regardless of whether any document is relevant to the accounting for any Statement of Account. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

28. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to the “OHTA IIM Historical Accounting Judgment/Per Capita Accounts Status/Results – June 7, 2002” including without limitation (a) “account histories for each of the new accounts selected (p63);” (b) “account detail produced (p63);” (c) the “support[ing]” documents found at the Renaissance records facility (p63);” (d) any “significant variances” calculated (p64); (e) the “detail of non-interest, non-award receipts (p64);” (f) any “additional document[s]” gathered through subsequent searches (p64);” (g) “checks” obtained from the Department of Treasury (p64);” (h) any “exceptions (p68);” (I) any “errors (p68);” (j) the “specific impact of any errors (p68);” (k) the proper disposition of such exceptions and calculated interest (p69);” (l) “specific historical transactions [] not included in the data provided by OTFM (p70);” (m) “[a]dditional research” performed on missing transactions (p70);” (n) “certain accounts for which the balances were paid out and subsequent postings of interest were made to the accounts (p70);” (o) and the disposition of residual interest postings (p70).” [sic] (June 7, 2002 OHTA Historical Accounting Project Reference SMMREQ0000060-70).

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad,

and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents referring or relating to the “OHTA IIM Historical Accounting Judgment/Per Capita Accounts Status/Results – June 7, 2002,” including some 15 items mentioned in that report, regardless of how trivial or insignificant and regardless of whether any document is relevant to the accounting for any Statement of Account. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

29. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to Grant Thornton's “quality control check on Chavarria, Dunne & Lamey LLC's effort to update . . . judgment accounts” dated June 14, 2002, including without limitation the (a) “[t]rac[ing of] the number of accounts reported as reconciled and their ending account balances back to support schedules included in CD&L's workpapers (p14);” (b) the “recalculat[ion of] the three months’ interest accruing (p14);” (c) the comparison of documents to the Accounting Standards Manual (p14); (d) “minor interest variances (p14);” (e) and the resolution of interest rate computation methodology (p15). Reference June 14, 2002 Grant Thornton Review (SMMREQ0000011-19).

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents referring or relating to a reported “quality control check on Chavarria, Dunne & Lamey LLC's effort to update . . .

judgment accounts' dated June 14, 2002," including at least 5 items mentioned in that report, regardless of how trivial or insignificant and regardless of whether any document is relevant to the accounting for any Statement of Account. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

30. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to CD&L's Historical Accounting Project report, dated July 31, 2002, including without limitation (a) the "judgment affecting 843 accounts (p30);" (b) "interest calculation and exception follow-up and additional reconciliation procedures (p30);" (c) Tribal trust account verification of the judgment receipt and allocation . . . and linked the minor per capita portion of the transfer to IIM (p30);" (d) "[c]ompleted accounting procedures for 91 per capita receipt transactions (p30);" (e) "account histories (p30);" (f) "support for transactions (p30);" (2) "variances between the interest recalculation and actual interest posted (p31);" (h) "detail of non-interest, non-award receipts for review (p31);" (I) "[r]eclassified miscoded interest receipts as appropriate and re-computed interest calculations (p31);" (j) documents produced as a result of "additional document search[es] (p31);" (k) "Tribal Trust account verification of the judgment receipt and allocation based on the use and distribution plan (p31);" (1) "[i]dentified/quantified disbursement transactions (p31);" (m) "check copies from the U.S. Treasury (p31);" (n) exceptions (p36);" [sic] (o) "[a]dditional other findings, not necessarily representing exceptions (p36);" (p) "errors (p36);" (q) "specific impact of any errors (p36);" (r) "proper disposition of such exceptions and calculated interest (p37);" (s) "33 accounts . . . [having] accounting discrepancies as a result of transfers between accounts (p37);" (t) "specific historical transactions . . . not included in the data provided by OTFM (p37);" (u) "[a]dditional research" performed on missing transactions (p37);" [sic] (v) "accounts for which the balances were paid out and subsequent postings of interest were made to the accounts (p37);" (w) and the disposition of residual interest postings (p37)." [sic] Reference July 31, 2002 CD&L Historical Accounting Report Review (SMMREQ0001528-53).

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents

regardless of how trivial or insignificant; and (3) it seeks all documents referring or relating to the “CD&L’s Historical Accounting Project report, dated July 31, 2002,” including some 21 items mentioned in that report, regardless of how trivial or insignificant and regardless of whether any document is relevant to the accounting for any Statement of Account. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

31. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to the Grant Thornton Quality Control Review for 3,706 judgment accounts. (Reference SMM001OSTWDC003000486).

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad, and poses an undue burden. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it seeks all related documents regardless of how trivial or insignificant; and (3) it seeks all documents referring or relating to the “the Grant Thornton Quality Control Review for 3,706 judgment accounts,” regardless of how trivial or insignificant and regardless of whether any document is relevant to the accounting for any Statement of Account. As set forth, the Request is over broad, unreasonable, and unduly burdensome on its face.

32. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody,

refer, or relate to e-mail, memoranda, notes or other communications to or from Bert Edwards in connection with the historical accounting of IIM trust funds for each trust beneficiaries since the inception of the IIM Trust.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, confusing, and over broad. In addition to the reasons set forth in the General Objections, the Request is vague, confusing and over broad because: (1) it is unbounded as to time; (2) it uses the undefined term “trust beneficiary” which has a commonly understood meaning that is not the same as the membership of the plaintiff class as set by the Court; and (3) it needlessly seeks duplicate production of documents responsive to numerous other requests, including without limitation Request Nos. 7 and 13 above. It is also over broad because it seeks sweeping discovery of any version of any type of document that relates to any e-mail, notes, or memoranda to or from Bert Edwards “in connection with” the historical accounting. Since Mr. Edwards is the Executive Director for the Office of Historical Trust Accounting at the Department of the Interior, this Request appears to include nearly every piece of paper and every e-mail message Mr. Edwards has ever sent or received in his job, as well as all other documents that “refer” or “relate” to any of Mr. Edwards’ documents. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

33. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by: the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to e-mail, memoranda, notes or other communications by or between the firm of Hughes & Bentzen or any of its partners, associates, paralegals, contractors or agents, Department of Justice attorneys, and the Defendants and their attorneys in the Solicitor’s Office,

in connection with the preparation and communication or distribution of INTERIOR STATEMENTS OF ACCOUNT, and the collection, compilation, inventory, verification, completeness, accuracy, and reliability of information and calculation of balances for such Statements of Account.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad and imposes an undue burden on the government. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it needlessly seeks duplicate production of all documents responsive to Request No. 6 above; and (3) it includes in its scope sweeping discovery of all “e-mail, memoranda, notes or other communications by or between” the law firm of Hughes & Bentzen, the Department of Justice, and the Solicitor’s Office of Interior in connection with the preparation or distribution of Statements of Account, as well as every document that relates to any such communication, regardless of how trivial or insignificant. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence. Without limiting any of the foregoing objections, Defendants also note that this Request, because it expressly seeks documents relating to communications involving an outside law firm, the Department of Justice, or Interior’s Office of the Solicitor, is objectionable because its scope explicitly appears to include documents that are subject to a claim of attorney-client or work product privilege.

34. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to e-mail, memoranda, notes or other communications by or between the firms of CD&L, Grant Thornton, LLP, Arthur Anderson, KPMG, NORC, Deloitte & Touche, LLP,

Gustavson Associates, Ernst & Young, Morgan Angel, Upper Mohawk, Historical Research Associates and Bank of America, or any of their partners, associates, paralegals, contractors or agents and Defendants in connection with the preparation of INTERIOR STATEMENTS OF ACCOUNT, and the collection, compilation, inventory, verification, completeness, accuracy, and reliability of information and calculation of balances for such Statements of Account.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous, over broad and imposes an undue burden on the government. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it is unbounded as to time; (2) it needlessly seeks duplicate production of all documents responsive to Request Nos. 6, 8 and 16 above; and (3) it seeks sweeping discovery of all “e-mail, memoranda, notes or other communications” issued in connection with the preparation of Statements of Account by or between any of twelve firms and entities assisting in varying capacities with the historical accounting, as well as every document that refers or relates to any such communications, regardless of how trivial or insignificant. As set forth, the Request is patently over broad, unreasonable, and unduly burdensome on its face. Without limiting any foregoing objections, Defendants note that this request is improper under Rule 34 to the extent it seeks to impose a requirement upon any Defendant to seek documents in the custody and control of any accounting firm, Tribe, or other contractor. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

35. ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to e-mail, memoranda, notes or other communications by or between the Office of the Special Trustee or any of its officials, employees, contractors or agents, in connection with the accounting of individual Indian trust assets and any employee of the Office of Historical

Trust Accounting, relating in any manner to preparation and distribution of INTERIOR STATEMENTS OF ACCOUNT and the collection, compilation, inventory, verification, accuracy, completeness, and reliability of information and calculation of balances for such Statements of Account.

RESPONSE: Defendants incorporate by reference their General Objections and their objections and response to Request No. 13 above.

36. ALL Versions of Documents in the custody and control of, or created or maintained by, the Defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Defendants or their REPRESENTATIVES, that in whole or part embody, refer, or relate to Defendants' verification of legal guardianship prior to distribution of INTERIOR STATEMENTS OF ACCOUNT.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is vague, ambiguous and over broad because: (1) it is unbounded as to time; (2) the request seeks documents concerning guardians for any Statement of Account regardless of class membership; and (3) it seeks all documents that relate or refer to such "verification" no matter how trivial or insignificant. Thus, the Request is patently over broad, unreasonable, and unduly burdensome on its face. The excessive scope of this Request goes far beyond what is permitted under Rule 26, in particular because its sheer breadth is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSES TO THE INTERROGATORIES

Without waiving any objection, Defendants respond to each individual Interrogatory as follows:

- 1. Identify by name, position, or title each Person assisting in the preparation of the responses to these interrogatories, specifying each interrogatory in which that assistance was provided.**

RESPONSE to Interrogatory No. 1: Because Defendants object to these Interrogatories in their entirety, through their counsel, as set forth in detail herein below, there is no person providing a substantive response to the referenced Interrogatories.

2. **Identify by name, position, title, professional and academic qualifications, last known address, place of employment and telephone number, each Person who has assisted in the collection, compilation, and verification of information and calculation of balances for any INTERIOR STATEMENTS OF ACCOUNT, including without limitation each auditor and accountant specifying:**
 - a. **The nature of [sic] scope of each Persons [sic] assistance or involvement.**
 - b. **The dates such work is represented to have been performed.**
 - c. **The time recorded for each day such work is reported to have been performed.**

RESPONSE to Interrogatory No. 2: Defendants object to this Interrogatory on multiple comprehensive and alternative grounds as set forth below:

1. These Interrogatories are improper in a case based upon the Administrative Procedure Act (“APA”). It is well-established law of the case that the District Court’s jurisdiction is based solely upon the APA. See Cobell v. Kempthorne, 455 F.3d 301, 304 (D.C. Cir. 2006). The APA routinely confines judicial review of agency action to the administrative record. E.g., Commercial Drapery Contractors, Inc. v. United States, 133 F.3d 1, 7 (D.C. Cir. 1998). “The focal point for judicial review” of agency action “should be the administrative record already in existence, not some new record made initially in the reviewing court.” Camp v. Pitts, 411 U.S. 138, 142 (1973) (per curiam). Indeed, in vacating the District Court’s most recent order on IT security in this case, the Court of Appeals cautioned that a “court cannot order programmatic supervision of an agency’s operations, nor can it displace an agency . . . by prescribing ‘particular tasks for Interior to perform based on policies developed’” by the court. 455 F.3d at 317 (quoting Cobell v. Norton, 391 F.3d 251, 258 (D.C. Cir. 2004)). Even as a general matter of trust law, a court will not interfere “to control [trustees] in the exercise of discretion vested in them by the instrument under which they act.” Id. at 305 (quoting Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 111 (1989)). To the extent the District Court had

previously permitted some discovery in this APA case, see Cobell v. Norton, 226 F.R.D. 67 (D.D.C. 2005), that decision is neither instructive nor controlling, because its underlying rationale has been rejected by the Court of Appeals, Cobell v. Kempthorne, 455 F.3d 301, 317 (D.C. Cir. 2006). The Interrogatories, however, ignore these limitations and demand extensive, detailed discovery without permission from the Court. Thus, these Interrogatories fall beyond whatever limited discovery might, in a rare instance, be permitted for cases brought under the APA.

2. There are no evidentiary proceedings scheduled at this time and no conference has been held to set a schedule for whatever limited discovery, if any, might be appropriate for any future trial phase in this case. There are no proceedings of any type open before the Court that require discovery at this time. These Interrogatories were propounded after Plaintiffs urged in open court that a June 2007 trial date be set and after the Court had determined that Plaintiffs' trial request was neither sustainable nor acceptable. See Order of January 16, 2007, at 1 [Dkt. 3283]. Consequently, the Interrogatory is improper because they seek broad discovery untethered to any scheduled proceeding.

3. Each Interrogatory is also objectionable, because even if it were assumed that Plaintiffs were entitled to some limited discovery, the Interrogatories exceed a reasonable reading of Federal Rule of Civil Procedure 26. See Fed. R. Civ. P. 26(b)(1). The District Court has stated that "the only 'live' claim in this litigation" is the demand for the accounting mandated by the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4041 et seq.). Cobell v. Norton, 226 F.R.D. 67, 76 (D.D.C. 2005). Consequently, the "current scope of this case, and thus of general discovery under Rule 26, is limited to matters relevant to

Plaintiffs' statutory claim that defendants have breached their statutory duty to provide an accurate accounting of all money in the IIM trust held in trust for the benefit of plaintiffs” Id. at 79. This Interrogatory, however, seeks detailed information about every person who has performed almost any task in connection with the historical accounting or the Statements of Account. When viewed along with the extensive Document Requests in this Discovery Set, it appears that Plaintiffs seek to embark on a fishing expedition prohibited by Rule 26 in order to reconstruct and review each and every discrete task of the historical accounting, effectively reenacting the whole undertaking. In this Interrogatory Plaintiffs want to know not only what tasks were accomplished but even the “time recorded for each day [for] such work.” Thus, even if this were an ordinary civil action and not an APA case, the broad discovery sought runs afoul of Rule 26 and would also impose unreasonable burdens on Defendants to compile and provide mounds of cumulative, duplicative, and insignificant information (or documents pursuant to Rule 33(d)). Discovery is inappropriate in this APA case, and the expense and burden of answering each Interrogatory outweighs the benefit of such discovery.

4. Each Interrogatory is also objectionable because they seek to discover information relevant only to unnamed IIM account holders, whose individual claims are not before the Court. This case is a representative class action prosecuted by five individuals in their own right, four of whom also have permission by Order of the Court to pursue their individual claims for the benefit of a class of unnamed IIM account holders. Those unnamed account holders are not co-plaintiffs, nor are they jointly pursuing their own claims in this case. To the contrary, it would destroy the very efficiency of conducting this case as a class action if such individual issues were injected into the case. Therefore, neither the accounts of such unnamed

account holders, nor any specifics regarding the historical accounting for their accounts is relevant to a “claim or defense” in this case. These Interrogatories are improper to the extent they seek discovery inconsistent with the class action nature of this case.

5. The Interrogatories are objectionable and improper to the extent they seek, or could be construed as seeking, information protected by the attorney-client privilege, work product privilege, deliberative process privilege, the right to privacy under applicable law, any joint defense, common interest or party communications privilege, investigative privilege, or any other applicable privilege, doctrine or right that would make the information or documents immune from discovery.

6. The Interrogatories are objectionable and improper to the extent they seek disclosure of confidential personal, trade and security-sensitive information. First, the Interrogatories are improper to the extent they seek information covered by the Privacy Act of 1971 but outside the scope of the Order entered November 27, 1996, or the scope of any other applicable statute or order. Second, the Interrogatories are improper to the extent that they seek confidential business or trade information belonging to third parties, tribes, contractors or the regulated community, or information that, if publicly released, could compromise Defendants’ regulatory or enforcement activities. Defendants, therefore, refuse to provide such information in answering any Interrogatory until an appropriate protective order is entered.

7. The Interrogatories are improper to the extent they seek to require any Defendant to contact and/or discuss issues in this litigation with class members contrary to Court order.

8. The Interrogatories are objectionable to the extent they seek information not for the purpose of obtaining admissible evidence to further a claim or defense on the merits as permitted by Rule 26, but for the improper purpose of compiling an investigative record to support motions for contempt, both civil and criminal, a strategy that Plaintiffs have previously pursued against numerous civil servants and government officials. It is law of the case that Plaintiffs are not permitted such investigative discovery. See Memorandum and Order of Sept. 2, 2004.

9. The Interrogatories are objectionable and improper to the extent they can be construed to require any Defendant to provide information that is solely in the possession of sovereign Tribes or other third parties, including without limitation contractors or other governmental departments or agencies (such as NARA).

10. Defendants object to Plaintiffs' definition of one term, "Interior Statement of Accounts" for purposes of its Discovery Set but then using a different term, "INTERIOR STATEMENTS OF ACCOUNT" in the interrogatories. For purposes of their Response, Defendants shall assume that the terms are synonymous.

11. Defendants object to the words "beneficiary" and "beneficiaries" as used in these Interrogatories as confusing and over broad. As made clear in the class certification order, see Order of February 4, 1997, at 2-3, the defined class as certified includes certain IIM account holders, which is neither synonymous nor coextensive with the common meaning of the word "beneficiaries."

12. The Interrogatories are also objectionable, unduly burdensome and improper on their face to the extent they attempt to impose any other obligation on Defendants that exceeds those specified for document discovery in Federal Rules of Civil Procedure 26 and 33. Although Defendants object to these Interrogatories in their entirety on numerous grounds, should the Defendants determine to answer any Interrogatory, in whole or in part, Defendants reserve the right to produce documents under Rule 33(d) in lieu of providing a written answer. In such a case, Defendants – as a prerequisite to producing or making available for inspection and copying the documents – may require Plaintiffs to advance their reasonable and fair share of the cost of that undertaking, in an amount and manner agreeable to both sides.

13. Defendants object to this Interrogatory on the additional grounds that (1) the identity, address, background, and tasks performed by all persons who have worked on historical accounting for any Statement of Account are neither relevant to any claim or defense nor reasonably calculated to lead to discovery of admissible evidence, and (2) the cost of researching such an answer would outweigh the questionable value of such information in this case.

3. Identify by name and last known mailing address each guardian who is or has been employed by Defendants at any time for each intended recipient of the INTERIOR STATEMENTS OF ACCOUNT.

RESPONSE to Interrogatory No. 3: Defendants incorporate by reference each and every objection the set forth in paragraphs (1) through (12) of their response to Interrogatory No. 2 above, and further object to this Interrogatory on the additional grounds that (1) the identity and location of any person who has been a guardian “at any time” is neither relevant to any claim or defense nor reasonably calculated to lead to discovery of admissible evidence, (2) the interrogatory seeks information about guardians concerning all Statements of Account regardless

of the class definition; and (2) the cost of researching such an answer would outweigh the questionable value of such information to this case.

4. Identify all members of the plaintiff class, including last known address, in the *Cobell v. Kempthorne* litigation.

RESPONSE to Interrogatory No. 4: Defendants incorporate by reference each and every objection the set forth in paragraphs (1) through (12) of their response to Interrogatory No. 2 above, and further object to this Interrogatory on the additional grounds that (1) the identity and last known address of all class members is neither relevant to any claim or defense nor reasonably calculated to lead to discovery of admissible evidence, and (2) because no notice to the class is presently required or contemplated, the provision of current address information would further no interest under Rule 23.

Dated: March 26, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on March 26, 2007 I served the foregoing *Defendants' Response to Plaintiffs' Interrogatories and Request for Documents Dated February 21, 2007, Regarding Judgement and Per Capita Accounts* by facsimile in accordance with their written request of October 31, 2001 upon:

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