

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

THE NEZ PERCE TRIBE, *et al.*,)
for and on behalf of themselves)
all others similarly situated,)
))
Plaintiffs,)
))
v.)
))
))
DIRK KEMPTHORNE,)
SECRETARY OF THE INTERIOR, *et al.*,)
))
Defendants.)
_____)

Case No. 06cv02239-JR

**PLAINTIFFS’ MOTION FOR CLASS ACTION CERTIFICATION
AND FOR APPROVAL OF CLASS NOTICE**

Pursuant to Fed. R. Civ. P. 23, Plaintiffs respectfully move this Court for an Order pursuant to Fed. R. Civ. P. 23(c)(1) certifying that this action may be maintained as a class action under Fed. R. Civ. P. 23(b)(2) on behalf of a plaintiff class consisting of all American Indian and Alaska Native Tribes, excluding the following four tribes: the Pueblo of Laguna; the Jicarilla Apache Nation; the Delaware Tribe of Indians and the Delaware Trust Board; and, the Navajo Nation,¹ which: 1) have or have had trust fund accounts that are or were administered by Defendants; 2) have received or were eligible to receive “Arthur Andersen Agreed-Upon Engagement and Procedures Reports,” 3) have not received full and complete accountings of their trust funds; and, 4) did not have their own actions pending on December 31, 2006 seeking full and complete accountings of their trust funds.

¹ As set forth in the First Amended Complaint filed April 2, 2007, these four tribes have indicated through their legal counsel to Plaintiffs that they do not wish to be included in the class in this action. Accordingly, Plaintiffs do seek to include these four tribes in the class in this action. *See* First Amended Complaint at ¶ 60 (Doc. 27).

Because the putative class members are sovereign Indian tribes, Plaintiffs move this Court for an Order granting under Fed. R. Civ. P. 23(d)(2) discretionary notice and opt-out rights for the class certified under Rule 23(b)(2). Pursuant to Fed. R. Civ. P. 23, Plaintiffs also respectfully move this Court for an Order designating them (the twelve named Plaintiffs) as representatives of this class, and appointing the Native American Rights Fund as Plaintiffs' class counsel.

Pursuant to Fed. R. Civ. P. 23 and LCvR 7(a), submitted with this Motion is a Memorandum that includes a statement of the specific points of law and authority in support of the Motion. Although not required under the Federal and Local Rules for Rule 23(b)(2) classes, since Plaintiffs are requesting notice and opt-out under the Court's Rule 23(d)(2) discretionary authority, a Proposed Class Notice is submitted herewith for the Court's approval.

Pursuant to LCvR 7(c), a proposed order is submitted herewith this Motion. Pursuant to LCvR 7(f), Plaintiffs respectfully request oral argument on this Motion.² Pursuant to LCvR 7(m), Counsel for Plaintiffs submits that she has discussed this Motion with Counsel for Defendants and is authorized to state that Defendants oppose this Motion.

² This Court's Order of May 13, 2008 (Doc. # 50), already has confirmed that oral argument on Plaintiffs' Motion for Class Certification will be held on July 24, 2008.

DATED this 5th day of June, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2008, a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR CLASS ACTION CERTIFICATION AND FOR APPROVAL OF CLASS NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION; [PROPOSED] CLASS NOTICE; and, [PROPOSED] ORDER was served by Electronic Case Filing or by regular first class U.S. mail, postage pre-paid, on the following counsel:

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