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

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NO. 11-5205

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

Kimberly Craven,  
*Appellant*,

v.

KENNETH LEE SALAZAR, Secretary of the Interior, *et al.*,  
*Appellees*.

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On Appeal from the United States District Court  
For the District of Columbia, No. 1:96-cv-01285 TFH

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AMENDED STATEMENT OF THE ISSUES

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CENTER FOR CLASS ACTION FAIRNESS LLC  
Theodore H. Frank  
(DC Cir. application pending)  
1718 M Street NW, No. 236  
Washington, D.C. 20036  
(703) 203-3848  
*Attorney for Appellant Kimberly Craven*

Pursuant to Fed. R. App. P. 10(b)(3)(a), Ms. Craven submits the following amended statement of issues that she intends to present on appeal:

1. Given that the total value of the class representatives' claims is approximately sixty dollars, does a request for a class representative incentive award of \$13 million (and receipt of an incentive award of \$2.5 million) create a conflict of interest with the class that precludes a finding that the class representatives are adequate representatives of the class under Rule 23 and the Constitution?
2. Is it constitutionally permissible to settle a Rule 23(b)(2) mandatory class seeking injunctive relief by waiving the right to injunctive relief in exchange for a monetary payment, when that monetary payment is unrelated to the value of the injunctive relief for individual class members, and when the court had previously found a right to the injunctive relief?
3. Did the district court err as a matter of law in failing to apply *Wal-Mart v. Dukes* in finding that the Trust Administration class satisfied the commonality and typicality requirements of Rule 23 and the Constitution?
4. Did the district court commit an error of law in failing to address the question of whether there were intra-class conflicts

that precluded certification of a single Trust Administration class and approval of the distribution scheme for the Trust Administration class?

5. Did the district court abuse its discretion in finding that the distribution scheme for the Trust Administration class was fair and reasonable, given that it was unrelated to the nature of the injuries claimed and systematically and perversely paid the least to the class members who suffered the greatest alleged injury?
6. Does the Claims Resolution Act of 2010, as interpreted by the district court, unconstitutionally violate separation of powers requirements by creating a rule of decision in a pending case without changing the underlying substantive law?
7. Did the district court err as a matter of law in holding that ninety-two objections to a settlement was grounds for approval of the settlement when multiple objections complained of intra-class inequities?
8. Was it error for the district court to both schedule objections to be due before the settling parties were required to move for settlement approval and to strike Ms. Craven's opposition brief to the motion for settlement approval filed in compliance with the local rules?

Dated: September 2, 2011

Respectfully submitted,

/s/ Theodore H. Frank

Theodore H. Frank

(DC Cir. application pending)

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Kimberly Craven

**CERTIFICATE OF SERVICE**

I hereby certify that, on this second day of September, 2011, I electronically filed the foregoing AMENDED STATEMENT OF THE ISSUES on the electronic docketing system for the Court of Appeals for the District of Columbia Circuit, thereby effecting service on counsel of record under Cir. R. 25(c).

*/s/ Theodore H. Frank* \_\_\_\_\_

Theodore H. Frank

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