THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LESLIE ANN WILKIE PELTIER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	1:20 CV 03775 (TFH)
DEBRA HAALAND, in her official capacity as Secretary of the Interior, et al.	)	Senior Judge Thomas F. Hogan
	)	
Defendants.	)	
	)	

PLAINTIFFS' UNOPPOSED MOTION UNDER RULE 60 TO CORRECT AND ADJUST ORDER (ECF No. 34) AND JUDGMENT (ECF No. 35); SUPPORTING BRIEF; AND [PROPOSED] ORDER

Pursuant to Fed. R. Civ. P. 60 and LCvR 7(a), Plaintiffs hereby request, without opposition from Defendants, that this Court grant relief from its Order dated June 23, 2021, granting Final Certification of Class Pursuant to Fed. R. Civ. P. 23(B)(3) for Settlement Purposes Only and Final Approval of Class Action Settlement Agreement (ECF No. 14) (ECF No. 34) ("June 23 Order"), and the associated Judgment dated July 20, 2021 (ECF No. 35) ("July 20 Judgment"), by (1) correcting two inadvertent errors in the June 23 Order and (2) adjusting or revising (a) the Claim Filing Deadline set forth in the June 23 Order in accordance with the terms of the Class Action Settlement Agreement (ECF No. 14), based on the definition of Final Approval in the Settlement Agreement and the date of the issuance of the July 20 Judgment, and (b) two Settlement Proceeds allocation amounts in the June 23 Order, based on the requested adjustment or revision of the Claim Filing Deadline. The factual and legal grounds of this unopposed motion are detailed below.

I. THE SETTLEMENT ALLOCATION AMOUNTS IN THE JUNE 23 ORDER

The Class Action Settlement Agreement (ECF No. 14) provides in relevant part that the total amount of Settlement Proceeds is $59,000,000.00. Among other things, the June 23 Order

rendered final approval of the Class Action Settlement Agreement (ECF No. 34, ¶ 6) and prescribed the following allocation of the Settlement Proceeds (*id.*, ¶ 12):

> 12. The allocation of Settlement Proceeds shall be as follows:
>
> Allocation to Settlement Class Members. The total amount allocated from the Settlement Proceeds to Settlement Class Members is $42,186,265.00. The specific components of this allocation are as follows:
>
> a. The total amount allocated for the 21,268 Settlement Class Members who shared in the 1964 Award is One Million Sixty-Three Thousand Four Hundred Dollars ($1,063,400.00);
>
> b. The total amount allocated for the 29,296 Settlement Class Members who shared in the 1980 Award as members of a Tribal Beneficiary is Thirty-Five Million One Hundred and Fifty-Five Thousand Two Hundred Dollars ($35,155,200.00); and
>
> c. The total amount allocated for the 4,288 Settlement Class Members who shared in the 1980 Award as members of the NMLD group is Six Million Four Hundred and Thirty-Two Thousand Dollars ($6,432,000.00).
>
> Allocations to the Tribal Plaintiffs. The total amount allocated from the Settlement Proceeds to the Tribal Plaintiffs in the CFC Companion Case is Eight Million Seven Hundred Eighty-Six Thousand Nine Hundred and Twenty Dollars ($8,786,920.00). The specific components of this allocation are as follows:
>
> a. The total amount allocated to the Chippewa Cree Tribe is One Million Twenty-Seven Thousand Nine Hundred and Thirty-Nine Dollars ($1,027,939.00);
>
> b. The total amount allocated to the Turtle Mountain Band is Six Million Eight Hundred Fifty-Three Thousand Three Hundred and Fifty Dollars ($6,853,350.00);
>
> c. The total amount allocated to the Little Shell Tribe is Five Hundred Sixty-Three Thousand Nine Hundred and Eighty-Six Dollars ($563,986.00); and
>
> d. The total amount allocated to the White Earth Band is Three Hundred Forty-One Thousand Six Hundred and Forty-Six Dollars ($341,646.00).
>
> Class Representative Service Awards. The total amount allocated from the Settlement Proceeds for Class Representative Service Awards is $170,000.00. As of the date of this Order, there are or have been a total of 85 Class Representatives or Named Representatives in the CFC Companion Case, and each living Class Representative, or an Eligible Heir of a Deceased Class Representative, shall receive Two Thousand Dollars ($2,000.00).
>
> Class Counsel Fees, Expenses, and Costs. The total amount allocated from the Settlement Proceeds for Class Counsel Fees, Expenses, and Costs is Five Million Four Hundred Thousand Dollars ($5,400,000.00).
>
> Settlement Administrator Fees, Expenses, and Costs. The total amount allocated from the Settlement Proceeds for the Settlement Administrator's Fees, Expenses, and Costs for performance of the Settlement Administrator's obligations under this Class Action Settlement Agreement is Two Million Dollars

> ($2,000,000.00). This takes into account that per the Settlement Agreement, from the total $3 million amount allocated for Settlement Administration, NARF already has paid or likely will pay the Settlement Administrator during the Preliminary Approval stage $971,520.33 under contract.

Id., ¶ 12.

Because of the inadvertence of Class Counsel,[1] there are two errors in the Settlement Allocation amounts stated in Paragraph 12 of the June 23 Order. The first error is in "[t]he total amount allocated from the Settlement Proceeds to Settlement Class Members [which] is $42,186,265.00." *Id.* This amount should be $42,650,600.00 because that is the correct total of the sub-amounts that are set forth in subsections a, b, and c of Paragraph 12 ($1,063,400.00 + $35,155,200.00 + $6,432,000.00 = $42,650,600.00).[2] *Id.* Without correction of the error, the June 23 Order understates the total amount of the Settlement Proceeds that should be allocated to Settlement Class Members by $464,335.00.

The second error in Paragraph 12 of the June 23 Order is in "[t]he total amount allocated from the Settlement Proceeds for Class Counsel Fees, Expenses, and Costs [which] is Five Million Four Hundred Thousand Dollars ($5,400,000.00)." *Id.* This amount should be $5,329,480.00. Without correction of the error, the June 23 Order overstates the total amount allocated to Class Counsel by $7,520.00.

Fed. R. Civ. P. 60(a) regarding relief from a judgment or order states the following:

> (a) **Corrections Based on Clerical Mistakes; Oversights and Omissions.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.

---

[1] Class Counsel made the two inadvertent errors in the Settlement Allocation amounts that they set forth in the revised proposed final settlement class certification and final settlement agreement approval order that they submitted to the Court on June 17, 2021. Class Counsel regret their inadvertence and any inconvenience to this Court and Defendants.

[2] *See also* Section II.B of this motion (at 9-11 *infra*).

> But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

Rule 60(a) authorizes federal district courts, on motion or *sua sponte*, with or without notice, to correct clerical mistakes and other mistakes arising from oversights or omissions in orders, judgments, or other parts of a record. *Bayer Healthcare, LLC v. U.S. Food and Drug Admin.*, No. 13-487, 2013 WL 12314510, at *3 (D.D.C. July 12, 2013). "In evaluating Rule 60(a) motions, trial courts enjoy broad discretion and are to be guided by the principle of 'liberal relief.'" *Id*. "Because Rule 60(a) 'is concerned primarily with mistakes which do not really attack the party's fundamental right to the judgment at the time it was entered,' no exceptional circumstances to warrant relief are required." *Id*. (citations omitted); *accord Continental Transfert Tech. Ltd v. Federal Gov't of Nigeria*, 850 F.Supp.2d 277, 283-284 (D.D.C. 2012), *aff'd*, 603 F. App'x 1 (D.C. Cir. 2015) (citations omitted) (Rule 60(a) permits the correction of inadvertent errors when correction is necessary not to reflect a new and subsequent intent of the court, but to conform the order to the contemporaneous intent of the court).

Correcting the two errors in the Settlement Proceeds allocation amounts to the Settlement Class Members and to Class Counsel, as requested herein, is within the ambit of relief available under Rule 60(a). The requested corrections do not alter the overall amount of the Settlement Proceeds ($59,000,000.00) or the amounts of Settlement Proceeds to be distributed to Settlement Class Members that have been agreed to by the parties and approved by the Court. Thus the corrections do not affect "the way in which the rights and obligations of the parties have in fact been adjudicated"; they "are consistent with the court's intent at the time it entered the judgment," *Glymph v. District of Columbia*, No. 01-cv-1333, 2018 WL 10715454, at * 6 (D.D.C. Apr. 17, 2018); and they do not require the court to "revisit its legal analysis," *Ali v. Carnegie Inst. of Washington*, No. 13-2030, 2015 WL 13680208, at *2 (D.D.C. Sept. 8, 2015), *aff'd*, 684 F. App'x

985 (Fed. Cir. 2017), *cert. denied*, 138 S.Ct. 677 (2018). In short, the corrections address no "substantive errors," *In re Salas*, No. 18-00260, 2020 WL 6054783, at *8 (Bankr. D.Col. Oct. 13, 2020), and they require no new "substantive determination" about the parties' rights not previously rendered, *Continental Transfert*, 850 F.Supp.2d at 284.

Plaintiffs' request for corrections is timely because a Rule 60(a) motion may be made at any time, *Glymph*, 2018 WL 10715454, at * 6 (citation omitted), regardless of an appeal of a district court order or judgment. While there has been no appeal in this case to date, a Rule 60(a) motion may be made even after an appeal of a judgment has been taken, as long as the subject or the requested correction or modification has not been expressly or implicitly ruled on by the appeals court, and it may be made even after a judgment has been affirmed on appeal. *Prows v. Department of Justice*, No. 92-5146, 1993 WL 118235, at *1 (D.C. Cir. Mar. 29, 1993).

In the alternative, this Court may grant Plaintiffs' request for corrections under Rule 60(b).[3] That subsection of the rule states the following:

> (b) **Grounds for Relief from a Final Judgment, Order, Or Proceeding**. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;

[3] Some jurisdictions limit the use of Rule 60(a) to correct errors made only by the court or Clerk of Court, *i.e.*, not made by the parties. *E.g.*, *Dudley v. Penn-America Ins. Co.*, 313 F.3d 662, 665 (2nd Cir. 2002). While it appears that this limitation may not be applicable in this Circuit, *see, e.g., Bond v. U.S. Dep't of Justice*, 286 F.R.D. 16, 22 (D.D.C. 2012), *aff'd*, No. 12-5296, 2013 WL 1187396 (D.C. Cir. July 2, 2012) ("Rule 60(a) also allows corrections of clerical mistakes when they are not committed by the Office of the Clerk of Court (or by the chambers' clerical staff)"), Plaintiffs assert Rule 60(b) as an alternative or additional basis for their unopposed motion, in the absence of a definitive determination of Rule 60(a)'s availability.

> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P, 60(b).

"Rule 60(b)(1) permits a court to 'relieve a party … from a final judgment, order, or proceeding for the following reasons: … mistake, inadvertence, surprise, or excusable neglect.'" *Goddard v. Service Emp. Int'l Union Loc. 32BJ*, 310 F.R.D. 190, 191-92 (D.D.C. 2015). "Rule 60(b)(1) typically encompasses 'mistake, inadvertence, surprise, or excusable neglect' of the parties." *Bestor v. Federal Bureau of Investigation*, 539 F.Supp.2d 324, 328 (D.D.C. 2008), *aff'd*, No. 08-5076, 2008 WL 5640702 (D.C. Cir. Feb. 11, 2009), *cert. denied*, 557 U.S. 938 (2009). Relief under "Rule 60(b)(1) turns on equitable factors." *Id*. at 327. "The district court is afforded broad discretion in correcting errors and granting relief from judgment under Rule 60," *Washington v. Thurgood Marshall Acad.*, 232 F.R.D. 6, 9 (D.D.C. 2005) (citations omitted), but '[t]he party seeking relief under Rule 60(b) bears the burden of showing that he or she is entitled to the relief." *Austin Inv. Fund, LLC v. United States*, 304 F.R.D. 5, 8 (D.D.C. 2014) (citation omitted).

Plaintiffs' unopposed motion is timely under Rule 60(b)(1), as it is made within a reasonable time and less than one year after the entry of final judgment. Fed. R. Civ. P. 60(c)(1). *See McMillian v. District of Columbia*, 241 F.R.D. 12, 14 (D.D.C. 2006) (a reasonable time under Rule 60(b)(1) typically is within one to three months after judgment). In fact, it has been less than three months since this Court issued the June 23 Order and about one and a half months since the Court issued the July 20 Judgment.

Similarly, correcting the two errors in the Settlement Allocation amounts, as requested herein, is within the ambit of relief available under Rule 60(b)(1). The requested corrections do

not address "substantive errors" for which Rule 60(b)(1) relief is limited. *Munoz v. Board of Tr. of Univ. of District of Columbia*, 730 F.Supp.2d 62, 66 (D.D.C. 2010); *accord Hall v. Central Intelligence Agency*, 437 F.3d 94, 99 (D.C. Cir. 2006). They do not raise the "new legal theories" that cannot be introduced under Rule 60(b)(1). Nor do they address "improvident strategic choices" or "carelessness with or misapprehension of law" by counsel. Rather, because of Class Counsel's inadvertent errors in the revised proposed final settlement class certification and final settlement agreement approval order that they submitted to the Court, the June 23 Order contains two errors in the Settlement Allocation amounts. Those errors should now be corrected so that the affected Settlement Allocation amounts are consistent with the other Settlement Allocation amounts and the overall amount of the Settlement Proceeds, as agreed upon by the parties and approved by the Court. *See Oneida Indian Nation v. County of Oneida*, 214 F.R.D. 83, 101 (N.D.N.Y. 2003) (granting Rule 60(b)(1) motion to correct "inadvertent mathematical errors made in connection with the damages awarded" in court's decision and concomitant judgment).

II. ADJUSTMENT OF CLAIM FILING DEADLINE AND SETTLEMENT PROCEEDS ALLOCATION AMOUNTS TO CLASS COUNSEL AND TO SETTLEMENT ADMINISTRATOR IN JUNE 23 ORDER

The Class Action Settlement Agreement (ECF No. 14) defines "Final Approval" as follows:

> "Final Approval" shall mean this Court's determination, if any, under Fed. R. Civ. P. 23(e), by order or judgment entered after the Fairness Hearing and made "final," that this Class Action Settlement Agreement is fair, adequate, reasonable, and binding. For purposes of Final Approval, "final" shall mean the later of the following:
>
> a. The time for rehearing or reconsideration, appellate review, and review by petition for certiorari has expired, and no motion for rehearing or reconsideration and/or notice of appeal or petition for certiorari has been lodged; or
>
> b. If rehearing, reconsideration, or appellate review, or review by petition for certiorari is sought, after any and all avenues, of rehearing, reconsideration, appellate review, or review by petition for certiorari have been exhausted, and no further rehearing, reconsideration, appellate review, or review

> by petition for certiorari is permitted, or the time for seeking such review has expired.

Id., Section II.A.33.

The July 20 Judgment (ECF No. 35) is in accordance with the terms of the Class Settlement Agreement (ECF No. 14, Section II.A.33) and the June 23 Order (ECF No. 34, ¶ 26). Under Fed. R. App. 4(a)(1)(B), the period for appealing the July 20 Judgment is 60 days. That period began to run on the Judgment's date of the entry (July 20, 2021), and it will expire on September 20, 2021. Accordingly, under the Class Action Settlement Agreement's terms, Final Approval does not occur, at the earliest, until September 20, 2021. As a result, there is a need to adjust the Claim Filing Deadline stated in Paragraph 15 of the June 26 Order and by extension the Settlement Proceeds allocations to Class Counsel and to the Settlement Administrator in Paragraph 12 of the June 26 Order.

A. Revising the Claim Filing Deadline

The Class Action Settlement Agreement defines "Claim Filing Deadline" as "the 90th day after Final Approval." ECF No. 14, Section II.A.13. As discussed *supra*, under the terms of the Class Action Settlement Agreement, Final Approval does not occur until "[t]he time for rehearing or reconsideration, appellate review, and review by petition for certiorari has expired, and no motion for rehearing or reconsideration and/or notice of appeal or petition for certiorari has been lodged; or … [i]f rehearing, reconsideration, or appellate review, or review by petition for certiorari is sought, after any and all avenues, of rehearing, reconsideration, appellate review, or review by petition for certiorari have been exhausted, and no further rehearing, reconsideration, appellate review, or review by petition for certiorari is permitted, or the time for seeking such review has expired," whichever is occurs later. *Id.* § II.A.33. Thus Final Approval in this case cannot occur until September 20, 2021, at the earliest.

Paragraph 15 of the June 23 Order (ECF No. 34) currently states that Claim Forms must be postmarked timely by September 8, 2021. This deadline is based on the erroneous presumption that the July 20 Judgment would be issued sooner than it really was. When the actual date of the Judgment (July 20, 2021) is applied to the Class Action Settlement Agreement's definitions of "Claim Filing Deadline" and of "Final Approval," it is clear that Final Approval cannot occur in this case before September 20, 2021, at the earliest and assuming that no appeals are filed. Therefore, the Claim Filing Deadline in Paragraph 15 of the June 23 Order needs to be revised to state "December 19, 2021," which is 90 days from September 20, 2021.[4]

B. Adjusting the Two Settlement Proceeds Allocation Amounts

As noted above, the total amount of Settlement Proceeds allocated in the June 23 Order (ECF No. 34, ¶ 12) for Class Counsel Fees, Expenses, and Costs is currently stated as $5,400,000.00. Further, the total amount of Settlement Proceeds allocated in the June 23 Order for the Settlement Administrator's Fees, Expenses, and Costs is $2,000,000.00. *Id.* These amounts should be further adjusted for the reasons explained below (and, as to the Class Counsel allocation amount, above). These amounts were based primarily on the projection that that Final Approval would occur at or shortly after entry of the June 23 Order. That projection turned out to be erroneous.

As it turns out, since the Judgment in this case was not issued until July 20, 2021(ECF No. 35), Final Approval, as defined by the Class Action Settlement Agreement (ECF No. 14, Section II.A.33), will not occur before September 20, 2021, at the earliest. Under their contract with the

[4] In the event of a timely appeal, the Claim Filing Deadline will need to be further adjusted to comport with the terms of the Class Action Settlement Agreement. ECF No. 14, Section II.A.33.b. In that situation, the Claim Filing Deadline will be 90 days from the date on which appeals have been exhausted. *Id.*

Settlement Administrator, Class Counsel has paid the Settlement Administrator $985,372.40 for work in the period from February 1 through July 31, 2021. Between August 1 and September 20, 2021, Class Counsel are projected to pay the Settlement Administrator an additional $500,000.00 for its work under that contract. Additionally, Class Counsel is projected to expend $63,000.00 for the work of Kroll—the claims administrator in *Cobell sub nom. Maulson v. Haaland*, No. 96-1285 (D.D.C.)—under a separate contract, regarding individual plaintiff-related data research, collection, and exchange between Kroll and the Settlement Administrator in this case. *See* ECF No. 36 and Minute Order dated July 27, 2021.

Class Counsel are entitled to receive reimbursement from the Settlement Proceeds for their legitimate case-related expenditures for the Settlement Administrator in this case and the *Cobell / Maulson* claims administrator during the relevant period before Final Approval occurs (at which time the Settlement Administrator's compensation can come directly from the Settlement Proceeds (through the Qualified Settlement Fund, *see* ECF No. 14, Section II.A.57), *see id* at Sections II.L.5 and II.M.6.c. Thus, the amounts of Settlement Proceeds that should be allocated to Class Counsel and to the Settlement Administrator should be adjusted to reflect Class Counsel's past and projected payments to the Settlement Administrator and the *Cobell / Maulson* claims administrator. In other words, Class Counsel should receive an allocation of $5,892,480.00 from the Settlement Proceeds (*i.e.*, $5,329,480.00[5] + $500,000.00 + $63,000.00 = $5,892,480.00), and the Settlement Administrator should receive an allocation of $1,500,000.00 from the Settlement Proceeds (*i.e.*, $2,000,000.00 – $500,000.00 = $1,500,000.00).

Given the foregoing, relief under Fed. R. Civ. P. 60(b)(5) is appropriate and warranted. Rule 60(b)(5) applies when an order compels a party to perform (or not to perform) any future act

[5] *See* Section I of this motion (at 3 *supra*).

or requires the court to supervise any continuing interaction between a party and the other parties to the case. *Twelve John Does v. District of Columbia,* 841 F.2d 1133, 1138 (D.C. Cir. 1988). Rule 60(b)(5) "allows a court to modify an order granting an injunction or consent decree if changed circumstances make that relief 'no longer equitable.'" *Washington All. of Tech. Workers v. U.S. Dep't of Homeland Security*, 153 F.Supp.3d 93, 99 (D.D.C. 2016), *judgment vacated and appeal dismissed on other grounds*, 650 F. App'x 13 (D.C. Cir. May 13, 2016) (citation omitted). For Rule 60(b)(5) purposes, "changed circumstances" includes a change in facts or law, unforeseen obstacles, or other conditions that would make enforcement of the consent decree detrimental to the public interest. *Salazar v. District of Columbia*, 685 F.Supp.2d 72, 76-77 (D.D.C. 2010), *aff'd*, 633 F.3d 1110 (D.C. Cir. 2011) (citations omitted). "[C]hanged circumstances" since the entry of judgment from which relief is sought … need not be 'unforeseeable, but only unforeseen.'" *Pigford v. Johanns*, 416 F.3d 12, 23 (D.C. Cir. 2005), *cert. denied*, 547 U.S. 1035 (2006) (Rogers, J., dissenting) (citation omitted). Any modification of a consent decree under Rule 60(b)(5) must be suitably tailored to the changed circumstances. *Salazar*, 685 F.Supp.2d at 76 and 78 (citation omitted) (vacation of entire order is not suitably tailored to changed circumstances).

Upon a balancing of the equities, Rule 60(b)(5) may be used to grant limited relief in the form of extending consent decree timelines that were "overly optimistic," *Washington All. of Tech. Workers*, 153 F.Supp.3d at 99-100, because underlying assumptions have proven to be unrealistic, *id*., or "expectations underlying the decree had failed to materialize." *New York v. Microsoft Corp.*, 531 F.Supp.2d 141, 169 (D.D.C. 2008) (citation omitted). In this case, Plaintiffs do not seek modification of the terms of the Class Action Settlement Agreement; rather, Plaintiffs request an adjustment of the Claim Filing Deadline stated in the June 23 Order, based on the date of the entry of July 20 Judgment. *See Salazar*, 685 F.Supp.2d at n.5 (citations omitted) (Rule 60(b)(5) may be

used to modify a consent decree itself, or to modify a final court order entered in order to achieve compliance with an underlying consent decree).

Plaintiffs' adjustment request is timely under Rule 60(b)(5) because it is made within a reasonable time after the entry of Final Judgment. "[W]hat constitutes a 'reasonable time' for a filing under Rule 60(b) depends on the facts of each case." *Evans v. Fenty*, 701 F.Supp.2d 126, 157 (D.D.C. 2010), *appeal dismissed*, No. 10-5109, 2010 WL 3447241 (D.C. Cir. Aug. 27, 2010) (citations omitted). "Factors to consider include 'the length of the delay, the explanations for the delay, the prejudice to the opposing party caused by the delay and the circumstances warranting relief.'" *Id*. Plaintiffs have made their motion about 45 days after the entry of the July 20 Judgment; the motion is well in advance of the Claim Filing Deadline to be adjusted; and the motion is unopposed by Defendants.

III. REVISING THE JULY 20 JUDGMENT

The July 20 Judgment (ECF No. 35) currently refers, in relevant part, to the "Stipulation of the Parties (Class Action Settlement Agreement)[,] ECF #14 (see ECF #34 for details)[.]" In the event that this Court grants this unopposed motion, Plaintiffs respectfully request that the July 20 Judgment be revised to include reference to any order that the Court issues granting the motion.

IV. CONCLUSION

Pursuant to LCvR 7(m), Class Counsel have conferred and consulted with counsel for Defendants about this Motion. Defendants' counsel has stated that Defendants do not oppose this Motion. Pursuant to LCvR 7(c), a proposed Order granting this Motion is submitted herewith.

For the foregoing reasons, Plaintiffs respectfully request that this Court grant the relief stated herein.

Respectfully submitted this 3rd day of September, 2021,

/s/ Melody L. McCoy
MELODY L. MCCOY
CO Bar # 16960, U.S. Dist. Ct. (D.C.) CO0043
KIM JEROME GOTTSCHALK, *pro hac vice*
NM Bar # 3799
Native American Rights Fund
1506 Broadway
Boulder, CO 80302
Tel.: (720) 647-9691 (McCoy)
Tel.: (720) 647-9252 (Gottschalk)
Fax: (303) 443-7776
E-mail: mmccoy@narf.org
Email: jeronimo@narf.org

Class Counsel; Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on September 3, 2021, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to all registered CM/ECF users.

/s/ *Melody L. McCoy*
MELODY L. MCCOY