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DISTRICT OF COLUMBIA

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Case No. 1:96CV01285
(Judge Lamberth)

I. Introductory Comments

- 1 -

Court should reject the arguments in plaintiffs' disgraceful and uncivil opposition.¹

II. Plaintiffs' Assertion That the Special Master's May 2, 2002 Revised Order Already Governs Submissions Under the July 28, 2003 Preliminary Injunction is Plainly Contrary to Law and Fact

Plaintiffs' Brief argues that Interior Defendants' submissions in response to the Court's July 28, 2003 Preliminary Injunction are already governed by the Special Master's May 2, 2002 Revised Order, which this Court ordered filed on February 6, 2003. Cobell v. Norton, Order (Feb. 6, 2003). In ordering the Revised Order filed, the Court neither adopted it nor made it applicable to any proceedings other than those already described in the Revised Order. Rather, the Court simply stated, "The Revised Order signed by the Special Master on May 2, 2002, which is appended hereto, shall be filed this date." Id.

A review of the Revised Order confirms that it has no application to the Interior Department's submissions pursuant to the July 28, 2003 Preliminary Injunction. To the contrary, the Revised Order was expressly entered as a result of Interior Defendants' February 25, 2002 Motion for a Protective Order, which was filed to address submissions pursuant to the now-stayed December 17, 2001 Consent Order. This is confirmed, initially, by the text of the February 25, 2002 motion, which began with the statement, "Defendants bring this Motion for a Protective Order to cover confidential and sensitive information related to the Special Master's

¹ Plaintiffs' brief plainly crosses the line for civility in pleadings filed with this Court. Aside from their repeated and unfounded assertions that Interior Defendants' motion was frivolous, plaintiffs' brief also engages in vile attacks such as challenging the competence of counsel and Secretary Norton, Pl. Br. at 2, 7, and 9; wrongly alleging that Interior Defendants' motion "perversely suggest[s] that the Court should trust them," Pl. Br. at 7; and that the "'trust me' claim is a sucker bet," Pl. Br. at 7, note 14. The gross excesses displayed in such rhetoric do not dignify a detailed response. Accordingly, the remainder of Interior Defendants' reply brief is devoted to the many flawed and erroneous legal and factual assertions buried within plaintiffs' invective.

validation of Interior's compliance with the terms of the Consent Order." Motion for Protective Order (filed Feb. 25, 2002) (emphasis added) (copy attached as Exhibit A). The Special Master's Revised Order further confirmed that it was issued to address submissions pursuant to the December 17, 2001 Consent Order:

Beginning December 17, 2001, Interior has filed numerous requests to reopen and/or to reconnect to the Internet, information technology systems that have been impacted by the Court's order of that date. In evaluating these requests, computer security experts retained by the Special Master have repeatedly expressed the need to secure copies of documents containing confidential security information ("Confidential Information"), the public disclosure of which may adversely impact individual Indian beneficiaries as well as third parties unrelated to the underlying litigation.

Revised Order, at 1.

Interior Defendants' current motion for a protective order seeks protection for IT security materials to be submitted pursuant to Court's Preliminary Injunction entered on July 28, 2003. Motion for Protective Order, at 1 (filed Aug. 4, 2003). By definition, such submissions are not being made pursuant to the Consent Order. Indeed, as the Court is well-aware, the Preliminary Injunction stayed the Consent Order, Preliminary Injunction ¶ 6, and the terms of the Preliminary Injunction make it clear that the Court – not the Special Master – has the responsibility of reviewing submissions pursuant the Preliminary Injunction.

Plaintiffs' remaining arguments about the Revised Order may be dealt with in brief fashion. First, plaintiffs argue that the current motion for a protective order is somehow intended to be a motion for reconsideration of the Special Master's Revised Order. E.g., Pl. Br. at 3 (erroneously describing the February 25, 2002 motion as having been filed by Secretary Norton and Acting Secretary Martin), 4, and 10. As is explained above, the Revised Order simply had

no application to the Preliminary Injunction submissions; by its terms, it applied to submissions under the now-stayed Consent Order.

Second, while plaintiffs imply that the terms of the Revised Order already govern the proceedings under the Preliminary Injunction, their other actions are inconsistent with this position. For example, Plaintiffs' Brief reiterates that plaintiffs object to the Revised Order, stating, "Although plaintiffs disagreed at the time, and continue to disagree, with the scope of the Revised Order, it was entered by the Special Master and adopted by the Court for the express purpose of covering material submitted by the Interior defendants in support of their efforts to reconnect and certify the security of IT Systems that house or access Individual Indian Trust data." Pl. Br. at 10 (emphasis added).² Plaintiffs apparently believe they can both seek to extend the application of the Revised Order, beyond its own terms, to attack Interior Defendants' motion while concurrently disclaiming their own support for the Revised Order.

Plaintiffs' fallacious reliance upon the Revised Order is further confirmed by their recent actions during the pendency of this motion. In an attempt to resolve the current motion by stipulation, Interior Defendants' counsel sent a proposal to plaintiffs' counsel by facsimile on the morning of August 27, 2003, in which Interior Defendants offered to incorporate the document listing in the Revised Order within the terms of a stipulated protective order. Letter from J. Warshawsky to D. Gingold and K. Harper (Aug. 27, 2003) (copy attached as Exhibit B). As of the filing of this pleading, plaintiffs apparently have opted to provide no response to Interior

² For the reasons already stated, plaintiffs' description of the purpose for the Special Master's Revised Order and this Court's Order to file the Revised Order is factually insupportable. The Revised Order only addressed submissions made pursuant to the Consent Order.

Defendants' proposal.

Thus, contrary to plaintiffs' repeated claims, the Revised Order only governed proceedings under the now-stayed December 17, 2001 Consent Order. Moreover, plaintiffs' attempts to extend the scope of the Revised Order beyond its own plain language conflicts squarely with their continuing objection to the Revised Order and their refusal to resolve this matter amicably through the proposed stipulated protective order.

III. Plaintiffs' Discussion Regarding "Blanket" or "Umbrella" Protective Orders Wrongly Describes the Law Governing Such Orders and Fails to Challenge Interior Defendants' Showing of Good Cause, Which Was Confirmed by Entry of the Revised Order

Contrary to plaintiffs' assertion, particularly in complex litigation involving voluminous document issues, the law does not favor an approach requiring the courts to expend valuable resources on document-by-document reviews. Rather, as the Manual for Complex Litigation explains:

When the volume of potentially protected materials is large, an umbrella order will expedite production, reduce costs, and avoid the burden on the court of document-by-document adjudication. Umbrella orders provide that all assertedly confidential material disclosed (and appropriately identified, usually by stamp) is presumptively protected unless challenged. The orders are made without a particularized showing to support the claim for protection, but such a showing must be made whenever a claim under an order is challenged.

Manual for Complex Litigation § 21.432, at 67 (3d ed. 1995).

Moore's Federal Practice describes the use of such protective orders as follows:

Although Rule 26(c) makes no mention of stipulated protective orders, litigants not infrequently agree to seal documents produced during discovery, and to seek a stipulated protective order to enforce the agreement. In fact, these stipulated "blanket"

protective orders are becoming standard practice in complex cases. Such orders allow the parties to make full disclosure without fear of public access to sensitive information. They also avoid the expense and delay of a dispute over every item of allegedly confidential information, thereby promoting the overriding goal of the Federal Rules of Civil Procedure, "to secure the just, speedy, and inexpensive determination of every action."

6 Moore's Federal Practice § 26.104[2], at 26-253 to -254 (June 2001) (footnotes omitted).³

Thus, in In re Halkin, 598 F.2d 176 (D.C. Cir. 1979), the Court observed:

We recognize that flexibility will be required to accommodate the practical needs of the discovery process with the standards enunciated herein, particularly where the discovery embraces a large quantity of documents. It may be appropriate for example, for a trial court (on a proper showing) to issue a blanket protective order covering all documents in a large-scale exchange of files without prejudice to raising the merits of the protective order as applied to particular documents at a later time. If a party wishes to disseminate a particular document, he might then inform the opposing party (precisely as plaintiffs have done here). At that point the burden would revert back to the party resisting dissemination to establish "good cause" as applied to the particular document(s), consistent with the standards enunciated in this opinion. This procedure is commonly used to preserve parties' rights to assert claims of privilege with respect to particular documents in complex cases, while at the same time facilitating needed discovery.

Id. at 196 note 47 (dictum).

Moore's Federal Practice further describes the policy that "discovery generally must take place in public in the absence of compelling reasons for denying the public access to the proceedings" and presents the issue typically raised by proposed blanket or umbrella protective

³ Moore's Federal Practice continues by describing the policy that "discovery generally must take place in public in the absence of compelling reasons for denying the public access to the proceedings" and presents the issue raised by blanket or umbrella protective orders, namely the court's role in assessing whether "good cause" exists to enter a protective order that denies the public access to discovery. Id. at 26-254 to -256.2 (footnotes omitted).

orders, namely the court's role in assessing whether "good cause" exists to enter a protective order that denies the public access to discovery. Id. at 26-254 to -256.2 (footnotes omitted). In Alexander v. FBI, 186 F.R.D. 60 (D.D.C. 1998), this Court explained the requirement for good cause and the balancing of litigant and First Amendment interests as follows:

As stated, Rule 26(c) of the Federal Rules of Civil Procedure provides that for good cause a court may fashion a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c). "This standard balances the governmental and first amendment interests at stake when a party seeks to disseminate information obtained through pretrial discovery." Avirgan v. Hull, 118 F.R.D. 252, 253 (D.D.C. 1987) (citing Seattle Times Co. v. Rhinehart 467 U.S. 20, 37 (1984)). In Doe v. District of Columbia, 697 F.2d 1115, 1119 (D.C. Cir. 1983), the Court of Appeals for the District of Columbia stated:

Protective orders that restrict dissemination to the public of discovered information . . . stand on a somewhat unusual footing. The resultant infringement of interests protected by the First Amendment, we have held, requires a district court to be careful to grant such an order only when essential to shield a party from significant harm or to protect an important public interest.

Id. (citing In re Halkin, 598 F.2d 176, 190-91 (D.C. Cir. 1979)).

186 F.R.D. at 65-66.

In this case, there can be no serious doubt that good cause exists to protect Interior Defendants' IT security materials. When he entered the Revised Order, the Special Master recognized that IT security materials should not be publicly disclosed to prevent the potential for harm.⁴ In doing so, the Special Master restricted plaintiffs' access to such materials to "the five-

⁴ As noted earlier, while plaintiffs alternate between endorsing and objecting to the Revised Order; nothing in their brief challenges the Special Master's finding that good cause

named plaintiffs, plaintiffs' counsel and experts retained by plaintiffs who are engaged in work specifically related to this litigation and who require such information in order to carry out that work." Revised Order ¶ 2. More recently, this Court recognized the need to protect IT security materials when it directed Interior Defendants to review the Special Master's July 25, 2003 letter to the Court's clerk and to provide the Court with a redacted version for public filing "that does not reveal any information that would compromise the security of the computer systems which are described therein." Order (July 28, 2003).

Moreover, good cause surely exists based upon a review of the six factors enunciated in United States v. Hubbard, 650 F.2d 293, 317-22 (D.C. Cir. 1980).⁵ There is no need for public access to IT security materials; indeed, by definition, such materials should not be made public to avoid compromising IT security. As a consequence, the IT security materials for which protection is sought would not have been publicly accessible in the past. The Interior Department unquestionably has a strong property interest in protecting its IT systems and ensuring that the privacy of information contained therein does not become publicly accessible. The disclosure of such materials would expose the Interior Department's IT systems to compromise and damage, thereby subjecting the Interior Department to obvious prejudice through disclosure. Finally, the materials would only be introduced in these proceedings if

existed for protecting IT security materials, however.

⁵ The six factors described in the opinion are (1) the need for public access to the documents at issue, (2) the extent of previous public access to the documents, (3) the fact that someone has objected to disclosure, as well as the identity of the objecting person, (4) the strength of any property or privacy interests asserted, (5) the possibility of prejudice to those opposing public disclosure, and (6) the purposes for which the documents were introduced during the judicial proceedings. See 650 F.2d at 317-22.

required to demonstrate IT security. For obvious reasons, the public disclosure of such IT security materials and inappropriate use of the materials by recipients would be improper.

Indeed, the only factor that plaintiffs can rely upon, among the six enunciated in Hubbard, is the fact that someone – the plaintiffs – have objected to the protective order. Interior Defendants cannot articulate a single justification which arguably would support plaintiffs' assertion that IT security materials should either be placed in the public domain or be the subject of unfettered use by plaintiffs. The fact that plaintiffs, themselves, have offered no justification in their opposition confirms that the IT security materials fully meet the standards for protection under Hubbard.

Thus, notwithstanding plaintiffs' claims to the contrary, the law of this Circuit recognizes that a blanket or umbrella protective order may be appropriately entered, particularly in a complex case, upon a showing of good cause. There is no legal authority directing that this Court should become involved in document-by-document review of every document claimed to require protection, and we respectfully suggest that the Court's resources should be reserved for ruling upon any exceptions raised by plaintiffs. Accord, In re Halkin, 598 F.2d at 196 note 47 (dictum); 6 Moore's Federal Practice § 26.104[2], at 26-253 to -254 (June 2001) (footnotes omitted). Moreover, the showing of good cause required for entry of a protective order is established by assessing the standards under Rule 26(c) of the Federal Rules of Civil Procedure. See, e.g., Alexander v. FBI, 186 F.R.D. at 65-66; see also Avirgan v. Hull, 118 F.R.D. 252, 253-54 (D.D.C. 1987) ("The specific focus before this Court, which has 'substantial latitude to fashion protective orders,' therefore, is not on the first amendment issue, but rather on whether [the movant] has shown good cause for a blanket protective order.") (quoting Seattle Times Co.

v. Rhinehart, 467 U.S. at 36). Interior Defendants have plainly demonstrated good cause for a protective order under Rule 26(c) standards.

Conclusion

For the foregoing reasons and the reasons set forth in the motion for protective order, Interior Defendants respectfully request that this Court enter a protective order, in the form submitted contemporaneously with the motion, with regard to IT security materials to be submitted pursuant to Court's Preliminary Injunction.

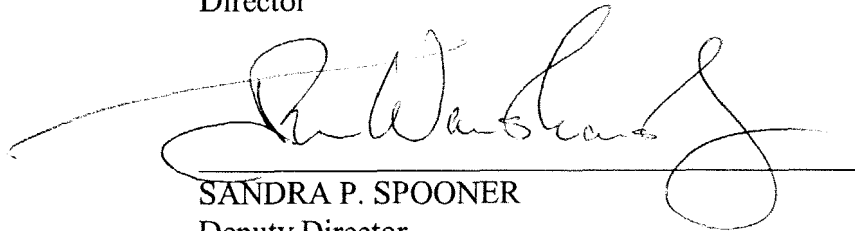
Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General

PETER D. KEISLER
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
Director

A handwritten signature in black ink, appearing to read 'Sandra P. Spooner', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

SANDRA P. SPOONER
Deputy Director
JOHN WARSHAWSKY (D.C. Bar No. 417170)
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August 28, 2003

SECRET

Case No. 1:96CV01285
(Special Master Balaran)

MOTION FOR A PROTECTIVE ORDER

Defendants bring this Motion for a Protective Order to cover confidential and sensitive information related to the Special Master's validation of Interior's compliance with the terms of the Consent Order. The Special Master has retained the services of experts (the "Special Master's experts") to assist in his review of Defendants' proposals to operate or reconnect to the Internet certain of its information technology systems. As part of that review, the Special Master and his experts have requested access to certain confidential or sensitive materials. Defendants expect that the Special Master and his experts will request access to additional confidential or sensitive materials in reviewing Defendants' proposals to reconnect to the Internet and/or to recommence operation of various information technology systems, including materials that may be generated during the course of site visits by the Special Master's experts to Interior and Interior contractor facilities.

On February 7, 2002, the Special Master entered a Protective Order covering documents produced pursuant to the Special Master's review of the Minerals Management Service (MMS)'s proposal to reconnect to the Internet its information technology systems. This Protective Order

EXHIBIT A

Defs' Reply Supporting Protective Order
for Submissions Under Jul. 28, 2003 P.I.

limits access to covered materials to necessary parties, and limits such access to the extent necessary for litigation purposes. Pursuant to this Protective Order, Interior has produced MMS Systems Security Documents for review by the Special Master and his experts, and also by plaintiffs' counsel and litigation team. Also pursuant to this Protective Order, the Special Master's experts have retained materials generated during the course of site visits by the Special Master's experts to MMS facilities during the week of February 18, 2002, verifying their validation tests of the security of the MMS system.

Defendants expect that similar materials will be requested with respect to proposals of other bureaus and offices to reconnect to the Internet their information technology systems. As has been the case with MMS System Security Documents, Defendants and third parties are likely to have security and/or proprietary concerns that could lead to harm, including weakening the security of information technology systems protecting Indian trust data, if the materials are publicly disclosed. If Defendants are required to seek a new protective order to cover such sensitive materials after each request by the Special Master or his experts and before the materials are produced, this is likely to result in a delay in consideration of Interior's proposals to reconnect to the Internet certain information technology systems and, consequently, a delay in resumption of important services provided by Interior bureaus and offices for individual Indians and for the rest of the country.

In order to expedite the Special Master's review, Defendants seek entry of a protective order that they believe will provide timely access to the materials at issue to the Special Master and his experts, as well as to Plaintiffs' counsel, litigation team, and experts; provide protection to Defendants and third parties from inappropriate disclosure of sensitive information; if there is

any disagreement as to the sensitive nature of the materials at issue, require Defendants to state clearly the materials that should be protected from public disclosure and the specific reasons why such protection is required; provide an effective mechanism for Plaintiffs to challenge a designation of confidentiality by Defendants; and provide protection to Defendants and third parties from disclosure of materials identified as sensitive until the Special Master and/or the Court has rendered a decision regarding any challenge made by Plaintiffs.

To accomplish all of these goals, Defendants seek a protective order with the following provisions:

1. Documents produced by Defendants in connection with proposals to recommence operation of or to reconnect to the Internet information technology systems, or generated during the course of site visits to Interior facilities by the Special Master or his experts, may be identified as sensitive by Interior typing, stamping, or writing on the face of the document, "Confidential – Subject to Protective Order."
2. Documents marked by this legend will be immediately subject to the protections of the protective order. Such documents will be made available to the Special Master, his experts, Plaintiffs' counsel, litigation team, and experts, Defendants' counsel and Defendants' litigation experts only to the extent necessary for the litigation and only for the purposes of the litigation. All such documents must be returned to Interior or destroyed at the conclusion of the litigation.
3. Plaintiffs may challenge any designation of materials as protected material. Within 10 days of any such challenge, Defendants must identify with specificity the materials for which it seeks protection under the protective order and the

reasons for seeking such protection. Any documents so identified will remain protected by the protective order pending resolution of Plaintiffs' challenge; any documents not so identified within 10 days will no longer be protected.

4. If the parties are unable to resolve any objections raised by Plaintiffs, Plaintiffs may challenge Defendants' designation by bringing a motion before the Special Master. If the documents are relevant to any proceeding currently before the Court, such challenge may be brought directly before the Court.
5. The Special Master's report and recommendation deciding such challenge will be subject to the normal procedures for filing and resolving objections pursuant to Federal Rule of Civil Procedure 53.

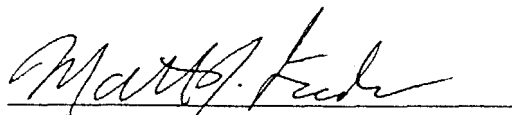
Defendants believe that these reasonable provisions will provide all parties with sufficient and timely access to the materials at issue, while providing protection against the harm that may arise if sensitive documents are disclosed more broadly than is necessary for the purposes of this

litigation. Counsel for the Defendants have consulted with counsel for Plaintiffs, Dennis Gingold. Mr. Gingold stated that the Plaintiffs will probably oppose this motion.

Dated: February 25, 2002

Respectfully submitted,

ROBERT D. McCALLUM, JR.
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STUART E. SCHIFFER
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OF COUNSEL:

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ELOUISE PEPION COBELL, et al.,

v.

Defendants.

PROTECTIVE ORDER

2. Protected Material so designated by Interior may be disclosed to the Court, the Special Master, experts retained by the Special Master; Plaintiffs' counsel, litigation staff, and experts; and defendants' counsel, litigation staff, and litigation experts only to the extent necessary for this litigation. Protected material shall not be disclosed by any of the entities listed

in this paragraph beyond the entities listed, shall be safeguarded from improper and inadvertent disclosure, and shall be used solely for purposes of this litigation.

3. Protected Material so designated by Defendants will remain subject to the provisions of this Protective Order pending any challenge to such designation by Plaintiffs, as described below. If Plaintiffs challenge Defendants' designation, within 10 days following such challenge, Defendants shall identify with specificity the materials for which they seek continued protection under this Protective Order and the reasons for seeking such protection. Any materials so identified will remain protected pending resolution of Plaintiffs' challenge. Any challenged materials not so identified within 10 days will no longer be protected by this Protective Order.

4. Plaintiffs may at any time after such materials have been designated object to the designation as Protected Material. If Interior and Plaintiffs are unable to resolve the objection informally, Plaintiffs may challenge such designation in a motion to the Special Master. The Special Master's report and recommendation deciding such challenge will be subject to the normal procedures for filing objections pursuant to Federal Rule of Civil Procedure 53. If the Protected Material is relevant to any matter currently pending before the Court, Plaintiffs may challenge any such designation directly and immediately with the Court. The information shall be treated as Protected Material until the issue is resolved by the Special Master, including resolution by the Court of any objections, or by the Court.

5. If a party desires to file with the Special Master or the Court a pleading, motion, brief, or other document containing Protected Material, the party shall file two sets of the pleading, motion, brief, or other document. One set shall be labeled on the cover "Confidential" and shall be complete in all respects. The other set shall be labeled on the cover

"Nonconfidential" and shall have the Protected Material deleted. Both sets shall be filed with the Court, but the Confidential set shall be filed under seal and shall not be made available to the public.

6. At the conclusion of this litigation, Plaintiffs' counsel and litigation staff and any expert retained for the litigation by either party or the Special Master shall destroy or return to Interior any copies of Protected Material received or made during the course of their review and any notes or other summaries that disclose or include the substance of the Protected Material.

7. The provisions of this protective order shall not preclude Defendants or a third party from seeking additional protections with respect to any specific documents.

IT IS SO ORDERED:

Alan L. Balaran
SPECIAL MASTER

Date: February __, 2002

cc:

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Keith Harper, Esq.
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Fax (202) 822-0068

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on February 25, 2002, I served the foregoing Defendants' Motion for A Protective Order, by facsimile only, in accordance with their written request of October 31, 2001, upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, N.W.,
Ninth Floor
Washington, D.C. 20004
202-318-2372

by facsimile, and by hand delivery on February 26, 2002, upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., N.W.
12th Floor
Washington, D.C. 20006

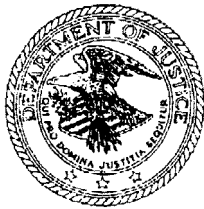
by U.S. Mail upon:

Elliott Levitas, Esq.
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and by hand delivery upon:

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Sean Schmergel



U.S. Department of Justice
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Washington, D.C. 20005

John Warshawsky

Telephone: (202) 307-0010 Facsimile: (202) 514-9163

August 27, 2003

By Facsimile

Mr. Dennis M. Gingold
1275 Pennsylvania Avenue, N.W., Ninth Floor
Washington, D.C. 20004

Mr. Keith Harper
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036

Re: Cobell v. Norton – Interior Defendants' Motion for Protective Order With Regard to IT Security
Materials to be Submitted Pursuant to July 28, 2003 Preliminary Injunction

Dear Messrs. Gingold and Harper:

In plaintiffs' opposition to the above-referenced motion for a protective order, you refer positively to the listing of IT security documents set forth in the Special Master's May 2, 2002 Revised Order. E.g., Pl. Br. at 10 ("A brief review of the existing Revised Order makes clear that it alone is sufficient to address Norton's submissions."). Your positive comments are tempered, however, by your statements indicating your opposition to the Revised Order. E.g., id. ("Although plaintiffs disagreed at the time, and continue to disagree, with the scope of the Revised Order,").

While we do not agree that the Revised Order applies to submission pursuant to the July 28, 2003 preliminary injunction, your comments implied that the possibility exists for a stipulation to resolve the issues presented in our motion for a protective order. Our motion was accompanied by a proposed protective order, which included as a definition of "Protected Material":

any document (including any pleadings, motions, briefs, notices, responses to interrogatories or document production requests, or documents provided pursuant to an informal document production), or portion or copies thereof, produced, filed, or served by Interior Defendants that has been designated by Interior Defendants as confidential by typing or stamping on the face of the document the words "Protected Material--Subject to August 2003 IT Security Protective Order" or a substantially similar legend;

EXHIBIT B

Defs' Reply Supporting Protective Order
for Submissions Under Jul. 28, 2003 P.I.

Proposed Protective Order ¶ 1(a). In lieu of this paragraph, we would be willing to stipulate to the entry of a protective order that substitutes the following language in paragraph 1(a):

any of the following documents and any pleadings, motions, briefs, notices, responses to interrogatories or document production requests, or documents provided pursuant to an informal document production that describe the contents of the following documents:

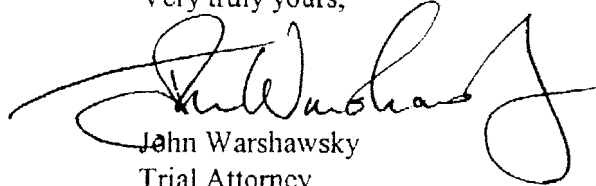
- (i) Network diagrams;
- (ii) Nessus outputs;
- (iii) Whisker outputs;
- (iv) Wardialing outputs;
- (v) Incident response plans;
- (vi) Security policies;
- (vii) Firewall configurations and rules;
- (viii) Router configurations and rules;
- (ix) Server configurations;
- (x) Dial-in configurations;
- (xi) System-hardening guidelines;
- (xii) Penetration test results;
- (xiii) Virus inoculation procedures;
- (xiv) Forensic procedures;
- (xv) Device IP addresses;
- (xvi) Router Access Control Lists (ACLs);
- (xvii) Operating System versions and Patch levels;
- (xviii) Application versions and Patch levels;
- (xix) Documents containing user names and identifications;

(xx) Topology diagrams.

Interior Defendants' reply brief in support of the protective order is due on Thursday, August 28, 2003. Accordingly, please advise us by close-of-business today whether plaintiffs would be willing to stipulate to a protective order as described herein.

Thank you for your attention to this proposal.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Warshawsky", with a large, stylized flourish extending to the right.

John Warshawsky
Trial Attorney
Commercial Litigation Branch
Civil Division

***** -COMM. JOURNAL- ***** DATE AUG-27-2003 TIME 08:53 *****

MODE - MEMORY TRANSMISSION

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FACSIMILE TRANSMITTAL

To: Mr. Dennis M. Gingold [Facsimile number (202) 318-2372]
Mr. Keith Harper [Facsimile number (202) 822-0068]

From: John Warshawsky, Trial Attorney
United States Department of Justice
Commercial Litigation Branch, Civil Division
1100 L Street, N.W., Room 10030
Washington D.C. 20005

Office telephone: (202) 307-0010
Facsimile number: (202) 514-9163

Pages (including cover page): 4

Comments:

Date of transmission: Wednesday, August 27, 2003

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IF YOU ARE NOT THE ADDRESSEE AND HAVE RECEIVED THIS FACSIMILE IN ERROR:

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 - (2) PLEASE ADVISE THE SENDER OF THIS FACSIMILE IMMEDIATELY.
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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on August 28, 2003 I served the foregoing *Interior Defendants' Reply Brief in Support of Motion for a Protective Order with Regard to Information Technology Security Materials to Be Submitted Pursuant to July 28, 2003 Preliminary Injunction* by facsimile in accordance with their written request of October 31, 2001 upon:

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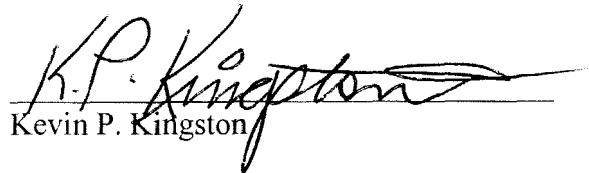
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Per the Court's Order of April 17, 2003,
by facsimile and by U.S. Mail upon:

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