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

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
Defendants.	)	

TREASURY DEFENDANT'S MOTION TO ADOPT THE NOVEMBER 27, 2002 RECOMMENDATIONS OF THE SPECIAL MASTER

The Secretary of the Treasury ("Treasury") files this Motion to Adopt the Special Master's recommendations contained in his November 27, 2002 Opinion ("Opinion").[1] In his Opinion[2], the Special Master "recommends that Defendant's Motion for Protective Order be GRANTED in part and DENIED in part and Plaintiffs' request for sanctions be DENIED." Opinion at 1. Although Treasury disagrees with portions of the Special Master's Opinion, it accepts his recommendations regarding Treasury's Motion for Protective Order and Plaintiffs' sanctions request and therefore urges the Court to adopt the Opinion's recommendations.

The Special Master's Opinion addresses the January 31, 2002 General Accounting Office report entitled "Financial Management Service: Significant Weaknesses in Computer Controls

[1] The undersigned consulted with Plaintiffs' counsel regarding potential opposition or agreement with this motion. Plaintiffs' counsel indicated that he could not state Plaintiffs' views on the motion without first reviewing it.

[2] Treasury views the Special Master's Opinion as a "Report" under Rule 53(e) of the Federal Rules of Civil Procedure.

Continue" ("GAO Report"). Specifically, it addresses Treasury's Motion for a Protective Order regarding certain sensitive information that Treasury produced to the Special Master in response to the GAO Report, as well as Plaintiffs' opposition and sanctions request. This sensitive information was contained in a Financial Management Service ("FMS") report, including a corrective action plan (Attachment A to the FMS report) and Treasury's Security Manual (Attachment B to the FMS Report). Opinion at 2. The Special Master found that the "unrestricted release of documents such as the FMS Report and Attachment A . . . may not only impede Treasury's ability to perform its general functions but may also thwart the agency's ability to safeguard trust data from uninvited intruders." Id. at 5. By contrast, the Special Master found that disclosure "of Attachment B . . . poses no 'significant risk' that Treasury's computer security would be compromised or circumvented." Id. at 5 n.2. The Special Master thus recommended issuance of a Protective Order for the FMS report and "Attachment A," but not for "Attachment B." Id. at 7. The Special Master further recommended denial of Plaintiffs' sanctions request "because Treasury was substantially justified in seeking the non-disclosure of the FMS Report and Attachment A . . . . " Id.

Although Treasury concurs with the Special Master regarding the dangers inherent in an "unrestricted release of documents" and the concomitant need for a Protective Order, Treasury does not agree with all of the Special Master's Opinion. For example, Treasury does not agree that its "Motion for Protective Order, on its face, lacks the requisite specificity to support its motion to shield the FMS Report and Attachments A and B from public disclosure." Id. at 4. Nor does Treasury agree that its proposed order was "so expansive that it could easily subsume all documents that became part of the Special Master's investigation." Id. at 6. Treasury also

finds unnecessary the Special Master's comment that "[H]ad Treasury drafted its initial proposed order with greater precision, Plaintiffs may not have been compelled to expend valuable time briefing the issue and drafting an opposition." Id. at 6 n.5. Furthermore, Treasury does not concede that disclosure of Attachment B poses "no 'significant risk'" of potential security compromises. Id. at 5 n.2.

Despite these disagreements, however, Treasury urges the Court to adopt the recommendations in the Special Master's Opinion. Although it takes issue with certain statements made by the Special Master, Treasury recognizes that the Opinion and accompanying Order accomplish Treasury's goal of protecting FMS's highly sensitive information. In addition, the Opinion and Order also accomplish Treasury's goal of allowing the Special Master to move forward on the FMS report.

CONCLUSION

For the reasons set forth above, the Court should adopt the Special Master's recommendations contained in his November 27, 2002 Opinion.

Dated: December 10, 2002

Respectfully submitted,

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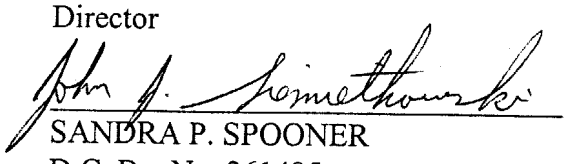

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Defendants.	)	

PROTECTIVE ORDER

Having considered the Special Master's November 27, 2002 Opinion, Treasury Defendant's Motion for a Protective Order, Plaintiffs' opposition and request for sanctions, and Treasury Defendant's Reply, and upon the showing of good cause by the Department of the Treasury for the entry of a protective order with regard to the March 1, 2002 FMS Report on the January 2002 GAO Report entitled "Financial Management Service: Significant Weaknesses in Computer Controls Continue" and its attachments ("GAO Report"), it is HEREBY ORDERED:

1. Plaintiffs' request for sanctions is DENIED. Treasury Defendant's Motion for a Protective Order is GRANTED in part and DENIED in part as follows:

2. "Protected Material" as used herein means the FMS Report and the attached 13 page chart labeled "Corrective Action Plan for Open Corrective Actions for GAO-02-317: General Control Findings for the FMS Enterprise Mainframe Platform Potentially Relevant to the Cobell Litigation."

3. Protected Material may be disclosed to the Court, the Special Master and experts retained by the Special Master; Plaintiffs' counsel, litigation staff and experts; and Defendants' counsel, litigation staff and 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.

4. 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 Special Master or the Court, but the Confidential set shall be filed under seal and shall not be made available to the public.

5. 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 Treasury 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.

Dated: _____

_____
Hon. Royce C. Lamberth
United States District Judge

cc:

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on December 10, 2002 I served the foregoing *Treasury Defendants' Motion to Adopt the November 27, 2002 Recommendations of the Special Master* by facsimile in accordance with their written request of October 31, 2001 upon:

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