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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14	DENNIS MONTGOMERY, et al.,)	
)	
15	Plaintiffs,)	3:06-CV-0056-PMP-VPC
)	BASE FILE
16	vs.)	
)	3:06-CV-0145-PMP-VPC
17	ETREPPID TECHNOLOGIES, LLC, et al.,)	(Consolidated action)
)	
18	Defendants.)	
)	DEPARTMENT OF DEFENSE’S RESPONSE
19	AND RELATED MATTERS.)	TO eTREPPID’S “LETTER MOTION TO
)	COMPEL PRODUCTION OF
20)	PHOTOGRAPHS” (# 180)

21 Comes now defendant Department of Defense (DoD), through its undersigned counsel, and
22 responds as follows to eTrepid’s “letter motion to compel production of photographs” (#180). The
23 “letter motion” should be denied.

24 These consolidated civil proceedings concern a dispute between eTrepid and Montgomery
25 as to who owns certain computer software source codes. See Order (#177) at 2, lines 3-5. DoD is
26 a party based on Montgomery’s causes of action against DoD for declaratory relief concerning the

1 scope of Montgomery's non-disclosure agreement with DoD and Montgomery's claims of copyright
2 infringement. Id. at 2, lines 11-20. Most of the claims against DoD have been dismissed by this
3 Court, with ongoing proceedings to obtain dismissal of any remaining claims against DoD. See
4 Order (#177) & Motion (#181).

5 A separate criminal proceeding under Rule 41, Fed.R.Crim.P., was initiated by Montgomery
6 to obtain return of materials seized by the F.B.I. That proceeding, docketed as case number 3:06-cv-
7 0263-PMP-VPC (the "criminal search warrant proceeding"), resulted in an order directing the return
8 of seized items of property to Montgomery. eTreppid sought to intervene in the criminal search
9 warrant proceeding, but this Court denied eTreppid's intervention motion in that case.

10 At a hearing conducted in these consolidated civil actions on March 23, 2007, this Court (at
11 the request of eTreppid's counsel) directed DoD counsel to prepare and file an inventory of the items
12 of property which were to be returned to Montgomery in connection with the criminal search warrant
13 proceeding. DoD counsel at the March 23 hearing opposed eTreppid's request because DoD counsel
14 in these consolidated actions has not appeared (and has had no role) in the criminal search warrant
15 proceeding and government counsel of record in the criminal search warrant proceeding had no
16 opportunity to address the Court concerning the proposed inventory. Nonetheless, DoD counsel
17 informed Assistant U.S. Attorney Ronald Rachow, government counsel of record assigned to the
18 criminal search warrant proceeding, of this Court's directive. Following the return of the seized
19 materials to Montgomery, the United States filed its inventory of returned property in the criminal
20 search warrant proceeding.

21 eTreppid, despite being a non-party to the criminal search warrant proceeding, is dissatisfied
22 with the inventory filed by the United States in that case. Specifically, eTreppid asserts that the
23 inventory should include copies of the photographs taken by F.B.I. at the time of the return of
24 property. Rather than seeking relief through a motion filed in the criminal search warrant
25 proceeding, eTreppid has now written a letter to the Court, which the Court has converted to a

1 motion to be addressed in these civil consolidated actions.

2 DoD respectfully submits that the adequacy of the inventory which eTreppid challenges is
3 a matter which is properly brought before the Court, if at all, in the criminal search warrant
4 proceeding, not in the instant civil actions.¹ As there is no pending discovery request in these civil
5 consolidated actions regarding the inventory in the criminal search warrant proceeding, there is no
6 jurisdictional or other basis herein for eTreppid's "letter motion" to compel a filing (or supplemental
7 filing) in the criminal search warrant proceeding.² Accordingly, eTreppid's "letter motion" should
8 be denied.

9 Based on the foregoing, eTreppid's "letter motion to compel production of photographs"
10 (#180) should be denied.

11
12 Respectfully submitted,

13 PETER KEISLER
14 Assistant Attorney General

15 STEVEN W. MYHRE
16 Acting United States Attorney

17 /s/ Greg Addington
18 GREG ADDINGTON
Assistant United States Attorney

19 ¹ According to Assistant U.S. Attorney Ronald Rachow, the government counsel of
20 record in the criminal search warrant proceeding, the inventory filed by the United States in that
21 case complies with this Court's directive which was announced at the March 23 hearing in these
consolidated cases. Further elucidation of that view is properly left to proceedings conducted in
the criminal search warrant proceeding.

22 ² To the extent eTreppid's "letter motion" is construed as an effort to "compel
23 production" of the photographs taken by F.B.I. so that eTreppid can use those photographs in this
24 civil litigation, then eTreppid's "letter motion" is properly regarded as a discovery motion which
25 is premature. Discovery has been stayed in these consolidated civil actions. See Minutes of the
26 Court (#88). Furthermore, eTreppid has made no request for production of the photographs in
accordance with Federal Rule of Civil Procedure 34, a necessary predicate to any "motion to
compel" such production.

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PROOF OF SERVICE

I hereby certify that service of the foregoing DEPARTMENT OF DEFENSE'S RESPONSE TO MONTGOMERY'S REQUEST/MOTION FOR DISCLOSURES, etc. (#118) was made through the Court's electronic notification system or, as appropriate, by sending same through first class mail from Reno, Nevada, to the addressees below on June 8, 2007.

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