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5 *Admitted Pro Hac Vice*

6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 DENNIS MONTGOMERY, and the ) 9 MONTGOMERY FAMILY TRUST, ) 10 Plaintiffs, ) 11 v. ) 12 ETREPPID TECHNOLOGIES, LLC, ) 13 WARREN TREPP, and the UNITED ) 14 STATES DEPARTMENT OF DEFENSE, ) 15 Defendants. ) _____ ) 16 AND ALL RELATED MATTERS. ) _____ )	3:06-CV-00056-PMP-VPC <b>BASE FILE</b>  3:06-CV-00145-PMP-VPC  <u><b>DECLARATION OF MICHAEL FLYNN</b></u> <u><b>IN RESPONSE TO GOVERNMENT MOTION</b></u> <u><b>TO COMPEL ENFORCEMENT OF</b></u> <u><b>PROTECTIVE ORDERS</b></u>
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16 **DECLARATION OF MICHAEL J. FLYNN**

17 I, Michael J. Flynn, declare:

- 18 1. I am an attorney licensed to practice in the state of Massachusetts. I have appeared pro hac  
19 vice as counsel for Dennis Montgomery, individually and as Trustee of the Montgomery  
20 Family Trust, Brenda Montgomery, as Trustee of the Montgomery Family Trust, and the  
21 Montgomery Family Trust, (hereinafter "Montgomery"), in the above captioned related  
22 cases, 3:06-cv-0056 and 3:06-cv-00145, and 3:06-cv-0263. I have personal knowledge of  
23 the facts stated herein, and if called as a witness, I could and would testify competently to  
24 them.
- 25 2. I support the protocols in the Government's Motion to Compel Enforcement of the  
26 Protective Orders because I believe it is the only reliable, consistent, and most efficient  
27 process to secure the confidentiality of information from my files, and the files of  
28 Montgomery and others, that I believe implicates national security, regardless of legal and  
factual issues relating to it being "classified" or not; and because I believe that this Court is

1 the proper forum to resolve the intertwined issues relating to the state secrets privilege, the  
2 attorney client privilege, the fee, file and lien issues, and the applicable Nevada Rules of  
3 Professional Conduct in order to achieve substantial justice. Based on my knowledge of  
4 events, and the presence of third parties during many of those events, I also believe that the  
5 attorney client privilege has either been waived by Montgomery, or is subject to other  
6 exclusions and exceptions. I believe Montgomery comprehensively waived the privilege  
7 when he sued me in Los Angeles falsely accusing me of fraud by representing myself to be  
8 a California licensed lawyer.

9 3. I accept and stipulate for purposes of this Response to the Government's Motion, that any  
10 classifications and/or redactions from any of the court files made by the government and  
11 approved by the Court on or after April 2, 2007, constitutes "classified information."  
12 Based on representations of Dennis Montgomery made to me while I was his lawyer, and  
13 based on my own legal and factual analysis while I served as counsel for Montgomery, I do  
14 not know, nor am I able to determine whether certain information *when* it came to me from  
15 Montgomery was either "classified" or not "classified". While serving as Montgomery's  
16 counsel, regardless of "classification" issues, based on Montgomery's representations, I  
17 believed certain information in Montgomery's possession implicated national security. But  
18 apparently, based on this Court's unsealing order, that belief was erroneous. Other  
19 information based on varying positions by the government, the Court's unsealing Orders,  
20 and original, and then subsequent government redactions, such as certain Peter Wiedeman  
21 information, became the subject of ambiguity and uncertainty at various times during the  
22 litigation, even after April 2, 2007. As to the identity of any intelligence community  
23 personnel, I strongly support the protection of their identity and any related information,  
24 regardless of other considerations, including assertions of the attorney client privilege; and  
25 based on my knowledge of events and facts in these matters, I strongly believe that the *only*  
26 reliable and consistent means of securing the confidentiality of such "protected  
27 information" is to adopt the government protocols as soon as possible.

28 4. Regardless of "classified information" uncertainties that arose during the course of the

1 litigation, including that in the search case proceedings; and regardless of the search case  
2 files forming the basis for identifying “protected information” in all files in all cases; and  
3 regardless of the facts and circumstances wherein “protected information” exists apart from  
4 the search case files in my files, I am presently able to comply with the court ordered  
5 redaction process for my files in the September 4, 2007 Order with regard to my *paper*  
6 files. Although it is time consuming and extremely burdensome to review my *paper* files  
7 and comply, which I have already partially accomplished, considering that I have already  
8 been defrauded of over six months of legal fees by Montgomery, it is akin to aiding  
9 Montgomery’s fraud against me by requiring substantial time and resources to accomplish  
10 just the *paper* file redactions and cleansing, while Montgomery and his partner continue to  
11 cheat me out of my time, and fees, and costs, and continue to maintain their files.

12 5. I know of no way to certify with absolute certainty that *all* protected information from all  
13 files, paper and electronic, in all cases before the Court, has been redacted, or removed, or  
14 destroyed, other than the process requested by the government. Moreover, there are  
15 electronic files, such as numerous pdf files, which present problems in the redaction  
16 process, and in connection with which I do not have the technical, electronic sophistication  
17 to redact, and leave other portions of the electronic file intact. Additionally, my electronic  
18 files are voluminous and in multiple computers in different locations. My paper files are on  
19 both coasts. The best solution appears to be to have government personnel go to those  
20 locations with me, and redact the files.

21 6. I hereby certify that I have not knowingly transmitted any protected information to anyone  
22 other than Carlotta Wells; and I do not believe that I have inadvertently transmitted any  
23 protected information to anyone. However, I have been excessively burdened with  
24 responding to Montgomery’s opposition to payment of my legal fees and costs in these  
25 cases; responding to Montgomery’s San Diego fee arbitration petition; responding to  
26 Montgomery’s Massachusetts Bar complaint; and responding to Montgomery’s Los  
27 Angeles law suit and his multiple motions to obtain my files, notwithstanding this Court’s  
28 explicit Orders. Although all of those matters have now been dismissed, (see attached

1 Exhibits 1 through 3), I have spent the last four months defending against them, as well as  
2 maintaining my existing cases. Thus, I am not one hundred percent certain that there have  
3 been no inadvertent disclosures, but I do not believe there have been. The only reliable  
4 method to insure against such problems is to implement the requested government  
5 procedures.

6 7. In sum, after I routinely worked 60 plus hour weeks for 18 months to defend him,  
7 Montgomery and his “partner” defrauded me of over \$600,000, then relentlessly attacked  
8 me with a perjured declaration and comprehensive abuse of the judicial system, engineered  
9 by attorneys Klar and Pham, causing me and co-counsel to incur another \$200,000 in  
10 attorney time and costs.

11 8. I respectfully request that I be present when my files are redacted by government security  
12 personnel. There are several computers involved and I have hundreds of unrelated files  
13 contained on these computers involving other clients, some of whom are prominent public  
14 figures, thus implicating the attorney client privilege as it relates to them. My presence is  
15 necessary to protect them. Additionally, substantial issues exist, which I have reported to  
16 the appropriate authorities, involving the “accessing” of my computers and related issues  
17 with my files that will require a forensic analysis after the protected information has been  
18 redacted.

19 9. If the Court does not adopt the government’s procedures, then I respectfully request an  
20 additional 120 days to complete the redaction process.

21 10. The Exhibits attached hereto are true and correct copies.

22 11. I respectfully request that the proposed government procedures be established to redact all  
23 files of all parties and counsel at this time.

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1 I declare under penalty of perjury under the laws of the United States and the State of Nevada that  
2 the foregoing is true and correct. Signed this 7<sup>th</sup> of December, 2007, in Rancho Santa Fe,  
3 California.

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6 Michael J. Flynn, Esq.

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9 **CERTIFICATE OF SERVICE**

10 I, Michael J. Flynn, declare: I am an attorney admitted pro hac vice in the United States  
11 District Court of Reno in the related civil cases, U.S.D. Reno, No. 3:06-CV-00056 and 3:06-CV-  
12 000145. I am over the age of 18 years and not a party to this action.

13 I am familiar with the practice for the collection of mail, delivery of hand-deliveries,  
14 process of facsimile, and the practice of mailing.

15 On December 8, 2007, I caused the foregoing documents (Response and Declaration with  
16 Exhibits and this Certificate of Service), to be emailed to the following persons and/or entities:

17  
18 Attorney Stephen Peek  
HALE LANE  
5441 Kietzke Lane, 2<sup>nd</sup> Fl.  
19 Reno, NV 89511

20 Attorney Carlotta P. Wells,  
U.S. DEPT. OF JUSTICE  
21 P.O. Box 883  
Washington, D.C. 20044

22 Deborah Klar,  
23 Liner, Yankelevitz etc.  
100 Glendon Ave.  
24 Los Angeles, CA 90024

25  
26  
27 /S/  
Attorney Michael J. Flynn