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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DENNIS MONTGOMERY and the
MONTGOMERY FAMILY TRUST,

Plaintiffs,

v.

ETREPPID TECHNOLOGIES, LLC;
WARREN TREPP; and the UNITED
STATES DEPARTMENT OF DEFENSE,

Defendants.

AND ALL RELATED MATTERS.

3:06-CV-00056-PMP-VPC
BASE FILE

3:06-CV-00145-PMP-VPC

ORDER


On May 29, 2007, the Court received the attached letter from Jerry M. Snyder, Esq., counsel for eTreppid dated May 25, 2007. Although the Court generally does not treat correspondence received as a motion, given the issue raised in Mr. Snyder's letter, the Court deems it appropriate to treat his letter of May 25, 2007, as a Letter Motion to Compel the Government to produce copies of photographs reflecting the inventory of items seized during the Search of 12720 Buckthorn Lane at issue in the related search case 3:06-CV-0263-PMP-VPC.

IT IS THEREFORE ORDERED that the enclosed letter and attachments thereto shall be filed with the Clerk of Court and docketed as eTreppid's Letter Motion to Compel Production of Photographs.

///

1 IT IS FURTHER ORDERED that all parties shall file a Response to the above
2 Letter Motion on or before June 10, 2007.

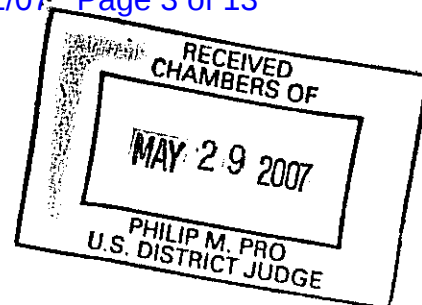
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4 Dated: May 31, 2007.

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7 PHILIP M. PRO
8 United States District Judge
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HALE LANE

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JERRY M. SNYDER

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May 25, 2007

Honorable Philip M. Pro
Chief Judge
U.S. District Court
333 Las Vegas Blvd., South
Room 7015
Las Vegas, NV 89101

**Re: *In re: the Search of 12720 Buckthorn Lane*, Case No. 3:06-CV-0263-PMP-VPC;
eTreppid Technologies, LLC v. Dennis Montgomery, et al., Case No. 3:06-CV-
0056-PMP-VPC/ 3:06-CV-0145-PMP-VPC**

Dear Judge Pro:

This letter relates to the property seized and returned by the United States in the *Buckthorn Lane* proceeding, and the United States' inventory of that property. During the telephonic hearing on March 23, 2007, counsel for eTreppid requested that this court require the FBI to prepare a detailed inventory of the property, including photographs, before the property was returned to Montgomery. See transcript of the March 23, 2007 hearing, at p.51:13-22. This Court granted eTreppid's request and ordered the United States to prepare and file a complete inventory of the seized items before returning them to Dennis Montgomery. Specifically, the Court ordered "[t]he United States Attorney, in conjunction with the FBI, [to] prepare a detailed inventory of the items to be returned, **including photographs** of them, documentation of serial numbers. . . . And a copy of that inventory can be filed with the court..." Transcript of March 23, 2007 Hearing, at p.53:23-54:4 (emphasis added).

The Court reiterated this ruling in a Minute Order dated March 23, 2007: "[Assistant U.S. Attorney] Addington, in conjunction with the FBI, shall prepare a detailed inventory of the items to be returned, **including photographs** of them and documentation of serial numbers. A copy of that inventory shall be filed with the court in [the Buckthorne Lane matter]." (emphasis added). For convenience, enclosed herewith is a copy of the March 23, 2007 Minute Order, and a copy of excerpts of the March 23, 2007 hearing transcript.

Pursuant to the Court's ruling, the United States prepared a detailed written inventory and took photographs of the seized items. On March 30, 2007, the United States filed a copy of its written inventory, but it did not file copies of the photographs. eTreppid requests that the Court

HALE LANE PEEK DENNISON AND HOWARD

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May 25, 2007


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confirm that its ruling requires the United States to also file copies of the photographs as part of its inventory.

Counsel for eTreppid has discussed this matter with Mr. Ron Rachow at the Reno U.S. Attorney's Office. eTreppid requested copies of the photographs prepared with the written inventory, but the U.S. Attorney's Office does not interpret the March 23, 2007 Minute Order to require that the photographs be filed as part of the inventory required by the Court. As a result, the United States did not file these photographs and have not provided eTreppid with copies of the photographs.

eTreppid respectfully requests that the Court confirm that its March 23, 2007 ruling required the Government to serve and file copies of the photographs, as part of the inventory of the seized items. eTreppid and the Reno U.S. Attorney's Office have agreed that this matter could be resolved with this letter, but if the Court prefers that the parties brief the issue eTreppid is willing to do so. Thank you for your attention to this matter.

Respectfully submitted,



Jerry M. Snyder

JMS/gs

Enclosures

C: Jeffrey S. Ross, Esq.
Jonathan D. Butler, Esq.
J. Stephen Peek, Esq.
Ronald Logar, Esq.
Michael J. Flynn, Esq.
Greg Addington, Assistant U.S. Attorney
Carlotta P. Wells, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NV

DENNIS MONTGOMERY, et al.,)
)
Plaintiff(s),)
)
vs.)
)
ETREPPID TECHNOLOGIES, LLC,)
et al.,)
)
Defendant(s).)

3:06-CV-0056-PMP-VPC

MINUTES OF PROCEEDINGS

DATED: March 23, 2007

PRESENT: THE HONORABLE PHILIP M. PRO, UNITED STATES DISTRICT JUDGE

PRESENT: THE HONORABLE VALERIE P. COOKE, U.S. MAGISTRATE JUDGE

Deputy Clerk: Donna Andrews Recorder: Erin Smith

Counsel for Dennis Montgomery, et al:

Michael James Flynn, Carla Dimare

Counsel for Etreppid Technologies, et al:

Jeffrey S. Ross, J.S. Peek

Counsel for U.S. Dept. of Defense:

Carlotta P. Wells, Greg Addington

PROCEEDINGS: TELEPHONIC HEARING ON EMERGENCY MOTION FOR RECONSIDERATION BY THE UNITED STATES (#133)

10:05 a.m. Court convenes.

The Court addresses counsel and then hears the representations of counsel on the pending motion.

Ms. Wells advises the Court they have people who are prepared to present themselves to the clerk next Tuesday, March 27th to review the documents.

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March 23, 2007

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Regarding Mr. Montgomery's Response, wherein Mr. Flynn raised the question as to who the Response to the Government's Motion for Protective Order should be served on, Ms. Wells advises the Court and counsel she is counsel of record and the Response should be served on her.

Mr. Peek advises the Court they have downloaded off of pacer most of the documents and exhibits and inquires whether those should be destroyed or returned to the Court.

The Court instructs Mr. Peek to deliver those documents to Magistrate Judge Cooke today.

Magistrate Judge Cooke inquires whether Mr. Flynn, having been a party to the search warrant proceedings, is obliged to turn in all of his records on behalf of Mr. Montgomery.

Ms. Wells advises the Court only the Executive Branch has the authority to determine what information is subject to the state secrets privilege.

IT IS ORDERED the Government's Emergency Motion for Reconsideration [133] is granted as follows: As to Defendants Montgomery and Etreppid, they shall cease all further review of the files in Case Number 3:06-CV-263-PMP-VPC, including review on the electronic case filing system, until the Department of Defense has conducted its review of the materials next week. The review will take place as follows: Ms. Wells, and whomever else from the Department of Defense that is going to be conducting that review, will conduct the review at the Court's chambers in Las Vegas, where the case file is located and maintained. They will mark the documents that they have a concern with. When the Court returns on Friday, at 9:30 a.m., the Court will meet with those individuals in chambers to review those materials to which redaction is proposed. Assuming that redaction is necessary, the Court will accomplish it at that time. Directions will be given to counsel of record as to what they must do with regard to materials they have received.

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March 23, 2007

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The Court directed the Clerk of Court to withdraw the access of counsel to these proceedings to the Court's sealed ECF case file pending review of the file as outlined above and further Order of the Court.

The Court instructs Mr. Flynn to file his Response to the Government's Motion for Protective Order forthwith.

The Court will not address Etreppid's Motion (#139) today.

Mr. Ross advises the Court they contend there is classified data in the seized materials and Mr. Trepp is the only one able to address that matter.

The Court advises Mr. Ross the Department of Defense is the only ones who can make the determination as to what is classified.

Ms. Wells advises the Court they have no objection to the items being returned to Mr. Montgomery as he is under an injunction not to disseminate it, share it, use it, or do anything with it except hold it.

Mr. Ross requests there be a hearing, before the DVD and servers are returned, in which Mr. Trepp can demonstrate that the classified information he has is the same as the classified information on that DVD. The Court denies Mr. Ross's request.

The Court will not modify its previous Order entered on March 19, 2007, except to state that the materials that were seized from Montgomery pursuant to search warrant that the Court has ordered returned, are returned to Montgomery subject to the Preliminary Injunction previously entered in this case, which specifically would prohibit Montgomery, or anybody on his behalf, from destroying, modifying, duplicating, distributing, disseminating, hypothecating, transferring, licensing or assigning such property until further Order of the Court.

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March 23, 2007

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The Court instructs Ms. Wells to carefully consider who within the Department of Defense is in a position to review the 3:06-CV-263-PMP-VPC case file and to coordinate with the various sections of the Department of Justice involved in all pertinent investigations to insure a comprehensive review. Mr. Wells is instructed to have the agents who will review the file arrive on Thursday and Friday of next week instead of Tuesday and Wednesday and to contact the Court's clerk, Donna Andrews, at 702-464-5426 for the agents to be brought to chambers.

Mr. Flynn addresses the Court on the attempt to modify the Preliminary Injunction in the search case. Mr. Flynn advises the Court there are new proceedings pending in Washington and he has been asked by the Department of Justice attorneys involved in those proceedings and the FBI to cooperate and to voluntarily provide copies of what has been seized by the Government. The Court's Order returning seized property subject to the Preliminary Injunction would implicate his ability to turn that material over. The Court hears the representations of Ms. Wells and Mr. Ross.

The Court grants an exception to the Court's previous Order which provides, to the extent said materials are requested in writing by the United States Department of Justice, copies may be provided by Mr. Montgomery. The Court instructs Mr. Flynn also to advise Ms. Wells of the name of the Department of Justice representative he is communicating with on this issue.

Mr. Peek reiterates their request to have a forensic examination of all of the seized property made and that replica deposited with the Clerk of the Court until further order. The Court will not order that at this time.

Magistrate Judge Cooke confers with counsel on Etreppid's Motion for Protective Order [74]. The Response to that Motion was sealed and was not served on Etreppid because it alluded to matters relating to the sealed file. The Court hears the representations of counsel. **IT IS ORDERED** the Response shall be sent to Las Vegas, the Department of Justice officials shall review it and if there are concerns, they can address those with Judge Pro.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO DIVISION

DENNIS MONTGOMERY, ET AL.,)	CASE NO: 3:06-CV-56-PMP-VPC
)	
Plaintiffs,)	CIVIL
)	
vs.)	Las Vegas, Nevada
)	
ETREPPID TECHNOLOGIES, LLC,)	
ET AL.,)	Friday, March 23, 2007
)	(10:05 a.m. to 11:22 a.m.)
Defendants.)	

TELEPHONIC HEARING ON EMERGENCY MOTION
FOR RECONSIDERATION BY THE UNITED STATES

BEFORE THE HONORABLE PHILIP M. PRO,
UNITED STATES DISTRICT JUDGE;
- AND -
THE HONORABLE VALERIE P. COOKE,
UNITED STATES MAGISTRATE JUDGE

Appearances: (See next page)

Courtroom Administrator: Donna Andrews

Law Clerks: Kara Rickey
Brian Reeve

Court Recorder: Erin Smith

Transcribed by: Exceptional Reporting Services, Inc.
14493 S. Padre Island Drive
Suite A-400
Corpus Christi, TX 78418-5940
361 949-2988

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 motion for disclosure I believe that the FBI has reexamined
2 this issue in detail with spreadsheets.

3 JUDGE COOKE: Well, I --

4 MR. FLYNN: And I don't --

5 JUDGE COOKE: I'm not privy to that, obviously,
6 Mr. Flynn. What I have is, and what Judge Pro has, of course,
7 is the court record and the search warrant returned inventory
8 that's always attached on search warrant returns as a standard
9 matter, standard protocol. And in a sense with Judge Pro here,
10 although the Court, the Magistrate Judge typically takes up the
11 issue of search warrant returns but, obviously, Judge Pro and I
12 are working together on this, it makes -- and so I will inquire
13 of Judge Pro. It makes sense to me --

14 THE COURT: Yeah, I agree.

15 JUDGE COOKE: If we need to direct the FBI to have a
16 detailed list of its serial numbers, it makes sense to me
17 whether you're talking about a computer or a CD player or any
18 piece of property that can be identified by a serial number.
19 And it also makes a good idea to take a photograph.

20 Judge Pro?

21 THE COURT: I agree.

22 Mr. Addington, are you on the line?

23 MR. ADDINGTON: I am, your Honor. Thank you. If I
24 could just --

25 THE COURT: You were counsel in both cases.

1 **MR. ADDINGTON:** The FBI and this office are certainly
2 mindful of the representations and accusation made by
3 Mr. Flynn, and we're certainly going to take steps that are
4 satisfactory to us to insure that the materials that are being
5 returned to Mr. Montgomery are going to be verified and
6 confirmable as being complete with respect to what was seized.

7 **THE COURT:** Yes. A complete inventory would be
8 appropriate. I mentioned Mr. Addington because he's the only
9 one other than, of course, Mr. Flynn, who is counsel in both
10 the 263 case and the 056 case, having appeared in both. And
11 so --

12 **MR. ADDINGTON:** Yeah. Your Honor, I would just
13 resist any effort to require a particular type of inventory or
14 photographing or anything of the like. But I can assure the
15 Court that we are certainly mindful of the concerns that have
16 been raised about the integrity of the process.

17 **THE COURT:** Well, no. But I'm going to require --

18 **MR. SPEAKER:** Your Honor, on behalf of eTreppid, we
19 would request that the serial numbers and the photographs -- I
20 think Judge Cooke made an excellent --

21 **THE COURT:** Yeah. I'm going to do that. I'm going
22 to do that. I agree completely with Judge Cooke.

23 Mr. Addington, the Order is that prior to returning,
24 the United States Attorney, in conjunction with the FBI,
25 prepare a detailed inventory of the items to be returned,

1 including photographs of them, documentation of serial numbers.
2 So I'll leave that with you to make sure that's accomplished.
3 And a copy of that inventory can be filed with the Court in
4 the 263 case just to make sure we have a copy of it, as well.

5 All right. Counsel, thank you very much. We've got
6 other proceedings lined up. And I'll look forward to seeing
7 those who are going to be reviewing documents next week here in
8 Las Vegas. Thank you all.

9 (Counsel thank the Court)

10 (This proceeding was adjourned at 11:22 a.m.)

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