

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

IN RE: SEARCH OF THE RESIDENCE)
LOCATED AT 12720 BUCKTHORNE)
LANE, RENO, NEVADA AND)
STORAGE UNITS 136, 140, 141, 142,)
143 DOUBLE R STORAGE, 888)
MAESTRO DRIVE,)

3:06-CV-0263-PMP-VPC

and)

DENNIS MONTGOMERY, et al.,)

3:06-CV-0056-PMP-VPC

Plaintiff(s),)

MINUTES OF PROCEEDINGS

v.)

DATE: September 5, 2008

ETREPPID TECHNOLOGIES, et al.,)

Defendant(s).)

PRESENT: THE HONORABLE VALERIE P. COOKE, MAGISTRATE JUDGE
Deputy Clerk: Lisa Mann Court Reporter: Margaret Griener
Counsel for Plaintiff(s): Randall Sunshine and Ellyn Garofalo
Counsel for Defendant(s): Stephen Peek
Counsel for Counter Defendant(s): Bridget Robb Peck and Tricia Darby
Counsel for Government: Gregory Addington and Raphael Gomez

PROCEEDINGS: EVIDENTIARY HEARING

9:01 a.m. Court convenes.

The Court advises the parties that this hearing shall be conducted simultaneously in the search warrant proceeding case number 3:06-CV-0263-PMP-VPC and in case number 3:06-CV-0056-PMP-VPC.

The Court addresses the parties regarding the purpose of this hearing and recites the chronology of events concerning the Montgomery parties' request for an evidentiary hearing (#527).

Counsel advise the Court they are in agreement that the most efficient way to conduct this proceeding shall be to have the government present their respective position first.

In Re: Search Warrant of the Residence Located at 12720 Buckthorne Lane, Reno, Nevada and Storage Units 136, 140, 141, 142, 143 Double R Storage, 888 Maestro Drive

3:06-CV-0056-PMP-VPC

and

Dennis Montgomery, et al., v. eTrepid Technologies, et al.

3:06-CV-0056-PMP-VPC

Page 2

Special Agent Gerald W. DeVore is sworn and testifies on direct examination by the government.

Government's exhibits D and E are admitted.

Witness testifies on cross examination by plaintiff.

Plaintiffs' exhibit 41 is marked.

Witness testifies on re-direct by the government, and is excused.

Special Agent Mark A. Thomas is sworn and testifies on direct examination by the government.

Government's exhibits C, A, B, F, G are admitted.

10:51 a.m. Court recesses.

11:02 a.m. Court reconvenes.

Mr. Peek addresses the Court concerning an issue the defendant has with a representation made by plaintiffs' former counsel in an opposition to eTrepid's motion for a temporary restraining order (#126) in case number 3:06-CV-0056-PMP-VPC and requests that plaintiffs' current counsel enter into a stipulation that no hard drives were planted by Warren Trepp.

The Court directs counsel to meet and confer regarding this issue and report after the noon hour recess.

Ms. Garofalo states for the record that Dennis Montgomery stipulates that the seized property taken by the Federal Bureau of Investigation ("FBI") is the seized property that was returned to Mr. Montgomery by the FBI.

Plaintiff continues cross examination of witness Mark A. Thomas.

Plaintiffs' exhibit 42 is marked.

11:32 a.m. Court recesses.

In Re: Search Warrant of the Residence Located at 12720 Buckthorne Lane, Reno, Nevada and Storage Units 136, 140, 141, 142, 143 Double R Storage, 888 Maestro Drive

3:06-CV-0056-PMP-VPC

and

Dennis Montgomery, et al., v. eTreppid Technologies, et al.

3:06-CV-0056-PMP-VPC

Page 3

1:03 p.m. Court reconvenes.

Mr. Sunshine and Mr. Peek address the Court concerning their request for a settlement conference.

IT IS ORDERED that a settlement conference is scheduled for two and a half days commencing on **Monday, September 15, 2008 at 9:00 a.m.**, and shall continue through **noon** on **Wednesday, September 17, 2008**. The deputy court clerk is directed to issue the standard order scheduling settlement conference.

Counsel for the Montgomery parties is directed to file a notice advising the Court of the availability of Ms. Blixseth for the settlement conference by no later than **Monday, September 8, 2008**.

Mr. Gomez shall meet and confer with counsel for the parties concerning which government representatives shall be present at the settlement conference and shall file a notice advising the Court of their availability by no later than **Tuesday, September 9, 2008**.

With respect to the issue raised by Mr. Peek regarding a stipulation from counsel the Court shall defer consideration of Mr. Peek's request until after counsel for the government has reviewed the document. Mr. Gomez is provided a copy of plaintiffs' opposition to eTreppid's motion for a temporary restraining order(#126).

Plaintiff continues cross examination of witness Mark A. Thomas.

Witness testifies on re-direct examination, testifies on re-cross examination, is questioned by counsel for defendant, and is excused.

Counsel for the government advises the Court he has been able to review the document and requests a sidebar.

IT IS ORDERED that the Dennis Montgomery and the Montgomery Family Trust's opposition to eTreppid's motion for a temporary restraining order (#126) filed March 19, 2007 shall be UNSEALED.

Plaintiffs' exhibits 11 through 19, 23 through 30, 41, and 42 are admitted.

In Re: Search Warrant of the Residence Located at 12720 Buckthorne Lane, Reno, Nevada and
Storage Units 136, 140, 141, 142, 143 Double R Storage, 888 Maestro Drive

3:06-CV-0056-PMP-VPC

and

Dennis Montgomery, et al., v. eTreppid Technologies, et al.

3:06-CV-0056-PMP-VPC

Page 4

2:49 p.m. Court recesses.

3:09 p.m. Court reconvenes.

Special Agent Michael West is sworn and testifies on direct examination by the government.

Government's exhibit H is admitted.

Witness is cross examined by plaintiff and excused.

IT IS FURTHER ORDERED that counsel shall file post hearing briefs no later than
Monday, September 22, 2008.

4:33 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: /s/
Lisa Mann, Deputy Clerk