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U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) No. CR 02-350(A) -AHM
11)
12 Plaintiff,)
13)
14 v.) STATUS FILING RE: DEFENDANT'S NON-
15 STEVEN WILLIAM SUTCLIFFE,) COMPLIANCE WITH THIS COURT'S
16 Defendant.) DECEMBER 8TH ORDER DIRECTING RETURN
17) OF ELECTRONIC TRIAL EVIDENCE AND
18) DISCOVERY TO THE GOVERNMENT;
19) DECLARATION OF ELENA J. DUARTE;
20) EXHIBITS; [PROPOSED] ORDER

21 Plaintiff United States of America, through its attorney of
22 record, Assistant United States Attorney Elena J. Duarte, hereby
23 respectfully files its Status Filing Re: Defendant's Non-
24 compliance With This Court's December 8th Order Directing Return
25 of Electronic Trial Evidence and Discovery to the Government;
26 Declaration of Elena J. Duarte; Exhibits; [Proposed] Order.

27 ///

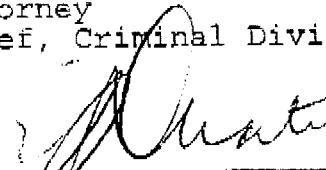
1 This submission is based on the included Memorandum of
 2 Points and Authorities, the attached Declaration of Elena J.
 3 Duarte, the attached exhibits, and all files and records of this
 4 case.

5 DATED: January 20, 2004

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On December 8, 2003, in its Order Directing Return of Electronic Trial Evidence and Discovery (CR 329), this Court ordered that defendant return to the government the following items in his possession:

1. Copies of the various computer evidence/electronic media, including hard drives, compact disks, floppy disks, and zip disks, seized from defendant's residence on March 26, 2002, with the exception of the original electronic evidence that was previously returned to him in its original electronic form; and

2. Copies of government's trial exhibits 8, 10, 12, 14, 16, 18, 20, 23, 24, 45, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 65, previously provided to defendant in electronic form.

The items previously provided to defendant by the government, including the electronic evidence later marked and exhibited at trial, were itemized and described in the government's September 29, 2003 filing entitled "Government's Status Filing Re: Electronic Discovery" and accompanying declaration and exhibits. (CR 234).¹

On December 22, 2003, the government was provided by staff at the Metropolitan Detention Center ("MDC") a portion of the electronic discovery previously provided to defendant in this case. (See Duarte Declaration, Ex. 1 thereto). MDC

¹The government is sending a complete copy of this Status Filing, CR 234, to defendant together with the instant filing. (See Declaration of Elena J. Duarte ("Duarte Declaration"), attached to this filing, at ¶ 5).

1 representatives informed the government that the remainder of the
2 electronic discovery and trial exhibits was not technically in
3 the custody of MDC, as these items had been given to defendant
4 to maintain in his living quarters at MDC. (Id.). That
5 the government sent a letter to defendant, advising him of this
6 Court's December 8th Order and attaching a copy of this Order.
7 (See Duarte Declaration, Ex. 2). This letter also presented
8 defendant with several options for compliance with the Court's
9 Order. (Id.).

10 II. STATUS OF DEFENDANT'S NON-COMPLIANCE

11 As of January 15, 2004, the government had received no
12 communication from defendant on the topic of the December 8th
13 Order, nor had it received any of the electronic discovery and
14 exhibits from defendant. (Id. at ¶ 3). FBI Special Agents
15 Jeffrey Cugno and Mark O'Brian went to MDC on January 15, 2004,
16 in order to retrieve these items from defendant. (Id.). At that
17 time, defendant provided the agents with six Compact Disks (CDs).
18 (Id.).

19 When asked by the agents if the six CDs constituted the
20 entirety of defendant's compliance with this Court's Order,
21 defendant indicated that the six CDs constituted all the items he
22 was required to return and that he was told he could keep the
23 remainder for appeal purposes.² (Id. at ¶ 4). Of the six CDs
24 provided by defendant, five appear to be within the scope of the
25

26
27 ²Defendant's comments are selectively paraphrased, in
28 summary form, and are not meant to be represented as direct
quotes, but rather the agents' understanding and interpretation
of defendant's communications to them. (Id. at ¶ 4).

1 Order. (Id. at ¶ 3). These are titled as follows: Mywebs (also
2 trial exhibit 65); Yahoo! Gary_Winnick 2002 evilgxhrdept;
3 greenwood e-mails; evilgx.com 1/11/02; and GX backup (also trial
4 exhibit 24).³ (Id.).

5 The government estimates that at least 41 CDs, 36 floppy
6 disks, and four zip disks remain in defendant's custody that are
7 responsive to this Court's order. (Id. at ¶ 5). These CDs,
8 floppy disks, and zip disks include copies of each of the
9 government's trial exhibits except exhibits 24 and 65,⁴ which
10 were already returned by defendant at the January 15, 2004
11 meeting with the agents, as well as various items of electronic
12 evidence acquired by the government but not exhibited at trial,
13 and copies of the various computer evidence/electronic media,
14 including 23 CDs, 29 floppy disks, and four zip disks, seized
15 from defendant's residence on March 26, 2002. (See CR 234, Ex.
16 3, p. 3).

17 The only electronic media that should remain in defendant's
18 possession, were he to fully comply with this Court's December
19 8th Order, would be a total of 103 pieces of original removable
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23 ³Defendant also provided the agents with an additional,
24 sixth CD, labeled LA-15, which appears to be an item of original
25 electronic evidence that was returned to defendant during the
26 course of the case and is not covered by the scope of the Order.
(See CR 234, Ex. 7, p. 2; CR 329, p. 3, n. 1; Duarte Declaration
at ¶ 3).

27 ⁴This includes exhibits 8, 10, 12, 14, 16, 18, 20, 23, 45,
28 55, 56, 57, 58, 59, 60, 61, 62, and 63, which are described in
detail within the government's Second Amended Exhibit List, filed
November 6, 2003 (CR 279).

1 media seized from defendant's residence⁵ consisting of 30 CDs and
2 73 floppy disks, individually listed and itemized at CR 234, Ex.
3 7, pp. 2-6.

4 **III. REQUEST FOR ORDER DIRECTING DEFENDANT'S COMPLIANCE FORTHWITH**

5 As of the date of this writing, as explained above, it
6 appears that defendant has willfully declined to comply with this
7 Court's December 8th Order. Based on this non-compliance, the
8 government respectfully requests that defendant be directed to
9 comply forthwith with this Court's earlier Order by assembling
10 the remainder of the electronic evidence within the scope of the
11 Order and mailing it directly to the government or providing it
12 to staff at MDC so that staff may return it to the government.

13 The government further requests that defendant be advised
14 that should he again fail to comply with this Court's Order, he
15 will face an Order to Show Cause and possible contempt sanctions
16 arising from his continued non-compliance.

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⁵As explained above and in previous filings, these original media had been previously determined by the FBI to have no evidentiary value, thus the items were not copied and the originals were returned to defense. These items were individually listed and itemized in the government's September 29, 2003 Status Filing (CR 234, Ex. 7, pp. 2-6).