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* E-filed 10/21/08*

NOT FOR CITATION
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NEW AMSTERDAM PROJECT
MANAGEMENT HUMANITARIAN
FOUNDATION, a Dutch non-profit corporation,

Plaintiff,

v.

KELLY M. LAUGHRIN, et al.

Defendants.

No.07-00935-JF (HRL)

**ORDER ON PLAINTIFF'S EMERGENCY
MOTION FOR CLARIFICATION OR
RECONSIDERATION OF THE THIRD
INTERIM ORDER.**

_____ /

In the October 15, 2008 interim order, this court found that plaintiff had not met the burden of proof required to vitiate claims of privilege. *See In re Napster, Inc. Copyright Litigation*, 479 F.3d 1078, 1094-95 (9th Cir. 2007) (imposing a preponderance of the evidence standard). Rather than dismiss plaintiff's crime-fraud exception argument outright, the undersigned ordered defendants to produce documents for an *in camera* review based on the lesser showing plaintiff had made. Production of documents was ordered by October 21, 2008.

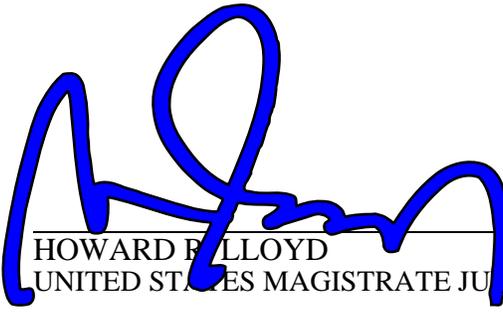
Late in the day on October 20, plaintiff filed an "Emergency Motion for Clarification, or in the Alternative, Reconsideration of the Court's Third Interim Order on Plaintiff's Motions to Compel Discovery. It appears that plaintiff is unhappy with the court's plan to review only *withheld* documents before making its determination of whether to apply the crime-fraud exception. Plaintiff correctly points out that defendants have made an additional production of

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documents since it generated its court-ordered factual submission on the crime-fraud exception. Because the court ordered defendants to only produce those documents that they continue to withhold, plaintiff may submit any documents not previously filed that it believes supports application of the crime-fraud exception. Plaintiff must produce any such documents not later than October 25, 2008.

IT IS SO ORDERED.

Dated: 10/21/08



HOWARD B. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 THIS SHALL CERTIFY THAT A COPY OF THIS ORDER WILL BE SENT TO:

2 Heather Noelte hnoelte@dempseyjohnson.com

3 John Mark Thacker jthacker@ropers.com

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5 * Counsel are responsible for providing copies of this order to co-counsel.

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