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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Louis Vuitton Malletier, S.A.,	Case No.: C 07 3952 JW
Plaintiff,	Hon. Magistrate Judge Howard R. Lloyd
v.	RESPONSIVE DECLARATION OF J. ANDREW COOMBS RE DEFENDANTS' ADMINISTRATIVE MOTION TO FILE A STATEMENT OF RECENT DECISION
Akanoc Solutions, Inc., et al.	
Defendants.	
	Local Rule 7-11(b)

I, J. Andrew Coombs, declare as follows:

1. I am an attorney at law duly admitted to practice before the Courts of the Northern District of California. I am counsel of record for Plaintiff Louis Vuitton Malletier, S.A. ("Louis Vuitton") in the above-captioned matter. Except as otherwise stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows:

2. On June 20, 2008 I spoke with Brian Edwards, counsel for defendants in the above-captioned matter. Mr. Edwards called to advise Plaintiff of Defendants' intention to file a statement of recent decision concerning the Ninth Circuit Court of Appeal decision in *Quon v. Arch Wireless Operating Co., Inc.*, Case No. 07-55282 (9th Cir. June 18, 2008). I was aware of the decision and stated that the decision has no material bearing on the matters for decision in Plaintiff's motion to compel.

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3. I also stated, contrary to Mr. Edwards' declaration, that the Defendants could elect to (a) prepare a stipulation submitting the decision so long as the stipulation included a recital that Plaintiff does not concede the decision has any material bearing on the pending motion, or (b) to file an administrative motion before the Court. The declaration is therefore, inaccurate insofar as it states I "was unable to consent to the filing of this Declaration…" *Declaration of Brian S. Edwards,* ¶ 6.

4. In particular, the Ninth Circuit ruled the services of defendant Arch Wireless, a text messaging service contracted by the City of Ontario, California, were incorrectly characterized by the District Court as a "remote computing service" instead of an "electronic communications service" to which different standards of liability apply. As the services provided by Arch Wireless are materially different from any at issue in the present case, the discussion is not instructive in this matter. Finally, there is nothing in the Ninth Circuit decision which addresses, contradicts or otherwise modifies the propositions for which Plaintiff cited the District Court decision in its Reply: (i) that the Stored Communications Act applies to criminal investigations, and (ii) that data disclosed with the consent of one party to the underlying communication is deliberately accorded less protection under the Act. *Reply in Support of Plaintiff's Motion to Compel Production, etc.*, pp. 5:10-15; 6:9-22.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed the 23rd day of June 2008 at Glendale, California.

___/s/ J. Andrew Coombs_____

J. ANDREW COOMBS