

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

Plaintiff

v.

Civil Action No. 08-11364-GAO

ZACK ANDERSON, RJ RYAN,
ALESSANDRO CHIESA, and the
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY

Defendants

SUPPLEMENTAL DECLARATION OF IEUAN G. MAHONY

1. I am a partner at Holland & Knight, LLP, representing the Massachusetts Bay Transportation Authority ("MBTA") in this matter. The following supplements my earlier Declaration in this matter.

The Defendants' Delay In Providing The Actual DEFCON Presentation Materials

2. By email dated Friday, August 8 at 8:13 PM I notified counsel for the MIT Undergrads and counsel for MIT (collectively, "Defendants' Counsel") of the hearing scheduled for today. I stated to the MIT Undergrads' counsel that "I urge you strongly to advise your clients to provide us with all presentation material and al other materials they may wish to circulate concerning the MBTA's Fare Media Systems." I noted that the August 8 Undergrad-to-MBTA Report (attached as Exhibit 1 to the Declaration of Scott Henderson) "does not appear to comprise all (or perhaps any) DEFCON presentation materials." *See* attached Exhibit 1 (emphasis added).

3. By email dated Friday, August 8 at 8:17 PM I provided a copy Defendants' Counsel with a copy of the Court's Order of yesterday. *See* Exhibit 2. I had previously left

detailed voice-mail messages with Defendants' Counsel, in order to begin attorney-to-attorney discussions in this matter.

4. By email dated Friday, August 8 at 8:31 PM, I asked Defendants' Counsel, Marcia Hofman (for the MIT Undergrads) and Jay Wilcoxson (in-house counsel for MIT) to confirm whether they had received my voice-mail messages and email, and whether they planned to attend the hearing. *See* Exhibit 3.

5. Shortly after I sent Exhibit 3, at approximately 8:35, I reached Attorney Wilcoxson. During our discussion, among other points, I urged Attorney Wilcoxson to do what he could to convince the MIT Undergrads to immediately provide us with any materials they intended to disclose or present concerning the MBTA's systems at issue.

6. After our discussion, by email dated Friday, August 8 at 8:52 PM, Attorney Wilcoxson confirmed that MIT would be represented by counsel at this hearing. *See* Exhibit 4.

7. Shortly after my discussion with Attorney Wilcoxson, at approximately 9:00, I reached Marcia Hofman, from the Washington DC office of the Electronic Frontier Foundation (the "EFF"). Attorney Hofman confirmed that she was representing the MIT Undergrads. Attorney Hofman's colleague from the San Francisco office of the EFF, Kurt Opsahl, also participated in this call.

8. During our discussion, among other points, I urged Attorney Hofman and Attorney Opsahl to provide us with any materials their clients intended to disclose or present at the DEFCON Conference concerning the MBTA's systems at issue. During this call, we also discussed a proposed Order in this matter, revised as suggested by the Court during the Friday hearing.

9. Shortly after this call, by email dated Friday, August 8 at 9:55 PM, I forwarded a revised Order, and indicated further interest in discussing a negotiated solution. *See* Exhibit 5.

10. Counsel for the MIT Undergrads then called me, at approximately 11:30, to discuss the MBTA's position, the MBTA's view of the "responsible disclosure" doctrine, and possible discussions toward a negotiated solution. Counsel also indicated an interest in postponing today's hearing.

11. By email dated Saturday, August 9 at 1:30 AM, I reminded Counsel for the MIT Undergrads that the MBTA still had not received any presentation materials. I noted that "the decision to continue to withhold these materials makes me concerned." *See* Exhibit 6.

12. By email dated Saturday, August 9 at 4:38 AM, Counsel for the MIT Undergrads forwarded to me an 87 page set of slides, that purports to constitute the DEFCON presentation of the MIT Undergrads. A copy of this slide deck is attached as Exhibit 7. I have hand-numbered the pages, as the formatting of the document does not allow the addition of page numbers. I provide a color copy to the Court, and black and white copies to Defendants' Counsel.

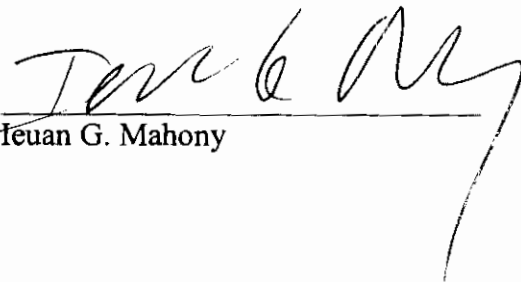
13. In their email of Saturday, August 9 at 4:38 am (Exhibit 8), Counsel for the MIT Undergrads informed the MBTA that this slide deck had already been distributed at the DEFCON Conference.

14. By emails dated Saturday, August 9 at 5:15 and 5:26 AM, I asked Defendants' Counsel to state when these materials had been provided to DEFCON, when they had been distributed, and whether the defendants' knew of the MBTA's requests to review these materials before they were distributed at DEFCON. *See* Exhibit 9.

15. I met with Scott Henderson of the MBTA and Daniel Terryn, Technical Software Manager of Scheidt & Bachmann this morning at Logan Airport at 6:00 to seek to review these

Presentation Materials (Ex. 7) before they flew to Las Vegas on an 8:00 flight. There was insufficient time to prepare Declarations concerning these materials, and the MBTA will rely on oral argument.

Signed under the penalties of perjury this 9th day of August, 2008.


Teuan G. Mahony

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