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October 15, 2009

By Hand and E-Mail

Hon. Donald C. Pogue  
U.S. Court of International Trade  
One Federal Plaza  
New York, New York 10278-0001

Re: John Wiley & Sons, Inc. v. Kirtsaeng  
08 Civ. 7834 (DCP)

Dear Judge Pogue:

We are attorneys for plaintiff in the above action. We are writing to request that the Court order defendant to consent to PACER's production, pursuant to our subpoena, of his login information for April 28, 2009.

In his declaration filed July 6, 2009, defendant Supap Kirtsaeng swore that he had not received the April 27, 2009 temporary restraining order at the time he withdrew \$6,400 in U.S. Currency from the Bank of America on April 28, 2009.

At his deposition on October 1, 2009, Mr. Kirtsaeng swore that on April 28, 2009, he played golf from 6-7:00 a.m. until about 11:00 a.m. (Tr. 42:10-43:5); that he returned to his home by 11:15 a.m. (Tr. 43:6-13); that the next thing that he remembers is going to the Bank to withdraw the \$6,400 in U.S. Currency, at "about before noon" (Tr. 43:19-44:9); and that within the hour, he checked his e-mail (Tr. 58:3-19); saw an e-mail from PayPal indicating that his PayPal account was frozen (Tr. 84:10-22); logged on to PACER (Tr. 75:23-76:15); received an e-mail from his attorney (Tr. 92:6-20); called his attorney; and then logged on to PACER again (Tr. 72:7-73:3).

*Griffith*  
*10/15/09*  
*D. Pogue*

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In response to a subsequent request, Bank of America produced earlier today a business record evidencing that Mr. Kirtsaeng withdrew the \$6,400 in U.S. Currency at 12:23 p.m. on April 23, 2009.

A critical question is: when did Mr. Kirtsaeng log on to PACER, before or after he went to the Bank of America?

To determine the answer to that question, we have served a subpoena on PACER. The representative of PACER responsible for responding to the subpoena has advised us that PACER routinely moves to quash subpoenas, based upon privacy concerns. But, a user can consent to the release of this information, after which PACER makes it available within about two hours. Mr. Kirtsaeng plainly has no privacy interest in this information, which is plainly available to another division of the Judiciary.

We have asked Mr. Kirtsaeng, through Mr. Israel, on at least two different occasions, to consent to PACER's disclosure of this information. Mr. Kirtsaeng has not yet consented, and we have no reason to believe he will do so absent a court order. Because PACER is located in Texas, we expect any proceeding to quash, or enforce, the subpoena will be filed in Texas.

Obviously, if Mr. Kirtsaeng had logged into PACER on April 28, 2009 before withdrawing the currency from Bank of America, then Mr. Kirtsaeng has attempted to defraud the Court in his July 6, 2009 declaration.

Accordingly, we request that the Court order Mr. Kirtsaeng to consent to the disclosure by PACER to plaintiff of his activity on April 27 and 28, 2009.

Respectfully yours,



William Dunnegan

Cc: Sam P. Israel, Esq. (By E-mail)