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7
 8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF NEVADA**

10 DENNIS MONTGOMERY, and the)	
11 MONTGOMERY FAMILY TRUST,)	3:06-CV-00056-PMP-VPC
)	BASE FILE
12 Plaintiffs,)	
)	3:06-CV-00145-PMP-VPC
13 v.)	
14 ETREPPID TECHNOLOGIES, LLC,)	<u>SUPPLEMENTAL DECLARATION OF</u>
15 WARREN TREPP, and the UNITED)	<u>MICHAEL J. FLYNN IN SUPPORT OF EX</u>
16 STATES DEPARTMENT OF DEFENSE,)	<u>PARTE MOTION TO WITHDRAW AS</u>
)	<u>COUNSEL FOR MONTGOMERY.</u>
17 Defendants.)	
_____)	
18 AND ALL RELATED MATTERS.)	
_____)	

19 **DECLARATION OF MICHAEL J. FLYNN**

20 I, Michael J. Flynn, declare:

- 21 1. I am an attorney licensed to practice in the state of Massachusetts. I have appeared pro hac
 22 vice as counsel for Dennis Montgomery, individually and as Trustee of the Montgomery
 23 Family Trust, Brenda Montgomery, as Trustee of the Montgomery Family Trust, and the
 24 Montgomery Family Trust, (hereinafter "Montgomery"), in the above captioned related
 25 cases, 3:06-cv-0056 and 3:06-cv-00145, and 3:06-cv-0263. I have personal knowledge of
 26 the facts stated herein, and if called as a witness, I could and would testify competently to
 27 them. I file this declaration to give the Court a chronology of recent and past events in
 28 connection with the Motion to Withdraw.
2. In May - June, 2007, I decided that Dennis Montgomery "has engaged in conduct that has

1 made continued representation unreasonably difficult.” In June, 2007, based on certain
2 recently discovered facts, I decided that I had conflicting duties between the attorney client
3 privilege and the Nevada Rules of Professional Conduct.

4 3. Throughout June 2007, I repeatedly reiterated my intention to withdraw based on conduct
5 of Dennis Montgomery and non-payment of fees.

6 4. On June 26, 2007, I gave written notice of my intention to file a motion to withdraw after
7 Montgomery made a specific statement.

8 5. On July 9, 2007, I filed the Motion to Withdraw.

9 6. On July 10, 2007, I faxed a signed substitution of attorney to Attorney Robert Shore of the
10 Liner Firm without receiving any telephone call from Deborah Klar or Teri Pham, who
11 yesterday, August 14, 2007, filed appearances in these cases.

12 7. On July 16, 2007, the Government filed a Response to the Motion to Withdraw requesting
13 specific conditions to the withdrawal.

14 8. On July 17, 2007, I filed a Reply to the Government’s response stipulating to certain
15 conditions and objecting to another. I hereby withdraw that objection. Given certain
16 conduct of new counsel for Montgomery as briefly recited below, I believe that judicial
17 supervision will be required throughout all phases of withdrawal.

18 9. On July 26, 2007, Dennis Montgomery filed a Response to the Motion to Withdraw, with a
19 declaration from his new counsel, Deborah Klar. The Response requests the transfer of my
20 Montgomery file to Montgomery, a “gag order,” and arguments asserted against the
21 government’s request to prevent delivery of parts of the file to Montgomery.

22 10. On July 30, 2007, I filed a Reply to Montgomery’s Response together with a sealed
23 declaration.

24 11. On July 31, 2007, I had a conference call with “new counsel” Teri Pham of the Liner Firm
25 for the first time. She refused to acknowledge my “retaining lien” under Nevada law,
26 refused to acknowledge the propriety of the government’s position with regard to
27 preventing any file transfer until the redaction issues were resolved, refused to
28 acknowledge issues relating to Montgomery’s credibility relating to the files, and refused

1 to acknowledge the moneys owed to me for past due fees and costs.

2 12. On August 1, 2007, Montgomery terminated my representation.

3 13. On August 3, 2007, Montgomery sued me in the Los Angeles Superior Court in a
4 complaint prepared by Deborah Klar and Teri Pham on the false and fabricated grounds
5 that I “ held myself out as a California lawyer” to Montgomery. This is demonstrably false
6 as proven in numerous documents and emails sent to Montgomery, not the least of which is
7 every pleading sent to him with my Massachusetts Bar Number. The Pham/Klar complaint
8 seeks injunctive relief and demands the return of his file, and a “gag order”, the identical
9 relief he is seeking here. In a letter attaching a copy of the aforesaid complaint, Ms. Pham
10 also accused me of *defamation* of Montgomery to local counsel, and *extortion*. I am in the
11 process of consulting Nevada ethics counsel in connection with these false allegations, and
12 in connection with my duties under the aforesaid Rules. I believe that this Court is the
13 proper forum to resolve these matters.

14 14. On August 8, 2007, following removal to the Los Angeles Federal Court, I filed a Motion
15 to Dismiss or Transfer the California action to the Nevada Federal Court, a copy of which
16 is attached hereto as Exhibit 1 (without Exhibits).

17 15. On August 15, 2007, I informally stipulated with the Government to make the return of at
18 least those portions of Montgomery’s file relating to the state secrets privilege subject to a
19 “condition precedent” to withdrawal of my pro hac vice admission. However, it is my
20 position that under no circumstances am I currently acting as counsel for Dennis
21 Montgomery having been terminated by him on August 1, 2007.

22
23 I declare under penalty of perjury under the laws of the United States and the State of Nevada that
24 the foregoing is true and correct. Signed this 15th day of August in Rancho Santa Fe, California..

25
26 /S/ _____
27 Michael J. Flynn, Esq.
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CERTIFICATE OF SERVICE

I, Michael J. Flynn declare: I am an attorney admitted pro hac vice in the United States District Court of Reno in the related civil cases, U.S.D. Reno, No. 3:06-CV-00056 and 3:06-CV-000145. I am over the age of 18 years and not a party to this action.

I am familiar with the practice for the collection of mail, delivery of hand-deliveries, process of facsimile, and the practice of mailing.

On August 15, 2007, I caused the foregoing document (Supplemental Declaration with Exhibit 1, (without exhibits), and this Certificate of Service), to be faxed and/or emailed to the following persons and/or entities:

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/S/

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