

Defendant's Response in Opposition of Third-Party Motion to Quash and Request for Sanctions
(07/23/07) - Docket No. 255

	<u>Page</u>	<u>Line</u>	<u>Word</u>
A.	7	12-16	"Then, between June 6, 2005 and June 23, 2005, Andrew McDonald using email address <u>mostin2003@yahoo.com</u> from IP addresses 65.68.206.29 and 66.140.63.145 transferred a series of PayPal payments to <u>Greg@mitchelgroup.com</u> . The payments totaled \$1,840.00. A highlight of the troubling notes accompanying the payments from "Andrew McDonald" between June 6, 2005 and June 23, 2005 include:"
B.	8	1-35	"I found a pretty good one . . . but the lighting sucks washed out still worth 100 " "100 . . . we gotta talk about what the really good ones are." "so far . . . there are just 20 in the file, and most of them are nothing (shots of beds and driveways, or you rolling a joint) that's okay i found 3 so far that i either didn't already have and were good. the way i am judging them is this: if i save them, i pay for them. if i don't - it means i didn't even bother to finish looking at them, so i didn't want to buy." "a problem . . . might have hit my withdraw limit for today. this is funded by a debit card, and i withdrew a ton of cash this morning. it is not letting me send 25 i still owe you at least 65, which i will pay by morning i will keep trying to do this." "now paid 110 . . . or 310 so far and have only downloaded - or kept - two. so . . . im being nice " "the ftp site is still not working . . . Paid a dollar to let you know. Now it doesn't seem to work at all Once it's up and running, I'll be back to downloading and paying you. I'll be online today. Find me and lemme know what to do. <u>And I have other proposals for you that would get you even more money "</u> "the problem with the ftp site is . . . when i try to go in it says 'the folder ' <u>ftp.66.27.236.12/weee/</u> ' is read only because the proxy server is not set up to allow full access. to move, paste, rename or delete files, you must use a different proxy, contact your system administrator." then, i click okay - and all it shows me is test_buddy.txt. no other files are there any thoughts?" "email me when you can . . . or tell me when u will be on aim i haven't had access to the ftp site since we last spoke and I'd like to

start payin ya again. email me at skywrite55@aol.com, or tell me when u will be on aim "

(underlining added for emphasis). The above referenced proxy server ('ftp.66.27.236.12/weee/') tracks back to Bakersfield, California (Berry's place of residence).

- C. 10 15-20 1) A subpoena was issued to PayPal on 5/10/07 for information regarding "Andrew McDonald" and was returned, in lieu of personal appearance, on 6/1/07. The information provided by PayPal revealed that "Andrew McDonald" used 2 credit cards (1 Visa and 1 MasterCard) to make the PayPal payments referenced above.
- D. 11 7-8 "Upon receiving PayPal's response reporting that "Andrew McDonald" used 2 credit cards to fund these suspicious payments."
- E. 11 11-15 "for the information about one of the credit cards used by "McDonald." This subpoena is also the subject of Mr. Eichenwald's Motion. Exhibit B to Mr. Eichenwald's Motion reveals that Mr. Eichenwald is the cardholder of the suspect credit card."
- F. 11 17-18 "about the other credit card used by McDonald "
- G. 11 Ftn 15 "The defense was alerted to the fact that Mr. Eichenwald was the actual card holder by an email communication with an attachment from Tim Perkins, Esq., counsel for Mr. Eichenwald "
- H. CitiCorp Subpoena
(attached to
Response) "MasterCard Account 5466-1602-2932-0765"
- I. Bank of America Subpoena
(attached to
Response) "MasterCard Account 4744-7200-0763-5465"

Appendix in Support of Motion to Quash Subpoenas (07/10/07) - Docket No. 251

- J. NP1 "Mastercard Account 5466-1602-2932-0765"
- K. NP4 "7530 Yamini Drive, Dallas, Texas 75230"

Supplemental Appendix in Support of Motion to Quash Subpoenas (07/30/07) - Docket No 261

- L. NP20 "Visa Account 4744-7200-0763-5465"
- M. NP22 "6431 Lupton Drive, Dallas, Texas 75225-2322"