

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

**DECLARATION OF IEUAN G. MAHONY IN SUPPORT OF
PLAINTIFF’S MOTION TO MODIFY TERMS BUT NOT DURATION OF
TEMPORARY RESTRAINING ORDER**

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

The TRO

2. A true and accurate copy of the Temporary Restraining Order that entered in this case on Saturday (the "TRO") is included as Exhibit 1 in the Exhibits in Support of Plaintiff’s Motion To Modify Terms But Not Duration Of Temporary Restraining Order (the "8/11 Exhibits").

Relevant Position of EFF Counsel for the MIT Undergrads’

3. By telephone conversation and shortly thereafter by email dated Saturday, August 9 at 5:14 PM EFF counsel for the MIT Undergrads ("EFF Counsel") informed me that she believed the MBTA should "take emergency measures" before this Court based on Court filings in this matter. *See* 8/11 Exhibit 2.

4. By email dated Sunday, August 10 at 9:27 AM I informed EFF Counsel that the MBTA and one of its vendors had completed review of the matters addressed in her earlier email (Ex. 2), and would be responding with conclusions later on Sunday. *See* Exhibit 3.

The MBTA Proposes Mediation

5. By email dated Sunday, August 10 at 3:18 PM, I responded with the MBTA's conclusions, informed EFF counsel that the MBTA and counsel did not see a basis for taking the "emergency measures" suggested, and proposed that the parties engage in expedited mediation to seek a negotiated resolution. *See* Exhibit 3.

6. By email dated Monday August 11 at 12:27 AM, EFF counsel declined to respond to the MBTA's mediation proposal, and instead requested that the TRO be dissolved in full. *See* Exhibit 4.

**EFF Counsel Ignores This Proposal;
The MBTA Again Requests Expedited Mediation**

7. By email dated Monday, August 11 at 3:36 PM, I responded with reasons why dissolving the TRO in full was not acceptable, noted perceived misinformation in the news media concerning the matter, re-emphasized the MBTA's desire to avoid all but necessary restraint on the MIT Undergrads, and again proposed mediation, on an expedited basis.

8. In this email, the MBTA again explained its interest in understanding what sensitive information, if any, the MIT Undergrads had obtained, as the first priority.

9. At approximately 3:45 PM on Monday, August 11, I called Defense Counsel and explained the MBTA's intent to file the current Motion.

Signed under the penalties of perjury this 11th day of August, 2008.

/s/ Ieuan G. Mahony _____
Ieuan G. Mahony