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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, vs. MARTIN KAO, Defendant.	)	CR. NO. 21-00061 LEK THE UNITED STATES OF AMERICA'S RESPONSE TO DEFENDANT MARTIN KAO'S APPEAL (ECF NO. 93); CERTIFICATE OF SERVICE

THE UNITED STATES OF AMERICA'S RESPONSE TO DEFENDANT MARTIN KAO'S APPEAL (ECF NO. 93)

The United States of America hereby responds to Defendant Martin Kao's Appeal (ECF No. 93) of the Magistrate Judge's Order (ECF No. 92) on PacMar Technologies LLC's Motion for Return of Property (ECF No. 82). The government takes no position on the merits of PacMar's motion or Defendant Kao's appeal. To assist the Court, the government states the following:

1. Pursuant to warrant, the government seized the cell phone at issue on or about September 30, 2020, from Defendant Kao at the offices of the Navatek companies that are now PacMar in connection with the arrest of Defendant Kao.
2. The cell phone constitutes an instrumentality and evidence, and contains evidence, relevant to this wire fraud and money laundering prosecution, and to the bank fraud prosecution in CR 23-00003 LEK.
3. Defendant Kao pled guilty to all charges in this matter without a plea agreement, and is scheduled for sentencing on September 7, 2023.
4. The bank fraud matter is scheduled for trial on November 6, 2023.
5. After seizing the cell phone, the government used forensic tools to extract data from the cell phone.
6. The extracted data set contains both business data and personal data.

7. Subject to the Court's direction, the government can produce to PacMar, Defendant Kao, and/or any special master that the Court may appoint (a) the raw data extracted from the cell phone and/or (b) a Cellebrite "report" containing a Cellebrite "reader" and extracted data recognized by the Cellebrite forensic tool. A party can use the reader to view, search, and organize the data. (The Cellebrite tool does not recognize all raw data extracted from cell phones.)
8. PacMar agrees that the production of the extracted raw data and the Cellebrite report would satisfy its request for return of the cell phone, and the Magistrate Judge ordered the production of data rather than the return of the cell phone, itself, given PacMar's agreement and the status of the two prosecutions.

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9. To the extent that the Court orders the segregation of business data from personal data before data is produced to PacMar, the government requests that a third-party, such as a special master, be appointed by the Court because such task would be unduly burdensome if placed upon the government. Furthermore, PacMar and/or Defendant Kao, and not the government, should bear the costs incurred for such a process because the government's obligation is merely to return property to its owner at the conclusion of proceedings and the instant dispute between PacMar and Defendant Kao is a part of a long-running business and legal dispute between the two.

DATED: March 23, 2023, at Honolulu, Hawaii.

CLARE E. CONNORS
United States Attorney
District of Hawaii

By /s/ Craig S. Nolan
CRAIG S. NOLAN
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served via Electronically through CM/ECF to Counsel, including:
Keith M. Kiuchi kkiuchi106@cs.com
Counsel for MARTIN KAO

DATED: March 23, 2023, at Honolulu, Hawaii.

/s/ Desirai Tolbert
United States Attorney's Office
District of Hawaii