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July 1, 2016

Hon. Joel H. Slomsky  
United States District Judge  
for the Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106

**Re: USA v. Yu Xue, et al., Case No. 2:16-cr-00022-JHS**

Dear Judge Slomsky:

I have been authorized to write on behalf of all counsel (and their clients) in the above referenced matter to briefly respond to the government's letter dated June 27, 2016 (Doc. No. 95). The defendants respectfully oppose the government's proposed alternative to use private security guards to facilitate the defendants' review of the discovery materials.

In its June 27 letter, the government proposed that private security firms be retained to deliver the discovery materials to the defendants' homes on laptops. Under the government's proposal, the defendants would then be required to review the discovery materials in the presence of the security guard, in their homes. This proposal is unreasonably intrusive, presents serious safety concerns for our clients, and is unnecessary, unworkable, and not appropriate in the circumstances.

First and foremost, as discussed in prior briefing, the defendants have child care and/or other obligations during business hours, and will often need to review the documents in the evenings, and even late into the night, due to the huge volume of documents that will be produced. In these circumstances, the government's position is entirely inappropriate inasmuch as it would require the defendants to accommodate a stranger (and potentially multiple strangers over time) in their homes, potentially at all hours of the day and night. The requirement the government seeks would set a dangerous precedent, and seriously implicates the defendants' constitutional rights.

In addition, the proposal creates serious logistical issues. The defendants would constantly have to come to an agreement with private security contractors as to a time or times for them to come to their homes to review the documents. Further, it would be difficult, if not impossible, for the defendants to communicate confidentially with their counsel during a review in the presence of security contractors.

The government's proposal is simply not reasonable given the circumstances as alleged in the indictment. The government readily acknowledges that aside from the small handful of documents identified in the indictment, no other documents (including approximately 80,000 documents on Dr. Xue's and Dr. Xi's computers) were shared with Renopharma, even though

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Dr. Xue and Dr. Xi had unfettered access to them for years. Further, there are no allegations that the few documents that the government alleges were shared with Renopharma were ever disseminated elsewhere. Accordingly, the government's latest proposal (as with the government's previous proposals) is attempting to prevent something that never has happened in the past, despite the fact that the defendants had unsupervised access to the alleged trade secret documents since 2012. The notion that the defendants would risk their liberty and now, for the first time, attempt to disseminate this information, while under court supervision and under indictment, is not remotely reasonable.

Notwithstanding the foregoing, the defendants believe that with a slight modification to the government's proposal, a compromise can be reached. The defendants propose to use security cameras, instead of in-person security contractors, to facilitate the review of the discovery materials. Specifically, the defendants propose the following compromise in good faith and in an effort to move the case forward:

- The government may install one (1) security camera in each defendant's house. The security camera must be focused on the specific area of the home where the defendant will be performing his or her document review. The government may remotely monitor the cameras 24/7 in real time.
- The defendants will have the discovery materials on a standalone computer that will be installed by the government or its designee. The computer (and any notes that the defendants take) must remain in the camera's line of sight at all times.
- The government may take an image of the standalone computer(s) to audit and inspect the defendants' use thereof at the government's and defendants' convenience.

The defendants believe this compromise addresses the concerns of all parties. The government may watch the defendants review the documents in real time, and the government may further audit and inspect the defendants' use of the standalone computers at any time. The combination of these measures allows the government to reasonably ensure that nothing nefarious occurs with the discovery materials. Additionally, under this proposal, the defendants would not be forced to accommodate a stranger in their homes after hours and on weekends.

The defendants presented this compromise agreement to the government for consideration on June 29, 2016. The government has yet to respond to this proposal.

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In sum, the defendants do not want unsupervised access to the discovery in their homes without any protection, as the government contends. Rather, the defendants, who are presumed innocent, believe that the alternatives submitted on May 12, 2016 (Doc. No. 85), as well as the

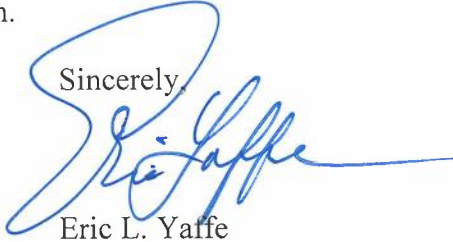
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alternative set forth herein, are reasonable and fair, and balance the defendants' constitutional right to prepare their defense against the government's right to ensure that the documents are adequately protected.

For the foregoing reasons, and those set forth in the defendants' prior briefing on this issue, the defendants respectfully request that the Court execute the defendants' Proposed Alternative Protective Order #1 or #2 (Doc. No. 85 Exs. 1 and 2) or the proposal contained herein. The defendants are further amenable to the Court's suggestion to refer this issue to a Special Master or Magistrate Judge for a report and recommendation in the event that the government does not agree with the recommendation contained in this letter, and the Court prefers to receive a recommendation from a Special Master or Magistrate Judge before rendering a decision.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric L. Yaffe", is written over the word "Sincerely,". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eric L. Yaffe

cc: Robert Livermore, Esq.  
Assistant United States Attorney  
  
Peter Zeidenberg, Esq.  
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