



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JMK/AES
F.#2014R00501

*271 Cadman Plaza East
Brooklyn, New York 11201*

May 8, 2017

By Hand and ECF

Honorable Kiyō A. Matsumoto
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Martin Shkreli
Criminal Docket No. 15-637 (KAM)

Dear Judge Matsumoto:

During oral argument for defendant Martin Shkreli's motion to suppress on April 26, 2017, the Court requested that the government disclose the specific subpoena requests served on Retrophin during the course of the government's investigation in the above-captioned matter. A list of those requests is attached hereto as Exhibit A to this letter.

In addition, the government writes to provide additional information about two factual issues that Shkreli did not mention in the memoranda in support of his motion to suppress or in a sworn affidavit, but attempted to raise for the first time at oral argument. First, Shkreli alleged that there were "separate passwords" needed to access emails sent to and from email addresses related to MSMB and to Retrophin that were stored on Retrophin's servers; that is, to access emails sent to and from MSMB email addresses, a "password that Mr. Shkreli developed for MSMB" would be needed. (April 26, 2017 Hearing Tr. at 3). Second, Shkreli alleged that he "paid for and created" the Retrophin servers on which emails sent to and from MSMB and Retrophin email addresses were stored. (*Id.* at 24).

As an initial matter, Shkreli's failure to file an affidavit or declaration – under penalty of perjury and based on personal knowledge – raising these or any other material factual disputes should result in the denial of his motion to suppress. See United States v. Awbrey, No. 14-CR-758, 2015 WL 1020334, at *1 (S.D.N.Y. Mar. 4, 2015) (denying motion to suppress statements where the defendant failed to file a "detailed, non-conclusory and particularized" affidavit or sworn declaration in support of his motion to suppress (citations omitted)); accord United States v. Watson, 404 F.3d 163, 166 (2d Cir. 2005); United States v. Perryman, No. 12-CR-0123, 2013 WL 4039374, at *6 (E.D.N.Y. Aug. 7, 2013)

