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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE DISTRICT OF ARIZONA

19 United States of America,
20 Plaintiff,

21 v.

22 Michael Lacey, et al.,
23 Defendants.
24

No. CR-18-422-PHX-SMB

**NOTICE RE FILING MATTHEW
FROST'S DECLARATION RE
EVIDENTIARY HEARING ON
DEFENDANTS' MOTION TO
COMPEL DISCOVERY (Doc. 643)**

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The government provides notice that it has lodged a Declaration of Matthew Frost for the Court’s consideration in evaluating Defendants’ motion to compel discovery. (Doc. 643.)

Respectfully submitted this 27th day of November, 2019.

MICHAEL BAILEY
United States Attorney
District of Arizona

s/ Andrew C. Stone

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2019, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants who have entered their appearance as counsel of record.

s/ Angela Schuetta
Angela Schuetta
U.S. Attorney’s Office

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

v.

Michael Lacey, et al.,
Defendants.

No. CR-18-422-PHX-SMB

**DECLARATION OF
MATTHEW FROST**

I, Matthew Frost, declare:

1. On October 29, 2019, I understand that attorneys for the United States sent a letter to Defendants that communicated to them my offer to fly to Phoenix, Arizona from Pocatello, Idaho to meet Tami Loehrs at her office, in order to demonstrate how to access the information contained on the hard drives produced by the government. A true and correct copy of that letter is attached as Exhibit A.

2. On November 5, 2019, Defendants responded to the government's letter. A true and correct copy of the letter is attached as Exhibit B.

3. On November 8, 2019, I understand attorneys for the United States responded to Defendants' November 5, 2019 letter. A true and correct copy of the letter is attached as Exhibit C.

4. The government's November 8, 2019 letter explained that I used a Linux-based version of FTK Imager-Command-Line to create a text file for each .e01 forensic image. The text file documented the following: (1) the tool used to make the forensic image; (2) when the data was acquired; and (3) the hash verification. The letter also explained that I would be able to walk Ms. Loehrs through the requisite steps to view the text files, which would enable her to confirm the information Defendants received from the government were valid forensic images. Finally, the letter explained that in order for

1 Ms. Loehrs to view the data that was contained on the hard drives, she would need to
2 have expertise in Z File Systems or ZFS.

3 5. On November 19, 2019, after flying to Phoenix, Arizona the night before, I
4 went to Loehrs Forensics to meet with Ms. Loehrs. Also in attendance were attorneys
5 Bruce Feder and Dan Quigley, AUSAs Peggy Perlmeter and Andrew Stone, and SA IRS-
6 CI Richard Robinson.

7 6. The meeting occurred in Loehrs Forensics' lobby. I sat at a table that had
8 been set-up with a Hewlett Packard computer, along with 11 hard drives, and a hard drive
9 dock to attach the drives to the computer. These hard drives were a subset of those
10 produced by the government to Defendants in this matter.

11 7. The computer screen and the keyboard were being video-recorded by two
12 digital cameras that had been set-up before I arrived.

13 8. I understood that the 11 hard drives were selected by Ms. Loehrs, because
14 she had difficulty accessing these hard drives.

15 9. During the meeting, which lasted approximately 90 minutes, the following
16 three steps in evaluating the 11 hard drives were defined as follows:

- 17 • Step One – Is the drive readable?
- 18 • Step Two – Can the .e01 files on the drive be pulled into forensic
19 software?
- 20 • Step Three – How can you access the data that was contained on the
21 Backpage servers?

22 10. During the meeting, I attempted to connect all 11 hard drives to the
23 computer.

24 11. Eight of the hard drives connected to the computer. This means that the
25 computer recognized the file system on the hard drive and auto-mounted the files. These
26 eight drives were readable (step one).

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1 12. Three of the hard drives did not connect. This means that the HP computer
2 did not recognize the file system on the hard drive and the files were not accessible to the
3 user. These three drives were not readable.

4 13. After reviewing all 11 hard drives, I told Ms. Loehrs I would replace the
5 three hard drives that were not readable.

6 14. During the meeting, I also demonstrated the difference between viewing the
7 files on the hard drives in Windows as compared with Linux. When these files are
8 viewed in Windows, the files do not display correctly. These files need to be viewed in a
9 Linux-based system.

10 15. I demonstrated how to view the files in a Linux based system by re-booting
11 the HP computer with a bootable USB thumb drive. The thumb drive contained tools that
12 are free to download online. I then mounted the .e01 image files and the HP computer
13 then displayed the data as it appeared on the original disk from the Backpage computer
14 server. This demonstration showed that these .e01 image files could be pulled into
15 forensic software (step two).

16 16. After the data displayed in the Linux-based system, I showed Ms. Loehrs
17 where to find an indicator that the disk was a part of a Z-Pool. We discussed that
18 someone with experience and familiarity would need to assemble the Z-Pool before the
19 data on the hard drives could be accessed (step three). I also mentioned that a Z-Pool
20 does not require the hard drives to be in the exact order in which they were previously
21 arranged to operate.

22 17. Before I left, Ms. Loehrs was asked if she had any further questions, and
23 she responded that she did not and that my presentation had cleared everything up from
24 her perspective.

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1 I declare under penalty of perjury under the law of the United States of America
2 that the foregoing is true and correct to the best of my knowledge and belief.

3 Executed this 27th day of November, 2019 at Pocatello, Idaho.

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6 MATTHEW FROST
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Exhibit A



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October 29, 2019

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VIA EMAIL

Re: *Offer to Assist Tami Loehrs Access Hard Drive Data*

Dear Counsel:

I write to address a few things.

First, in response to Ariel's email from yesterday, the agents did not produce any reports of the February 20, 2019 phone call because they did not view it as an interview that needed to be memorialized. Rather, it was a conference call with attorneys, agents, and others, to facilitate the ESI discovery process. This meet and confer is contemplated by the ESI Protocol. In any event, we've asked the agents who participated in the call if they have any notes from the meeting and they do not.

Second, as requested by the government at the hearing, please produce the chat logs between Tami Loehrs and AccessData that Ms. Loehrs testified about on Friday. We make this request in accordance with Fed. R. Crim. P. 26.2. Please provide a copy of the chat logs no later

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Page 2

than November 15, 2019. If you do not intend to produce the chat logs, please let us know, so that we can promptly raise this issue with the Court.

Third and lastly, Ms. Loehrs testified on Friday that she was unable to access the information contained on the 56 hard drives. We believe Mr. Frost could show Ms. Loehrs how to access the information and he is willing to travel to Loehrs Forensics to do so. Please let us know when Ms. Loehrs is available. Regardless of how the Court rules on this issue, all parties understand that Defendants need access to the information contained on the hard drives. While it would have been constructive if Defendants had simply made this request before filing the motion to compel, which is typically how these issues are resolved, the government will make Mr. Frost available to show Ms. Loehrs how to access the information.

Once we have confirmed a time when Ms. Loehrs and Mr. Frost are both available, we can hammer out the remaining details.

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JOHN J. KUCERA
Special Assistant U.S. Attorney

Exhibit B



Bienert | Katzman
A PROFESSIONAL LAW CORPORATION

November 5, 2019

Via Email

Andrew Stone
United States Attorney's Office
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Phoenix, Arizona 85004
Andrew.Stone@usdoj.gov

Re: Response to AUSA Stone's October 29, 2019 Letter

Dear Andy:

Thank you for your letter of October 29 relating to our motion to compel. I appreciate you providing the notes Ms. Tolhurst took during our February 20, 2019, telephone call relating to the servers. Pursuant to your request, I am providing with this letter a copy of the chat log for the communication that Tami Loehrs had with AccessData.

We appreciate your offer to have Mr. Frost come to Phoenix from Pocatello to see if he can access the drives the government produced to the defense. Before Mr. Frost travels to Phoenix, however, we ask that he provide, in writing, information about the computer and operating system, and the forensic software and tools, he proposes to use to access the forensic images, along with the protocols he will use in doing so. If the protocol varies from drive to drive or server to server, please provide the protocol for each, identifying which protocol applies to which drives or server. In the event that information does not obviate the need for Mr. Frost to come to Phoenix, please let us know the dates Mr. Frost would be available during the week of November 18 and we'll come up with a date that will work for the defense and Ms. Loehrs.

Finally, the defense raised its inability to access the hard drives produced by the government not later than August 5, 2019—more than a month before the hearing commenced on our motion to compel. *See* Doc. 717-1, Defendants' Reply in Support of Motion to Compel Discovery (Doc. 643), pp. 4, 7, 8-9 (“[t]he majority of the electronic data seized from Backpage.com and produced by the government does not meet minimum industry standards and is completely unusable in its current form. The issues . . . include[] . . . the integrity of the data produced;” “most of the data acquired by the government was not produced in an industry standard format and is not forensically sound;” “the government has not produced valid forensic images of the hard drives;” “[m]any of the forensic images produced by the government are incomplete, invalid and cannot be read by industry standard forensic tools”). Although we appreciate the offer for assistance, the offer did come nearly three months after the government knew the defense could not access the drives and after three days of testimony. Moreover, our inability to access the drives is just the threshold issue that must be addressed to even begin discussing the other problems raised by our motion. In other words, none of the issues raised in the Motion to Compel (Doc. 643) will be resolved even if Ms. Loehrs is able to access the drives. We want to be careful to not conflate the issue of whether the data on the imaged drives can be accessed with the real issues: the government's failure to preserve the Backpage computer systems in



a functional format seriously degraded the ability to access data in the systems and the data produced is not in a reasonably usable form.

We look forward to hearing from you.

Very truly yours,

A handwritten signature in blue ink that reads "Whitney Bernstein". The signature is written in a cursive, flowing style.

Whitney Z. Bernstein

cc: Paul J. Cambria, Jr.
Bruce Feder
Ariel Neuman
Dave Eisenberg
Joy Bertrand

[REDACTED]

From: Tami Loehrs <tl@LoehrsForensics.com>
Sent: Monday, November 4, 2019 9:32 AM
To: [REDACTED]
Subject: FW: Your chat transcript with support.accessdata.com (22 Oct 2019, 04:55 PM GMT)

[REDACTED]

Tami Loehrs, EnCE, ACE, CHFI, CCFE | Forensics Expert



Loehrs Forensics | A Digital Forensics Company
1505 N. Central Ave, Suite 111 | Phoenix, AZ 85004
TUC 520.219.6807 | PHX 602.313.0976

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This message and any of the attached documents contain information from Loehrs Forensics, LLC. that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information, and no privilege has been waived by your inadvertent receipt. If you receive this email in error, please notify the sender by e-mail and then delete this.

From: noreply@zopim.com <noreply@zopim.com>
Sent: Tuesday, October 22, 2019 10:45 AM
To: Tami Loehrs <tl@LoehrsForensics.com>
Subject: Your chat transcript with support.accessdata.com (22 Oct 2019, 04:55 PM GMT)

Chat Transcript with Tami

Chat started on 22 Oct 2019, 04:55 PM (GMT+0)

(04:55:09) *** Tami joined the chat ***
(04:55:09) Tami: Is FTK Imager 3 able to successfully acquire a hard drive running FreeBSD with ZFS?
(05:03:05) *** Herman joined the chat ***
(05:03:09) Herman: Hi Tami,
(05:03:15) Tami: Hi
(05:03:20) Herman: sorry for the delay

(05:03:27) Tami: No worries
(05:03:46) Herman: ftk imager versions have not been validated to run on FreeBSD
(05:03:59) Herman: you could use the freebsd command set to generate an image
(05:04:19) Tami: what is that?
(05:04:22) Herman: according to this help article, the freebsd image format is acceptable
(05:04:24) Herman: <https://support.accessdata.com/hc/en-us/articles/222778608-What-Image-Formats-Do-AccessData-Products-Support->
(05:04:43) Herman: freebsd should generate a ufd image
(05:04:51) Herman: i mean "ufs"
(05:04:54) Tami: Ok, thank you!
(05:06:09) Herman: i do not know the freebsd command for imaging
(05:06:45) Herman: my research shows it might be "mking"
(05:06:58) Herman: but please i encourage you to research on your own
(05:07:23) Herman: is there anything else i can help you with?
(05:08:35) Tami: nope, that's it, thanks!
(05:08:41) Herman: you're welcome
(05:08:58) Herman: i will close chat now. to close chat on your side, click "options" and end chat. have a great day
(05:09:17) *** Herman left the chat ***
(05:44:54) *** Tami left the chat ***

NAME	Tami
EMAIL	tl@loehrsforensics.com
PHONE	—
LOCATION	Tucson, Arizona, United States
URL	https://support.accessdata.com/hc/en-us/articles/222778608-What-Image-Formats-Do-AccessData-Products-Support-
DEPARTMENT	—
SERVED BY	Herman
RATING	—
COMMENT	—

Are you using Zendesk Chat yet? [Sign up free today](#)

Exhibit C



U.S. Department of Justice

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November 8, 2019

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VIA EMAIL

Re: Response to Ms. Bernstein's November 5, 2019 Letter

Dear Whitney:

Thank you for your response on November 5, 2019 to my letter dated October 29, 2019. We appreciate you including a copy of the chat log between Tami Loehrs and AccessData.

For Mr. Frost's visit, Ms. Loehrs will need to download a Linux distribution software. Any current Linux distribution should allow mounting of the EXT4 drives, however, the specific Linux distribution that was used in acquiring these servers is called Fedora and is free to download. <https://getfedora.org/> The purpose of this visit is for Mr. Frost to help Ms. Loehrs do her job of "confirm[ing] the information [received] from the government were valid forensic images" using her own equipment, workspace, and tools. Thus, it will be important for Ms. Loehrs to download Fedora prior to the meeting.

In acquiring the data from each hard drive, Mr. Frost used a Linux-based version of FTK Imager-Command-Line after using an FBI Linux Boot disk to power on the computer without

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Page 2

modifying the drives.¹ (October 3, 2019 Tr. at 30, 164.) The boot disk allowed Mr. Frost to mount the individual disks within the server in a read-only format, which permitted him to acquire data from each disk individually. The data was stored in E01 format and the files were initially saved to a network attached storage device so all acquired files were stored in one location. (October 3, 2019 Tr. at 164.) The FTK Imager-Command-Line software created a text file for each E01 forensic image acquired. This text file documented the following: (1) the tool used to make the forensic image; (2) when the data was acquired; and (3) the hash verification. These text files were saved with the E01 files for each disk acquired. We anticipate Mr. Frost walking through the requisite steps to enable Ms. Loehrs to access these text files, which will enable her to “confirm the information [Defendants] got from the government were valid forensic images.” (Oct. 25, 2019 Tr. at 286.)

Now, in order to take the next step, which is to assemble the Z pools, Ms. Loehrs would need expertise in Z File Systems or ZFS. (*See* Oct. 3, 2019 Tr. at 81-82; *see also id.* at 174-5 (“[U]nlike normal operating systems, [in a ZFS file system] the file system and the volume manager are integrated. . . . [T]he ZFS operating system is built with security and integrity built into the Z pool, so you can add disks, remove disks in any order.”).) Based on her testimony and CV, it appears Ms. Loehrs does not have that expertise. Please let us know if that understanding is incorrect.

Mr. Frost is available on November 19 to assist Ms. Loehrs. We can also represent that Mr. Frost has successfully been able to rebuild the Z pools from an image server and a database server using identical (*i.e.*, with matching hash values) E01 files as those provided to Defendants.

Finally, our goal with this offer is to help Ms. Loehrs do her job of confirming that Defendants received valid forensic images and not to argue about timing of when Defendants raised the issue of their inability to access the hard drives. But, we do not believe that filing a motion to compel in June and then raising the lack of access issue in August is within the normal course of conduct for these types of issues.

Please let us know by November 12 if you wish to accept this offer so that Mr. Frost can make travel arrangements. We look forward to hearing from you.

¹ The FBI Linux Boot disk is a compilation of tools available on Linux that the FBI has packaged together. While the disk is law enforcement only, all of the tools on the disk are open source and free. (October 3, 2019 Tr. at 223.)

November 8, 2019
Page 3

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