

EXHIBIT 9

Katherine Aizpuru

From: Hassan Zavareei
Sent: Thursday, July 25, 2019 4:17 PM
To: RStonerock@harderllp.com
Cc: TJAENSCH@fordharrison.com; Tanya S. Koshy; sfrackman@harderllp.com; RStonerock@harderllp.com; PBLAND@publicjustice.net; Nicole Porzenheim; Katherine Aizpuru; KGilbride@publicjustice.net; JBennett@publicjustice.net; Janet Varnel; hself@harderllp.com; DSiler-Nixon@fordharrison.com; charder@harderllp.com; bwarwick@varnellandwarwick.com
Subject: RE: Brian Hayes Video

Ryan,

Can you get on a quick call today to discuss? Maybe 5:30 Eastern?

Thanks,

Hassan

Hassan Zavareei ■ TYCKO & ZAVAREEI LLP ■ www.tzlegal.com
1828 L Street, NW ■ Suite 1000 ■ Washington, DC 20036 p 202.973.0910 (direct) ■ f 202.973.0950

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-----Original Message-----

From: Hassan Zavareei
Sent: Wednesday, July 24, 2019 6:12 PM
To: RStonerock@harderllp.com
Cc: TJAENSCH@fordharrison.com; Tanya S. Koshy <tkoshy@tzlegal.com>; sfrackman@harderllp.com; RStonerock@harderllp.com; PBLAND@publicjustice.net; Nicole Porzenheim <nporzenheim@tzlegal.com>; Katherine Aizpuru <kaizpuru@tzlegal.com>; KGilbride@publicjustice.net; JBennett@publicjustice.net; Janet Varnel <JVarnell@VarnellandWarwick.com>; hself@harderllp.com; DSiler-Nixon@fordharrison.com; charder@harderllp.com; bwarwick@varnellandwarwick.com
Subject: Brian Hayes Video

Ryan,

I have attached a declaration from a forensic expert we retained to examine the Brian Hayes video. As you will see, it appears that the video is a snippet of a longer video. Can you please produce the full unedited video? If you don't have it and cannot get it from Mr. Hayes, please let us know. If that is the case we will need to ask the Court to reopen discovery for the limited purpose of obtaining the original video. Hopefully that won't be necessary. Also, if you have reason to believe our expert's conclusions are incorrect, please let us know.

Thank you,

Hassan

DECLARATION OF MATT DANNER

I, Matt Danner, state that I have personal knowledge of the facts and matters set forth below, and if called as a witness would testify competently thereto:

1. I am a U.S. citizen over the age of eighteen years old.
2. I am currently a Senior Forensics Specialist with CS DISCO, Inc., 3700 N. Capital of Texas Highway, Austin, TX 78726.
3. I have over 7 years of experience as a digital forensics examiner and have received hundreds of hours of training in the field of digital forensics. I am currently a Certified Forensic Computer Examiner (CFCE) and a Certified Mobile Device Examiner (CMDE) issued by the International Association of Computer Investigative Specialists (IACIS). I am also a Certified Fraud Examiner (CFE) issued by the Association of Certified Fraud Examiners (ACFE).
4. I also hold a Bachelor of Arts Degree from the University of Texas with major concentration in Government and minor concentration in Chemistry.
5. In my career, I have conducted hundreds of forensic examinations of digital evidence including but not limited to computers, laptops, servers, smartphones, digital documents and media, cloud storage technology, and various digital evidence items.
6. I have testified multiple times as an expert in the field of digital forensics including federal, state, and military courts for defense, plaintiff, and prosecution in both civil and criminal cases.
7. My curriculum vitae is attached to this declaration for reference and additional background information including work experience, education, training, and prior testimony.
8. In this matter, I was engaged by the law firm Tycko & Zavareei, LLP to examine a video file for any available "metadata". "Metadata" is a term in digital forensics used to described various characteristics of digital evidence and is commonly utilized during the course of a forensic examination. "Metadata" is commonly referred to as "data about data".
9. In this case, the video file provided was named "Exhibit A to Declaration of Brian Hayes.mov".
10. This video file is an Apple QuickTime video format, which is a format commonly associated and created by Apple products such as iPhones. Video files in this

1 format are multimedia containers that store metadata and video data related to the
2 recorded content.

3 11. I reviewed the metadata of the provided video file and found the following metadata
4 characteristics:

- 5 • Make: Apple
- 6 • Model: iPhone 6
- 7 • Software: 9.3.4
- 8 • Creation Date: 2016:08:24 13:35:41 (UTC -4)

9 12. This is common metadata associated with the QuickTime video format and
10 indicates that the video was originally created with an Apple iPhone 6 with iOS
11 v9.3.4 and was created on August 24, 2016 at 13:35:41. This metadata was
12 recorded with a time zone identifier of “UTC -4” which indicates that the iPhone
13 was set to Eastern Daylight Time, given the date and time settings were accurate on
14 the iPhone at the time of creation.

15 13. In addition to the standard metadata presented above, the MOV video file format
16 also contains other metadata unique to QuickTime video formats.

17 14. I reviewed the additional metadata related to specific QuickTime data within the
18 video and found the following three entries:

- 19 • Create Date: 2019:02:25 22:45:48
- 20 • Modify Date: 2019:02:25 22:45:51
- 21 • Duration: 15.28 s

22 15. Additionally, the MOV file format contains different tracks that represent different
23 streams of data that make up the video and media content within the file. These
24 tracks contain their own set of metadata that can be extracted. This video file
25 contains four separate tracks of data each with the following metadata timestamp
entries:

- 26 • Track 1:
 - 27 ○ Track Create Date: 2019:02:25 22:45:48
 - 28 ○ Track Modify Date: 2019:02:25 22:45:51
 - 29 ○ Media Create Date: 2019:02:25 22:45:48
 - 30 ○ Media Modify Date: 2019:02:25 22:45:51
- 31 • Track 2:
 - 32 ○ Track Create Date: 2019:02:25 22:45:48
 - 33 ○ Track Modify Date: 2019:02:25 22:45:51

- Media Create Date: 2019:02:25 22:45:48
- Media Modify Date: 2019:02:25 22:45:51

- Track 3:

- Track Create Date: 2019:02:25 22:45:48
- Track Modify Date: 2019:02:25 22:45:51
- Media Create Date: 2019:02:25 22:45:48
- Media Modify Date: 2019:02:25 22:45:51

- Track 4:

- Track Create Date: 2019:02:25 22:45:48
- Track Modify Date: 2019:02:25 22:45:51
- Media Create Date: 2019:02:25 22:45:48
- Media Modify Date: 2019:02:25 22:45:51

16. It is important to note that the timestamps listed in paragraphs 14 and 15 above are in Coordinated Universal Time (UTC), which means that time zone offsets have not been applied to them.

17. The timestamps above indicate that additional activity occurred with this video on February 25, 2019 that updated these internal metadata timestamps.

18. Specifically, the difference between the timestamps listed in paragraphs 14 and 15 and the creation timestamp listed in paragraph 11 is consistent with this video being a clip or portion of another video.

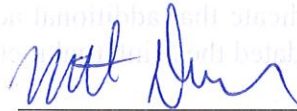
19. Typically, when a video is recorded with an Apple iPhone, the metadata timestamps described in paragraphs 11, 14, and 15 would be very similar if not the same. In this case, these timestamps are offset by a significant margin.

20. Apple iPhones have a built-in function that allows a user to select and export a section of video from a video file. This is accomplished by opening the video from the iOS “Photos” app and enabling the “Edit” option. The user can then select a portion of the video and export it as its own clip.

21. When this “edit” action occurs, a new video is created that only contains the portion of the video selected by the user. The new video clip maintains the parent video’s make, model, and creation date (described in paragraph 11) but it gains a new “Track Create Date”, “Track Modify Date”, “Media Create Date”, and “Media Modify Date” that coincides with the date and time the new video clip was created.

- 1
22. This pattern of timestamp modification is consistent with the timestamp metadata
2 located within the video "Exhibit A to Declaration of Brian Hayes".
- 3
23. This indicates that the video named "Exhibit A to Declaration of Brian Hayes" was
4 a video clip of another video. The timestamps indicate that the video clip was
5 created on February 25, 2019 while the parent video was created on August 24,
6 2016.
- 7
24. An examination of the Apple iPhone 6 source device or any other device considered
8 to be the current source may lead to additional forensic evidence related to the
9 creation, production, and modification of this video.

10 I declare under penalty of perjury that the foregoing is true and correct.
11 Executed on the 24th day of July 2019, in Austin, TX (Travis County).

12
13 

14 *Matt Danner CFCE, CMDE, CFE*
15 *Senior Forensics Specialist*
16 *CS DISCO, Inc.*

MATT DANNER, CFCE, CFE



Senior Forensic Specialist | CS Disco
3700 N. Capital of Texas Hwy, Ste 150
Austin, TX 78746
danner@csdisco.com | 512-434-0657

EMPLOYMENT HISTORY

CS DISCO

MAY 2019 - PRESENT

Senior Forensic Specialist

- Digital forensics evidence collection and handling
- Conduct forensic examinations of digital evidence
- Development of forensic case reports
- Testing and validation of forensic software and hardware
- Search warrant and affidavit development for digital evidence
- Consulting for Fortune 1000 companies, foreign and domestic government agencies, and law firms
- Testify as an expert in digital forensics when necessary

FLASHBACK DATA, LLC

MAY 2016 – MAY 2019

Senior Forensic Examiner

- Adherence to ISO/IEC 17025:2005 and ANAB accreditation standards
- Digital forensics evidence collection and handling
- Conduct forensic examinations of digital evidence
- Development of forensic case reports
- Testing and validation of forensic software and hardware
- Search warrant and affidavit development for digital evidence
- Consulting for Fortune 1000 companies, foreign and domestic government agencies, and law firms
- Testify as an expert in digital forensics when necessary

TEXAS STATE AUDITOR'S OFFICE

JULY 2012 – MAY 2016

Senior Investigator / Digital Forensics Examiner

- Conducted fraud investigations related to misuse of state funds
- Presented and referred investigative findings for prosecution
- Conducted digital forensic examinations pertaining to alleged misuse of state funds
- Forensically collected and acquired digital evidence
- Tested and validated forensic software and hardware, to include development of validation reports
- Interviewed witnesses and suspects involved in fraud cases
- Prepared affidavits
- Developed plans that defined scopes and objectives of fraud investigations
- Maintained forensic server
- Coordinated with federal, state, and local law enforcement agencies during investigations

TEXAS WORKFORCE COMMISSION

APRIL 2008 – JULY 2012

Investigator IV

- Planned and conducted investigations pertaining to fraud within TWC program areas
- Conducted interviews of witnesses and suspects involved in fraud cases
- Developed investigative reports for distribution to agency administration officials
- Presentation of testimony and evidence in Grand Jury and formal administrative hearings
- Coordinated with federal, state, and local law enforcement agencies during investigations
- Administrative subpoena development
- Development of investigative reports for presentation to local and federal jurisdictions for criminal prosecution
- Executed search and seizure warrants for undercover operations

LICENSES AND CERTIFICATIONS

| | |
|--|---------------------|
| Certified Mobile Device Examiner (ICMDE) <i>International Association of Computer Investigative Specialists (IACIS)</i> | JAN 2019 - PRESENT |
| Certified Forensic Computer Examiner (CFCE) - Recertification <i>International Association of Computer Investigative Specialists (IACIS)</i> | DEC 2017 - PRESENT |
| Certified Forensic Computer Examiner (CFCE) <i>International Association of Computer Investigative Specialists (IACIS)</i> | SEP 2014 – DEC 2017 |
| Certified Fraud Examiner (CFE) <i>Association of Certified Fraud Examiners (ACFE)</i> | MAY 2014 - PRESENT |
| Texas Private Investigator License (#00208628) <i>Texas Department of Public Safety</i> | MAY 2016 - PRESENT |
| Oregon Private Investigator License (#78948) <i>Oregon Department of Public Safety Standards and Training</i> | MAR 2018 - PRESENT |

EDUCATION

| | |
|---|---------------------|
| Bachelor of Arts in Government <i>University of Texas, Austin, Texas</i> | DEC 2007 |
| Continuing Education Courses in Computer Science <i>Texas State University, San Marcos, Texas</i> <ul style="list-style-type: none">○ <i>Data Structures and Algorithms</i>○ <i>Discrete Math II</i>○ <i>Probability and Statistics</i>○ <i>Computer Networks</i>○ <i>Operating Systems</i>○ <i>Computer Architecture</i>○ <i>Digital Logic</i> | FEB 2015 – JAN 2016 |

TRAINING

| | |
|---|----------|
| "Mobile Device Forensics" <i>International Association of Computer Investigative Specialists (IACIS)</i> <i>Austin Police Department, Austin, Texas</i> | APR 2018 |
| "FOR508: Advanced Digital Forensics, Incident Response, and Threat Hunting" <i>SANS Institute</i> <i>Austin DFIR Summit, Austin, Texas</i> | JUN 2017 |
| "CyberCop 315 – Windows Forensic Artifacts (WinArt)" <i>National White Collar Crime Center (NW3C)</i> <i>Gulfport, Mississippi</i> | MAR 2016 |
| "Basic Computer Forensic Examiner Program (BCFE)" <i>International Association of Computer Investigative Specialists (IACIS)</i> <i>Orlando, Florida</i> | MAY 2014 |
| "CyberCop 101 – Basic Data Recovery and Acquisition (BDRA)" <i>National White Collar Crime Center (NW3C)</i> <i>Natchitoches Police Department, Natchitoches, Louisiana</i> | AUG 2012 |
| "CyberCop 201 – Intermediate Data Recovery and Analysis (IDRA)" <i>National White Collar Crime Center (NW3C)</i> <i>Natchitoches Police Department, Natchitoches, Louisiana</i> | AUG 2012 |
| "Cyber-Investigation 100 – Identifying and Seizing Electronic Evidence (ISEE)" <i>National White Collar Crime Center (NW3C)</i> <i>Natchitoches Police Department, Natchitoches, Louisiana</i> | JUL 2012 |
| "Cyber-Investigation 101 – Secure Techniques for Onsite Preview (STOP)" <i>National White Collar Crime Center (NW3C)</i> <i>Natchitoches Police Department, Natchitoches, Louisiana</i> | JUL 2012 |

PRESENTATIONS

| | |
|--|----------------------|
| Case Study: Methods to Detect Forged Digital Documents <i>30th Annual ACFE Global Fraud Conference</i> <i>Austin, Texas</i> | JUN 24, 2019 |
| Guest Lecturer – Digital Forensics and eDiscovery Lecture <i>St. Mary's School of Law – eDiscovery Course</i> <i>San Antonio, Texas</i> | SEP 11, 13, 18, 2018 |
| What You Need to Know About Digital Forensics <i>Austin Bar Association (Small Firm/Solo Practice)</i> <i>Austin, Texas</i> | AUG 23, 2018 |
| Digital Evidence Collection Procedures <i>International Crime Scene Investigators Association (ICSIA)</i> <i>Nashville, Tennessee</i> | MAY 16, 2018 |

| | |
|---|--------------|
| Cell Phone Analysis and Computer Forensics – How, What, and Where Data is Stored <i>Austin Bar Association (Small Firm/Solo Practice)</i> <i>Austin, Texas</i> | OCT 26, 2017 |
| Guest Lecturer – Digital Forensics and eDiscovery Lecture <i>St. Mary's School of Law – eDiscovery Course</i> <i>San Antonio, Texas</i> | SEP 14, 2017 |
| Collection and Preservation of Digital Evidence <i>Travis County Sherriff's Office</i> <i>Austin, Texas</i> | AUG 24, 2017 |
| Preservation Strategies and Data Collection <i>Lexbe Webinar</i> <i>Online</i> | JUN 20, 2017 |
| Case Studies in Digital Forensics Investigations <i>Greater Houston Business Ethics Round Table</i> <i>Houston, TX</i> | APR 25, 2017 |
| Cell Phone Analysis and Computer Forensics – How, What, and Where Data is Stored <i>Houston Bar Association</i> <i>Houston, TX</i> | MAR 22, 2017 |
| Intro to Digital Forensics <i>Computer Science Student Research Group</i> <i>Texas State University, San Marcos, TX</i> | FEB 3, 2017 |
| Collection and Preservation of Digital Evidence <i>Lakeway Police Department</i> <i>Lakeway, TX</i> | JAN 18, 2017 |
| Collection and Preservation of Digital Evidence <i>Travis County Sherriff's Office</i> <i>Austin, Texas</i> | JAN 9, 2017 |
| Cell Phone Analysis and Computer Forensics – How, What, and Where Data is Stored <i>Houston Bar Association</i> <i>Houston, TX</i> | OCT 25, 2016 |
| Digital Forensics Presentation <i>Austin Bar Association</i> <i>Austin, Texas</i> | OCT 5, 2016 |
| Digital Forensics Presentation <i>Houston Bar Association</i> <i>Houston, Texas</i> | SEP 14, 2016 |

PROFESSIONAL DEVELOPMENT

| | |
|---|----------------|
| Active Member <i>International Association of Computer Investigative Specialists (IACIS)</i> | 2014 - PRESENT |
| CFCE Program Peer Review Coach <i>International Association of Computer Investigative Specialists (IACIS)</i> | 2016 - PRESENT |
| Active Member <i>Association of Certified Fraud Examiners (ACFE)</i> | 2014 - PRESENT |

TESTIMONY and DEPOSITIONS

| | |
|---|--------------|
| State of Texas v. Justin Twyne <i>Expert Witness Testimony – 147th District Court of Travis County</i> | MAR 6, 2019 |
| State of Texas v. Meechaiel Criner <i>Expert Witness Testimony – 167th District Court of Travis County</i> | SEP 13, 2018 |
| Mathey Dearman, Inc v. H&M Pipe Beveling Machine co. et al <i>Expert Witness Testimony – United States District Court for the Northern District of Oklahoma</i> | SEP 4, 2018 |
| State of Texas v. Wade Hodges <i>Expert Witness Testimony – 147th District Court of Travis County</i> | AUG 29, 2018 |
| Child Custody Trial <i>Expert Witness Testimony – County Court at Law, Bastrop County, Texas</i> | AUG 24, 2018 |
| United States v. Marquez <i>Expert Witness Testimony – General Court Marshal – Naval Base Kitsap Bremerton</i> | MAR 20, 2018 |
| State of Texas v. Michael Wade Jones <i>Expert Witness Deposition – 40th Judicial District Court of Ellis County, Texas</i> | APR 3, 2018 |
| Child Custody Hearing <i>Expert Witness Testimony – 261st Judicial District Court of Travis County, Texas</i> | JAN 8, 2018 |
| State of Texas v. Charles Henry Hawkins <i>Expert Witness Testimony – 252nd Judicial District Court of Jefferson County, Texas</i> | NOV 2, 2017 |
| Raul A. Toscano v. Mary O'Brien-Hamm <i>Expert Witness Testimony – 225 Judicial District Court of Bexar County, Texas</i> | JUN 20, 2017 |
| Connor Industries, Inc v. Zane McDonald et al <i>Expert Witness Testimony – American Arbitration Association in Tarrant County Texas</i> | MAY 15, 2017 |
| State of Texas v. Michael Wade Jones <i>Expert Witness Testimony – 40th Judicial District Court of Ellis County, Texas</i> | MAY 1, 2017 |
| | SEP 12, 2017 |

In the Matter of the Marriage of Nicole West and Byron Blank

Expert Witness Testimony – Williamson County Court, Texas

Jesus Elena Urias v. Luis Saucedo Lopez, et al

APR 12, 2017

Expert Witness Deposition – 161st Judicial District Court of Ector County, Texas

Texo Ventures, LLC v. Philip Sanger, MD v. Randall Crowder and Jerry Devries

FEB 24, 2017

Expert Witness Testimony – 200th Judicial District Court of Travis County, Texas

Texo Ventures, LLC v. Philip Sanger, MD v. Randall Crowder and Jerry Devries

FEB 1, 2017

Expert Witness Testimony – 200th Judicial District Court of Travis County, Texas

Texo Ventures, LLC v. Philip Sanger, MD v. Randall Crowder and Jerry Devries

JAN 3, 2017

Expert Witness Testimony – 200th Judicial District Court of Travis County, Texas

The State of Texas v. John Knowlton

DEC 16, 2016

Expert Witness Testimony – 212th Judicial District Court of Galveston County, Texas

Annan v. City of New York, et al

OCT 24, 2016

Expert Witness Deposition – United States District Court for the Eastern District of New York

Deutsch v. Clark, et al

SEP 13, 2016

Expert Witness Testimony – United States District Court for the Western District of Texas

Annan v. City of New York, et al

AUG 23, 2016

Expert Witness Deposition – United States District Court for the Eastern District of New York