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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

United States of America,  
  
Plaintiff,  
  
v.  
  
Daniel David Rigmaiden,  
  
Defendant.

No. CR-08-0814-001-PHX-DGC  
**GOVERNMENT’S RESPONSE TO  
DEFENDANT’S MOTION TO  
SUPPRESS ALL DIGITAL  
EVIDENCE AS A SANCTION TO  
FOR FAILURE TO PRESERVE  
EVIDENCE (DOCUMENT NO. 931)  
AND MOTION FOR SANCTIONS  
FOR DISCOVERY VIOLATIONS  
(DOCUMENT NO. 932)**

The United States, through undersigned counsel, hereby responds to defendant’s Motion to Suppress All Digital Evidence as a Sanction to for Failure to Preserve Evidence (Document No. 931) and Motion for Sanctions for Discovery Violations (Document No. 932) through the attached Memorandum and requests that they be denied.

Respectfully submitted this 27<sup>th</sup> day of November, 2012.

JOHN S. LEONARDO  
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District of Arizona  
  
s/ Frederick A. Battista  
  
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MEMORANDUM

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**I. Introduction**

In order to respond to defendant’s Motion to Suppress All Digital Evidence as a Sanction to for Failure to Preserve Evidence (Document No. 931) and Motion for Sanctions for Discovery Violations (Document No. 932), the United States must first briefly respond to the numerous allegations set forth in defendant’s Reply to Government’s Response to Motion for Discovery Re: Digital Evidence (Document No. 911) (Document No. 930).

**II. Defendant’s Reply to Government’s Response to Motion for Discovery Re: Digital Evidence (Document No. 911) (Document No. 930)**

a. Request for evidence No. 1 (Defendant’s Reply, Page 2, Doc. No. 930)

Defendant has been advised of the identities of the four agents who were given access to the three subject virtual machines.<sup>1/</sup> No other agents were given access to the machines except in an administrative capacity. The defendant was provided with summaries of the limited nature and results of the searches conducted by the three agents other than IRS-CI Special Agent Daun. None of the four agents simply uploaded information from the three virtual machines for general examination by other agents or agencies. Defendant has been informed of the nature of the information the agents looked for and the general results of their queries. There is no evidence that their efforts were beyond the scope of the original search warrants. All of the limited queries and results related to violations of law set forth in the Attachments B - Items to be Seized contained in the search warrants that authorized the seizure of the subject computers.<sup>2/</sup>

Within a very short period of time after the seizure of defendant’s computers, the computers that contained information authorized to be seized pursuant to the subject warrants were identified by IRS-CI Special Agent Daun. The later searches conducted by the agents were

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<sup>1/</sup> “Phosvr001” is the name for an IRS-CI file service IRS-CI Special Agent Daun created to allow her to share select files from defendant’s computers with her fellow two case agents, IRS-CI Special Agents Medrano and Fleischmann in furtherance on the subject investigation.

<sup>2/</sup> There is no evidence that any data from the subject virtual machines was loaded into any general FBI database for any purpose or were ever shared with any representative of the National Security Agency.

1 not exploratory rummaging or fishing expeditions; they were limited searches for additional  
2 evidence specifically related to what defendant had been under investigation for as set forth in  
3 the subject search warrants and attachments.

4 b. Request for Evidence No. 2 (Defendant's Reply, Page 5, Doc. No. 930)

5 The simple answer to this question is that the United States has not shared a forensic  
6 image of any of defendant's computers with any other defendant in any case.

7 c. Request for Evidence No. 3 (Defendant's Reply, Page 6, Doc. No. 930)

8 Defendant has requested additional information regarding when the subject virtual  
9 machines were accessed by the four case agents. In general, all available information at the time  
10 of the request was disclosed. See defendant's Fifth Submission of Consolidated Exhibits,  
11 Exhibit 1 (Document No. 929-1). Defendant was advised that the virtual machines only  
12 maintain a record of the final four log ons to system. The discovery set forth the dates and times  
13 for the machines that were accessed by the three IRS-CI agents and additional available records  
14 for IRS-CI Special Agent Daun. The only record that was not generated was a similar record  
15 for the virtual machine provided to FBI Special Agent Murray. The nature and results of Special  
16 Agent Murray's limited searches were also sent to defendant. See defendant's Fifth Submission  
17 of Consolidated Exhibits, Exhibit 1, Page 6 (Document No. 929-1). Again, defendant has been  
18 advised of the nature, extent and general results and extent of the agent's searches of the virtual  
19 machines and there is no evidence that any of the four agents conducted exploratory rummaging  
20 or fishing expeditions within defendant's computers.

21 d. Request for Evidence No. 4 (Defendant's Reply, Page 8, Doc. No. 930)

22 Defendant has requested additional records related to the accessing of the computers seized  
23 pursuant to the subject search warrants. As noted above, the searches conducted by agents other  
24 than IRS-CI Special Agent Daun were limited in scope and resulted in evidence related to the  
25 subject investigation and defendant's violations of enumerated offenses. As for Special Agent  
26 Daun's limited examination of defendant's massive collection of data, she was required to use  
27 her expertise to briefly examine all of the subject files in order to determine whether they fell  
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1 within or outside of the scope of the subject warrants. Defendant's sophisticated and extensive  
2 data, in the form of images, programs and/or encrypted files contained numerous files that could  
3 not readily be searched solely via word searches. Therefore, it was incumbent on Special Agent  
4 Daun to conduct the search in the manner in which she conducted it. At no time did Special  
5 Agent Daun intentionally conduct a search into defendant's personal life unrelated to the  
6 enumerated violations of federal law. For example, Special Agent Daun became aware of  
7 defendant's interests in "outdoor activities, vitamins and nutrition" while she was examining  
8 credit card purchase records related to defendant's use of one or more credit cards obtained  
9 through the use of a false identity in order to purchase computers and related equipment which  
10 he used on furtherance of the subject offenses.

11 **III. Defendant's Motion to Suppress All Digital Data Evidence As a Sanction for Failure  
12 to Preserve Evidence**

13 The United States has provided defendant with the available information regarding the  
14 nature, scope and timing of the search of the digital evidence seized from defendant's computers.  
15 The searches conducted by the three case agents other than IRS-CI Special Agent Daun were limited  
16 in scope and related directly to the offenses enumerated in the subject search warrants.  
17 Defendant has been advised of the more detailed examination by IRS-CI Special Agent Daun.  
18 Due to the nature of the data contained on defendant's computers as noted above, the nature and  
19 extent of her more extensive, yet very limited, examination was reasonable. Defendant has been  
20 advised of these facts and does not contend that the known results of the four agents' searches  
21 are not related in some manner to the subject charges. There is also no evidence that the actual  
22 contents of defendant's computers were ever shared with other agencies or agents who were not  
23 working on the subject prosecution. The results of the subject computer searches have only been  
24 used in support of charges against defendant of statutes enumerated in the subject search  
25 warrants in this case. None of the subject computer searches have resulted in defendant, or any  
26 of his associates, being charged by any other jurisdiction or in any other case. Moreover, at no  
27 time has the United States acted in bad faith while attempting to manage the voluminous and  
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1 complex discovery in this case. Defendant has not shown that: (1) he is entitled to the  
2 information that he has requested; (2) the United States was required to preserve the information;  
3 (3) the United States acted in bad faith by not preserving any of the information that he has  
4 requested; and (4) suppression is the appropriate remedy as a result of the current state of  
5 discovery in this case. Accordingly, suppression of the digital evidence directly related to  
6 defendant's commission of the subject offenses is unreasonable and inappropriate in this case.

7 **IV. Defendant's Motion Requesting Sanctions for Digital Discovery Violations Re:  
8 Digital Evidence Search (Document No. 932)**

9 The United States has addressed the nature and timing of the searching of defendant's  
10 computers in the Government's Response to Defendant's Motion to Suppress (Document No.  
11 873 at pages 63-66).<sup>3/</sup> As stated above, the case agents' searches of defendant's computers have  
12 been limited to violations of the statutes enumerated in the subject search warrants. To date, the  
13 United States has not used any evidence found on defendant's computers against defendant or  
14 anyone else which is not relevant to the subject violations. In addition, at no time has the United  
15 States acted in bad faith in attempting to respond to defendant's voluminous and never ending  
16 discovery requests. Defendant has cited no authority for the unreasonable sanctions he has  
17 requested. The requests, therefore, should be denied.

18 **V. Conclusion**

19 For the forgoing reasons, defendant's Motion to Suppress All Digital Evidence as a  
20 Sanction to for Failure to Preserve Evidence (Document No. 931) and Motion for Sanctions for  
21 Discovery Violations (Document No. 932) should be denied.

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23 <sup>3/</sup> On March 25, 2010, defendant was notified that Special Agent Daun had conducted  
24 an extensive examination of the Toshiba 100 GB Xcraft external USB hard drive that contained  
25 the file "agj\_bag\_liner\_jagbags.co.nz.txt." The file was not specifically identified. (Discovery  
26 Letter dated March 25, 2010, pages 303-309 and 326.). Defendant contends that the file is  
27 unrelated to the subject investigation however it relates to defendant's use of the false identity  
28 of Andrew Johnson; conduct well within the scope of the subject warrants. In addition, the same  
discovery identified numerous other "agj" txt files which also relate to defendant's use of the  
same false identity on numerous occasions. (For example - Discovery Letter dated March 25,  
2010, pages 456-479.)

1 Respectfully submitted this 27<sup>th</sup> day of November, 2012.

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3 JOHN S. LEONARDO  
United States Attorney  
District of Arizona

4 s/ Frederick A. Battista

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6 FREDERICK A. BATTISTA  
PETER S. SEXTON  
7 JAMES R. KNAPP  
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9 **Certificate of Service**

10 I hereby certify that on November 27, 2012, I caused the attached document to be  
11 electronically transmitted to the Clerk's Office using the CM/ECF system for filing and  
12 transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

13 Philip Seplow  
14 Shadow Counsel for Defendant

15 A copy of the attached document was also mailed to:

16 Daniel David Rigmaiden  
17 Agency No. 10966111  
CCA-CADC  
18 PO Box 6300  
Florence, AZ 85132

19 s/ Frederick A. Battista  
Assistant U.S. Attorney  
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