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IN THE UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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| UNITED STATES OF AMERICA,  Plaintiff,  vs.  WILLIAM HUGH WEYGANDT; JERRY EDWARD KUWATA; SCOTT HAMILTON DURHAM; CHRISTOPHER WARREN MACQUEEN; and DOUGLAS ARTHUR JOHNSON,  Defendants. | Case No. 2:11-cr-00429-JAM  **DEFENDANT WILLIAM WEYGANDT’S NOTICE OF MOTION AND MOTION TO COMPEL PRODUCTION OF EXCULPATORY AND IMPEACHMENT EVIDENCE**  **(ORAL ARGUMENT REQUESTED)**  Date: January 3, 2013  Time: 2:00 p.m. |

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##### 1 NOTICE OF MOTION AND MOTION

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PLEASE TAKE NOTICE that on January 3, 2013 at 2:00 p.m., or as soon as the matter

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may be heard before U.S. Magistrate Judge, Defendant William Weygandt will and hereby does

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move the Court for an order to compel production of exculpatory and impeachment evidence.

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This motion is based on the instant notice, the attached memorandum of points and authorities,

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the records in this case, and upon such argument as may be made at the hearing on January 3,

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2013.

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| --- | --- |
| Dated: December 16, 2012 | SNELL & WILMER L.L.P.  */s/ Craig S. Denney*  CRAIG S. DENNEY  California Bar No. 244692 JUSTIN R. COCHRAN, ESQ.  (Admitted *Pro Hac Vice*) 50 West Liberty, Suite 510  Reno, Nevada 89501  DOMBROFF GILMORE JAQUES & FRENCH  MARK A. DOMBROFF, ESQ.  (Admitted *Pro Hac Vice*) MATTHEW J. CLARK, ESQ.  (Admitted *Pro Hac Vice*)  1676 International Drive - Penthouse Mclean, Virginia 22102  *Attorneys for Defendant William Hugh Weygandt* |

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##### MEMORANDUM OF POINTS AND AUTHORITIES

1. **I. INTRODUCTION**
2. The United States Attorney’s Office (“USAO”) has failed to produce exculpatory
3. evidence in this case to defendant William Weygandt. The USAO has also failed to provide
4. defense with an index to voluminous electronic discovery materials. Despite numerous requests
5. for the information by the defense, the USAO has failed to produce requested documents and

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1. information to defense. This motion to compel production is brought to request the Court’s
2. assistance in ordering the USAO to meet its obligations under the Constitution and the landmark
3. decision *Brady v. Maryland*.
4. In a detailed letter hand delivered on November 9, 2012, Mr. Weygandt requested
5. production of relevant and required information under *Brady* and *Giglio* (hereinafter, “*Brady*
6. Request,” attached as Ex.1). Since the date of Mr. Weygandt’s arraignment, the defense has
7. made detailed requests for exculpatory information. The Government has failed to provide a
8. response. During the same time period, the USAO has failed to provide Mr. Weygandt with any
9. meaningful access to discovery consisting of nearly 1.2 million single-page PDF files of
10. electronically stored information (“ESI”). The USAO has investigated this case for
11. approximately 5 years. The grand jury indicted Mr. Weygandt on October 10, 2012. Mr.
12. Weygandt faces trial on April 8, 2013. This Court should not countenance such questionable
13. conduct and apparent gamesmanship ultimately prejudicing Mr. Weygandt.

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1. The USAO’s own policy has been significantly undermined in these proceedings. “[T]he
2. prosecutor’s role transcends that of an adversary: he [or she] ‘is the representative not of an
3. ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal
4. prosecution is not that it shall win a case, but that justice shall be done.’” *United States v. Hsia*,
5. 24 F. Supp.2d 14, 29 (D.D.C.1998) (citing *United States v. Bagley*, 473 U.S. at 675 n. 6 (quoting
6. *Berger v. United States*, 295 U.S. 78, 88 (1935)). In this case, the USAO has lost sight of its role
7. and obligation, long established by the United States Supreme Court. The USAO’s conduct in
8. this case thus far is not that of one acting in the interest of justice. Rather, the USAO’s conduct
9. borders on either incompetence at best or bad faith, at worst. More than anything, the USAO’s
10. non- responsiveness to defense requests have delayed and impeded Mr. Weygandt’s defense
11. preparation to the conspiracy charge alleged in the Superseding Indictment in this case.
12. Trial is less than four months away. Mr. Weygandt’s diligent efforts and counsel’s
13. numerous attempts to confer with the Assistant United States Attorney (“AUSA”) [1](#_bookmark0) about the
14. 1 During the five years of investigation, the WECO case has been handled by three different AUSAs in the USAO in Sacramento. Initially, AUSA Laura Ferris handled the case but later left the USAO. Then AUSA Sean Flynn
15. handled the investigation of WECO for a couple of years. Flynn left the office and transferred to the USAO in New

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1 *Brady* Request and ESI have been met with only delays. Although Mr. Weygandt was indicted in

2 October 2012, the USAO has had the ESI in the WECO investigation for approximately four (4)

1. years. The ESI is not in its original native format, fails to contain an index or load file, and is not
2. produced with logical page breaks. Notably, the USAO indicated that the ESI has been compiled
3. in a more useable format for Government’s review, but that the USAO will not provide the ESI in
4. that form to Mr. Weygandt. This is unacceptable. There is no logic to the ESI.
5. Yet, while Mr. Weygandt had the ESI for less than one week, defense counsel randomly
6. came across what may in fact be contraband, specifically, an image of a minor engaged in
7. sexually explicit conduct. It defies explanation how the Government would produce criminal
8. contraband in discovery to the defense. Consequently, not only has the ESI been produced in a
9. late and nearly useless fashion but it contains criminal contraband. More than just prejudicial,
10. this is disturbing.
11. Mr. Weygandt cannot be expected to locate the exculpatory and impeachment evidence

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1. buried within over one million single-page PDF files. This is the equivalent of searching for the
2. needle in a haystack. It is unreasonable, inequitable, and prejudicial to require Mr. Weygandt to
3. undertake such a task after the Government has investigated this case for five years and had these
4. materials for approximately four years. Therefore, Mr. Weygandt respectfully requests that this
5. Court employ its well-established authority to require the USAO to provide an index for ESI and
6. produce all exculpatory and impeachment evidence to the defense. Such material appears to be
7. intentionally buried within the over one million individual page PDF files. At the very least, the
8. USAO should identify the relevant *Brady* and *Giglio* evidence and provide the ESI in a format in
9. which it has already created for itself.

##### II. FACTS

1. The instant investigation apparently dates back more than five years to on or about early
2. 2007. Mr. Weygandt sold WECO to Gulfstream Aerospace Corporation (“Gulfstream”) in

26 January 2007. For approximately one year of the federal investigation of WECO, Mr. Weygandt 27

York. Finally, AUSA Kyle Reardon took over the investigation two years ago. AUSA Reardon presented the

28 WECO case to the federal grand jury for the original indictment and the superseding indictment.

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1 was no longer the head of the company. The FBI served grand jury subpoenas at WECO on

2 February 14, 2008. This was more than one year after Gulfstream assumed ownership and

1. control of WECO.
2. The USAO obtained a grand jury indictment against six WECO Defendants [2](#_bookmark1) on

5 September 29, 2011. Mr. Weygandt, however, was not charged in this original indictment. More

1. than one year after the original indictment of the WECO Defendants, the USAO obtained a
2. Superseding Indictment that included Mr. Weygandt as an alleged co-conspirator.
3. After Mr. Weygandt was indicted, defense counsel requested the ESI. Based on
4. conversations between defense counsel and AUSA Kyle Reardon that the ESI needed to be
5. copied to a hard drive, counsel sent a hard drive via FedEx on November 7, 2012. (*See* Email C.
6. Denney to K. Reardon, November 7, 2012, attached as Ex. 2.) Since the case was originally
7. indicted in September 2011, it seemed reasonable to believe the USAO would have the discovery
8. materials ready for immediate delivery at Mr. Weygandt’s arraignment. The goal was to have it

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1. available to Mr. Weygandt at his arraignment on November 9, 2012. That did not happen. AUSA
2. Reardon indicated that that the ESI may not be available by the arraignment, but that other
3. discovery materials would be given to Mr. Weygandt, and the ESI would more likely be ready on

17 November 13, 2012. (Ex. 2.) The materials were not ready on that date.

1. On November 9, 2012, Mr. Weygandt appeared at his arraignment but the ESI was not yet
2. copied to the hard drive and no other discovery was provided to Mr. Weygandt’s counsel. (*See*
3. Email C. Denney to K. Reardon, November 9, 2012, attached as Ex. 3.) On the same date,
4. counsel hand delivered the *Brady* Request to Mr. Reardon’s office. November 13th passed
5. without a production of the ESI so defense counsel sent an email on November 15, 2012 to
6. AUSA Reardon inquiring about both the status of the ESI and the USAO’s response to the *Brady*
7. Request. (*See* Email C. Denney to K. Reardon, November 15, 2012, attached as Ex. 4.)
8. On November 16, 2012, AUSA Reardon ignored the *Brady* Request, but responded that
9. the ESI had been copied to the hard drive and would be sent out in “tomorrow’s mail.” (Ex. 4.)
10. 2 Anthony Zito was charged in this indictment and pled guilty to the conspiracy offense. Michael Maupin was indicted and pled guilty to a misdemeanor charge under 18 U.S.C. § 1018. Jerry Kuwata was included in the
11. superseding indictment but also pled guilty to a charge under 18 U.S.C. § 38(a)(8).

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1. Several days passed and the hard drive of ESI still had not arrived. Therefore, on November 21,
2. 2012, defense counsel sent an email to AUSA Reardon concerning the whereabouts of the hard
3. drive and the USAO’s position on the *Brady* Request. (Ex. 4.) Without receiving a response,
4. defense counsel sent another email on November 27, 2012 concerning the hard drive and *Brady*
5. Request. (Ex. 4.) On November 29, 2012 (21 days *after* the blank hard drive was delivered to the
6. USAO), Mr. Weygandt’s counsel finally received the ESI. Counsel sent a detailed email the
7. following day, insisting that a meet and confer take place on December 3, 2012, because there
8. had been no response to the *Brady* Request (delivered on November 9, 2012) and the ESI was
9. provided in a completely illogical and non-reviewable nature. (*See* Email C. Denney to K.
10. Reardon, November 30, 2012, attached as Ex. 5.)
11. Namely, the ESI contained over 1 million single-page PDF files that lacked any index or
12. load file. The ESI was not searchable. The ESI was not in native format. The ESI failed to
13. include original page breaks. For example, the ESI contains emails that are divided into separate

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1. one page PDFs for each page of an email rather than as a single document. In order for Mr.
2. Weygandt to effectively translate these documents into reviewable format, vendors provided
3. estimates indicating that Mr. Weygandt will have to expend, at a minimum, $55,000.00. (*See*
4. Estimates from Vendors eLit and Quivx, attached as Ex. 6.)
5. Hence, the USAO provided Mr. Weygandt with a set of nearly useless documents until he
6. expends a significant sum of money, at which time Mr. Weygandt’s defense can begin the
7. necessary review. Such a production is both deficient and highly prejudicial to the defense
8. preparation for trial.
9. AUSA Reardon did not respond substantively to defense counsel’s November 30, 2012
10. letter so that a meet and confer could take place on December 3, 2012. Instead, AUSA Reardon
11. emailed counsel on December 4, 2012, indicating his availability for a conference call. (*See* Email
12. K. Reardon to C. Denney, December 4, 2012, attached as Ex. 7.)
13. Finally, a telephone conference took place on December 5, 2012 [3](#_bookmark2) , where defense
14. counsel raised the ESI issues and the USAO’s lack of response to the *Brady* Request. Defense
15. 3 *See* Emails between K. Reardon to C. Denney, December 4, 2012, attached as Ex. 8.)

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1. counsel also provided AUSA Reardon with information that the USAO’s ESI contained sexually
2. illicit images that appeared to be criminal contraband. [4](#_bookmark3) AUSA Reardon failed to provide a
3. substantive response to the *Brady* Request and did not indicate what materials he would provide.
4. On the following day, after reviewing the contraband image on the USAO’s ESI, AUSA
5. Reardon sent an email to all defense lawyers in the WECO case stating, “possession of CP [child
6. pornography] is illegal (even when part of discovery).” (*See* Email K. Reardon to C. Denney et
7. al., December 6, 2012, attached as Ex. 9.)
8. AUSA Reardon directed the parties to turn over their hard drives to the USAO and have
9. the data wiped. (Ex. 9.) AUSA Reardon indicated that the USAO would reload the data after
10. removing the contraband. (Ex. 9.) The USAO did not provide any explanation for how or why
11. the contraband was provided to Defendants. On December 11, 2012, counsel received the hard
12. drives of the “new” ESI in the WECO investigation. The materials do not have any index. The
13. materials are not in searchable format. To defense counsel’s surprise, the exact same contraband

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1. image of child pornography, just ***one*** bates numbered file below the contraband image, was on the
2. new hard drive of ESI. There appears to be other similar type images within 500 Bates numbers.
3. Hence, while WECO Bates #01138058 has been removed due to its contraband nature, the very
4. next image (WECO Bates #01138059) appears to be a duplicate email with the same contraband
5. image. For reasons unclear, the investigators in this case did not review these materials *before*
6. sending them out to the defense. The investigators did not review the ESI initially, nor even after
7. they were put on notice of the contraband. This situation leaves Mr. Weygandt with yet another
8. prejudicial delay in preparing for trial.
9. On December 11, 2012, counsel explained to AUSA Reardon the issues with the ESI, the
10. contraband images, and the complete failure to respond to the *Brady* Request. (*See* Email C.
11. Denney to K. Reardon., December 11, 2012, attached as Ex. 10 and Letter from C. Denney to K.
12. Reardon, attached as Ex. 11.) On December 12, 2012, AUSA Reardon replied to the letter in an
13. email indicating that counsel should “continue to segregate the hard drive” and that “[a]s it
14. concerns the other discovery issues raised in your letters, I intend to reply no later than Friday.”
15. 4 Bate #01138058 was identified by defense to AUSA Reardon as suspected contraband image.

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1. (*See* Email K. Reardon to C. Denney, December 12, 2012, attached as Ex. 12.) Friday came, but
2. no response from the USAO was provided to defense counsel. Consequently, at 5:30 p.m. on
3. Friday, December 14, 2012, Mr. Weygandt’s counsel emailed AUSA Reardon explaining to him
4. that Mr. Weygandt is forced to seek appropriate relief from this Court. (*See* Email C. Denney to
5. K. Reardon., December 14, 2012, attached as Ex. 13.) To counsel’s surprise, AUSA Reardon
6. responded with an automatic out-of-office reply email, indicating that he was going to be away
7. from the office on Friday. (*See* Email K. Reardon to C. Denney, December 14, 2012, attached as
8. Ex. 14.) As of the date of filing this motion, the USAO has failed to respond or produce
9. exculpatory evidence to the defense.
10. Mr. Weygandt’s counsel has attempted on numerous occasions through various
11. correspondence and messages, and telephone calls, in an effort to obtain a response from the
12. USAO to the *Brady* Request and address the completely prejudicial production of the ESI.
13. Nothing but delays and a lack of response has occurred. The USAO’s conduct appears to be

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1. either incompetence or gamesmanship as it systematically ignores the detailed *Brady* Request.
2. The USAO has prejudiced Mr. Weygandt enough in this investigation.
3. This matter is set to be tried before a jury in this Court on April 8, 2013. Relief is needed.
4. Good faith efforts have been exhausted with the USAO. Fairness and integrity of the justice
5. system require this Court’s assistance.

##### III. LEGAL ANALYSIS

1. **A. Legal Standard**
2. 1. Due Process demands the USAO’s disclosure of exculpatory and
3. impeachment information.
4. “[W]hen the prosecution receives a specific and relevant request, the failure to make any
5. response is seldom, if ever, excusable” *Bagley*, 473 U.S. at 682. The Fifth Amendment’s Due
6. Process Clause requires the government to disclose evidence favorable to a defendant if it is
7. material to guilt or punishment. *See Brady v. Maryland*, 373 U.S. 83, 87-88 (1963); *Giglio v.*

27 *United States*, 405 U.S. 150, 154 (1972); *United States v. Bagley*, 473 U.S. 667, 676 (1985). The

28 government’s constitutional obligation to disclose such evidence includes both exculpatory and

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1. impeachment evidence. *Kyles v. Whitley*, 514 U.S. 419, 433 (1995) (noting that “the Court [has]
2. disavowed any difference between exculpatory and impeachment evidence for Brady purposes . .
3. .”); *Bagley*, 473 U.S. at 676 (holding that “[i]mpeachment evidence . . . as well as exculpatory
4. evidence, falls within the Brady rule.”); *Giglio*, 405 U.S. at 153–55 (holding that “[m]aterial is
5. ‘favorable,’ and therefore must be disclosed to defendants, if it is exculpatory or useful for
6. purposes of impeachment.”) Under *Brady* and its progeny, the government has a duty to disclose
7. favorable evidence known to it, even if the defense makes no specific disclosure request. *Whitley*, 8 514 U.S. at 433.

9 In addressing criminal discovery, the United States Attorney’s Manual (“USAM”)

1. explains that “the policy is intended to ensure ***timely*** disclosure of an appropriate scope of
2. exculpatory and impeachment information so as to ensure that trials are ***fair***.” USAM, 9-5.001
3. (*Policy Regarding Disclosure of Exculpatory and Impeachment Information*). The policy
4. “requires disclosure by prosecutors of information beyond that which is ‘material’ to guilt as

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1. articulated in *Kyles v. Whitley*, 514 U.S. 419 (1995).” *Id.* at 9-5.001(C). 15
2. 2. The USAO is not alleviated of its duty to provide relevant discovery by
3. dumping an unusable set of PDF files.
4. A fair trial presupposes fair play by the prosecution. *See, e.g.*, *Banks v. Dretke*, 540 U.S.
5. 668, 675-76 (2004) (“When police or prosecutors conceal significant exculpatory of impeachment
6. material in the State’s possession, it is ordinarily incumbent on the state to set the record
7. straight.”) The government does not automatically satisfy its *Brady* obligations simply by
8. dumping its open file or a voluminous amount of documents on a defendant. *See United States v.*
9. *Skilling*, 554 F. 3d 529, 577 (5th Cir. 2009) (noting that “[w]e do not hold that the use of a
10. voluminous open file can never violate *Brady*.”) Hence, “the prosecutorial duty to produce
11. exculpatory evidence imposed by Brady may not be discharged by ‘dumping’ (even in good faith)
12. a voluminous mass of files, tapes and documentary evidence on a trial judge [T]he prosecutor
13. retains the constitutional obligation of initially screening the materials before him and handling
14. over to the defense those items to which the defense is unquestionably entitled under *Brady*.

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1 *Emmett v. Rickets*, 397 F. Supp. 1025, 1042-43 (N.D. Ga. 1975).

* 1. This United States District Court for the Eastern District of California has previously
  2. addressed this exact issue and held that “case law does not preclude the undersigned as a matter
  3. of case management (and fairness) in ordering identification to be done.” *United States v. Salyer*,
  4. CR. S-10-0061 LKK, 2010 U.S. Dist. LEXIS, at \*6 (E.D. Cal. Aug. 2, 2010.) *Salyer* additionally
  5. noted that “a duty to disclose may be unfulfilled by disclosing too much; at some point,
  6. ‘disclosure,’ in order to be meaningful, requires ‘identification’ as well.” 2010 U.S. Dist. LEXIS,
  7. at \*19-20. Other courts have addressed this same issue and rightly find that “open-file discovery
  8. does not relieve the government of its Brady obligations.” *United States v. Hsia*, 24 F. Supp.2d 10 14, 29 (D.D.C. 1998).

##### B. This Court should Exercise its Discretion to Compel the Government to

1. **Produce Relevant Information and Provide it in Useable Form.**
2. As a result of the particular facts and circumstances of the USAO’s document dump,

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1. consisting of more than one million individually separated single-page PDF documents, this
2. Court has the discretion to, and should, compel the USAO to produce and identify the exculpatory
3. and impeachment evidence buried within its document dump. While Mr. Weygandt
4. acknowledges that *Brady* does not categorically require the USAO to identify the evidence, there
5. are a number of courts which have compelled identification in circumstances similar to the facts
6. at hand. The particular facts and circumstances of the WECO investigation necessitate this
7. Court’s intervention in ordering the USAO to produce and identify the exculpatory and
8. impeachment evidence within its document dump.
9. 1. The USAO’s failure to respond to the *Brady* Request and ESI issues is in
10. sharp contrast to DOJ’s policies and procedures.
11. Ironically, what the USAO has done in this case is strikingly at odds with the Department
12. of Justice’s (“DOJ”) own policy. In addressing the relief requested by Mr. Weygandt, it is useful
13. to briefly review some of DOJ’s key policies and procedures. On January 4, 2010, DOJ Deputy
14. Attorney General David W. Ogden circulated a Memorandum entitled “Guidance for Prosecutors
15. Regarding Criminal Discovery.” *See* USAM, Criminal Resource Manual 165. This manual

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1. describes where to look for impeachment and exculpatory information, what to review, and how
2. to review this critical information. “To ensure that all discovery is disclosed on a timely basis,
3. generally all potentially discoverable material within the custody or control of the prosecution
4. team should be reviewed.” *Id.* at p. 4, ¶ B. “Generally, all evidence and information gathered
5. during the investigation should be reviewed . . . .” *Id.* at p. 5, no. 3. “Having gathered the
6. information . . . prosecutors must ensure that the material is reviewed to identify discoverable
7. information.” *Id.* at p. 8, step 2. Considering that the USAO produced potential criminal
8. contraband on two separate occasions, the AUSA and case agent managing this prosecution have
9. clearly failed in their duty in reviewing the ESI. Moreover, despite the outstanding *Brady*
10. Request on November 9, 2012, and several letters and emails later, the AUSA’s non-
11. responsiveness in serious discovery matters, in this case, has been stark.
12. Additionally, in collaboration with others, the DOJ developed a set of principles
13. illustrative of best practices for ESI discovery management in order to help prosecutors and

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1. defense attorneys confront and manage the challenges of electronic discovery (“ESI Protocol”).
2. *See* DEP’T OF JUSTICE AND ADMIN. OFFICE OF THE U.S. COURTS JOINT WORKING GRP. ON ELEC.
3. TECH. IN THE CRIMINAL JUSTICE SYS., *Recommendations for Electronically Stored Information*
4. *(ESI) Discovery Production in Federal Criminal Cases* (2012).[5](#_bookmark4) Principle 4 states that “any
5. format selected for producing discovery should maintain the ESI’s integrity, allow for reasonable
6. usability, reasonably limit costs, and if possible, conform to industry standards for the format.”
7. The ESI Protocol strongly advocates the use of a table of contents. “In complex discovery cases,
8. a table of contents to the available discovery materials can help expedite the opposing party’s
9. review of discovery, promote early settlement, and avoid discovery disputes, unnecessary
10. expense, and undue delay.” ESI Protocol, *Strategies and Commentary* at 2. This is DOJ policy.
11. The USAO has not followed DOJ policy in Mr. Weygandt’s case.
12. Not surprisingly, the ESI produced in this case is fundamentally at odds with Principle 4
13. and includes no index or a table of contents. Here, the ESI is not in its native format, is unusable
14. in its current form, and will cost Mr. Weygandt nearly $50,000.00 just to begin reviewing the
15. 5 Available at <http://www.fd.org/docs/litigation-support/final-esi-protocol.pdf>

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1. ESI. “Production of something in a manner which is unintelligible is really not production.”
2. *Stirling*, Case No. 1:11-cr-20792-CMA, Order Granting Motion for New Trial, at 2.
3. Principle 5 of the protocol provides, “[w]hen producing ESI discovery, a party should not
4. be required to take on substantial additional processing or format conversion costs and burdens
5. beyond what the party has already done or would do for its own case preparation on discovery
6. production.” Nonetheless, “these recommendations operate on the general assumption that where
7. a producing party elects to engage in the processing of ESI, the results of that processing should,
8. unless they constitute work product, be produced in discovery along with the underlying ESI so
9. as to save the receiving party the expense of replicating the work.” *Id.* at 6-7.
10. Both the National Criminal Discovery Coordinator for the Office of the Deputy Attorney
11. General and Criminal Discovery Coordination for the Executive Office for United States
12. Attorneys support this point forcefully: “Our goal of the Protocol is to save the parties’ money by
13. reducing unnecessary duplication or processing.” UNITED STATES ATTORNEYS’ BULLETIN,

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1. Criminal Discovery, *The New Criminal ESI Protocol: What Prosecutors Need to Know*, at 8 (A.
2. Goldsmith and J. Harid, September 2012). Hence, if the government processes PDF business
3. records (as it did here) “to create TIFF and OCR text for its case preparation,[] then it should
4. produce the TIFF/text files upon the defendant’s request to save the defendant the unnecessary
5. expense of replicating the government’s processing.” *Id.* Unfortunately, the USAO in this case,
6. refused to provide the ESI in the form in which it currently uses. This is unacceptable and
7. unjustified.
8. Moreover, the “Protocol recommends that ESI received from third parties . . . be produced
9. in the form it was received or in a reasonably usable form,” language that is similar to Federal
10. Rule of Civil Procedure 34(b)(2)(E)(ii). For example, emails received as native files can be
11. produced as native files or in another format, such as searchable PDFs or as TIFF images and
12. OCR text with a load file. *The New Criminal ESI Protocol: What Prosecutors Need to Know*, at
13. 8. The USAO has translated the ESI into single-page PDF files for the Defendants. It is unclear
14. why the USAO would do this, when it has effectively made the entire ESI useless and fraught
15. with significant issues, prejudicing Mr. Weygandt in preparation of his defense.

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* 1. Finally, in the preface entitled *In the Digital Age, Ensuring that the Department Does*
  2. *Justice*, authored by Attorney General Holder of this year’s GEORGETOWN LAW JOURNAL
  3. ANNUAL REVIEW OF CRIMINAL PROCEDURE, Attorney General Holder addresses how federal
  4. prosecutors strive to exceed what the Constitution requires when it comes to disclosure in
  5. criminal cases, how the ESI Protocol will enable prosecutors to address criminal discovery in the
  6. digital age, and why a table of contents is critical in cases involving large quantities of ESI. 41
  7. GEO. L.J. ANN. REV. CRIM. PROC. (2012). The USAO’s action in Mr. Weygandt’s case repudiates
  8. the comments of the Attorney General. Repeated request for *Brady* information and useable ESI
  9. have not triggered a substantive response in this particular case.
  10. 2. This Court has discretion and authority to manage its cases and related
  11. discovery.
  12. *Salyer* addressed the issue of whether this Court has the authority to order identification of
  13. exculpatory and impeachment evidence, and determined that this Court is not precluded “from

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* 1. ordering such identification and disclosure prior to trial as a matter of case management where
  2. appropriate.” 2010 U.S. Dist. LEXIS, at \*6. Moreover, the Ninth Circuit has held that “the
  3. district court is charged with effectuating the speedy and orderly administration of justice. There
  4. is universal acceptance in the federal courts that, in carrying out this mandate, a district court has
  5. the authority to enter pretrial case management and discovery orders designed to ensure that the
  6. relevant issues to be tried are identified, that the parties have an opportunity to engage in
  7. appropriate discovery and that the parties are adequately and timely prepared so that the trial can
  8. proceed efficiently and intelligibly.” *United States v. W.R. Grace*, 526 F.3d 499, 508-09 (9th Cir. 22 2008).

1. 3. Open File discovery does not relieve the USAO of its *Brady* obligations.
2. The USAO’s modified open file disclosure does not comply with its *Brady* obligations.
3. *Salyer* held that “[w]hen the prosecution, in good faith, determines that a piece of evidence, on its
4. face, significantly tends to controvert what it is attempting to prove, disclosure (and in this case,
5. identification as well) is *mandated*.” 2010 U.S. Dist. LEXIS, at \*17 (emphasis added). In
6. determining that identification is mandated, *Salyer* stated that the “ultimate issue is whether there

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1. is ‘disclosure’ in the letter *and* spirit of Brady/Giglio simply by turning over a mountain of
2. ‘everything’ acquired over half a decade, and telling defense counsel nothing about where
3. exculpatory/impeaching information can be found.” 2010 U.S. Dist. LEXIS, at \*19 (emphasis in
4. original).
5. *Salyer* noted that “[a]t some point (long since passed in this case) a duty to disclose may
6. be unfulfilled by disclosing too much; at some point, ‘disclosure, in order to be meaningful,
7. requires ‘identification’ as well. 2010 U.S. Dist. LEXIS, at \*19-20. Finally, *Salyer* recognized
8. that Federal Rule of Criminal Procedure 16 “is intended to prescribe the minimum amount of
9. discovery to which the parties are entitled. It is not intended to limit the judge’s discretion to
10. order broader discovery in appropriate cases.” 2010 U.S. Dist. LEXIS, at \*6-7 (citing Advisory
11. Committee Notes, *Rule 16*, 1974).
12. Additionally, this District is not alone in its holding that identification of exculpatory and
13. impeachment evidence is required in certain circumstances. The District of Columbia has held

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1. that “[o]pen-file discovery does not relieve the government of its *Brady* obligations.” *United*
2. *States v. Hsia*, 24 F. Supp.2d 14, 29 (D.D.C. 1998). *Hsia* held that the government did not
3. comply with its *Brady* obligations when it disclosed 600,000 documents to the defendant and
4. asserted that the defendant “should have been able to find the exculpatory information in the
5. haystack.” *Id. at* 29. The *Hsia* Court further explained that “[t]o the extent that the government
6. knows of any documents or statements that constitute Brady material, it *must identify that*
7. *material* to [the defendant].” *Id.* at 30 (emphasis added).
8. The District of Columbia has cautioned that the issues of disclosure should be resolved in
9. favor of a more broad and liberal disclosure policy. “[I]t is important to note that courts in this
10. jurisdiction look with disfavor on narrow readings of the government’s *Brady* obligations; it
11. simply is insufficient for the government to offer ‘niggling excuses’ for its failure to provide
12. potentially exculpatory evidence to the defendant, and it does so at its peril.” *Hsia*, 24 F. Supp.2d
13. at 29; *United States v. Paxson*, 861 F.2d 730, 737 (D.C. Cir. 1988). Additionally, the District of
14. Columbia noted that the government has an affirmative duty to resolve questions in favor of
15. disclosure, and that “if the sword of Damocles is hanging over the head of one of the two parties,

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1. it is hanging over the head of the [government].” *Id.* at 30 (citing *United States v. Blackley*, 986
2. F. Supp. 600, 607 (D.D.C.1997) (internal quotations omitted).
3. In *United States v. Briggs*, 2011 WL 4017886 (W.D.N.Y. Sept. 8, 2011), prosecutors
4. produced wiretap data from voice box software and other discovery using IRPO, a suite of
5. software products commonly used by the USAO. The defendants disputed the use of IRPO,
6. arguing that IRPO’s TIFF images could not be sorted or searched. The defendants said that they
7. were entitled to production in a different file format that would give them more extensive
8. electronic searching, sorting, and tagging features. The government responded that concerns
9. about redaction of information from the original “native files,” server space, and cost limited
10. what it could provide.
11. The Magistrate Judge held, “for purposes of the motion in this case, the standard of
12. Federal Rule of Civil Procedure 34(b)(2)(E)(ii) should apply here, that is, the Government
13. produces this ESI ‘in a reasonably usable form or forms.” *Briggs*, 2011 WL 4017886, at \*8; *see*

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1. *also United States v. Stirling*, Case No. 1:11-cr-20792-CMA, Order Granting Motion for New
2. Trial, ECF No. 214 (S.D. Fla. June 5, 2012) (adopting FRCP 34(b)(2)(E)(ii) and requiring
3. government to produce ESI, which was not apparent by reading the disk or hard drive, in a
4. reasonably usable form). The Magistrate Judge determined that “as between the Government
5. and defense, the Government is in a better position to organize this mass of information and re-
6. present it in a manner that is searchable by the defense.” *Briggs*, 2011 WL 4017886, at \*8
7. Here, the USAO has disclosed its open file of over one million single-page PDF files, only
8. four months before trial. This open file document dump, with nothing more, does not comply
9. with *Brady*. These one million plus pages exceeds the 600,000 pages which *Hsia* held to be an
10. insurmountable “haystack.” 24 F. Supp.2d at 29. Similar to the government’s conduct in *Salyer*,
11. the USAO has been in possession of these documents and has had a working knowledge and
12. understanding of these documents for 4 years, since 2008 when the USAO subpoenaed WECO
13. for documents (owned by Gulfstream). [6](#_bookmark5) As the investigation began in 2007, the USAO is 27

6 In *Salyer*, the Court noted that the government cannot in good faith assert that it is unable to identify the relevant

28 evidence after more than five years of pre-indictment investigation. 2010 U.S. Dist. LEXIS, at \*14.

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1. presumably intimately familiar with these documents. In contrast, Mr. Weygandt only received
2. the one million plus pages a few weeks ago, and now because of the criminal contraband
3. contained in the ESI, his counsel is unable to view any of it at this time.
4. Mr. Weygandt’s freedom is at stake and his constitutional rights have been violated. The
5. USAO’s massive unsearchable document dump and nothing more, does not meet the *Brady*
6. requirements, and does not comply with the letter and spirit of *Brady* as outlined by this Court in
7. *Salyer.* The persuasive authority in this jurisdiction suggests in compelling fashion that the
8. USAO must identify the exculpatory and impeachment evidence under the circumstances
9. presented herein. Therefore, this Court should compel USAO’s identification and production of
10. the exculpatory and impeachment evidence.
11. 4. Factors and considerations in determining *Brady* violations after open file
12. disclosure.
13. A determination of whether identification, not simply disclosure, is appropriate “seem[s]

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1. to turn on what the government does *in addition to* allowing access to a voluminous open file.”
2. *United States v. Skilling*, 554 F.3d 529, 577 (5th Cir. 2009). Similarly, and in the words of this
3. Court, the “ultimate issue is whether there is ‘disclosure’ in the letter *and* spirit of Brady/Giglio
4. simply by turning over a mountain of ‘everything’ acquired over half a decade, and telling
5. defense counsel nothing about where exculpatory/impeaching information can be found.” *Salyer*,
6. 2010 U.S. Dist. LEXIS, at \*19 (emphasis in original). Whether identification is appropriate under
7. these particular circumstances, this Court should ask: (1) What did the USAO do *in addition to*
8. dumping more than one million single-page PDF files on Mr. Weygandt only four months before
9. trial?; and (2) Did the USAO’s document dump comply with the letter and spirit of *Brady* and
10. *Giglio*? The answers are a resounding “nothing” and “no.”
11. In considering whether to require a government entity to identify exculpatory and
12. impeachment evidence in a prior disclosure, courts have considered a variety of factors. Where
13. the government: (1) produced an electronic and searchable database; (2) identified a set of “hot
14. documents”; (3) provided an index; and (4) allowed the defendant access to a number of other
15. databases regarding prior related litigation, *Skilling* held that the government was not required to

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1. specifically identify the requested evidence. *Skilling*, 554 F.3d at 577. Notably, in *Skilling*, the
2. Fifth Circuit considered that, unlike this instant case, “the government did much more than drop
3. several hundred million pages on Skilling’s doorstep.” 554 F.3d 529 at 577. Similarly, the
4. District Court for the District of Connecticut found that because the Government: 1) provided the
5. defendants with its hot docs; 2) agreed to make its final *Brady* and *Giglio* disclosures far in
6. advance of trial; and 3) coupled with providing a searchable electronic format of its entire Rule
7. 16 production, it was not required to identify the *Brady* and *Giglio* material already disclosed.
8. *United States v. Ferguson*, 478 F. Supp. 3d 220, 241-42 (D. Conn. 2007).
9. *Salyer* considered the following facts concerning the defendant: (1) he was the sole
10. defendant, thus there were no co-parties with whom the defendant could share the review burden,
11. (2) he was represented by a relatively small defense team, (3) he did not have access to corporate
12. assistance in locating the documents needed, and (4) he was incarcerated pending trial. 2010 U.S.
13. Dist. LEXIS, at \*21. In ordering identification of the exculpatory and impeachment evidence, the

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1. Court considered these factors, plus those set forth in *Skillin*g. *Id.* at \*23
2. In this case, the USAO has not provided a searchable database. The USAO has not
3. provided a list of “hot documents.” The USAO has not provided any sort of index or catalogue of
4. the one million plus documents. The USAO has done nothing more than drop over one million
5. single-page PDF files on Mr. Weygandt’s doorstep. In fact, the USAO has not attempted to
6. comply with the minimum requirements of *Brady* and clearly ignored its own policies and
7. procedures*.* Notably, Mr. Weygandt shares many of the factors which formed the basis for
8. requiring identification in *Salyer*.
9. First, while Mr. Weygandt is not the sole defendant, there are no over-lapping discovery
10. needs that could be shared by the defense teams. Mr. Weygandt cannot and should not rely upon
11. his co-defendants to locate exculpatory and impeachment evidence that is unique to him. [7](#_bookmark6)
12. Second, Mr. Weygandt has a relatively small legal team, consisting of 4 attorneys, who are now
13. tasked with the seemingly insurmountable job of organizing each and every single-page PDF file
14. into its original document form, and then reviewing each and every document, without the benefit
15. 7 Apparently the other WECO defendants have had the ESI for one year.

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1. of electronic searching capabilities. Third, Mr. Weygandt does not have the assistance of a
2. corporate counterpart who is typically better equipped, both financially and in manpower, to
3. review this voluminous amount of documents.
4. Accordingly, Mr. Weygandt shares many of the factors this Court previously found
5. sufficient to require identification of the exculpatory and impeachment evidence. Moreover, the
6. factors commonly offered as the basis for *not* requiring identification are *not* present in this case,
7. as the USAO has done absolutely nothing more than drop over one million single-page PDF files
8. on Mr. Weygandt, only four months before trial. The facts and circumstances of this case are
9. appropriate for compelling production and identification. This Court should grant Mr.
10. Weygandt’s Motion.
11. 5. The USAO disclosure of documents verges on bad faith in this particular
12. case and is in a better position to identify and produce the exculpatory and
13. impeachment evidence in a more user-friendly manner.

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1. The USAO’s document dump of over one million single-page PDF files verges on bad
2. faith and ill intent. It is highly suspect that the USAO has ever, for the past 4 years, organized
3. and utilized these documents in the manner in which they have been disclosed to defense. It is
4. further highly unlikely that the USAO has never created an index or catalogue system to organize
5. these over one million pages. From conversations with AUSA Reardon, indeed, the USAO is
6. using a different set of files organize in a much more logical and straightforward manner.
7. Additionally, the USAO is obligated to have, and is deemed to have, knowledge of any
8. exculpatory and impeachment evidence, and is in a much better position to locate and identify
9. such evidence and produce it to the defense.
10. a) *The USAO’s conduct establishes bad faith in this particular case.*
11. In *Skilling*, the Fifth Circuit held that there may be instances where disclosure of a
12. voluminous open file can violate *Brady*, identifying a number of circumstances that could amount
13. to *Brady* violations. 554 F.3d at 577. First, *Skilling* held that “[c]reating a voluminous file that is
14. unduly onerous to access might raise similar concerns.” *Id.* Second, the Fifth Circuit noted that
15. “it should go without saying that the government may not hide *Brady* material of which it is

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1. actually aware in a huge open file in the hope that the defendant will never find it.” *Id.* Third,
2. *Skilling* found that “evidence that the government ‘padded’ an open file with pointless or
3. superfluous information to frustrate [the] defendant’s review of the file might raise serious *Brady*
4. issues.” *Id.*
5. The USAO appears to have engaged in several of these tactics, expressly identified in
6. *Skilling*, as grounds for *Brady* violations. First, the USAO’s disclosure of over one million
7. single-page PDF files is clearly a voluminous open file that is unduly onerous to access. It is
8. unreasonable for the USAO or this Court to expect that Mr. Weygandt and his defense team could
9. possibly wade through this document dump in its current form. In fact, Mr. Weygandt has been
10. compelled to obtain quotes from electronic document and data services vendors for assistance in
11. organizing and making the files reviewable. It will cost Mr. Weygandt more than $55,000.00 to
12. group the single-page files back into their original form as a whole document, make the PDF files
13. searchable, in an OCR format, and to translate the PDF files into TIFF files, so that Mr.

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1. Weygandt’s counsel can organize the documents in its internal trial preparation software. (*See*
2. Estimates from Vendors eLit and Quivx, attached as Ex. 6.) This costly process of translating the
3. files will take weeks. Hence, Mr. Weygandt’s total cost and time just to be able to search and
4. organize the ESI will be a significant impediment to preparing for a fair trial. Such an expense is
5. unduly burdensome, prejudicial, and wholly unnecessary. This expense would not be required if
6. the USAO had acted in good faith and produced the documents in a timely format and manner
7. which could actually be utilized by Mr. Weygandt – and *is* used by it.
8. Second, it is possible that because of the form in which the USAO has provided the ESI,
9. exculpatory and impeach evidence might in fact be effectively hidden, making it virtually
10. impossible for Mr. Weygandt to ever find. The USAO is required to know what exculpatory and
11. impeachment evidence exists. This District Court has held that “the *prosecution* has the duty to
12. *affirmatively* scour those records of the agencies considered the ‘government’ for purposes of the
13. criminal case in order to determine and acquire those materials which would be considered *Brady*
14. exculpatory and *Giglio* impeaching.” *Salyer*, 2010 U.S. Dist. LEXIS, at \*10; *Kyles v. Whitley*, 28

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1 514 U.S. 419, 437 (1995); *United States v. Price*, 566 F.3d 900, 908–909 (9th Cir. 2009).[8](#_bookmark7) The

* 1. USAO “retains the constitutional obligation of initially screening the materials before him and
  2. handing over to the defense those items to which the defense is unquestionably entitled under
  3. Brady.” *Emmett v. Ricketts*, 397 F.Supp. 1025, 1043 (N.D.Ga.1975).
  4. Such knowledge is only reasonable as the USAO sought out and obtained the documents,
  5. and has been in possession of these documents for many years. The USAO cannot then hide the
  6. relevant evidence in a massive, unorganized, unsearchable document dump, as it effectively has
  7. done. *Skilling*, 554 F.3d at 577. Such conduct clearly violates both the intent and spirit of *Brady*.
  8. *Id.; Salyer*, 2010 U.S. Dist. LEXIS, at \*19.
  9. Third, it appears that the ESI is padded with irrelevant and gratuitous information,
  10. ultimately effecting Mr. Weygandt’s review of the ESI and obstructing trial preparation. *Skilling*,
  11. 554 F.3d at 577. The USAO’s disclosure of over one million pages is suspect when, the defense
  12. has uncovered several folders, consisting of thousands of single files, appearing to consist of

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* 1. computer code. What is the relevance of what appears to be thousands of single-page PDF’s
  2. filled with computer code? The USAO’s massive document dump, coupled with its failure to
  3. address the *Brady* Request is prejudicial and frustrates Mr. Weygandt’s defense in preparation for
  4. trial.
  5. b) *The USAO is in a much better position to identify and produce the*
  6. *exculpatory and impeachment evidence.*
  7. As set forth herein, it is extremely unlikely that the USAO originally organized all of
  8. these pages as single-page PDF files. To review the documents in this nature is truly a nightmare.
  9. It is therefore highly suspect that the documents are now disclosed in this manner. Additionally,
  10. it is highly unlikely that the USAO does not have an index or other cataloging system for this
  11. massive amount of documents. Further, similar to the government in *Salyer*, the USAO has been
  12. in possession of these documents for approximately 4 years, and presumably became familiar 26

8 *See also United States v. Ferguson*, 478 F.Supp.2d 220, 238 (D.Conn. 2007) (holding that the government is

1. “presumed to know all information gathered by his office in connection an investigation of the case.”); *Whitley*, 514

U.S. at 437 (holding that the government has a “duty to learn of any favorable evidence known to the others acting on

1. the government’s behalf in the case.”).

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1. with these documents. On the contrary, Mr. Weygandt has only a few short months to review
2. over one million pages of documents and prepare his defense against the allegation in the
3. Superseding Indictment for which he could potentially be sentenced to prison. Because the
4. USAO is obligated to know of the exculpatory and impeachment evidence it has a duty and
5. obligation to identify and produce it to the defense. The USAO in this case has been in possession
6. of and working with these documents for four years. The USAO’s document dump demonstrates
7. its conduct is below the bare minimum for disclosure. The USAO is in a better position to
8. produce and identify the exculpatory and impeachment evidence. The defense moves for an order
9. from this Court to compel the USAO to meet its *Brady* obligations and to rectify the ESI
10. problems it created.

##### IV. CONCLUSION

1. The USAO’s tactics, in this case, should not be countenanced. Mr. Weygandt is entitled to
2. a fair trial. Accordingly, Mr. Weygandt’s Motion to Compel must be granted, and this Court

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1. should compel the USAO to produce and identify all exculpatory and impeachment evidence.
2. This Court should also compel the USAO to provide the ESI in a format in which the USAO has
3. already created for itself. 17

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| Dated: December 16\_, 2012 | SNELL & WILMER L.L.P.  */s/ Craig S. Denney*  CRAIG S. DENNEY  California Bar No. 244692 JUSTIN R. COCHRAN, ESQ.  (Admitted *Pro Hac Vice*) 50 West Liberty, Suite 510  Reno, Nevada 89501  DOMBROFF GILMORE JAQUES & FRENCH  MARK A. DOMBROFF, ESQ.  (Admitted *Pro Hac Vice*) MATTHEW J. CLARK, ESQ.  (Admitted *Pro Hac Vice*)  1676 International Drive - Penthouse Mclean, Virginia 22102  *Attorneys for Defendant William Hugh Weygandt* |

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*Hand-delivered*

Mr. Kyle Reardon

Assi tant United tates Attorney United tales Attorney's Office Eastern District of California 501 1 treel uit 10-100

acramento CA 95814

Re: *United Stales* 11. *William Weygandt* - 2: l 1-CR-00429-JAM

*Defense request for Brady material (exculpatory evidence)*

Dear Mr. Reardon:

As counsel for William Weygandt, attorney Mark Dombroff and 1 have reviewed the WECO discovery documents (approximate ly 1,500 pages) that you provided in advance of the arraignment in the above case. We appreciate the government's early production of discovery. We also understand that you have additional voluminous discovery documents from Gulfstream that you will provide in electronic format on a hard drive. It is our understanding that these voluminous documents are discovery materials from the civil litigation that occurred in Chancery Court in Delaware.

The discovery materials received and reviewed thus far identify a number of FBI confidential informants confid ntial sources of information, cooperating witnesses and cooperating defendants (collectively referred to as 'informants' )1 in the lengthy Department of Justice ( DOJ ) investigation of WECO and our client. In our review of the discovery we have found minimal *Brady* or *Giglio* material regarding these informants in lhe DOJ production of documents. We understand there may b a timing is s ue on disclosure of certain information. Nevertheless, we wanted to identif-y various calegories of information Lhat are relevant and material to Mr. Weygandt s defense in this case. We request timely production of these documents and materials lo lhe defens .

1 The defen e recognizes that FBI DHS-OIG, and DOT-OJG may refer to informants in a variety of ways (confidential ources. cooperating defendant etc.). This request pertains to all categories of such

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Pursuant to the Federal Rules of Criminal Procedure Rule 16 and the Local Rules for this case please provide us with hard or electronic copies of the following discovery materials and information. We believe these materials should be produced to the defense pursuant to the governments obligations under *Brady v. Maryland* 373 U. . 83 (1963) and *Giglio v. United Stales* 405 U. . 150 (1972) and their progeny.

***Brady* Material** (Excu lpat ory Evidence)

The defense requests all documents statements law enforcement and/or agents reports and tangible evidence favorable to the defendant on the issue of guilt and/or which affects the credibility of the government ' s case. Impeachment as well as exculpatory evidence falls within *Brady's* defmition of evidence favorable to the accused. *United tales v. Bagley* 473 U.. 667 (1985) *United Stales* v. *Shaffer* 789 F.2d 682 (9th Cir. 1986).

**Regulatory and lndu try Audit/Inspection Report of WECO**

A you know there has been significant and xtensive regulatory and industry review of WECO and i ts operations during U1e past decades. During his tenure as president of WECO Mr. Weygandt relied on the regulatory and industry audits of the company for information and feedback on U1e company s compliance in lhe aviation industry. As a result any and all audjt and inspection reports of the company would clearly constitute exculpatory evidence for Mr. Weygandt. There are several categories of these reports.

1. All Federa l Aviation Administration ( 'FAA ") audits and inspection reports of WECO.
   1. It is our understanding that FAA audits /inspections would occur approxinlately 2 to 4 Limes per year.
   2. In our prior presentation to the DOJ we provided copies of fifty (50) audit and inspection rep 11s that *Mr.* Weygandt had access to during his tenure at WECO. We request full copies of the reports. Thes are material exculpatory evidence for Mr. Weygandt.
   3. We request copies of all AA correspondence and communications regarding WECO operations on any issues of compliance and/or violations.
2. All Gulfstream audits and inspection repotis of WE
   1. In our prior presentation to the DOJ we provided copies of two audit reports (late 1990s) that Mr. Weygandt had access to. There should be numerous other audit/inspection reports during the past decade. Gulfstream was a major

customer of WECO for app ro, imately 20 years. lt is our understanding that Gulfstream did audits/inspections on a□ annual basis at WECO. We would reasonably assume that Gulfstream provided these reports to the DOJ in its cooperation with the investigation. We have reason to believe that the Gulfstream audits and inspections were favorable. This information would constitute exculpatory evidence for Mr. Weygandt.

* 1. Gulfstream's due diligence of CO prior to acquisition was comprehensive. It is our understanding that Gulfstream conducted due diligence of WECO for approximately one year leading up to the sale (that occurred in January 2007). We can only reasonably assume that Gulfstream provided copies of its due diligence reports to DOJ. This information would constitute material exculpatory evidenc for Mr. Weygandt.

1. Industry audits and inspections of 0 conducted by any customers of WECO.
   1. rt is our understanding that WE O was regularly audited and/or inspected by its aviation industry customers. We requ st production of copies of those audits and/or inspections that will show favorable reviews of WECO s operations. These reports would be material exculpatory evidence for Mr.

Weygandt

* 1. These reports should be maintained by WECO and we reasonably asswne that Gulfstream would have provided DOJ with copies of the reports.

**Coordinating Agency for upplier Evaluations** ( **C.A.. E.")**

We request copies of all .A. .E. audit and inspection reports of WECO.

1. 1n our prior presentation to AUSA ean Flynn in this case (approximately two years ago), we provided him with the name and address of C.A.S.E. so that DOJ could request or subpoena the C.A. . . audit/inspection reports of WECO. We can only reasonably assume that DOJ obtained copies of these reports from C.A.S.E. and/or G uJfsu·eam. These audits were comprehensive in nature and conducted by independent auditors from the aviation industry. It is our understanding that C.A. . . audits of WE O were favorable.
2. In particular Lhere was a .A. . . audit of WECO on or about June 28, 2007 (which was six months after the Gulfstream acquisition of WECO). We can only reasonably assume that Gulfstream has a copy and produced the C.A.S.E. audjt of WECO to D J since Gulfstream owned and controlled the company

--- **L.L.P. -**

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as of January 2007. This and other C.A.S.E. audit reports would constitute material exculpatory evidence for Mr. Weygandt.

**Contract and Service Agreements with WECO**

Pursuant to 14 C.F.R *§*145.217 a certificated repair station may contract a maintenance function pertaining to an article to an outside source. We have reason to believe that WECO contracted with outside sources as it pertains to testing and maintenance of articles for whjch it was rated. There are several categories of these agreements.

1. We request all information including reports invoices purchase orders service contracts, or other materials relating to lhe calibration maintenance, inspection or purchase ofWECO tools and equipment
   1. We have reason to believe that outside vendors including but not limited to Micro Precision Calibration Inc. ("MPC ') and American Lab & Systems ( ALS' ) cali bra ted , maintained or inspected WECO tools and equipment. This information would constitute exculpatory evidence for *Mr.* Weygandt.
2. All information and matetials regarding th performance of Non-Destructive Testing (' NDT ) performed by WECO or on WECO s behalf by others.
   1. We have reason to believe that NDT was performed by WECO, or that NDT was performed on WECO' s behalf by others. TI-ti information would constitute exculpatory evidence for Mr. Weygandt.
3. All infom1ation and materials pertaining to any contract or agreement between WECO and any outsid source /vendor that performed article maintenance on behalf of WECO. Such contracts or agre ments would constitute exculpatory evidence for Mr. Weygandt.

**Information regarding Government Informants Confidential ources, Cooperating Witne c and/or Cooperating Defendants in the Investigation**

The defendant requests that the government provide all relevant information concerning any confidential i nformants, confid ntia1 sources, cooperating witnesses and cooperating defendants involved in this case. Relevant information would include any and all statements by these individuals about WECO in the investigation (whether made to Gulfstream or DOJ). We request copies of all 'agent notes' of interviews proffers debriefings of these individuals. Since FBI 302s and other agent reports are only summaries of interviews we request copies of the agent notes of the informant interviews because these may contain inconsistent contradictory or inaccurate information U1at was not included in the final draft of Lh agent s report.

## Snell & Wilm r

L.L.P. ---

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The government is obligated to disclose the identity and location of any informants or cooperating witnesses as well as the id ntity and location of any other percipient witnesses unknown to the defendant. *Roviaro v. United States* 353 U.. 53 (1957).

Please provide copies of any and all police reports arrests charges and convictions for these informants. If any of these informants were provided any benefits by the government in exchang for their cooperation and/or testim ny in the investigation, pl ase di clo e the nature of the compensation and total benefits. Such information would be exculpatory information for *Mr.* Weygandt. We request copies of any confidential source agreements, proffer agreements (also known as 'Queen for a Day or K.astigar letters) and correspondence by DOJ and attorneys representing these individuals.

**Evidence of Bia or Motive to Lie by Government Agent and Informants**

The defense requests any evidence that any prospective government witness is biased or prejudiced against him, or has a motive to fal ify or distort hi or her testimony. *Pennsylvania v. Ritchie* 480 U.. 39 (1987); *United Slates v. trifler,* 851 F.2d 1197 (9th Cir. 1988); *United*

*/ates* v. *Hentho rn,* 931 F.2d 29, 31 (901 Cir. 1991) (law enforcement personnel files). Th.is request would include Anthony Zito Michael Maupin, Jerry Kuwata Wi.ll iam Howell, Matt Mortimer William Soito Daniel B jenariu David Atkins Nick Guthr ie, Daniel Radu and any oth r government witness in this ca e.

For exa mp le , Anthony Zit appear Lo have made variou inconsistent tatements to the FBl and federal agents in this investigat io n. The DOJ discovery contains various FBI 302 reports of Zit o' s interviews. The defense requests copies of all FBI agent handwritten notes of these interviews and any debriefing interviews before/after Zito s guilty plea.

We are aware that a nwnber of FAA employees conducted audits and inspections of WECO on numerous occasions over the years. We request copies of any investigations and/or disciplinary action taken by the FAA or Office of Lnspector General against these FAA employees with respect to WE 0.

**Evidence of Criminal or Regulatory Agency Investigation of Government Witne es/Confidential Informant /Confidential ource /Cooperating Defendant**

The defendant requests any evidence that any confidential informant is under invesligation by federal state or local authorities for any criminal conduct. *United fates v. Chitty* 760 F.2d 425 (2d Cir.) *cerl. denied,* 474 U. . 945 (1985) .

From our review or the DOJ disc very a number or former WE technicians (Dc\illel Bejenariu Michael Maupin, Matt Mortimer and others) have admitted to committing various acts of criminal conduct in repairs and overhauls a employee at WE 0. inc many of these

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individuals were FAA license holders (aircraft and powerplant license) it would be reasonable to assume that the FAA or other regulatory ag ncies look some typ of disciplinary action against the e individuals. The defense reque t copies of any investigative reports and/or disciplinary action that was taken (or may be pending) against lbese individuals.

***Jencks* Material.** 18 U.. C. §3500.

The defense requests early disclosure of all government witness statements, including grand jury testimony. 2 The DOJ discovery provided thus far to defense only included grand jury testimony of co-defendant Doug Johnson. ince this investigation has been ongoing for at least 5 years, we reasonably assume that other witnesses have testified before the grand jury. We request copies of the grand jury transcripts of their witnes testimony. If any federal agents testified as summary witnesses before the grand jury we request copies of their testimony as well.

***Giglio* Information**

Pursuant to *Giglio v. United States,* 405 U. . 150 ( I 972) the defense requests all statements and/or promises express or implied made lo any government informant in exchange for his/her assistance - in whatever manner - in this case and any other information relevant to the confidential informants, c operating witnesses ooperating defendants, or tmindicted co­ conspirators in this case.

**Gulf tream Communication** 3 **with the Department of Justice on WECO iove tigation**

It is ow· understanding that DOJ considers Gulfstream to be a cooperating entity in U1e federal investigation of WECO and Mr. Weygandt. ince F bruary 2008 it appears that Gulfstream has provided information (including voluminous document productions correspondence and oral presentations) to the DOJ in the investigation. It is our understanding that Gulfstream has also alleged Mr. Weygandt is culpable for employee conduct while portraying itself as a victim. It has been and remains our contention that Gulfstream has had significant financial motives to blarn Mr. Weygandt in this case in the company s fforts to insulate itself from criminal and civil liabiljty for WE O operations in which it was lbe owner as of January 2007 .

As such we request copies of any and all correspondence emails facsimiles pre entations or 0U1er materials between Gulfstream and DOJ (to include but not limited to

2 The defense recognizes that *Jencks* is not required to be produced until after the witness testifies. However , early disclosure will prevent unnecessary delays in the trial proceedings.

3 Thi would include any communications by Gulfstream par nt company (General Dynamics) with

DOJ regarding WECO.

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AU A Laura Ferris , AUSA ean Flynn yoursel() and federal agenls involved in the WECO investigation.

**Warehouse 4**

In the superseding indictment it alleges a pecific overt act by Mr. Weygandt that he 'signed the WECO Repair tation Manual/Quality A surance Manual which failed to disclose Warehouse 4. ( *ee* uperseding Indictment p.16 5c). We request production of any FAA or federal agency reports regulations, witness, or expert opinions that substantiate DOJ s contention that Warehouse 4 needed to be disclosed in the WECO Repair Station Manual/Quality Assurance Manual. Production of these materials is relevant and necessary for Mr. Weygandt ' s defens .

**Electronic Communications and Corre pondence by Government [nformant**

The defense requests copies of all email c mmunications and correspondence by any of the government informants confidential sources, cooperating witnesses and cooperating defendants regarding WE O and the federal investigation. 111.is request pertains to 1) Anthony Zito 2) Michael Maupin 3) Jerry Kuwa ta, 4) William Howell 5) Matt Mortimer, 6) David Atkins, 7) Daniel Bejenariu, 8) William Soito 9) Nick Guthrie I 0) Daniel Radu and any other informants.

TI1e defense reasonably beli ves the e former WE O employees maintained communications between one another about their fraudulent conduct and/or the investigation during (and after) th ir employment with WE 0. For example we have reasonable basis to believe David Atkins, Willian1 Soito and Daniel Bejenariu are social acquaintances. Jerry Kuwata and Chris MacQueen are also known as friends. These communications would provide material exculpatory evidence of motives and biases for these individuals to participate m wrongdoing cover it up and then all ge wrongdoing of others including Mr. Weygandt.

**Government Examination of Law Enforcement Per onnel File**

Mr. Weygandt requests that the government examine the per onnel files (and any other files witllin its custody care or control, or wllich *could* be obtained by the government) for all testifying witnesses. This includes te tifying federal officers, agents and personnel who may have been controlling or contactjng the confidential informants sources of information and cooperating defendants in this case. The defense requests that these files be reviewed by the government attorney for evidence of pcrjurious conduct or other like dishonesty or any other material relevant to impeachment , or any information that i exculpatory pursuant to its duty under *United /ate s v. Henthorn* 931 F.2d 29 (9th ir. 1991). *See United /ates v. Jennings* 960 F.2d 1488 1492 (9th Cir. 1992).

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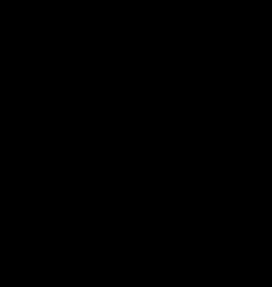
We recognize U1is defense discovery reque l contain a list of categories that may requir time for DOJ to compile and produce. evertheless, the requested materials would constitute *Brady* material (exculpatory evidence) for Mr. Weygandt. hould you oppose production of one or more items of discovery , please advise us in writing as to which items will be provided and which items you will not provide. If there is a basis for DOJ's refusal lo provide certain information please explain it with respecl lo the category. The defens can then detennine whether to seek appropriate relief with the court.

The federal investigation of WECO and Mr. Weygandt dates back to early 2007. Mr. Weygandt was not charged until early October 2012. We would appreciate a timely response within ten (I 0) days. Please note that we are amenabl to a rolling production of the requested discovery documents . The requested documents are material exculpatory evidence for Mr. Weygandt.

If you have any que tions re.garding this request or the above categories of documents, please contact me at yow- convenience. Mark Dombroff and I are available to discuss at your convenience.

Very truly yours

NELL & WILMER

*CS'*

cc: Mark Dombroff

**From:** Denney, Craig

**To:** ["Reardon, Kyle (USACAE)"](mailto:Kyle.Reardon@usdoj.gov)

**Cc:** [Denney, Craig](mailto:cdenney@swlaw.com); [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

**Subject:** RE: Weco - hard drive for discovery

**Date:** Wednesday, November 07, 2012 5:32:47 PM

thanks

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

From: Reardon, Kyle (USACAE) [<mailto:Kyle.Reardon@usdoj.gov>] Sent: Wednesday, November 07, 2012 4:43 PM

To: Denney, Craig

Subject: RE: Weco - hard drive for discovery Craig;

Thanks. We'll get it loaded and hopefully have it in time for Friday (but more likely have it ready for next Tuesday).

As far as the Kuwata statements go, the paralegal handling discovery in this case is in trial. I'll send another reminder and work to have it to you on Friday.

Kyle

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

From: Denney, Craig [<mailto:cdenney@swlaw.com>] Sent: Wednesday, November 07, 2012 11:55 AM To: Reardon, Kyle (USACAE)

Cc: Denney, Craig; Mark Dombroff Subject: Weco - hard drive for discovery

Kyle,

Hello, our office will be sending a FedEx out today to you with a hard drive for the Weco discovery. Craig

Sent from my iPhone

**Denney, Craig**

**From: Sent: To:**

**Cc: Subject:**

Denney, Craig

Friday, November 09, 2012 2:33 PM Kyle Reardon

Denney, Craig Weco

Kyle,

Hello, the AUSA who covered Bill Weygandt's arraignment did not have any discovery documents.

If you get this message in the next 30 minutes, please call me. 775.830.2432 I am at the USMS getting my client processed.

I have a letter for you as well. I can drop it off at your office if you are busy. Craig

Sent from my iPhone

1

**From:** Denney, Craig

**To:** ["Reardon, Kyle (USACAE)"](mailto:Kyle.Reardon@usdoj.gov)

**Cc:** [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com); [Denney, Craig](mailto:cdenney@swlaw.com) **Subject:** RE: Weco - hard drive discovery and Brady material **Date:** Tuesday, November 27, 2012 5:32:49 PM

**Importance:** High

Kyle:

Hello, not sure what the delay is on WECO. It has been a while since Bill Weygandt's arraignment (11/9) and we still have not received the hard drive with the WECO discovery. We would also appreciate a response on the letter request for exculpatory evidence with the categories that you will provide or oppose providing to defense.

Please let me know as soon as possible. Craig Denney

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

From: Denney, Craig

Sent: Wednesday, November 21, 2012 12:44 PM To: 'Reardon, Kyle (USACAE)'

Cc: Denney, Craig; [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

Subject: RE: Weco - hard drive discovery and Brady material Importance: High

Kyle:

Hello, my office still has not received the hard drive of the Weco discovery. Was it sent out?

Also, please let me know your position on which (hopefully all) of the categories of Brady documents we have requested in my letter from the date of the arraignment.

Craig Denney

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

From: Reardon, Kyle (USACAE) [<mailto:Kyle.Reardon@usdoj.gov>] Sent: Friday, November 16, 2012 12:19 AM

To: Denney, Craig

Subject: RE: Weco - hard drive discovery and Brady material Craig;

Discovery has been copied to the hard drive and will go out in tomorrow's mail. Kyle

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

From: Denney, Craig [<mailto:cdenney@swlaw.com>] Sent: Thursday, November 15, 2012 1:06 PM

To: Reardon, Kyle (USACAE)

Cc: Denney, Craig; Mark Dombroff

Subject: Weco - hard drive discovery and Brady material

Kyle:

Hello, has your IT person been able to copy the bulk discovery to the hard drive we provided? Also, can you let me know what documents you are going to provide in the Brady evidence letter? I am in NYC this week but wanted to follow up since we now have a trial date.

Thanks, Craig

Sent from my iPad

**From:** Denney, Craig

**To:** [Kyle Reardon](mailto:kyle.reardon@usdoj.gov)

**Cc:** [Denney, Craig](mailto:cdenney@swlaw.com); [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

**Subject:** Weco discovery issues

**Date:** Friday, November 30, 2012 9:37:31 AM

Kyle,

Hello, we received the hard drive in the mail yesterday. I see it contains over one million pages in discovery. Thanks for finally sending it out. During the Weco civil litigation with Gulfstream in Chancery Court more than 2 years ago, we only received approximately 100,000 pages or less. The USAO then intervened in the civ case and obtained an order from the court to stay civil discovery. It appears Gulfstream produced another million pages of documents to the USAO that we did not have access to.

I wanted to set up a conf call on Monday 12/3/12 to discuss the discovery with you and Mark. If the hard drive you provided to defense contains all the documents that Gulfstream produced to the USAO in the grand jury investigation, I would assume that Gulfstream provided you with some index or directory to the documents. The hard drive shows 1183 file folders that contains hundreds of PDFs in the folders.

Please let me know what time works for a conference call on Monday Dec 3 to discuss the discovery issues. We would prefer to meet and confer and resolve the discovery issues without filing motions. However, it has been difficult to get timely responses from your office to requests for info on this case.

I provided a letter to your office requesting Brady documents in various detailed categories on the date of Mr. Weygandt's arraignment - Nov. 9, 2012. As of today's date, we have received no response in writing or by phone on the Brady request. The production of the hard drive materials was delayed nearly 3 weeks after arraignment.

This trial is scheduled for April 8, 2013. The USAO and FBI have investigated Weco and Mr. Weygandt since 2007. The original indictment of 6 former employees was in late Sept 2011. Mr. Weygandt was indicted in Oct 2012. There should be no reason that discovery and Brady material is delayed in production to defense in this case.

Please let me know a convenient time for a conf call on Monday. Since arraignment, I have sent a number of email messages and also left phone messages with you but have not received the courtesy of a call or email back.

Mark Dombroff and I will adjust our schedules to accommodate you for a call on Monday 12/3/12. If we don't receive a call, we will file a motion to compel next week to request court intervention in discovery and Brady materials production. I would prefer not to do that but too much time is passing without response from your office.

Mr. Weygandt is entitled to production of all exculpatory evidence and I have detailed the categories in my letter. The bulk production of over one million pages of documents without any index or directory of he materials is unfair and has the appearance of gamesmanship. I hope that is not the case. As a result, I would respectfully request a conference call on Monday. Thanks very much for your attention to this.

I am traveling this morning so you can reach me on my cell if you wish to discuss today. 775.830.2432. Regards,

Craig Denney

Snell & Wilmer LLP 775.830.2432

Sent from my iPhone

December 6, 2012

Mr. Justin Cochran Snell & Wilmer

3883 Howard Hughes Pkwy., #1100 Las Vegas, NV 89169

***Re: United States v. Wegandt***

Electronic Discovery Services Retainer Agreement

Dear Mr. Justin Cochran:

This letter confirms that you have retained QUiVX eDiscovery Solutions “QUiVX” to provide digital forensics, consulting and/or electronic discovery services to you, your Client, or your designee in the matter referenced above. We are pleased to provide these services to you. This letter will outline the terms of this engagement.

The services performed will be based on requests by you, your client, or your designee. The work requested will be performed and billed according to the enclosed pricing schedule.

If work is requested that has a definable scope, we are happy to provide an estimate or a fixed fee as appropriate. If we are ordered by the Court to perform any services on this matter, you accept the responsibility for fees incurred. You will also be billed for out of pocket expenses such as mileage, parking, tolls, computer media, applications, tools or services specifically required by the engagement. Any individual expense in excess of $300 will be approved by you in advance.

We will bill for consulting services on at least a monthly basis. All invoices are due Net 30. We reserve the right to stop work on this matter if our invoices remain unpaid for 30 days. Any billing disputes must be submitted within 30 days. All accounts must be in good standing before expert testimony is given.

QUiVX will take reasonable steps to protect the confidentiality of information and data in this case. The parties acknowledge that, if compelled by law to disclose information, QUiVX will

comply with the disclosure requirement and will notify you in advance of such required disclosure or as soon as possible if no advance notice is given to QUiVX or is restricted by law.

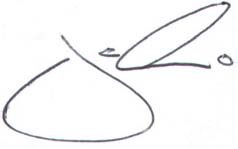
Client warrants that any electronic media or evidence sent to or made available to QUiVX for examination or duplication and any access granted to any information, system or network was obtained lawfully, in full compliance with all applicable statutes and regulations or orders or policies of any court or agency with jurisdiction. Client agrees to indemnify and hold QUiVX harmless from any claim or suit alleging unauthorized or unlawful access to any information, media, system or network, including all damages, expenses, liability, fines and attorney fees.

QUiVX is an independent contractor and shall not be deemed an employee or agent of Client. The parties acknowledge that QUiVX is providing computer forensics, consulting, electronic discovery and/or technology support services at the direction of Client and QUiVX does not provide legal services.

In no event will QUiVX’s liability of any kind include any special, incidental or consequential damages, including lost profits. QUiVX’s entire liability and Client’s exclusive remedy for liability of any kind shall be limited to the amount the Client has actually paid QUiVX.

This Engagement Letter may be modified or amended if the modification or amendment is made in writing and is signed by both parties. Alternatively, electronic mail communications will be an acceptable method of amendment.

We look forward to our working relationship and assisting with your discovery needs in this matter.

Very truly yours,

*Jim Holpuch, Senior Account Manager QUiVX eDiscovery Solutions*

***PRICING SCHEDULE***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Unit** | **Price per Unit** | **Estimated Units** | **Total Amount** |
| **TIFF Conversion From PDF** | Page | .01 | 1,200,000 | **$12,000** |
| **Optical Character Recognition (OCR) Allows Ability to Search Documents** | Page | .01 | 1,200,000 | **$12,000** |
| **Logical Document Determination (LDD) Manual Application of Document Breaks** | Page | .04 | 1,200,000 | **$48,000** |

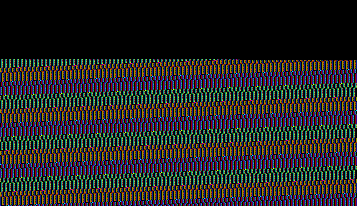
**\*Concordance database and load files will be provided along with the above listed services.**

**QUiVX requires 5‐6 weeks for full completion but can provide rolling productions of completed data on a daily basis.**

***ACKNOWLEDGMENT AND ACCEPTANCE***

Please indicate your approval of the *pricing schedule* and terms of this engagement by signing where indicated below. Should you have additional questions, please do not hesitate to call Jim Holpuch directly at 702.882.9903.

|  |  |
| --- | --- |
| **Accepted by** |  |
| **Printed Name** |  |
| **Title** |  |
| **Date** |  |

Case 2:11-cr-00429-JAM Document 100-6 Filed 12/16/12 Page 4 of 13

# Project Estimate and

**Scope of Work**



**Client’s Information**

**eLit’s Information**

|  |  |  |
| --- | --- | --- |
| Firm/Co.:  Contact: | Snell & Wilmer  Justin Cochran | Team: eLit Phoenix  Contact: Paul McIlroy |
| Address: | Las Vegas, NV | Phone: (602) 264-3100 |
| Phone: | 702-784-5260 | Email: [pmcilr](mailto:pmcilroy@elitinc.com)[oy@elitinc.com](mailto:oy@elitinc.com) |
| Email: | [jcochran@swlaw.com](mailto:jcochran@swlaw.com) | Ref: Weygandt |



**Scope of Work**C**: S**a**n**s**e**e**ll**2**&**:1**W**1**i**-**l**c**m**r**e**-0**r** 0**-** 4**W**2**e**9**y**-**g**J**a**A**n**M**dt**

Document 100-6 Filed 12/16/12

Page 5 of**D**1**e**3**cember 6, 2012**

### Synopsis

This Scope of Work (“SOW”) defines the scope, services and fees to be delivered by **eLitigation Solutions, Inc.** (“eLit”) to **Snell & Wilmer** (“Client”).

Client is requesting eLit to provide eDiscovery services relating to: Weygand.

### Scope of Services

The scope of services is limited to the following:

#### *Processing*

Client will provide eLit with ~ 1.2M single-page; searchable PDF files (57 GB) eLit will perform the following tasks:

1. Convert all PDF files to single-page TIFF images. Color images will be converted to JPG
2. Logical Document Determination (LDD) will then be used to establish document breaks. LDD is a subjective review of each page where the document boundaries are determined based on author’s intent, pagination, Table-of-Contents etc.
3. Attachments will be captured as such when possible. If a document does not have an attachment association, the BEGATTACH, ENDATTACH, and ATTRANGE fields will not be coded.

Processing to TIFF will be completed in one phase. LDD, OCR and release of the documents for review will take place in multiple phases. The number of images processed per day will depend on a number of factors, but can range from 25-75,000 images per day.

#### *Review*

Once the LDD is complete, all images will be OCR’d and prepared for the review database of choice. Pricing for both Concordance and Relativity have been provided below.

If Relativity is the database of choice, eLit would strongly recommend processing the data through equivio, which will identify near-duplicate documents, which will be grouped and identified based on an adjustable similarity threshold.

In addition, eLit will provide Relativity training (up to two hours) and Project Management support throughout the review.

#### *Production/Data Disposition*

Data disposition specifications have not been discussed or finalized at this time.



**Scope of Work**C**: S**a**n**s**e**e**ll**2**&**:1**W**1**i**-**l**c**m**r**e**-0**r** 0**-** 4**W**2**e**9**y**-**g**J**a**A**n**M**dt**

Document 100-6 Filed 12/16/12

Page 6 of**D**1**e**3**cember 6, 2012**

### Estimate: Scenario #1

Project Assumptions:

* 1.2 M PDF Files (57 GB)
* Domestic LDD with Attachment Range
* Concordance Review

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Description** | **Rate** | **Unit** | **Amt** | **Total** |
| Processing for TIFF Review | $200 | GB | 57 | $11,400 |
| Domestic LDD | $0.055 | Page | 1,200,000 | $66,000 |
| OCR | $25.00 | GB | 57 | $1,425 |
| Senior Tech | $225 | HR |  | $0 |
| Associate Tech | $125 | HR |  | $0 |
| Media | $135 | Device | 2 | $270 |
| Shipping | At Cost | N/A | N/A | $0 |
|  |  |  |  | $79,095 |

### Estimate: Scenario #2

Project Assumptions:

* 1.2 M PDF Files (57 GB)
* Off-Shore LDD with Attachment Range
* Concordance Review

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Description** | **Rate** | **Unit** | **Amt** | **Total** |
| Processing for TIFF Review | $200 | GB | 57 | $11,400 |
| Off-Shore LDD | $0.035 | Page | 1,200,000 | $42,000 |
| OCR | $25.00 | GB | 57 | $1,425 |
| Senior Tech | $225 | HR |  | $0 |
| Associate Tech | $125 | HR |  | $0 |
| Media | $135 | Device | 2 | $270 |
| Shipping | At Cost | N/A | N/A | $0 |
|  |  |  |  | $55,095 |

fee. Estimated monthly cost



**Scope of Work**C**: S**a**n**s**e**e**ll**2**&**:1**W**1**i**-**l**c**m**r**e**-0**r** 0**-** 4**W**2**e**9**y**-**g**J**a**A**n**M**dt**

Document 100-6 Filed 12/16/12

Page 7 of**D**1**e**3**cember 6, 2012**

### Estimate: Scenario #3

Project Assumptions:

* 1.2 M PDF Files (57 GB)
* Domestic LDD with Attachment Range
* Equivio Near-Duplicate Identification (5:1 page-to-document ratio)
* Hosting via Relativity

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Description** | **Rate** | **Unit** | **Amt** | **Total** | **Notes** |
| Processing for TIFF Review | $200 | GB | 57 $11,400 | |  |
| Domestic LDD | $0.055 | Page | 1,200,000 | $66,000 | |
| OCR | $25.00 | GB | 57 | $1,425 | |
| Relativity Setup & Ingestion | $100 | HR | 3 | $0 Fee Waived | |
| Relativity Hosting | $25 | GB | 100 | Three months of hosting will  $0 be included in the processing | |
| Relativity User Fee (monthly) | $100 | User/MTH | 5 | thereafter will be $2,500  $500 Per user/Per month | |
| Equivio | $0.06 | Doc | 240,000 | $14,400 Document | |
| Senior Tech | $225 | HR | TBD | $0 Custom coding or other  advanced tasks | |
| Associate Tech | $125 | HR | TBD | $0 Trouble shooting, basic task  review | |
| Project Management | $150 | HR | TBD | $0 Running searches, QC of  Production etc. | |
| Media | $135 | Device | 2 | $270 | |
| Shipping | At Cost | N/A | N/A | $0 | |
|  |  |  |  | $93,995 | |



**Scope of Work**C**: S**a**n**s**e**e**ll**2**&**:1**W**1**i**-**l**c**m**r**e**-0**r** 0**-** 4**W**2**e**9**y**-**g**J**a**A**n**M**dt**

Document 100-6 Filed 12/16/12

Page 8 of**D**1**e**3**cember 6, 2012**

### Estimate: Scenario #4

Project Assumptions:

* 1.2 M PDF Files (57 GB)
* Off-Shore LDD with Attachment Range
* Equivio Near-Duplicate Identification (5:1 page-to-document ratio)
* Hosting via Relativity

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Description** | **Rate** | **Unit** | **Amt** | **Total** | **Notes** |
| Processing for TIFF Review | $200 | GB | 57 $11,400 | |  |
|  |  |  | 1,200,00 |  |  |
| Off-Shore LDD | $0.035 | Page | 0 | $42,000 |  |
| OCR | $25.00 | GB | 57 | $1,425 |  |
| Relativity Setup & Ingestion | $100 | HR | 3 | $0 | Fee Waived |
| Relativity Hosting | $25 | GB | 100 | $0 | Three months of hosting will be included in the processing fee. Estimated monthly cost  thereafter will be $2,500 |
| Relativity User Fee (monthly) | $100 | User/MT H | 5 | $500 | Per user/Per month |
| Equivio | $0.06 | Doc | 240,000 | $14,400 | Document |
| Senior Tech | $225 | HR | TBD | $0 | Custom coding or other advanced tasks |
| Associate Tech | $125 | HR | TBD | $0 | Trouble shooting, basic task review |
| Project Management | $150 | HR | TBD | $0 | Running searches, QC of  Production etc. |
| Media | $135 | Device | 2 | $270 |  |
| Shipping | At Cost | N/A | N/A | $0 |  |

$69,995

The information provided in this document is for estimation purposes only. Actual project costs will be dependent upon the data provided to eLit and final project instructions.



**Scope of Work**C**: S**a**n**s**e**e**ll**2**&**:1**W**1**i**-**l**c**m**r**e**-0**r** 0**-** 4**W**2**e**9**y**-**g**J**a**A**n**M**dt**

Document 100-6 Filed 12/16/12

Page 9 of**D**1**e**3**cember 6, 2012**

Terms & Conditions

* 1. This SOW may be executed in two counterparts, each of which when so executed shall be deemed to be an original and both of which when taken together shall constitute one and the same SOW. Fax or electronically scanned copies of such signed documents may be used in lieu of the originals for any purpose.
  2. eLit shall invoice Client upon completion of the services described in the Work Order or Statement of Work. All prices for services performed do not include applicable taxes, which if required by the applicable jurisdiction shall be billed in addition to the statement for services rendered. All outstanding balances invoiced to Client are due on receipt and are overdue if not paid within 30 days of the invoice date, regardless of payment status of Client's customers. It is understood and agreed between eLit and Client that eLit’s services and payments thereon are not contingent in any fashion on Client receiving payment from any third party. Client will pay interest on all overdue amounts at the rate of one percent (1%) per month, or the maximum amount allowed by law, whichever is less, until all amounts due are paid in full. If Client fails to pay, eLit has full right to suspend any Services until Client pays all fees, expenses and interest due and payable to eLit. Notwithstanding anything to the contrary in this SOW, if Client fails to pay invoices from eLit in a timely manner, the parties acknowledge and agree that eLit shall have the right to send any information obtained from Client or as a result of the Services, whether otherwise considered confidential or proprietary, to its attorneys, advisors, or collection agencies in order to pursue the collection of any unpaid invoice.
  3. All work product, other than Intellectual Property (as defined below), developed by eLit specifically for Client in connection with eLit’s performance of the Services, including all original copies of electronic data evidence, including evidence files, shall be deemed to be the property of Client and shall be promptly delivered to Client at the Client’s request or at the latest, upon any termination of this Agreement and/or cessation of Services, at which time Client shall be solely responsible for the retention of any such evidence as required by law. Client acknowledges and agrees that eLit shall retain all ownership and title in any Intellectual Property developed prior to or in the course of providing Services to Client. For purposes of this Agreement, “Intellectual Property” shall be defined as including but not limited to computer programs, source codes, ideas, trade secrets, processes, including any specified processes for the handling of electronic evidence, methodologies, “hash value” libraries and/or any other concept, compilation or process eligible for federal copyright or patent protection.
  4. Client and eLit each agree to retain in confidence the non-public terms in this Agreement and all other non- public information and know-how disclosed or that becomes known as a result of activities pursuant to this Agreement, which is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential (“Confidential Information”). Each party agrees to: (a) preserve and protect the confidentiality of the other party’s Confidential Information; (b) refrain from using the other party’s Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees and contractors as is reasonably required under this Agreement. Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) already publicly known; (ii) discovered or created by the receiving party without reference to the Confidential Information of the disclosing party, as shown in records of receiving party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (iv) required to be disclosed by law, court order, or, in the opinion of eLit, may constitute child pornography. However, either party hereto may disclose any Confidential Information hereunder to such party’s agents, attorneys and other legal representatives or any appropriate court process of competent jurisdiction so long as the other party has been provided reasonable notice of such intended disclosure such that it can seek to enjoin its disclosure.



**Scope of Work**C**:**a**S**s**n**e**el**2**l &**:1**W**1-**i**c**lm**r-**e**0**r**0**-**4**W**2**e**9**y**-J**g**A**an**M**dt** Document 100-6 Filed 12/16/12

Page 10 o**D**f **e**1**c**3**ember 6, 2012**

* 1. Legal Work Product. For any Services performed in the course of or in the anticipation of any legal action, Client

agrees that at Client’s request eLit shall take instructions with regard to the Services from Client's attorney and shall work through such attorney in performing all Services. In the event that Client is a law firm or attorney and has engaged eLit to perform Services on behalf of a third party client, eLit shall take instructions with regard to the Services from Client and shall work through Client in performing all such Services. For avoidance of doubt, Client retains final decision-making authority in regard to the Services. Subject to Section 6 of this Agreement, all work product resulting from such Services as directed by Client’s legal counsel, including reports, EnCase evidence files and other data compilations shall be considered the attorney work product of the Client and the Client’s counsel. The Client agrees that eLit shall have a right to notify law enforcement and terminate this Agreement if, during the performance of the Services, (a) eLit observes information that, in the opinion of eLit, may constitute child pornography, or (b) eLit believes in its opinion that continued performance of the Services will commit or aid and abet any crime.

* 1. eLit warrants that it will perform the Services with professional thoroughness and competence. No other warranty or representation, whether express or implied, including but not limited to the implied warranty for a particular purpose, is created by this Agreement or in connection with the Services. Client represents and warrants that all actions by eLit undertaken upon the instructions of Client, either as set forth in a SOW or as subsequently communicated to eLit (including, without limitation, the Services), are and will be in compliance with applicable law, and do not and shall not constitute tortuous actions. If the Services involve or contemplate the collection of any data within the European Union (or any territory outside the United States of America), Client represents and warrants that it has the legal right to collect (or have eLit collect) such data. In addition, if the Services involve or contemplate the transfer of data from the European Union to the United States of America (or a third country) Client represents and warrants that it has the legal right to transfer (or have eLit transfer) such data. eLit's sole liability, and Client's sole remedy, in connection with this Agreement shall be limited to having eLit bear the reasonable cost of re-performing (or, at eLit's option, having re-performed) any Services that do not meet the above warranty. Such remedy shall be available only in the event that Client reports in writing any breach of eLit's warranty within sixty (60) days of such breach, and provides documentation of such breach. IN NO EVENT SHALL eLit BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR SPECIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF DATA, LOSS OF USE, BUSINESS PROFITS, BUSINESS INTERRUPTION, SPOLIATION OF EVIDENCE, AND/OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE SERVICES PROVIDED OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT EVEN IF eLit HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. eLit’s ENTIRE LIABILITY TO CLIENT OR ANY THIRD PARTY, WHETHER IN TORT, CONTRACT, NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY CLIENT TO eLit FOR THE PARTICULAR PRODUCT OR SERVICE WHICH GAVE RISE TO THE CLAIM.
  2. Client will defend, indemnify and hold eLit (and its officers, directors, agents and employees) harmless from any and all losses, liabilities, suits, damages, claims, demands, and expenses (including, without limitation, reasonable attorneys' fees), whether based on contract, tort (including strict liability) or crimes, resulting from a claim by a third party (for clarity, the term “third party” includes but is not limited to a government entity, as well as Client employees and agents) based on actions by eLit undertaken upon the instructions of Client, as communicated to eLit. eLit agrees to (i) promptly notify Client in writing of any indemnifiable claim and (ii) give Client the opportunity to defend or negotiate a settlement of any such claim and cooperate fully with Client, at Client’s expense, in defending or settling such claim. Notwithstanding the foregoing, eLit may, at its own expense, assist in such defense if it so chooses, provided that Client will control such defense and all negotiations relative to the settlement of any such claim.



**Scope of Work**C**:**a**S**s**n**e**el**2**l &**:1**W**1-**i**c**lm**r-**e**0**r**0**-**4**W**2**e**9**y**-J**g**A**an**M**dt** Document 100-6 Filed 12/16/12

Page 11 o**D**f **e**1**c**3**ember 6, 2012**

* 1. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any

controversy or claim arising out of or relating to this Agreement shall be settled by arbitration using a single arbitrator in San Jose, California and in accordance with the JAM’s rules of commercial arbitration. Judgment upon any award rendered in such arbitration may be entered in any court having jurisdiction thereof. In the event legal action or arbitration is commenced by either party in connection with this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs, including without limitation expert witness' costs, expended by the prevailing party in connection with such action.

* 1. Nothing in this Agreement shall constitute or create a joint venture, partnership, or any other similar arrangement between eLit and Client. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement.
  2. The parties intend eLit to be an independent consultant in the performance of the services. eLit and Client agree to the following rights consistent with an independent consultant relationship.
  3. eLit will have the right to control and determine the methods and means of performing the contractual services.
  4. eLit has the right to perform services for others during the term of this Agreement as long as this work does not create a known conflict of interest.
  5. eLit has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
  6. Client shall not require eLit or eLit's employees or subcontractors to devote full time to performing the services required by this Agreement unless otherwise agreed to by Client and eLit in writing.
  7. Neither eLit nor eLit's employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of Client.



**Scope of Work**C**:**a**S**s**n**e**el**2**l &**:1**W**1-**i**c**lm**r-**e**0**r**0**-**4**W**2**e**9**y**-J**g**A**an**M**dt** Document 100-6 Filed 12/16/12

Page 12 o**D**f **e**1**c**3**ember 6, 2012**

### Billing Instructions

All invoices will be mailed to:

**TO: Snell & Wilmer LLP c/o Mr. Justin Cochran**

**3883 Howard Hughes Parkway Las Vegas, NV 89169**

**CC: Barry Ewart**

### Disposition of Evidentiary Materials

eLit will maintain custody of all ESI delivered to or collected by eLit in one of our secure storage areas located within our facilities and/or our data center. Storage of this ESI shall be only for the time required to complete the work as outlined in the Scope of Services section of this agreement.

Once all work is completed, the collected ESI shall be delivered to the following:

**Snell & Wilmer - Barry Ewart**

Unless otherwise reflected in this agreement, Client shall bear all costs for the delivery of the ESI to the above.

Client shall have the option to provide written authorization directing eLit to wipe and/or physically destroy any media containing the ESI identified in such authorization at the then current fee for such service.

### Statement of Confidentiality

eLit considers this proposal and all material related to it as proprietary and confidential in nature. Any dissemination of the information contained within this response outside of The Client is strictly prohibited. All pricing within this document shall expire 90 days from the date of receipt by The Client, unless eLit agrees to extend it at your written request. Any contract resulting from this proposal is subject to entering into a mutually acceptable written agreement signed by The Client and eLit.

### Expiration

This Statement of Work (“SOW”) shall expire if not signed and returned to eLit within 30 days from the date of this SOW. This SOW will become void if work does not commence within 30 days from the date it is executed and returned by the Client.



Case 2:11-cr-00429-JAM Document 100-6 Filed 12/16/12 Page 13 of 13

**Scope of Work: Snell & Wilmer - Weygandt**

**December 6, 2012**

### Execution

This SOW may be executed in counterparts or by facsimile, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

eLitigation Solution, Inc. (eLit)

/S

Paul McIlroy

Business Development Manager Phoenix, AZ

(602) 214-8636

[pmcilr](mailto:pmcilroy@elitinc.com)[oy@elitinc.com](mailto:oy@elitinc.com)

Company

Signature

Printed Name Date

Title

**From:** Denney, Craig

**To:** ["Reardon, Kyle (USACAE)"](mailto:Kyle.Reardon@usdoj.gov)

**Cc:** [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

**Subject:** RE: Weco discovery issues

**Date:** Wednesday, December 05, 2012 1:30:43 PM

**Importance:** High

Kyle,

We really need to discuss WECO discovery issues. I can appreciate you have new cases that have more urgency. However, this is a major case set for trial in 4 months. There are significant issues that I have been trying to get an answer on since shortly after arraignment (a month ago).

I am available to talk at 5:00PM today and will see if Mark can join the call even though it will be 8:00PM on the East Coast.

I would rather not continue to delay this call further. Craig

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

From: Reardon, Kyle (USACAE) [<mailto:Kyle.Reardon@usdoj.gov>] Sent: Wednesday, December 05, 2012 1:15 PM

To: Denney, Craig

Cc: [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com) Subject: RE: Weco discovery issues

Craig;

I seem to be snakebit this week. I have a new matter that was on my desk when I got back from court involving a possible child exploitation offense that needs to be resolved by COB today.

Can we reschedule our conference call to tomorrow morning? If not, then I can talk after 5:00 pm PST, but I know that might not be convenient for Mr. Dombroff.

Kyle

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

From: Denney, Craig [<mailto:cdenney@swlaw.com>] Sent: Wednesday, December 05, 2012 10:05 AM To: Reardon, Kyle (USACAE)

Cc: Denney, Craig; [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com) Subject: RE: Weco discovery issues

Importance: High

Kyle,

Thanks. 1:30PM PST today works fine for a conference call.

We need to discuss the hard drive discovery and the Brady material request. Regards,

Craig Denney

Snell & Wilmer L.L.P.

Dial in - 888-872-3769

Passcode - 702-784-5200

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

From: Reardon, Kyle (USACAE) [<mailto:Kyle.Reardon@usdoj.gov>] Sent: Wednesday, December 05, 2012 9:50 AM

To: Denney, Craig

Subject: Re: Weco discovery issues Craig,

It won't. I have a sentencing hearing before Judge Mueller that will likely go into early afternoon. Can we talk at 1:30 pm?

If not, I have nothing on caledar tomorrow and am free most all day. Kyle

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

From: Denney, Craig [<mailto:cdenney@swlaw.com>] Sent: Wednesday, December 05, 2012 12:18 PM To: Reardon, Kyle (USACAE)

Cc: Denney, Craig [<cdenney@swlaw.com>;](mailto:cdenney@swlaw.com) [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

[<mdombroff@dglitigators.com>](mailto:mdombroff@dglitigators.com) Subject: Re: Weco discovery issues

Kyle,

Will 11am today work for a conf call on Weco? Please confirm. Use the dial in number and pass code listed below.

Craig

Sent from my iPhone

On Dec 4, 2012, at 2:40 PM, "Reardon, Kyle (USACAE)" [<Kyle.Reardon@usdoj.gov>](mailto:Kyle.Reardon@usdoj.gov) wrote:

* Craig,

>

* I have 4 new arrests today and am stuck at the bottom of a long 2pm Magistrate calendar. Can we set up a conference call tomorrow morning.

>

* This also has the added bonus of giving your voice another day to rest.

>

* Kyle

>

* ----- Original Message -----
* From: Denney, Craig [<mailto:cdenney@swlaw.com>]
* Sent: Tuesday, December 04, 2012 05:27 PM
* To: Reardon, Kyle (USACAE)
* Cc: Denney, Craig [<cdenney@swlaw.com>;](mailto:cdenney@swlaw.com) [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

[<mdombroff@dglitigators.com>](mailto:mdombroff@dglitigators.com)

* Subject: RE: Weco discovery issues

>

* Kyle,
* Hello, just saw your message.

>

* Can you talk at 3PM today? I am getting over a cold and don't have much voice. However, Mark and I would like to do a call with you before the weekend if possible.

>

* Dial in - 888-872-3769

>

* Phone - 702-784-5200

>

* Craig

>

* -----Original Message-----
* From: Reardon, Kyle (USACAE) [<mailto:Kyle.Reardon@usdoj.gov>]
* Sent: Tuesday, December 04, 2012 11:59 AM
* To: Denney, Craig
* Subject: RE: Weco discovery issues

>

* Craig;

>

* Sorry for not getting back to you sooner. I was out sick several days last week and had several other filings that I needed to get done before tackling other matters.

>

* Are you available this afternoon to talk?

>

* Kyle

>

* -----Original Message-----
* From: Denney, Craig [<mailto:cdenney@swlaw.com>]
* Sent: Friday, November 30, 2012 9:37 AM
* To: Reardon, Kyle (USACAE)
* Cc: Denney, Craig; [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)
* Subject: Weco discovery issues

>

* Kyle,
* Hello, we received the hard drive in the mail yesterday. I see it contains over one million pages in discovery. Thanks for finally sending it out. During the Weco civil litigation with Gulfstream in Chancery Court more than 2 years ago, we only received approximately 100,000 pages or less. The USAO then intervened in the civ case and obtained an order from the court to stay civil discovery. It appears Gulfstream produced another million pages of documents to the USAO that we did not have access to.

>

* I wanted to set up a conf call on Monday 12/3/12 to discuss the discovery with you and Mark. If the hard drive you provided to defense contains all the documents that Gulfstream produced to the USAO in the grand jury investigation, I would assume that Gulfstream provided you with some index or directory to the documents. The hard drive shows 1183 file folders that contains hundreds of PDFs in the folders.

>

* Please let me know what time works for a conference call on Monday Dec 3 to discuss the discovery issues. We would prefer to meet and confer and resolve the discovery issues without filing motions.

However, it has been difficult to get timely responses from your office to requests for info on this case.

>

* I provided a letter to your office requesting Brady documents in various detailed categories on the date of Mr. Weygandt's arraignment - Nov. 9, 2012. As of today's date, we have received no response in writing or by phone on the Brady request. The production of the hard drive materials was delayed nearly 3 weeks after arraignment.

>

* This trial is scheduled for April 8, 2013. The USAO and FBI have investigated Weco and Mr. Weygandt since 2007. The original indictment of 6 former employees was in late Sept 2011. Mr. Weygandt was indicted in Oct 2012. There should be no reason that discovery and Brady material is delayed in production to defense in this case.

>

* Please let me know a convenient time for a conf call on Monday. Since arraignment, I have sent a number of email messages and also left phone messages with you but have not received the courtesy of a call or email back.

>

* Mark Dombroff and I will adjust our schedules to accommodate you for a call on Monday 12/3/12. If

we don't receive a call, we will file a motion to compel next week to request court intervention in discovery and Brady materials production. I would prefer not to do that but too much time is passing without response from your office.

>

* Mr. Weygandt is entitled to production of all exculpatory evidence and I have detailed the categories in my letter. The bulk production of over one million pages of documents without any index or directory of he materials is unfair and has the appearance of gamesmanship. I hope that is not the case. As a result, I would respectfully request a conference call on Monday. Thanks very much for your attention to this.

>

* I am traveling this morning so you can reach me on my cell if you wish to discuss today. 775.830.2432.

>

* Regards,

>

* Craig Denney
* Snell & Wilmer LLP
* 775.830.2432

>

* Sent from my iPhone

**From:** Denney, Craig

**To:** ["Reardon, Kyle (USACAE)"](mailto:Kyle.Reardon@usdoj.gov)

**Cc:** [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

**Subject:** RE: Weco discovery issues

**Date:** Wednesday, December 05, 2012 1:30:43 PM

**Importance:** High

Kyle,

We really need to discuss WECO discovery issues. I can appreciate you have new cases that have more urgency. However, this is a major case set for trial in 4 months. There are significant issues that I have been trying to get an answer on since shortly after arraignment (a month ago).

I am available to talk at 5:00PM today and will see if Mark can join the call even though it will be 8:00PM on the East Coast.

I would rather not continue to delay this call further. Craig

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To: Denney, Craig

Cc: [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com) Subject: RE: Weco discovery issues

Craig;

I seem to be snakebit this week. I have a new matter that was on my desk when I got back from court involving a possible child exploitation offense that needs to be resolved by COB today.

Can we reschedule our conference call to tomorrow morning? If not, then I can talk after 5:00 pm PST, but I know that might not be convenient for Mr. Dombroff.

Kyle

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

From: Denney, Craig [<mailto:cdenney@swlaw.com>] Sent: Wednesday, December 05, 2012 10:05 AM To: Reardon, Kyle (USACAE)

Cc: Denney, Craig; [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com) Subject: RE: Weco discovery issues

Importance: High

Kyle,

Thanks. 1:30PM PST today works fine for a conference call.

We need to discuss the hard drive discovery and the Brady material request. Regards,

Craig Denney

Snell & Wilmer L.L.P.

Dial in - 888-872-3769

Passcode - 702-784-5200

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

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To: Denney, Craig

Subject: Re: Weco discovery issues Craig,

It won't. I have a sentencing hearing before Judge Mueller that will likely go into early afternoon. Can we talk at 1:30 pm?

If not, I have nothing on caledar tomorrow and am free most all day. Kyle

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

From: Denney, Craig [<mailto:cdenney@swlaw.com>] Sent: Wednesday, December 05, 2012 12:18 PM To: Reardon, Kyle (USACAE)

Cc: Denney, Craig [<cdenney@swlaw.com>;](mailto:cdenney@swlaw.com) [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

[<mdombroff@dglitigators.com>](mailto:mdombroff@dglitigators.com) Subject: Re: Weco discovery issues

Kyle,

Will 11am today work for a conf call on Weco? Please confirm. Use the dial in number and pass code listed below.

Craig

Sent from my iPhone

On Dec 4, 2012, at 2:40 PM, "Reardon, Kyle (USACAE)" [<Kyle.Reardon@usdoj.gov>](mailto:Kyle.Reardon@usdoj.gov) wrote:

* Craig,

>

* I have 4 new arrests today and am stuck at the bottom of a long 2pm Magistrate calendar. Can we set up a conference call tomorrow morning.

>

* This also has the added bonus of giving your voice another day to rest.

>

* Kyle

>

* ----- Original Message -----
* From: Denney, Craig [<mailto:cdenney@swlaw.com>]
* Sent: Tuesday, December 04, 2012 05:27 PM
* To: Reardon, Kyle (USACAE)
* Cc: Denney, Craig [<cdenney@swlaw.com>;](mailto:cdenney@swlaw.com) [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

[<mdombroff@dglitigators.com>](mailto:mdombroff@dglitigators.com)

* Subject: RE: Weco discovery issues

>

* Kyle,
* Hello, just saw your message.

>

* Can you talk at 3PM today? I am getting over a cold and don't have much voice. However, Mark and I would like to do a call with you before the weekend if possible.

>

* Dial in - 888-872-3769

>

* Phone - 702-784-5200

>

* Craig

>

* -----Original Message-----
* From: Reardon, Kyle (USACAE) [<mailto:Kyle.Reardon@usdoj.gov>]
* Sent: Tuesday, December 04, 2012 11:59 AM
* To: Denney, Craig
* Subject: RE: Weco discovery issues

>

* Craig;

>

* Sorry for not getting back to you sooner. I was out sick several days last week and had several other filings that I needed to get done before tackling other matters.

>

* Are you available this afternoon to talk?

>

* Kyle

>

* -----Original Message-----
* From: Denney, Craig [<mailto:cdenney@swlaw.com>]
* Sent: Friday, November 30, 2012 9:37 AM
* To: Reardon, Kyle (USACAE)
* Cc: Denney, Craig; [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)
* Subject: Weco discovery issues

>

* Kyle,
* Hello, we received the hard drive in the mail yesterday. I see it contains over one million pages in discovery. Thanks for finally sending it out. During the Weco civil litigation with Gulfstream in Chancery Court more than 2 years ago, we only received approximately 100,000 pages or less. The USAO then intervened in the civ case and obtained an order from the court to stay civil discovery. It appears Gulfstream produced another million pages of documents to the USAO that we did not have access to.

>

* I wanted to set up a conf call on Monday 12/3/12 to discuss the discovery with you and Mark. If the hard drive you provided to defense contains all the documents that Gulfstream produced to the USAO in the grand jury investigation, I would assume that Gulfstream provided you with some index or directory to the documents. The hard drive shows 1183 file folders that contains hundreds of PDFs in the folders.

>

* Please let me know what time works for a conference call on Monday Dec 3 to discuss the discovery issues. We would prefer to meet and confer and resolve the discovery issues without filing motions.

However, it has been difficult to get timely responses from your office to requests for info on this case.

>

* I provided a letter to your office requesting Brady documents in various detailed categories on the date of Mr. Weygandt's arraignment - Nov. 9, 2012. As of today's date, we have received no response in writing or by phone on the Brady request. The production of the hard drive materials was delayed nearly 3 weeks after arraignment.

>

* This trial is scheduled for April 8, 2013. The USAO and FBI have investigated Weco and Mr. Weygandt since 2007. The original indictment of 6 former employees was in late Sept 2011. Mr. Weygandt was indicted in Oct 2012. There should be no reason that discovery and Brady material is delayed in production to defense in this case.

>

* Please let me know a convenient time for a conf call on Monday. Since arraignment, I have sent a number of email messages and also left phone messages with you but have not received the courtesy of a call or email back.

>

* Mark Dombroff and I will adjust our schedules to accommodate you for a call on Monday 12/3/12. If

we don't receive a call, we will file a motion to compel next week to request court intervention in discovery and Brady materials production. I would prefer not to do that but too much time is passing without response from your office.

>

* Mr. Weygandt is entitled to production of all exculpatory evidence and I have detailed the categories in my letter. The bulk production of over one million pages of documents without any index or directory of he materials is unfair and has the appearance of gamesmanship. I hope that is not the case. As a result, I would respectfully request a conference call on Monday. Thanks very much for your attention to this.

>

* I am traveling this morning so you can reach me on my cell if you wish to discuss today. 775.830.2432.

>

* Regards,

>

* Craig Denney
* Snell & Wilmer LLP
* 775.830.2432

>

* Sent from my iPhone

**From:** Cochran, Justin

**To:** [Cochran, Justin](mailto:jcochran@swlaw.com)

**Subject:** FW: WECO Discovery

**Date:** Sunday, December 16, 2012 7:18:26 PM

**From:** "Reardon, Kyle (USACAE)" <[Kyle.Reardon@usdoj.gov](mailto:Kyle.Reardon@usdoj.gov)>

**Date:** December 6, 2012, 4:38:41 PM PST

**To:** "Denney, Craig" <[cdenney@swlaw.com](mailto:cdenney@swlaw.com)>, "[msegal@segalandkirby.com](mailto:msegal@segalandkirby.com)"

<[msegal@segalandkirby.com](mailto:msegal@segalandkirby.com)>, "Jim Mayo ([JMayo@segalandkirby.com](mailto:JMayo@segalandkirby.com))"

<[JMayo@segalandkirby.com](mailto:JMayo@segalandkirby.com)>, "Tom Johnson ([taj@tomjohnsonlaw.com](mailto:taj@tomjohnsonlaw.com))"

<[taj@tomjohnsonlaw.com](mailto:taj@tomjohnsonlaw.com)>, "Kresta N. Daly ([kdaly@btdlegal.com](mailto:kdaly@btdlegal.com))" <[kdaly@btdlegal.com](mailto:kdaly@btdlegal.com)> **Cc:** "Coleman, Reginald (FBI)" <[Reginald.Coleman@ic.fbi.gov](mailto:Reginald.Coleman@ic.fbi.gov)>, "Schleyer, Steven M. ([Steven.Schleyer@oig.dot.gov](mailto:Steven.Schleyer@oig.dot.gov))" <[Steven.Schleyer@oig.dot.gov](mailto:Steven.Schleyer@oig.dot.gov)>, "Castruita, Donna (USACAE)" <[Donna.Castruita@usdoj.gov](mailto:Donna.Castruita@usdoj.gov)>, "Camacho, Susana (USACAE)"

<[Susana.Camacho@usdoj.gov](mailto:Susana.Camacho@usdoj.gov)>

##### Subject: WECO Discovery

All;

Two issues:

First, I learned last night that document “WE01138055” which was given to you on the hard drives you provided may contain contraband, specifically, an image of a minor engaged in sexually explicit conduct. A quick review of the discovery this morning uncovered this same image in another location (“WE01138058”). Four other pornographic images of what appear to be adults were also located (located on “WE01138061,” “…63,” “…66,” and “…68”). No other contraband images were located.

As you all know, under federal law, possession of CP is illegal (even when part of discovery). Accordingly, I ask that all of you discontinue working with your hard drives, and to the extent that either of the files described above have been printed or saved elsewhere on your respective computer systems, that they be destroyed.

Second, in the format that the discovery was provided to you, the discovery is not searchable. I was not aware of this fact until last night - the conversion that we performed in our office made the .pdfs that were provided to us by Jenner and Block searchable. Furthermore, no index was provided with the materials when they were provided to this office.

In order to remedy both problems, I have made arrangements for an FBI agent to come to each of your offices to pick up the hard drives tomorrow. They will be calling prior to their arrival to coordinate the pick-up (they can also pick up any hard copies that you may not want to dispose of in your office shredder). In the alternative, you can return the drives to me in my office. These drives will then be wiped clean by my office. The discovery will then be provided to you a second time in searchable .pdf format. I have been assured by my office’s IT department that these reloaded drives

will be ready no later than close of business on Monday. (For Mr. Denney in Reno, the drive will be put in Monday’s FedEx and delivered the following day.)

I appreciate your cooperation. Please let me know if you have any questions. Kyle

Kyle Reardon

Assistant United States Attorney 501 I Street, Suite 10-100

Sacramento, CA 95816

(916) 554-2700 (office)

(916) 554-2900 (fax)

“CONFIDENTIALITY NOTICE: This communication with its contents and attachments, if any, may contain confidential, law enforcement sensitive, privileged attorney/client communications or work products, and is not subject to disclosure. It is solely for the use of the intended recipients. Unauthorized interception, review, use or disclosure is prohibited. If you believe that you have received this email in error, please notify the sender immediately, and permanently delete the email, any attachments, and all copies from your computer.”



**Denney, Craig**

**From: Sent: To: Subject:**

Reardon, Kyle (USACAE) [<Kyle](mailto:Kyle.Reardon@usdoj.gov).[Reardon@usdoj.gov>](mailto:Kyle.Reardon@usdoj.gov) Tuesday, December 11, 2012 12:47 **PM**

Denney, Craig

RE: WECO - hard drive of discovery

Craig;

I am unable to call this afternoon at 3 pm. I will be available tomo rro w morning if that time is convenient for you and Mr. Dombroff.

As it concerns an index - no index was provided to us and one has not been created by my off ice.

Regarding the contraband, I am working with my supervisors and the IT section in the office to resolve the issu e. I will get back to you as soon as I am able .

Kyle

**From:** Denney, Craig [[mailto:cdenney@swlaw.com](mailto:cdenney@swlaw.com)]

**Sent:** Tuesday, December 11, 2012 10:53 AM

**To:** Reardon, Kyle (USACAE)

**Cc:** Denney, Craig; [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com) **Subject:** WECO - hard drive of discovery **Importance:** High

Kyle:

Mark Dombroff and I received the hard drives of the newly copied WECO discovery today . The hard drives still do not include any index of the 1.2 million pages of materials. The content format also remains single page PDFs instead of a load file format that we can search.

Apparently, the FBI {or perhaps, your staff) did not inspect the materials very closely on the second go around before sending us the new copies of WECO materials. Mark's colleague at the firm did an initial inspection of the hard drive today. While WECO Bates #01138058 has been removed, the very next file {WECO Bates #01138059) appears to contains a copy of the same email and image of suspected child pornography.

Mark and I need to discuss with you by conference call this afternoon. We have been more than patient on this case with discovery issues and the problems are not getting resolved.

Please review WECO Bates #01138059 - I have not looked at the email or image but am informed it appears to be a copy of the email and CP image we brought to your attention in the conference call last week.

Let me know if you can do a call this afternoon at **3PM PST today.** The conf call number and code are listed below. Dial In# 888-872-3769

Passcode # 702-784-5200

**Craig S. Denney**

**Snell** & **Wilmer L.L.P. Snell** & **Wilmer L.L.P.**

50 West Liberty Street (Suite #510) 3883 Howard Hughes Parkway {Suite #1100) Reno, Nevada 89501 Las Vegas, Nevada 89169

775.785.5440 {office) 702.784.5200 {office)

775.830.2432 {mobile) 702.784.5252 {fax)

775.785.5441 {fax)

[cdenney@swlaw.com](mailto:cdenney@swlaw.com) [www.swlaw.com](http://www.swlaw.com/)

Snell & Wilmer DE N V E R

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775-785-5441 (Fax)

w,vw.sw law.com

I. AS VEGAS LOS AN GE L ES LOS C A BOS

ORANGE COUNTY

PH OE NI X SALT LA KE C IT Y

TUCSON

**Craig S. Denney**

**(775) 785-5411**

[**cdenney@swlaw.com**](mailto:cdenney@swlaw.com)December 11, 2012

**VIA E-MAIL AND FIRST CLASS MAIL**

Kyle Reardon

Assistant United States Attorney United States Attorney's Office Eastern District of California 500 I Street, Suite 10-100

Sacramento, CA 95814

Re: *United States v. Weygandt, et al.*

Case No. 2:11-CR-00429-JAM

Dear Mr. Reardon:

This letter is a follow-up to our phone conversation on December 6, 2012 and emails exchanged on today's date regarding electronic discovery problems in the above case. The delay in obtaining relevant discovery materials has become disruptive to defense preparation for Mr. Weygandt. On November 9, 2012, I provided you a letter requesting relevant *Brady* and *Giglio* evidence in this case. After nearly three weeks of delay, your office provided a hard drive of nearly 1.2 million single page PDF file documents. We were not provided with any index or directory of the materials. The hard drive of electronic materials contains 1183 folders of PDF files and each folder contains hundreds or even thousands of pages of single page PDF files.

Since there is no index and the files are not searchable , the discovery materials on the hard drive are not in an acceptable format. The production also failed to include any electronic load file, thus leaving over a million pages of PDF files without logical page breaks. In order for Mr. Weygandt to effectively translate these documents into reviewable format, our firm has received estimates from two vendors in the $50,000.00 range. In essence, Mr. Weygandt has been provided with a set of nearly useless documents until he expends a significant sum of money, at which time we can begin a review. Frankly, this is unacceptable. The resources to put these documents in reviewable form and the loss of time in doing so are significant.

Moreover, after this major electronic discovery issue is addressed, it does not alleviate the DOJ's continuing obligation to provide *Brady* and *Giglio* evidence - requested a month ago. Nothing has been received as of today's date. DOJ is obligated to produce this information

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irrespective of Rule 16. Nevertheless, you explained to me on our last phone call that you were without knowledge whether the nearly 1.2 million single page PDF files included this information.

The DOJ investigation of WECO and Mr. Weygandt appears to have been going on since 2007. Apparently, Gulfstream Aerospace Corporation ("Gulfstream") has made a number of document productions to your office since it received grand jury subpoenas for WECO and Gulfstream on February 14, 2008. These document productions have been ongoing since that date and on through the past several years. DOJ appears to have had the documents for at least two to three years of the investigation. While the defense has only had the discovery materials for less than one week, one of the defense attorneys came across what may in fact be contraband, specifically, an image of a minor engaged in sexually explicit conduct. It is truly disturbing that DOJ provided the defense with apparent contraband that has not even been reviewed by federal investigators in this case.

Immediately upon discovering the image, Mark Dombroff and I alerted you in a conference call on December 5, 2012, to the Bates number in the electronic discovery so that you and the FBI could review and determine if the image was contraband. On the following day, the defense lawyer in this case received an email from you stating, "possession of CP is illegal (even when part of discovery)." (Encl). Your remedy directed the parties to tum over their hard drives to FBI agents and have the data wiped. We spoke by phone and you advised that the discovery would be reloaded. Accordingly, because of DOJ's apparent oversight, Mr. Weygandt is now without the discovery and is waiting upon your office to reproduce the voluminous data.

On today's date, Mark Dombroff and I received hard drives of the "new" WECO discovery materials. The materials do not have any index and they are not in searchable format. Mark Dombroff s colleague examined the materials and discovered that while WECO Bates #01138058 has been removed due to its contraband nature, the very next image (WECO Bates #01138059) appears to be a duplicate email with the same contraband image. For reasons unclear, the investigators in this case did not review these materials before sending them out to the defense. This leaves us with yet another delay in review of discovery. You advised me that you do not have any index for the nearly 1.2 million pages of documents. I find this incredulous that DOJ would receive this volume of materials from Gulfstream and not insist on production of an index to the materials. Moreover, the materials were then converted by DOJ (or its vendor) into single PDF pages rather than a format that can be searched.

The discovery delays are simply unacceptable in this case. The original WECO defendants (Jerry Kuwata, Chris MacQueen, Anthony Zito, Scott Durham, Doug Johnson, and Michael Maupin) were indicted in September 2011. Mr. Weygandt was indicted in early October 2012. The discovery materials should have been reviewed, organized, formatted, and produced to the defense in short order.

Mr. Weygandt faces trial in this case in four months. DOJ should be able to provide the defense with electronic discovery in searchable format. And if Gulfstream provided the voluminous discovery materials in response to grand jury subpoenas , then DOJ should *insist* that Gulfstream provide the materials with an index so that the defense can properly review them. This letter shall serve as a final attempt to obtain meaningful discovery and materials to which Mr. Weygandt is entitled before DOJ forces the defense to seek relief from the Court.

We respectfully request that no later than 5:00 p.m. on December 14, 2012, you provide the discovery in a logical format which maintains the original pagination of the files, i.e. *not* single page PDFs lacking logical page breaks. In doing so, we request the " lo ad file" that was generated when the electronic data was extracted and compiled and which may be utilized to search the files. In a document production of this size, it is inconceivable that Gulfstream would have simply provided the discovery to DOJ in the manner and means in which your office provided it to the defense. And if that happened, it would seem incumbent upon DOJ to request an index for the voluminous materials.

Similarly, Mr. Weygandt repeats his request for *Brady* and *Giglio* evidence (requested on November 9, 2012) and asks that you provide this by close of business on December 14, 2012.

Mr. Weygandt has been prejudiced significantly during this entire matter over the past four plus years of investigation. The material requested, and the format in which it should be produced is reasonable. We ask that you promptly work with DOJ's technical support personnel and Gulfstream to voluntarily provide these materials to defense before Mr. Weygandt incurs additional prejudice, expense, and further delay. We look forward to your anticipated cooperation.

Very truly yours,

CSD:mw

cc: Mark Dombroff

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Snell & Wilmer



Craig S. Denn9 .--

CT

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**From:** Cochran, Justin

**To:** [Cochran, Justin](mailto:jcochran@swlaw.com)

**Subject:** RE: WECO - hard drive of discovery

**Date:** Sunday, December 16, 2012 7:28:50 PM

**From:** Reardon, Kyle (USACAE) [<mailto:Kyle.Reardon@usdoj.gov>]

**Sent:** Tuesday, December 11, 2012 12:47 PM

**To:** Denney, Craig

**Subject:** RE: WECO - hard drive of discovery

Craig;

I am unable to call this afternoon at 3 pm. I will be available tomorrow morning if that time is convenient for you and Mr. Dombroff.

As it concerns an index – no index was provided to us and one has not been created by my office.

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Kyle

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**Sent:** Tuesday, December 11, 2012 10:53 AM

**To:** Reardon, Kyle (USACAE)

**Cc:** Denney, Craig; [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com) **Subject:** WECO - hard drive of discovery **Importance:** High

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Dial In # 888-872-3769

Passcode # 702-784-5200

**Craig S. Denney**

**Snell & Wilmer L.L.P. Snell & Wilmer L.L.P.**

50 West Liberty Street (Suite #510) 3883 Howard Hughes Parkway (Suite #1100) Reno, Nevada 89501 Las Vegas, Nevada 89169

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775.830.2432 (mobile) 702.784.5252 (fax)

775.785.5441 (fax)

[cdenney@swlaw.com](mailto:cdenney@swlaw.com) [www.swlaw.com](http://www.swlaw.com/)

**From:** Denney, Craig

**To:** [Kyle Reardon](mailto:kyle.reardon@usdoj.gov)

**Cc:** [Denney, Craig](mailto:cdenney@swlaw.com); [mdombroff@dglitigators.com](mailto:mdombroff@dglitigators.com)

**Subject:** Weco discovery

**Date:** Friday, December 14, 2012 5:36:58 PM

Kyle:

Hello, we have not received any response on the Brady request from Nov. 9. The problems with the hard drive discovery remain unchanged.

Mark Dombroff and I have been more than patient with discovery. However, the delay is ongoing and unacceptable for preparation of Bill Weygandt's defense with an April trial date.

We are forced to file a motion to compel and seek the court's assistance in obtaining all exculpatory evidence listed in my November 9 letter. We are also entitled to the voluminous electronic materials in searchable (source file) format and with an index.

We will request an order shortening time on the motion to compel and request your agreement to schedule a hearing before the magistrate as soon as possible.

Let me know if you agree or oppose the early hearing to argue the motion. Regards,

Craig Denney

Sent from my iPhone

**Denney, Craig**

**From: Sent: To: Subject:**

Reardon, Kyle (USACAE) <[Kyle.Reardon@usdoj.gov>](mailto:Kyle.Reardon@usdoj.gov) Friday, December 14, 2012 5:37 PM

Denney, Craig

Automatic reply: Weco discovery

I am out of the office today (Friday, December 14, 2012). If you need immediate assistance, please contact Susie Camacho at (916) 554-2820.

1