

LAW OFFICES  
Robert J. Tennant

January 9, 2012

City of Santa Clara  
Police Department  
601 El Camino Real  
Santa Clara, California 95050-4307

Santa Clara Police Department Agency Arrest Number 1112465  
Garrett Bondaug, dob 6/27/1970  
Event date(s) December 2 and December 3, 2011

Records Department:

**DEMAND FOR PRESERVATION OF EVIDENCE**

Please be advised that my client and I believe that electronically stored information (ESI) is an important and irreplaceable source of discovery and/or evidence in connection with the dispute described above.

Therefore, you are hereby given notice to immediately take all steps necessary to prevent the destruction, loss, concealment, or alternation of any paper, document, or electronically stored information and other data or information generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes, etc.), and e-mail related Garrett Bondaug, Agency Arrest Number 1112465, and the officers involved.

ESI should be afforded the broadest possible definition and includes, but is not limited to, all digital communications (e.g., e-mail, voice mail, instant messaging), work processing documents (e.g., Word and WordPerfect documents and drafts), spreadsheets and tables (e.g., Excel and Lotus 123 worksheets), image and facsimile files (including PDF, TIFF, JPG, and GIF images), sound recordings (including WAV and MP3 files), video recordings, all databases, all contact and relationship management data, calendar and diary application data, online access data (including temporary files, Internet files, History, and Cookies), all network access and server activity logs, all data created with the use of any Personal Data Assistant (PDA) such as a Palm Pilot, Blackberry, or other Windows-based or Pocket PC devices, any Droid, Apple, Microsoft or other smart phone operating system, all CAD files, and all back-up and archival files.

Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent loss due to routine operations and employ proper techniques to safeguard all such evidence.

**Because hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for ESI. If information exists in both electronic and paper form, you should preserve them both.**

### **Litigation Hold**

You are requested to immediately initiate a litigation hold for **potential relevant** ESI, documents, and tangible things, and to act diligently and in good faith to secure and audit compliance with that litigation hold. You are also requested to preserve and not destroy all passwords, decryption procedures (including, if necessary, the software to decrypt the files), network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view, and (if necessary) reconstruct any ESI. You should not pack, compress, purge, or dispose of any file or any part thereof.

You are further requested to immediately identify and modify or suspend features of your operations, information systems, and devices that, in routine operations, operate to cause the loss of documents, tangible items, or ESI. Examples of such features and operations include, but are not limited to, purging the contents of e-mail repositories by age, capacity, or other criteria; using data or media wiping, disposal, erasure, or encryption utilities or devices; overwriting, erasing, destroying, or discarding backup media; reassigning, re-imaging or disposing of systems, servers, devices, or media; running antivirus or other programs that alter metadata; using metadata stripper utilities; and destroying documents or any ESI by age or other criteria.

### **Servers**

With respect to servers like those used to manage electronic mail and network storage, the entire contents of each user's network share and e-mail account should be preserved and not modified.

### **Storage**

With respect to on-line storage and/or direct access storage devices attached to your mainframe computers and/or minicomputers, in addition to the above, you are not to modify or delete any ESI, "deleted" files, and/or the file fragments existing on the date of this letter's delivery that contain potentially relevant information.

With regard to all electronic media used for offline storage, including magnetic tapes and cartridges, optical media, electronic media, and other media or combinations of media containing potentially relevant information, you are requested to stop any activity which

may result in the loss of any ESI, including rotation, destruction, overwriting and erasure in whole or in part. This request is intended to cover all media used for data or information storage in connection with your computer systems, including magnetic tapes and cartridges, magneto-optical disks, floppy diskettes, and all other media, whether used with personal computers, mini computers, mainframes, or other computers, and whether containing backup and/or archival ESI.

#### **Personal Computers**

You should take immediate steps to preserve all ESI on all personal computers used by the department and its employees that in any way relate to Mr. Bondaug, Agency Arrest Number 1112465 and the officers involved. As to fixed devices, (1) a true and correct copy is to be made of all such ESI, including all active files and completely restored versions of all deleted electronic files and file fragments; (2) full directory listings (including hidden files) for all directories and subdirectories (including hidden directories) on such fixed devices should be written; and (3) all such copies and listings are to be preserved until this litigation is ended. Floppy diskettes, CDs, DVDs, tapes, and other non-fixed media relating to this matter are to be collected and stored pending resolution of this litigation.

#### **Portable Systems**

In addition to your immediate preservation of ESI, documents and tangible items, on servers and workstations, you should also determine if any home or portable systems may contain potentially relevant data or information. To the extent that officers or employees have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the station you must preserve the contents of systems, devices, and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, CD-R disks, PDAs, smart phones, voice mail boxes, or other forms of ESI storage). Additionally, if any employees, officer, partners or directors used online or browser-based e-mail accounts or services to send or receive potentially relevant messages and attachments, the contents of these account mailboxes should be preserved.

#### **Evidence Created or Acquired in the Future**

With regard to documents, tangible things, and ESI that are created or come into your custody, possession or control subsequent to the date of delivery of this letter, potentially relevant evidence is to be preserved. You should take all appropriate action to avoid destruction of potentially relevant evidence.

Please forward a copy of this letter to all persons and entities possession or controlling potentially relevant evidence. Your obligation to preserve potentially relevant evidence is required by law.

Please contact me if you have any questions regarding this letter. I would be happy to meet and confer with you or your designee over the issues set forth herein.

Very Truly Yours,

*Dictated but not read.  
Sent w/o signature to avoid delay.*

MICHELLE BRENOT

MB:jak

Cc: Mr. Garrett Bondaug