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9 Attorney for Defendant

10 **SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 THE STATE OF ARIZONA
13 Plaintiff,

14 vs.

15 JODI ANN ARIAS,
16 Defendant,

) NO. CR 2008-031021-001DT

) **DEFENDANT'S RESPONSE TO**
) **STATE'S MOTION FOR**
) **SANCTIONS AND STATE'S**
) **MOTION TO STRIKE**

) (Hon. Sherry Stephens)

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20 Jodi Ann Arias, by and through her counsel undersigned, responds to the
21 state's motion for sanctions and the state's motion to strike. The defense
22 respectfully requests this Court deny the state's motions. This Response is filed
23 pursuant to the 5th, 6th, 8th, and 14th Amendments to the United States Constitution,
24 as well as Art. II, § 4 and 24 of the Arizona Constitution.
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27 On November 13, 2014, the state filed a motion requesting a copy of a
28 hard drive from which the defense expert was working. The defense expert had

1 created an image of the original hard drive that belonged to Mr. Alexander. The
2 actual laptop and drive that belonged to Mr. Alexander was seized by Mesa Police
3 Department on June 10, 2008. It is labeled as evidentiary item number 390633.
4

5 In its request for a copy, the state falsely accused the defense expert of
6 damaging the actual evidentiary item number 390633 which prevented the state
7 from making its own copy. This is nothing more than a spurious allegation. Item
8 number 390633 was already damaged long before the defense expert received it.
9 The expert noted the damage and took a photo explaining where the damage was
10 and how he fixed it prior to accessing it. That photo is attached as **Exhibit A**. It
11 clearly indicates item number 390633, like many other items in the state's custody,
12 was damaged prior to the defense receiving the item. A disturbing pattern of
13 damaged and missing evidence is emerging after a recent review of multiple items
14 that have been held in state custody over the past 6 years.
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18 Despite the false accusations, the defense rushed to provide a copy of item
19 number 390633 on November 14, 2014 to the state. On November 16, 2014, the
20 state filed a motion claiming that the copy the defense provided was not the
21 correct item. Although the state refused to return the drive, the defense has now
22 reviewed a copy of what was disclosed to the state and agrees the FTK software
23 mistakenly grabbed the wrong drive. A complaint is being forwarded to FTK.
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26 Additionally, the state claimed it was unable to access the original drive
27 because "the defense expert damaged the computer during his last examination
28 preventing the state from making a mirror image of the hard drive." *See Motion*

1 *for Discovery (Compaq Presario Computer)*, filed November 13, 2014, page 1.

2 The state's motivation to request a copy of the hard drive from the defense is now
3 questionable because the state admitted it **was** able to conduct "further
4 examination of the original hard drive image from the Compaq Presario computer
5 belonging to the victim and seized by police on June 10, 2008." *See Motion for*
6 *Sanctions (Compaq Presario Computer)*, filed November 16, 2014, page 2.
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9 There really seems to be no need for the defense to provide anything to the
10 state since it is able to access its own evidence. Furthermore, the state had a half-
11 decade to create its own raw clone, but seemingly chose not to do so. Despite the
12 questionable motivation to request a copy from the defense, the defense delivered
13 a second copy of item number 390633 to the state on November 17, 2014. Yet on
14 November 18, 2014 the state filed another motion complaining that the second
15 defense-provided copy of item number 390633 "only contains a live folder
16 structure from a computer. The folder or files were only recently created within
17 the last week and cannot be forensically examined." *See Motion to Strike*
18 *(Compaq Presario Computer)*, filed November 18, 2014, page 1.
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22 There is absolutely nothing wrong with the second drive the defense
23 disclosed. The state received a clone of the master drive. It has been accessed by
24 different technicians. This is not an untouched image of the original drive. The
25 fact that the state does not have the general expertise to access the drive or
26 understand what it is that it received is appalling
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1 Also, the state claims that a Spybot Search and Destroy program prevented
2 Mr. Alexander from accessing any pornography sites. But this is simply untrue.
3
4 Spybot Search and Destroy is nothing more than 'freeware.' Anyone can
5 download the program for free from the internet. As such, it is not a strong anti-
6 malware program that would have prevented access to pornography sites. Search
7 and Destroy was used to clean up malware *after* it was downloaded. If it actually
8 stopped all malware then there would not have been so much found on Mr.
9 Alexander's computer.
10

11 Furthermore, it would not have stopped popups in order to prevent Mr.
12 Alexander from viewing the pop up files. It is not a pop up blocker but an after-
13 the-fact malware remover. There were thousands of pornography site hits found
14 on Mr. Alexander's computer. Some were caused by viruses and some were
15 accessed prior to viruses being downloaded onto his computer. The type of
16 viruses found on Mr. Alexander's computer are severe and typically associated
17 with the computer user visiting pornography sites.
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21 Moreover, the state has now admitted that many viruses were found on Mr.
22 Alexander's computer. However, during trial in 2013, the state's computer
23 forensic expert, Detective Melendez testified that he looked for viruses and found
24 none. Besides mishandling, tampering, and destroying evidence on June 19, 2009,
25 the state now admits that it proffered false testimony when Melendez testified to
26 looking for viruses and finding none. This testimony was solicited knowing that
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1 Ms. Arias asserted that Mr. Alexander's computer was infected with a virus. The
2 state used Melendez' false testimony to argue that Ms. Arias was lying.

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4 For the foregoing reasons, the state's motion for sanctions and motion to
5 strike should be denied.
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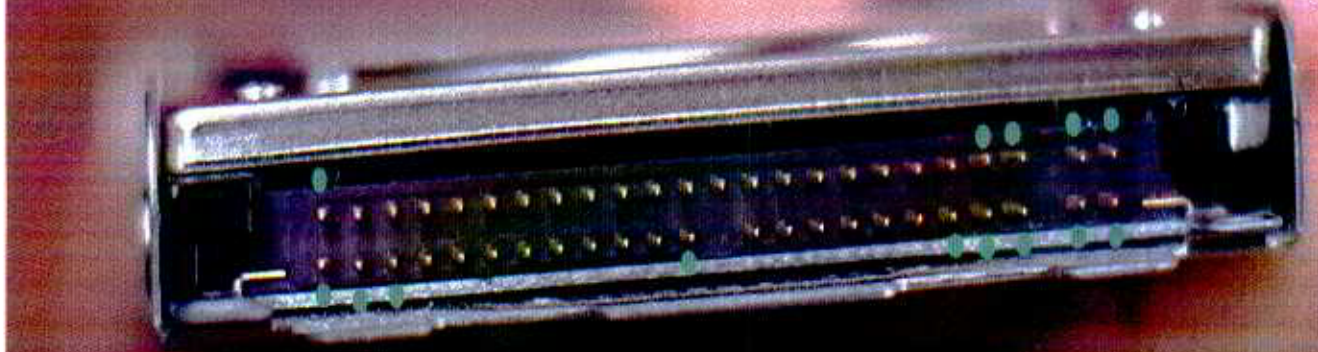
Court Chatter

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Court Chatter

EXHIBIT A

The pins marked with green dots were bent before we first inspected the drive.
This photo was taken after we realigned them on 8/25/14



Name	DISC09743.JPG
Item type	FastStone.JPG File
Folder path	E:\ARIAS MESA PD
Date created	8/26/2014 2:02 PM
Date modified	8/25/2014 10:49 AM

Court Chatter

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RESPECTFULLY SUBMITTED this 20th day of November, 2014.

WILLMOTT & ASSOCIATES

By /s/Jennifer L. Willmott

JENNIFER L. WILLMOTT

Attorney for Defendant

Copy of the foregoing mailed/
delivered this 20th day of
November 2014, to:

Clerk of the Superior Court
201 West Jefferson
Phoenix, AZ 85003

Hon. Sherry Stephens
Judge of the Superior Court
175 W. Madison
Phoenix, Arizona 85003-2243

Juan Martinez
Deputy County Attorney
301 West Jefferson
Phoenix, Arizona 85003

By /s/Jennifer L. Willmott
JENNIFER L. WILLMOTT
Attorney for Defendant

JLW/aj

Court Chatter