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ATTORNEY AT LAW

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\*LICENSED TO PRACTICE IN ALL  
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FOR CALIFORNIA AND FLORIDA  
AND ALL MILITARY COURTS  
WORLDWIDE

May 20, 2016

To: Commander, Marine Corps Installation Command  
From: Civilian Defense Counsel

Via: Regional Trial Counsel, National Capital Region

Subj: OBJECTION TO THE USE "TAINT ATTORNEY" PROCESSING OF CELL PHONE  
CONTENTS AND OTHER ELECTRONIC DATA ICO U.S. v. MAJOR MARK A.  
THOMPSON, USMC

Encl: (1) 5800 B 0521 20 Apr 16; OIC, LSSS-NCR Appointment Memorandum  
(2) 5800 B 0521 21 Apr 16; Taint Attorney Report  
(3) 5800 B 0251 2 May 16; OIC, LSSS-NCR Appointment Memorandum  
(4) 5800 B 0521 17 May 16; Second Taint Attorney Report [first & fourth pages only]  
(5) Inventory for Search and Seizure

This correspondence seeks to halt any further review of Maj. Thompson's electronic data until such time as the undersigned has an opportunity to review the work of the government's "taint attorney."

Per Encl (1), the OIC for the LSSS-NCR appointed an attorney to review the electronic data associated with NMCI email accounts associated with Maj. Thompson. To the undersigned's present understanding, no counsel for Maj. Thompson was put on notice that privileged attorney-client communications could potentially be discovered and revealed to the government.

One day after his appointment, the attorney issued a report claiming that out of 414 emails belonging to Maj. Thompson and 211 emails belonging to another suspect, and found only one privileged e-mail. Encl. (2)

Per Encl (3), the same attorney was appointed to review an additional cache of NMCI e-mails and was tasked reviewing this cache for privileged documents. This attorney completed his review and issued a report, identifying numerous files that pertained to attorney-client discussions between the undersign and Maj. Thompson, in addition to the discussion between Maj. Thompson and an investigator employed under the work-product privilege of counsel. Encl. (4) At no time was the undersigned or any counsel for Maj. Thompson informed that such a review by a taint attorney would be conducted.

On or about 16 April 2016, agents for the government seized the cell phone of Maj. Thompson. Encl. (5) At the present time, it is believed that agents for the government are inspecting the contents of the phone. Said phone will contain substantial privileged discussions in e-mail and

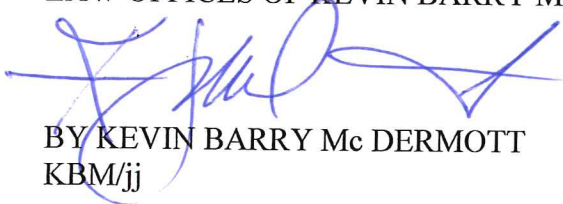
text format, as well as a log of calls made between his counsel and various members of his defense team.

At the present time, the undersigned has not been informed of any taint attorney being assigned to review the contents of Maj. Thompson's cell phone.

Maj. Thompson has the absolute right to maintain the confidentiality of the communications between himself and his legal team. The current procedures in place are insufficient to protect that privilege. Accordingly, it is requested that no further review be conducted until such time as Maj. Thompson's defense has had the opportunity to review the data that the taint attorney intends to release to the government. Moreover, before any review of the contents of Maj. Thompson's cell phone occurs, it is requested that Maj. Thompson be given the opportunity to review the contents and release to the taint attorney all cell phone data that Maj. Thompson's defense deems not to be privileged.

If it has been learned that any portion of the privileged materials have been provided by the taint attorney to the government, to include whether such materials exist and when they were created, it is our intention to seek dismissal of these charges or, at the minimum, compel the government to remove the current prosecution team from this case.

LAW OFFICES OF KEVIN BARRY Mc DERMOTT



BY KEVIN BARRY Mc DERMOTT  
KBM/jj

cc: trial counsel  
defense team



UNITED STATES MARINE CORPS  
LEGAL SERVICES SUPPORT SECTION  
NATIONAL CAPITAL REGION  
3250T CATLIN AVENUE  
MARINE CORPS BASE  
QUANTICO, VIRGINIA 22134-5001

5800  
B 0521  
20 Apr 16

FIRST ENDORSEMENT on Trial Counsel ltr 5800 B 0521 of 20 Apr 16

From: Officer in Charge, Legal Services Support Section  
To: Major Geoff Hengerer, U.S. Marine Corps Reserve

Subj: TRIAL COUNSEL MEMORANDUM ON APPOINTMENT OF TAINT ATTORNEY IN THE  
CASE OF MAJOR MARK A. THOMPSON, U.S. MARINE CORPS

1. I hereby appoint Major Geoff Hengerer, U.S. Marine Corps Reserve, as the taint attorney in the case of *United States v. Major Mark A. Thompson, U.S. Marine Corps*.
2. You are directed to review items contained in enclosure (2) to determine if there are any privileged communications contained therein and immediately notify the point of contact below. If privileged communications are found, you are directed to also notify senders and recipients of those communications, remove/redact any privileged materials, and return the materials to trial counsel. If you require administrative assistance in accomplishing the redaction, please advise and a technical administrator will be assigned to assist you.
3. Any questions or concerns should be directed to Major S. B. Kaza, U.S. Marine Corps Reserve, at (703) 432-0884 or by e-mail at [sridhar.kaza@usmc.mil](mailto:sridhar.kaza@usmc.mil).

V. C. DANYLUK

ENCL (1)  
ENCLOSURE (1)



UNITED STATES MARINE CORPS  
RESERVE LEGAL SUPPORT  
JUDGE ADVOCATE DIVISION  
WASHINGTON, DC 20350-3000

IN REPLY REFER TO

5800

B 0521

21 Apr 16

From: Major G. G. Hengerer, U.S. Marine Corps Reserve  
To: Major S. B. Kaza, U.S. Marine Corps Reserve

Subj: TAINT ATTORNEY REPORT IN THE CASE OF MAJOR MARK A. THOMPSON,  
U.S. MARINE CORPS

Encl: (1) OIC, LSSS-NCR Appointment Memorandum of 20 Apr 2016

1. Pursuant to enclosure (1), I have been appointed as the taint attorney in the case of United States v. Major Mark A. Thompson, U.S. Marine Corps.
2. On 13 April 2016, I conferred with Major Sridhar B. Kaza concerning the transmittal of all relevant evidence containing allegedly privileged communications and the procedures and logistics associated with my review.
3. On 13 April 2016, I received a .pst file through AMDREC from Agent Thomas J. Grafe, NCIS, labeled "govt email information of Majors Thompson and Pretus from 01Jan16-31Mar16" (hereinafter the "Thompson Production" and the "Pretus Production" respectively).
4. The Thompson Production contained archived traffic from Major Thompson's NMCI email account - mark.a.thompson@usmc.mil. Once opened using Microsoft Outlook, the Thompson Production contained 414 total emails in the following folders and subfolders: Deleted Items (196 emails), Inbox (185 emails), Recoverable Items (29 emails), and Sent Items (4 emails).
5. The Pretus Production contained archived traffic from Major Pretus' NMCI email account - michael.pretus@usmc.mil - and included 211 total emails in the Inbox folder.
6. As instructed in enclosure (1), I reviewed the documents provided in the Thompson and Pretus Productions for possible privileged communications - attorney-client communications, attorney work product (i.e., documents and tangible things that are prepared in anticipation of trial), or lawyer-client privileged information under M.R.E. 502.
7. I have determined that following email found in the Deleted Items Folder of the Thompson Production contains privileged communications:

ENCLOSURE (2)

**ENCL (2)**

Subj: TAINT ATTORNEY REPORT IN THE CASE OF MAJOR MARK A. THOMPSON,  
U.S. MARINE CORPS

Date	To	From	Subject	Comment
8 Mar 16	P. Cave & M. Thompson	B. Magee	Assignment of Appellate Defense Counsel	The entire email chain contains privileged communications.

8. The file referenced in paragraph 7 above must be redacted and withheld from the criminal investigator and/or the trial counsel.

9. All remaining files or documents are not deemed privileged, require no redactions, and are discoverable.

10. If you have any questions concerning this report, please contact me at geoff.hengerer@gmail.com or 443-915-9159.

  
G. G. HENGERER

Copy to:  
OIC, LSSS-NCR



UNITED STATES MARINE CORPS  
LEGAL SERVICES SUPPORT SECTION  
NATIONAL CAPITAL REGION  
3250T CATLIN AVENUE  
MARINE CORPS BASE  
QUANTICO, VIRGINIA 22134-5001

5800  
B 0521  
2 May 16

FIRST ENDORSEMENT on Trial Counsel ltr 5800 B 0521 of 2 May 16

From: Officer in Charge, Legal Services Support Section  
To: Major Geoff Hengerer, U.S. Marine Corps Reserve

Subj: TRIAL COUNSEL MEMORANDUM ON APPOINTMENT OF TAINT ATTORNEY IN THE  
CASE OF MAJOR MARK A. THOMPSON, U.S. MARINE CORPS

1. I hereby appoint Major Geoff Hengerer, U.S. Marine Corps Reserve, as the taint attorney in the case of *United States v. Major Mark A. Thompson, U.S. Marine Corps.*
2. You are directed to review items contained in enclosure (2) to determine if there are any privileged communications contained therein and immediately notify the point of contact below. If privileged communications are found, you are directed to also notify senders and recipients of those communications, remove/redact any privileged materials, and return the materials to trial counsel. If you require administrative assistance in accomplishing the redaction, please advise and a technical administrator will be assigned to assist you.
3. Any questions or concerns should be directed to Major S. B. Kaza, U.S. Marine Corps Reserve, at (703) 432-0884 or by e-mail at [sridhar.kaza@usmc.mil](mailto:sridhar.kaza@usmc.mil).

  
V. C. DANYLUK

ENC(3)



UNITED STATES MARINE CORPS  
RESERVE LEGAL SUPPORT  
JUDGE ADVOCATE DIVISION  
WASHINGTON, DC 20350-3000

IN REPLY REFER TO  
5800  
B 0521  
17 May 16

From: Major G. G. Hengerer, U.S. Marine Corps Reserve  
To: Major S. B. Kaza, U.S. Marine Corps Reserve

Subj: SECOND TAINT ATTORNEY REPORT IN THE CASE OF MAJOR MARK A.  
THOMPSON, U.S. MARINE CORPS

Encl: (1) OIC, LSSS-NCR Appointment Memorandum of 2 May 2016  
(2) Maj Hengerer First Taint Attorney Report of 21 Apr 2016

1. Pursuant to enclosure (1), I have been appointed as the taint attorney in the case of United States v. Major Mark A. Thompson, U.S. Marine Corps.
2. On 20 April 2016, I was previously appointed as the taint attorney in this matter whereby I reviewed the government emails of Majors Thompson and Pretus from 1 January 2016 - 31 March 2016 (the "First Thompson Production").
3. On 21 April 2016, I submitted enclosure (2) to Trial Counsel identifying one privileged communication from the First Thompson Production.
4. On 13 May 2016, I corresponded with Agent Michael C. Bengs, NCIS, regarding my appointment to serve as the taint attorney charged with reviewing additional email collections from Maj Thompson.
5. On 13 May 2016, I received a .pst file through AMDREC from Agent Bengs labeled "mark.a.thompson 31mar16-26apr16.pst" (the "Second Thompson Production").
6. The Second Thompson Production contained archived traffic from Major Thompson's NMCI email account - mark.a.thompson@usmc.mil - for the period covering 31 March 2016 - 26 April 2016. Once opened using Microsoft Outlook, the Second Thompson Production contained 254 total emails in the following folders and subfolders: Deleted Items (17 emails), Inbox (188 emails), Recoverable Items (18 emails), Deletions Subfolder (29 emails), and Sent Items (2 emails).
7. As instructed in enclosure (1), I reviewed the documents provided in the Second Thompson Production for possible privileged communications - attorney-client communications, attorney work product (i.e., documents and tangible things that are prepared in anticipation of trial), or lawyer-client privileged information under M.R.E. 502.

ENCL (4)

Subj: SECOND TAINT ATTORNEY REPORT IN THE CASE OF MAJOR MARK A.  
THOMPSON, U.S. MARINE CORPS

advice); see also, e.g., *Cottillion v. United Refining Co.*, 279 F.R.D.  
290, 304-05 (W.D. Pa. 2011).

10. The files referenced in paragraphs 8 and 9 above must be redacted and/or withheld from the criminal investigator and/or the trial counsel. As directed in enclosure (1), I request administrative and technical assistance in accomplishing the redactions.

11. All remaining files or documents are not deemed privileged, require no redactions, and are discoverable.

12. If you have any questions concerning this report, please contact me at geoff.hengerer@gmail.com or 443-915-9159.

  
G. G. HENGERER

Copy to:  
OIC, LSSS-NCR  
Mr. Kevin McDermott  
Maj Geoffrey Shows, U.S. Marine Corps  
LT Daniel M. Bridges, JAGC, U.S. Navy



The person of Maj Mark A. Thompson

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# Inventory for Search and Seizure

CASE NUMBER: US V Maj Mark A. Thompson

- 1) (1) Apple iPhone, IMEI 354443060151408
- 2) Nothing Follows
- 3) \_\_\_\_\_
- 4) Note: Evidence was turned over to LSSS. Evidence is not maintained at NCIS
- 5) \_\_\_\_\_
- 6) \_\_\_\_\_
- 7) \_\_\_\_\_
- 8) \_\_\_\_\_
- 9) \_\_\_\_\_
- 10) \_\_\_\_\_



Gabriel Henson, Special Agent  
NCIS, Quantico VA

**ENCL(5)**