



Wilmington Trust,

Plaintiff,

v.

Gregory Nelson

Defendant.

Case No.: 18-cv-3299 (PJS/DTS)

EXPERT MEMORANDUM

December 27, 2019

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EXECUTIVE SUMMARY

Computer Forensic Services (“CFS”) has been retained by counsel for Defendant (“Nelson”) to assist with matters that involve digital evidence. This memorandum seeks to describe the methodology of CFS’s analysis of digital evidence, and to provide conclusions about user activity germane to the claims and defenses in this litigation.

CFS and I reserve the right to supplement this report.

EXPERT BACKGROUND

My name is Mark Lanterman. I am the Chief Technology Officer of CFS located in Minneapolis, Minnesota.

Our firm specializes in the analysis of digital evidence in civil and criminal litigation. I have over 25 years of experience in computer forensics and cybersecurity. Prior to joining CFS, I was a sworn investigator for the United States Secret Service Electronic Crimes Task Force and acted as its senior computer forensic analyst. I am certified by the United States Department of Homeland Security as a “Seized Computer Evidence Recovery Specialist,” as well as certified in computer forensics by the National White-Collar Crime Center. Both federal and state court judges have appointed me as a neutral computer forensic analyst or special master.

I graduated from Upsala College in New Jersey with both a Bachelor of Science and a Master’s degree in computer science. I completed post graduate work in cyber security at Harvard University. I am currently adjunct faculty of computer science for the University of Minnesota Technological Leadership Institute’s Master of Science and Security Technologies program (MSST). I am also faculty at the Mitchell Hamline School of Law and the University of St. Thomas School of Law in Minnesota. I am faculty for the National Judicial College in Reno, Nevada and the Federal Judicial Center in Washington D.C.

I have previously provided training and delivered keynote addresses for the United States Supreme Court, the Eleventh Circuit Federal Judicial Conference, the Eighth Circuit Federal Judicial Conference, the Southern District of Georgia Judicial Conference and several state judicial conferences. I delivered the keynote address at the 2018 Chief Justices’ Conference and Georgetown Law School’s e-discovery conference.

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I was appointed by the Minnesota Supreme Court to serve as a member of Minnesota's Lawyers' Professional Responsibility Board (LPRB). I have been appointed to its Opinion Committee.

I am a co-author of the Minnesota State Bar's e-Discovery Deskbook, and I also write monthly articles for Minnesota Bench & Bar magazine.

CFS is the exclusive, contracted computer forensic expert for the Hennepin County Sheriff's Office, the Ramsey County Attorney's Office, the Washington County Attorney's Office in Minnesota, as well as the Metropolitan Airports Commission, also known as the Minneapolis/Saint Paul International Airport. CFS is currently partnered with the U.S. Secret Service to assist with its electronic investigations, as part of its nationwide Electronic Crimes Task Force (ECTF).

MATERIALS REVIEWED

CFS has been provided with the following documents and data, which are incorporated by reference:

- The amended complaint in this action, filed on January 10, 2019;
- The Affidavit of Patrick Trainor, dated December 5, 2018;
- The Supplemental Affidavit of Patrick Trainor, dated December 17, 2018;
- An undated letter from Trevor Haight from Xact Data Discovery ("XDD"), which briefly summarizes his analysis;
- Defendant's Second Set of Supplemental Answers to Plaintiff's Interrogatories to Defendant (Set 1);
- In addition to the documents listed above, CFS and I have also received, on February 1, 2019, two Apple iMac computer for preservation and analysis.¹ Table 1 below lists information about the identification of these devices.²

Description	Serial Number
Greg Nelson's iMac	C02HTJMUDHJF
Lisa Nelson's iMac	W80478JUDAS

Table 1

¹ Each device was forensically preserved. Sound data preservation is the first step generally taken by a trained computer forensic examiner. A process known as forensic imaging creates a copy of an electronic storage device's data. The resulting copy is known as a "forensic image," and is an accurate representation of a device's data, regardless of file or operating system. The process is known as imaging because it is akin to taking a snapshot of the entirety of a device's data, including deleted data. The process does not alter any data on the original device. Additionally, the comprehensive nature of this preservation process allows for the assembly of a timeline of user actions.

² These two devices were similarly received and reviewed by XDD. (See XDD/Haight Ltr. ¶ 2).
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- On October 3, 2019, CFS received a third iMac computer. I understand this iMac is Mrs. Nelson's "new" iMac computer. Information about the identification of this device is listed in Table 2 below.

Description	Serial Number
Lisa Nelson's "new" iMac	C02XG0H8J1GH

Table 2

OPINION SUMMARY

This memorandum is offered to discuss the transmission of data from Wilmington's email system to Nelson's personal computers. In summary, consistent with the opinions expressed in greater detail in this report, and based upon review of the devices listed above and the materials that have been made available to CFS, I have concluded that:

- Nelson undertook to remove emails sent from Wilmington Trust's email system from his and his wife's personal computers;³
- Nelson regularly, throughout the course of his employment and over several years, sent emails from his Wilmington Trust email account to his personal account(s);⁴
- Other individuals, currently employed by Wilmington Trust, had sent emails to Nelson personal email account;
- There is no evidence to indicate that a document called "grp-Nelsons Contacts.XLSX" is on any of the devices listed above any longer, or that it was accessed on or after November 13, 2018.

Emails transmitted from Nelson's Wilmington Trust email account to personal email accounts/devices

As to Mr. Nelson's iMac computer, CFS recovered approximately 500 deleted emails that originated from the domain @wilmingtontrust.com and that had been sent to Nelson's personal

³ See Def.'s Ans. To Pl.'s Interrog 1. ("...I deleted those emails from the personal email accounts to the best of my ability following my receipt of Plaintiff's November 15, 2018 letter instructing me to do so."). See *also* Def.'s Ans. To Pl.'s Interrog. 2.

⁴ See Def.'s Ans. To Pl.'s Interrog. 1, ("I sent emails to my personal email address and/or my wife's personal email address through the course of my employment.")

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email accounts.⁵ The emails' reported date stamps span from November 2013 to November 2018.

I understand that Wilmington Trust has alleged that March 2018 is the first time Nelson was contacted by a headhunter. (See Amend. Compl. ¶ 2). Based upon my analysis of the recovered emails from Nelson's personally-owned iMac, between November 2013 and February 2018, there are a total of 461 emails originating from an @wilmingtontrust.com email address. Between March and November of 2018, there are 42 emails originating from an @wilmingtontrust.com email address. Therefore, approximately 91% of the potentially relevant emails were sent or received before Nelson was allegedly contacted by a headhunter.⁶ Analysis of the dates of those emails indicates that the frequency the emails were sent or received did not increase in the May to November 2018 timeframe. Even when narrowed to the set of emails with attachments, which are presumably more likely to be work-related emails, the frequency of emails sent or received did not increase in the May to November 2018 timeframe.⁷

I understand that Wilmington Trust has made reference to specific emails in its Amended Complaint. Table 3 summarizes the specific emails enumerated in Plaintiff's complaint. Ostensibly, these are also the five email messages that were provided to XDD for analysis and identification. (See XDD/Haight Ltr. ¶ 3, "...[XDD was] provided with a file called 'Responsive Emails.zip'. It contained five email messages in .MSG format.").

Email Date	Complaint	Analysis Result
August 15, 2018	Amend. Compl. ¶ 5 ("...Nelson emailed to his personal email address a complete list of all deals he had worked on at Wilmington Trust since 2012.")	This email, nor any other from August 15, 2018, exist on the provided devices, suggesting that it was deleted from the devices as stated by Nelson.
August 24, 2018	Amend. Compl. ¶ 7 ("...Nelson then emailed to his personal email address a confidential schedule of the money market funds offered by Wilmington Trust.")	This email had been deleted but was recovered from Mr. Nelson's iMac computer through forensic methods.

⁵ The personal email addresses include the following: lisa.a.nelson@comcast.net; "greg.p.nelson@comcast.net;" and "abbsnelsonn@gmail.com."

⁶ I understand that some of the content of these emails are personal in nature, and not related to Nelson's work for Wilmington Trust.

⁷ A spreadsheet of the data analyzed to render these conclusions is being provided together with this report in electronic form as Exhibit A. Exhibit B shows the frequency of emails from month to month, and Exhibit C shows the frequency of emails with attachments from month to month.

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October 12, 2018	Amend. Compl. ¶¶ 8-9 (“...Nelson emailed to his personal email address two additional confidential documents belonging to Wilmington Trust.”)	This email, nor any other from October 12, 2018, exist on the provided devices.
October 24, 2018	Amend. Compl. ¶ 10 (...Nelson emailed to his personal email address a list of approximately 2000 Wilmington Trust clients and/or referral sources with their accompanying mailing addresses, email addresses, and/or contact persons.”)	This email existed on both Mr. Nelson’s system and Mrs. Nelson’s first systems as a “forwarded” message (e.g. the original email from Nelson’s Wilmington Trust account no longer exists). It did not exist in any form on Ms. Nelson’s “new” computer when it was received. It also no longer exists on Mr. or Mrs. Nelson’s first systems, supporting that it was successfully removed by XDD.
November 1, 2018	Amend. Compl. ¶ 11 (...Nelson also emailed to his personal email address a portion of the New Business Review Committee meeting agenda from that same day.”)	This email, nor any other from November 1, 2018, exist on the provided devices.

Table 3

Emails transmitted from Wilmington Trust accounts to Nelson’s personal account by other employees

During the course of my review of the recovered emails I identified an email that had been sent to Nelson’s personal address from an employee of Wilmington Trust. On January 18, 2018, Nicholas Tally, “NTally@WilmingtonTrust.com,” sent an email to Nelson.

Datestamp	Attachment Name(s)	To	From
1/18/18	M&A Consolidated Financials 12-17.xlsx	Greg Nelson <greg.p.nelson@comcast.net> [21 additional recipients omitted]	Tally, Nicholas <NTally@WilmingtonTrust.com>

Table 4

The “contacts” document was not accessed on or after November 13, 2018.

As noted by Mr. Haight of XDD in his letter, he identified a file called “grp-Nelsons Contacts.XLSX.” I have identified the same file on both Mr. and Mrs. Nelson’s first iMacs. These files appeared on both systems on October 30, 2018, within files associated with Apple’s Mail program. While this file originated from Nelson’s Wilmington Trust email account, it existed on the first systems during our initial review because it was sent between Mr. Nelson’s personal email account and Mrs. Nelson’s personal email account and had yet to be removed by XDD. From our review of all three systems, there is no evidence to affirmatively

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indicate that the "grp-Nelsons Contacts.XLSX" spreadsheet had been used or viewed on or after November 13, 2018.

I declare under penalty of perjury under the laws of the United States that foregoing is true and correct.

Respectfully submitted,



Mark Lanterman
Chief Technology Officer
Computer Forensic Services

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EXHIBIT B

Frequency of Emails Sent from Domain @wilmingtontrust.com by Month/Year

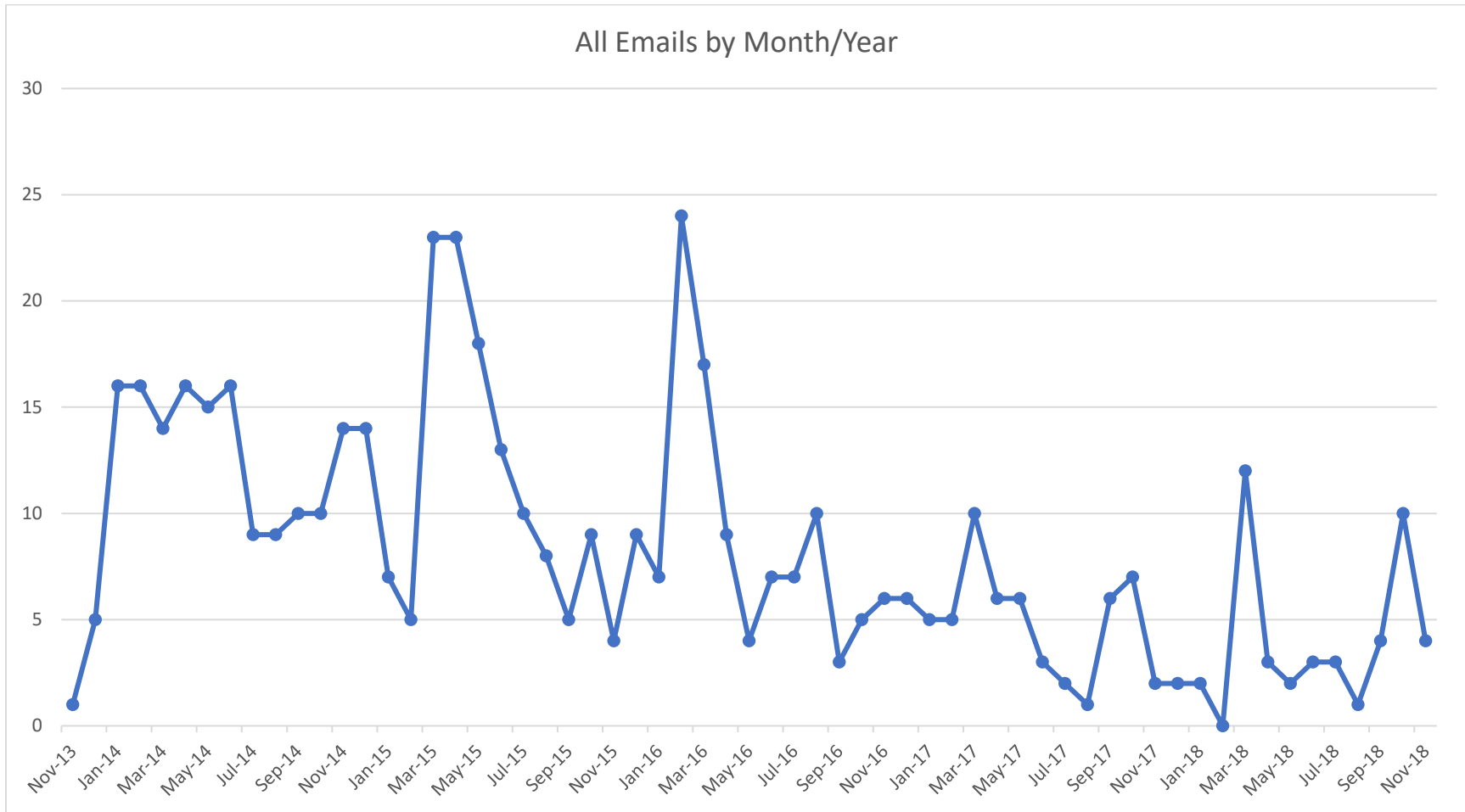


EXHIBIT C

Frequency of Emails with Attachments Sent from Domain @wilmingtontrust.com by Month/Year

