

NORTH CAROLINA
 GUILFORD COUNTY

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AFFIDAVIT

I, MICHAEL A_ DEGUGLIELMO, DECLARE AS FOLLOWS:

Bill Thompson's latest Motion before the Court is a complete **misrepresentation of the facts as has been the case with virtually every** representation made by Mr. Thompson concerning the DNA analysis in this **case**. Mr. Thompson has made a habit of selectively remembering a small portion of each **conversation** and then utilizing that selective portion, taken out **of context**, to misrepresent the intent of the original statement.

What Mr. Thompson has said **that is the truth is as follows**:

- 1) I did agree, as Mr. Thompson states, to **rescore** the **autorads**, making note of any operator overrides. **In** our discussion these overrides were **specified** by Mr. Thompson to be the **addition of what he, believed to be faint or missing bands**. Any potential **overrides were** documented in the **BioImage** WBA List requested by Mr. Thompson, which Mr. Thompson in his same letter of May 25, 2994, **states "includes the information I seek"** (see **attached letter**).
- 2) I did **tell** Mr. Thompson that our **BioImage/Computer** Systems are not set up to store images on floppy disks. Due to the large volume of data analyzed a Genetic **Design**, our system is set up to archive images to an **optical disk reader**, something that Mr. Thompson **referred to in his next** motion as "exotic and expensive" and **once** again **stated falsely** that this was an **effort on** our part to **preclude** his expert **from examinhg our files**. **First of all, as Mr.** Thompson is well aware, optical dish are neither exotic nor expensive Quite to the contrary, they are the most **efficient and economical method** of storing large quantities of imaged data **When one considers that an optical disk can be used to simultaneously archive up to 200** images, as compared to floppy disks which at **best** can hold **one** image each and **must** be archived **individually**, the reason for our choice is quite obvious_ The inherent fallacy in Mr. Thompson's logic is that Genetic **Design or any** other private company has any need to consult with Mr. Thompson or his experts regarding how we choose to store data or any other aspect of our business.

- 3) It is true that in October 12, 1995, both Mr. Thompson and myself talked with Greg Kinch from BioImage Corporation regarding saving the image files. Mr. Thompson, however, was not, as he would imply from his statements, responsible for elucidating a coverup on my part to prevent him from obtaining the image files. What Mr. Thompson has once again conveniently and selectively left out was the remainder of the discussion where Mr. Kinch and myself explained to Mr. Thompson the nature and set up of our imaging systems regarding why we could not allow Mr. Thompson's expert access to our imaging system [since he does not have one of his own) Mr. Kinch did state that he believed the images could be saved on floppy disks even though that is not how our system is normally utilized. Since Mr. Thompson has taken the liberty to interpret Mr. Kinch's instructions regarding this process to the "use of simple commands", I would welcome Mr. Thompson to provide me with a written list of these "simple commands" (in their correct order, of course) thereby alleviating the need of my contacting Mr. Kinch to learn how to modify the archiving process from the one normally utilized by Genetic Design.
- 4) Mr. Thompson has truthfully stated that I requested that all communication go through the prosecutor. Once again what Mr. Thompson has selectively left out is the reason. After several discussions with Mr. Thompson where only portions of what I had said were relayed to the court in writing it became apparent that Mr. Thompson would consistently utilize only a portion of my statements and use them in a fashion that misrepresents the intent of the original statement. An excellent example of this is contained in Mr. Thompson's statements regarding our conversations of December 18 and 20, 1995 (see next item).
- 5) It is true that Mr. Thompson and I talked on December 18 and 20, 1995, I, however, did not tell him definitively that these images were erased. During the conversation I did tell him that it was not the normal Practice of the forensic laboratory to save image files indefinitely. A simple statement from a circuitous conversation again out of context by Mr. Thompson and utilized to represent the truth with what Mr. Thompson refers to as the "Intentional Destruction of Evidence". Our forensic laboratory does not indefinitely store image files because we have the original autoradiograph from which the images are made. This is Mr. Thompson's misrepresentation of the facts. Two images made of the same autorads at different times are not like two different photographs of the same person taken at different times. The autorads are x-ray films, exactly like black and white photographic negatives. Two images of the same autorad are like two photographic prints made from the

same negative (a **process** which has been **successfully** marketed by a number of photo-finishing **companies** in order to allow their **customers** the convenience of providing duplicate prints of their photos to friends and relatives). The **images** are not the evidence. They are **nothing** more than electronic photographs of the **evidence** itself which is the autoradiographs or **x-ray films**.

This is, however, somewhat of a pointless argument **due** to the bet that it has **evolved** from **Mr. Thompson's** initial misrepresentation **of our discussion**. **I told** Mr. Thompson that, as a matter of policy, our **forensic laboratory** does not **indefinitely** store **images**. When the hard drive becomes full, images are deleted on a random basis to allow for more disk space. As a **result** of this practice, it is possible that the image files were deleted during our normal **maintenance**. During our conversation Mr. Thompson said nothing regarding his concerns. **He did not ask me if I was sure the August 1995 images had been deleted. He did not ask** me why **they** had been deleted. He simply responded with a typical "oh" or "**uh-huh**". Not the **expected** response of someone who is concerned or **upset over** an event, **unless** of course, it is deemed as a useful piece of **information** that can be utilized that very same day **to** draft an **affidavit** and motion incorrectly declaring and accusing the **source** of "**Intentional Destruction of Evidence**." It should be noted that this entire portion of our **conversation** is not **mentioned** once in Mr. **Thompson's** letter to me on December 10, **1995, in** which he **sought** in his **words**, to "memorialize our **conversation**." Once again a very **strange** oversight since he did remember **to include it and even make it the focal point of his affidavit dated** that **very** same day.

After receiving a copy of **Mr. Thompson's** latest **document** at **1:06 p.m.** on Friday, December 22, 1995, I went to check the Biohnage hard drive to see if the **specific image files pertaining to this case which were imaged on August 18, 1995**, had been routinely **deleted**. They have **not**. A point which **could** have been easily settled **prior** to **his** lengthy motion had he **expressed** his deep **concern** over the situation during our **conversation**. I was not concerned **because**, as I have previously **stated, the image can easily be reproduced so** that time after time they will contain the same data as before, as is evidenced by the fact that we obtained the same results by imaging the autorads both in **August** of 1995 as well as in the original analysis in **1993**. However, since the images we still on the hard drive, we can produce image files from the August 1995 **imaging as well as** any future imaging. This so called "**intentional erasure**", "**egregious violation of the Court's Order**", and "**act of extreme bad faith**" is just as

inaccurate and misrepresentative as Mr. Thompson's previous accusations of "scientific misconduct" and "fudging". Every motion or declaration filed by Mr. Thompson has consistently taken a small amount of information out of the context in which it was given and used it to misrepresent the original intent of the statement. It should be noted that Mr. Thompson's outrage over the possibility of the August 1995 images being deleted (even though it turns out not to be true) is interestingly suspicious since in an affidavit dated November 19, 1995, Mr. Thompson's own expert states that "the image files (of August 1995) are not an acceptable substitute for observing re-scaring". First, Mr. Thompson told the court that he wants the image files and that we will not give them to him. Then, an affidavit (from Mr. Thompson's expert) filed by Mr. Thompson tells the court that the image files are not acceptable. Now Mr. Thompson goes on to tell the court that the prosecution should be sanctioned because we have destroyed (not true however) evidence that his own expert has sworn was not dependable. It appears that Mr. Thompson's position (although critical to his client's defense) has changed several times depending on what he deems to be most expedient at the moment.

- 6) Mr. Thompson has stated truthfully that Genetic Design will not provide him with any other materials or services without an advance deposit to cover the estimated charges. Mr. Thompson has intentionally omitted from his motion (after I informed him of this same omission in his letter to me on December 18, 1995) the fact that Genetic Design has previously extended credit to him for discovery materials produced in August of 1995. The terms of our services (stated on the invoice) are net 30 days. Mr. Thompson paid his bill only after repeated reminders (both written and verbal) of its overdue status. The payment was received 109 days after invoicing (79 days past due). In addition Mr. Thompson has informed me that he does not think it is his responsibility to pay for these. Both of these facts omitted by Mr. Thompson give Genetic Design good reason to doubt that Mr. Thompson will pay his bill unless we require a deposit in advance.
- 7) Mr. Thompson has truthfully stated that we require a deposit of \$69755 for the services he requests. Mr. Thompson has, however, misrepresented (without ever trying to clarify) the basis of these fees to suit his own purposes. It is true that Genetic Design charges \$1.00 per page for photocopying documents. This is a fee that has been in place at Genetic Design for years and has applied to hundreds of discovery requests over that time. I did not charge him \$125.00 per hour for the time it would take to make the photocopies. That was the estimated

minimum time it would require to obtain the files for the proficiency documents and databases he wanted, to **disassemble** for photocopying and **reassemble after photocopying** the files, and to **consult** with Mr. Thompson on the phone regarding his **discovery** request (to date, two phone calls on December 18 and 20, 1995, totalling approximately 15 minutes), and **to write, have typed, and mail a summary letter regarding the discovery response. I would be** happy once again to have Mr. Thompson outline in writing specifically how he could complete those tasks in less than one hour. As should be quite obvious, Mr. **Thompson's** accusations of our fees being "exorbitant" or "ridiculous@ high" are supported only by his **intentional** misrepresentations made **possible** by the utilization of partial **information** without attempting to obtain the whole truth. His **selective** information is then used to support his **hellous accusations** that "the **prosecution** is demanding that the defense buy a pig in a poke from a lab that has already **flim-flammed** and cheated the defendant ..".

- 8) Mr. Thompson has truthfully stated that Genetic Design will not **provide** its database on diskette, What Mr_ Thompson has omitted once again are the **pertinent** accompanying facts. It is and has always been a corporate decision of Genetic **Design for** reasons stated in my previous declaration (see attached) not to give out **its** database on **diskette**. Mr. Thompson once again has misrepresented the truth by stating that "**without** access to the database **diskette**, defendant's experts will be unable to **check the** accuracy and appropriateness of Genetic Design's statistical computations in this **case**." Genetic Design has **always** agreed to **provide** its database in hard copy for review; therefore, **Mr. Thompson's** previously quoted statement is a lie unless of course he is concerned that his experts **are** not capable of **analyzing** data without first **having** Genetic Design prepare **the** data **for** their analysis. Numerous problems associated with providing the data on diskette **are also addressed** in my previous declaration. In addition, **having** the database on diskette is not (as Mr. Thompson had claimed) essential **to** either his client's defense nor his constitutional rights due **to** the fact that this database was not **utilized** in the **analysis** of this case because it did **not** exist at the time this **case was** done (note **database compilation of December** 1994).

Finally, I previously mentioned Mr. Thompson's **letter** of December 18, 1995, with **respect** to its omission of the reasons for Genetic **Design's** refusal to provide further services to Mr. Thompson without an advance deposit. I clarified two additional points with Mr. Thompson over the telephone. **First** there was no miscommunication between myself and the **Accounting Department** regarding payment of Mr. Thompson's outstanding bill. It was not paid for 109 days. I mentioned to Mr.

Thompson that payment for his future services should be sent to my attention in order to expedite his request for materials by avoiding the few days necessary for accounting to process their receipts and contact me regarding the payment. Second, with regard to Mr. Rader's current location, I did not tell Mr. Thompson that I was unaware of his current whereabouts at the time. I told him I was unaware of his current employment at that time,

Signed on December 27, 1995 in Greensboro, North Carolina.

**Michael A DeGuglielmo
Director of Forensic Analysis**

subscribed and sworn to before me
this _____ day of _____, 1995.

**Notary Public in and for the
State of North Carolina**

My commission expires: 7/12/1998