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12  
 13 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17  
 18 RYAN HEE; and VDA OC, LLC, formerly  
 19 ADVANTAGE ON CALL, LLC,

20 Defendants.  
 21  
 22  
 23  
 24

Case No.: 2:21-cr-00098-RFB-BNW

**OPPOSITION TO DEFENDANT RYAN  
 HEE’S MOTION TO DISMISS OR IN THE  
 ALTERNATIVE TO SUPPRESS**

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## INTRODUCTION

Defendant Hee's Motion to Dismiss makes sweeping, legally and factually unsupported accusations of prosecutorial misconduct arising from purported ethical and constitutional violations. Defendant's arguments are facially invalid and legally meritless. The government violated no ethical rules or constitutional requirements.

The government did not violate Nevada's Rule 4.2 because Defendant was not represented at the time of his interview. In addition, the ABA's Model Rule 4.2 (and California's) contains an express exception for law enforcement investigative activities, which is incorporated by reference in Nevada and which Defendant ignores. Defendant also ignores countless Ninth Circuit precedents. The law is clear: even if Defendant was represented by counsel in connection with the government's investigation (he was not), preindictment, noncustodial interviews of represented persons for a law enforcement purpose do not violate Rule 4.2.

Similarly, the government did not violate Rule 8.4. The Ninth Circuit has routinely found that a prosecutor's supervision of otherwise lawful investigatory techniques—including those involving subterfuge or deceit—do not constitute a violation of her ethical obligations. And the ABA's Standing Committee on Ethics and Professional Responsibility has endorsed surreptitious recordings under circumstances akin to those here, including for counsel not engaged in law enforcement. Given the seriousness of the purported violations he is seeking to remedy, Defendant's failure to acknowledge this substantial authority to the contrary is troubling.

Defendant's attempt to shoehorn the government's authorized preindictment contact with him into a panoply of alleged constitutional violations is similarly unavailing. The Fifth Amendment is implicated only when a defendant is in custody or when his statements are coerced or involuntary; the Sixth Amendment right to counsel does not attach preindictment. Neither right was implicated by Defendant's voluntary, uncoerced, noncustodial preindictment confession. Finally, Defendant's argument that his Fourth Amendment rights were violated

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