

**REDACTED VERSION OF
DOCUMENT(S) SOUGHT TO BE
SEALED
EXHIBIT 5**

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 TESLA, INC., a Delaware
5 corporation,

6 Plaintiff,

7 vs.

Case No. 19-cv-01463-VC

8 GUANGZHI CAO, an individual,
9 Defendant.

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15 VIDEOTAPED DEPOSITION OF GUANGZHI CAO
16 Oakland, California
17 Tuesday, January 7, 2020
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22 Reported by:

23 JANIS JENNINGS

24 CSR No. 3942, CLR, CCRR

25 Job No. 174305

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VIDEOTAPED DEPOSITION OF GUANGZHI CAO, taken on behalf of the Plaintiff, at The Norton Law Firm, 299 Third Street, Suite 106, Oakland, California, beginning at 9:43 a.m. Tuesday, January 7, 2020, before Janis Jennings, Certified Shorthand Reporter No. 3942, CLR, CCRR.

1 APPEARANCES:

2

3 For Plaintiff:

4 THE NORTON LAW FIRM

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10

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15 BY: MARK CONRAD, ESQ.

16 GABRIELA KIPNIS, ESQ.

17

18

19 Also Present:

20 CANDICE JACKSON, ESQ., Tesla, Inc.

21 MADISON BUTKO, Videographer

22

23

24

25

1 was still at Tesla.

2 Q. All right. Is this the copy of your resume
3 that you provided to a person named Alex Ren at
4 TalentSeer?

5 A. Probably.

6 Q. And did you prepare your resume yourself?

7 A. Yes.

8 Q. And was the information on your resume
9 accurate?

10 MR. CONRAD: Objection. Compound. Vague.

11 BY MR. NORTON:

12 Q. You can answer my question.

13 A. I think so.

14 Q. You have "Ph.D.," and it says here, "ECE."
15 What is "ECE"?

16 A. It stands for Electrical and Computer
17 Engineering.

18 Q. And can -- this may be one of my obvious
19 questions. Can you just explain what electrical
20 computer engineering is as a discipline.

21 A. It's a field that -- dealing with electric
22 signal, radio signal and image and computer
23 architecture, all the computer-related technologies.

24 Q. And your -- throughout your professional
25 career, have you been working in computer

1 Q. And why did you leave?

2 A. Because Apple approached me and told me they
3 are -- they were working on a really exciting
4 project, and I thought that, yeah, that did sound
5 quite exciting to me. So I decided to move to
6 California and join Apple.

7 Q. All right. So did you go directly from GE
8 Healthcare to Apple?

9 A. Yes.

10 Q. And what was your job at Apple?

11 A. I was working as an image scientist at
12 Apple, and my job was developing at that time a
13 next-generational camera for iPhone.

14 Q. And did you, in fact -- while you were
15 working at Apple, did you, in fact, succeed in
16 developing a camera for the iPhone?

17 A. Yes. It actually ended as the first
18 generation of dual camera in iPhone. I believe it
19 was iPhone 7 Plus, so that's the first iPhone that
20 had two cameras on the iPhone.

21 Q. I'm sorry. That was the first dual camera;
22 is that what you said?

23 A. Yes.

24 Q. All right. Thank you.

25 And how long were you at Apple?

1 home?

2 A. Right.

3 Q. And we're talking about the -- the personal
4 computer is an -- is an iMac; correct?

5 A. Yes.

6 Q. And we're going to talk about that in more
7 detail, but it's the iMac?

8 A. Yes.

9 Q. All right. And throughout the time that you
10 were working at Tesla, was there one iMac at your
11 home?

12 A. Yes.

13 Q. Why was it not possible for you to access
14 source code on the Tesla servers using your home
15 iMac?

16 A. I never tried, but by default I think
17 that -- that for the internal device you needed to
18 install a VPN application in that -- in that device
19 so you could access the -- the -- the Tesla network.

20 Q. And you did use your Tesla laptop from time
21 to time to access the VPN; correct?

22 A. Yes.

23 Q. All right. And you could also use your iMac
24 to access the Tesla servers using the VPN -- the
25 VPN; yes?

1 MR. CONRAD: Objection. Calls for
2 speculation.

3 THE WITNESS: I could.

4 BY MR. NORTON:

5 Q. Okay. But you never did?

6 A. Right.

7 Q. So what did -- what was the -- in order
8 to -- I apologize.

9 How long was that the case that you were
10 unable to access source code from home using your
11 iMac?

12 A. I do not remember how long was that.

13 Q. Okay. But at some point that changed?

14 A. Yes.

15 Q. Right.

16 And how -- how did it change? How did you
17 get access to source code on your home computer?

18 A. As I said, I think there were one -- there
19 were one time I -- I really wanted to refer to the
20 source code when I was thinking about some --
21 some -- some problem in work and I tried to
22 understand what was going on exactly. I don't know
23 when was that.

24 But then it came to me as an idea, like, if
25 I had that source code in-house as a resource I

1 then?

2 A. No. As I said, I was working on all of the
3 major source computer -- repository, so it should
4 be -- I guess it should be all of them.

5 Q. Now, where did you get the source code files
6 in order to put them into the iCloud Drive?

7 A. I have all the source code repository in my
8 Tesla MacBook.

9 Q. In fact, you had cloned the entire source
10 code repository to your Tesla laptop previously;
11 correct?

12 A. Yeah. I think everyone did so.

13 Q. That's -- that's the standard practice,
14 right, is you clone the source code repositories to
15 your work-issued local machine; right?

16 A. Yes.

17 Q. And, in fact, that's what you did at Apple
18 too; right? When you wanted to work on source code
19 at Apple, you cloned it to your Apple-issued device;
20 right?

21 A. Yes.

22 Q. And that was how you were able to work on it
23 remotely; correct?

24 A. Correct.

25 Q. Now, did you tell anybody that you were

1 everything on Amazon --

2 A. Right.

3 Q. -- and if you're one of those people, then
4 it's an easy answer. Some people buy things on --

5 A. Recently I did buy a lot of stuff on Amazon.
6 I mean, we become a Prime member in the last two
7 years. But -- but this one, I -- I think we bought
8 it a really long time ago.

9 Q. Okay. And paragraph 3 is the devices that
10 might have stored source code, et cetera.

11 You had the one Apple laptop, the one iMac,
12 the one Seagate, the one Western Digital. Did you
13 have one of these thumb drives?

14 A. Excuse me. Sort of -- it -- what are you
15 talking about, the number g --

16 Q. Well, just, like -- as we're going through
17 it, each of these items, there's -- there's --
18 item a, there's one cell phone; right? There's --
19 item b, there's one cell phone.

20 A. Uh-huh.

21 Q. There's one iMac. And, you know, I asked if
22 you previously had, you know, other computers. I'm
23 trying to understand. Did you have other thumb
24 drives, or was this the one thumb drive you had?

25 A. This is the only one I -- I can recollect.

1 the job?

2 A. I mean, I would -- I was interested to know
3 more at that point.

4 Q. Okay. So if we go back to Exhibit 36. You
5 can set aside the text messages for now. 36 is the
6 interrogatory responses.

7 It says:

8 "Through that recruiter, the Defendant
9 was connected with Xinhou Wu."

10 Am I saying that almost correctly?

11 A. Actually, there -- there is a spelling
12 error. It's Xinzhou, X-i-n-z-h-o-u.

13 Q. Okay.

14 A. Yeah.

15 Q. So Xinzhou -- Again, I won't get it right,
16 but Xinzhou Wu?

17 A. Yes.

18 Q. Okay. So this says on or around November 17
19 you spoke to Mr. Wu. Did you speak to Mr. Wu
20 before -- before November 17?

21 A. No, I don't remember any conversation before
22 that.

23 Q. Did you speak to anybody else at XMotors
24 before you spoke to Mr. Wu?

25 A. I said I spoke to them in June --

1 Q. I'm sorry. Between this November 10 meeting
2 and this November 17 meeting -- between the
3 November 10 outreach with Mr. Ren and the
4 November 17 meeting with Mr. Wu, did you speak to
5 anyone else at XMotors?

6 A. I believe not.

7 Q. Okay. Now, where -- did you actually meet
8 with Mr. Wu in person?

9 A. No. We were talking on the phone.

10 Q. Was it a video conference or audio phone
11 call, or how did you do it?

12 A. It's a phone call, I believe.

13 Q. How long did the phone call last?

14 A. I do not remember how long exactly were
15 that.

16 Q. Did you provide a resume before this phone
17 call?

18 A. I -- that was my impression.

19 Q. Did you provide any other materials?

20 A. Definitely not.

21 Q. Sorry?

22 A. Definitely not.

23 Q. "Definitely not." Okay.

24 A. I think he asked for my resume before he --
25 he -- he started talking to me through the

1 "Mr. Wu extended an oral offer of
2 employment to Mr. Cao with a proposed
3 compensation package..."

4 Between the date that you spoke to Mr. Wu on
5 November 17th and receiving the oral offer of
6 employment, did you speak to any other people at
7 XMotors about the job?

8 A. No, I don't think so.

9 Q. Did you -- were there any other
10 conversations or communications of any kind between
11 Mr. Wu and you between November 17th and when they
12 offered you a job with a compensation package?

13 A. I -- I don't think so.

14 Q. What were the terms of that initial offer in
15 terms of compensation?

[REDACTED]

22 Q. Did the initial oral offer include a signing
23 bonus?

24 A. I believe so.

25 Q. And that initial offer, that was

1 BY MR. NORTON:

2 Q. Exhibit 37, for the record, this is a WeChat
3 message thread in Chinese with an English
4 translation and with a certification all as one
5 document, and so there are slip sheets separating
6 them.

7 And so, Dr. Cao, I'm going to direct you to
8 the English version. If you feel the need to go
9 back and look at the Chinese for some reason, of
10 course you can, but my questions will all refer to
11 the English. And so looking at -- and their Bates
12 numbers are reproduced on both sets, so the
13 pagination should be the same.

14 Now, who is Cindy or Dan Chen?

15 A. She -- at that time she was the HR manager
16 for the autonomy driving group at Xpeng.

17 Q. Xpeng is XMotors?

18 A. Yeah. "Xpeng" is the XMotors -- I think the
19 headquarters name.

20 Q. So if we look at the very first page of the
21 English version, so page 131, you indicate -- I
22 prefer to use people's formal names. Should I refer
23 to her as Miss Dan or Miss Chen or neither?

24 A. Do you -- do you mean last name?

25 Q. Yes.

1 A. Chen.

2 Q. Miss Chen. Thank you.

3 A. Chen.

4 Q. So Miss Chen writes -- or you write to
5 Miss Chen that you decided to "go visit you next
6 week"; is that right?

7 A. Yes.

8 Q. And that's a reference to your -- your
9 anticipated trip to China to visit XMotors; correct?

10 A. Correct.

11 Q. All right. And then I'm going to flip
12 forward several pages to page 137. And on page 137
13 Miss Chen writes to you that she has a suggestion.
14 And she says:

15 "So we want to organize a business
16 exchange between you and the Zhiguang
17 team. Do you think there are any
18 ready-made business thoughts or
19 materials about which you can discuss
20 and exchange with Xpeng or the
21 domestic team?"

22 A. Let me refer to the Chinese versions first.

23 Q. And the page numbers should correspond.

24 A. What was your question?

25 Q. I was just making sure that you had seen

1 that.

2 A. Yes.

3 Q. And then you responded, and that's on the
4 next page.

5 And on page 138 it says -- you said:

6 "One of the purposes of this trip is
7 to communicate with Zhiguang and his
8 team. I may not have enough time to
9 prepare the formal materials, but I
10 will have some ideas to share and
11 communicate with you. I will talk
12 about my own views on how we can
13 gradually realize self driving on
14 mass production cars."

15 What did you mean by "prepare formal
16 materials"?

17 A. I -- I think what she meant was, like,
18 PowerPoint presentation. I can make a presentation
19 for the team, something like that. So I was telling
20 her I don't have time to prepare any, like,
21 presentation material.

22 Q. So did you, in fact, prepare any materials
23 to bring with you on your XMotors trip?

24 A. I believe not. I -- I thought about -- all
25 I prepared was in my mind I tried to formulate how I

1 can, like, present my own view of, like, long-term
2 paths to autonomous driving.

3 Q. Right.

4 In the next sentence you wrote:

5 "I will talk about my own views on
6 how we can gradually realize self
7 driving on mass production cars."

8 Are those the views you were just referring
9 to?

10 A. Yes. But the translation was not perfect.
11 I didn't say "we can." I mean, I would say how --
12 how can -- how can, like, one gradually realize
13 self-driving.

14 Q. So at this time you anticipated that you
15 were going to provide your views on how one could
16 gradually realize self-driving on mass production
17 cars?

18 A. Yes.

19 Q. And did you, in fact, prepare thoughts on
20 that?

21 A. No. In the flight I -- I thought about -- I
22 mean, I kind of tried -- thought about how I can,
23 like, express myself, but all the thoughts were kind
24 of -- were already there, like it's kind of my
25 understanding of the industry.

1 Q. Sure. All right. And that understanding of
2 the industry, how did you develop that
3 understanding?

4 A. You're an engineer in a certain field. You
5 gradually, like, I mean, grow your thought with more
6 experience, more reading, more talking, more
7 communication. You -- you gain your -- your own
8 thought on the industry.

9 Q. Okay. So as a result of your experience
10 working on autonomous driving in your role at Tesla,
11 you had developed some thoughts about how one could
12 gradually realize self-driving on mass production
13 cars?

14 A. My work at Tesla was kind of part of how I
15 can gain this kind of experience and thoughts.

16 Q. And then you go on to say:

17 "During the last exchange with Zhiguang,
18 he mentioned that he would share some of
19 their last experiences in automatic
20 parking."

21 A. Could you -- sorry. I didn't --

22 Q. Again, it's right here on the page.

23 "During the last exchange with Zhiguang,
24 he mentioned that he would share some of
25 their last experiences in automatic

1 parking."

2 My question to you is: When was that
3 exchange with Zhiguang?

4 A. I believe if -- when I decided to go to -- I
5 think it was a time I -- I -- I decided to go to
6 visit China. So -- so we had a phone call, say,
7 tried to get to know each other, so about he would
8 try to welcome me to Guangzhou.

9 Q. Okay. That was -- that was a telephone
10 call?

11 A. I believe so.

12 Q. It was a video conference or telephone?

13 A. I do not remember it's a video or just
14 telephone.

15 Q. Were there any other communications you had
16 with XMotors personnel between receiving the offer
17 of employment with the compensation package and
18 actually going to China?

19 A. I do not remember. I mean, this -- except
20 this one, I do not -- do not remember any other
21 conversations.

22 Q. So then if we go forward to page 144, there
23 is a chart there. And you said they had scheduled a
24 full day for you?

25 A. Yes.

1 Q. And is this the day that they had scheduled
2 for you?

3 A. Yes.

4 Q. And did the day -- did the day that you
5 spent at XMotors on December 7th, 2018 -- did it
6 correspond to this schedule?

7 A. I believe so.

8 Q. Okay. Did you have any meetings with people
9 at XMotors that are not reflected on this schedule?

10 A. I do not remember anyone who was not on this
11 list.

12 Q. Okay. When you -- so it appears that for an
13 hour you met one-on-one with Xiaopeng?

14 A. Yes.

15 Q. And that's the founder and CEO of XMotors?

16 A. Yes.

17 Q. And do you recall what you talked about?

18 A. I believe what I talked about is, again, the
19 topic we just talked about, kind of my own view --
20 my own view of the paths towards long-term goal
21 autonomous driving. I also -- I think then he
22 shared his view on the same topic.

23 Then -- then I -- mostly for me to ask
24 questions, because I -- that's the goal of my visit.
25 So I was asking him what was his expectation on the

1 U.S. team and what -- and I were asking why he
2 thought XMotors will be -- Xpeng will be successful,
3 because it's a competitive industry. And I was
4 asking him to tell me what -- what thing he will do
5 to -- to make Xpeng a successful company.

6 I think pretty much that -- so I spent some
7 time talking about my thought. The rest of the time
8 I would try to ask him questions so I can be
9 convinced it's a -- it's a company with potential.

10 Q. What did you tell -- what did you tell him
11 about -- specifically what did you tell him about
12 how one could achieve self-driving on
13 mass-production cars?

14 A. I think what -- I believe what I told him
15 is, like, deep learning or AI is -- I think is
16 important as a very big component if you want to
17 achieve autonomous driving. I think the -- the
18 hardware platform in the vehicle -- I think it would
19 be important. And I think I told him the -- it's
20 important to have a lot of data so we can train
21 network.

22 (Clarification requested by reporter.)

23 THE WITNESS: Train, like, neural
24 network -- network.

25 MR. NORTON: "So we can train the neural

1 network"?

2 THE WITNESS: Yes. I mean, good neural
3 network. You can train, I mean, with -- with crap,
4 but in order to train a good neural network.

5 BY MR. NORTON:

6 Q. How much time did you spend talking about
7 that?

8 A. As I said, I think I probably -- I don't
9 remember the exact number of minutes, but it should
10 be a few minutes. Then I was asking him his view,
11 and he tried to answer my question.

12 Q. You said one of the things you talked about
13 was that the hardware is important. What did you
14 say about the importance of the hardware?

15 A. I mean, there are a lot of platforms to --
16 to run the autonomous driving technology; right? So
17 I -- I'm saying if you -- if you really want to
18 achieve real autonomous driving, it's important to
19 have a very powerful computation platform. That's
20 what I meant.

21 Q. Did you talk about the specifics of what
22 a -- what a powerful computation platform looks
23 like?

24 A. No, I'm not an expert in that area.

25 Q. Did you talk about specifics on any of these

1 various components of what it takes to make
2 self-driving cars possible for mass production?

3 MR. CONRAD: Objection. Vague as to
4 specifics.

5 THE WITNESS: No. I mean, I could -- I -- I
6 think I was not even able to because those are very
7 long-term goals. If I know how to do it, I would be
8 a superstar in this industry.

9 BY MR. NORTON:

10 Q. So after you met with Xiaopeng, then you met
11 with Xinzhou; is that right?

12 A. Yes.

13 Q. And that was also an hour?

14 A. Yes, I think so.

15 Q. All right. And then in that conversation
16 did you also share your views on how to realize
17 self-driving?

18 A. I believe so. I mean, part of our
19 conversation.

20 Q. With either Xiaopeng or Xinzhou in this
21 meeting, this December 7 meeting, did you talk about
22 your work at Tesla?

23 A. I mean, they asked -- asked me, like, which
24 team I'm working on, what's the role of that team,
25 but they did not ask me specifically, like, my work

1 at Tesla.

2 Q. Did you talk about other people who -- other
3 personnel at Tesla?

4 A. Excuse me? What's --

5 Q. Did you talk about other personnel at Tesla?

6 A. The person I talked to, like, I listed on
7 this -- this list.

8 Q. No. I'm sorry. When you were meeting with
9 the XMotors employees, did you discuss other Tesla
10 team members who worked on Autopilot?

11 A. I believe -- I'm very sure I didn't.

12 Q. That you did not?

13 A. I did not.

14 Q. Then you met with Zhiguang in the afternoon?

15 A. Yes.

16 Q. And that's a -- that was about a 30-minute
17 meeting, according to the itinerary. Does that
18 sound right?

19 A. Yes.

20 Q. And do you recall that meeting?

21 A. Yes.

22 Q. Again, did you talk about your work at
23 Tesla?

24 A. No. I -- what I talked was what I -- I was
25 planning to, as I said, to share my own personal

1 view on autonomy driving, and he shared their work
2 on -- on the intelligent parking.

3 Q. Just -- there is a reference in the
4 participants of XMotors; one person is Rick. You
5 see during -- for lunch you had lunch with a person
6 named Rick?

7 A. Yes.

8 Q. Do you recall what Rick's last name is?

9 A. It might be "Dean," but I don't remember
10 exactly.

11 Q. And there is a reference also to a meeting
12 in the evening with Brian. Do you recall Brian's
13 last name?

14 A. Brian's last name is "Gu," G-u.

15 Q. G-u? Brian Gu? Okay.

16 And then in the evening you had dinner,
17 meeting again with Xinzhou?

18 A. It turned out he was busy, so I just had
19 dinner myself in the hotel.

20 Q. All right. So you were there for a full
21 day. In the course of your meeting at XMotors on
22 December 7, did you have occasion to talk about any
23 specifics of your work at Tesla?

24 A. No. I was asked, like -- these people
25 generally asked what team I was in and what's the

1 role of the team and -- and, I mean, they did ask
2 some, like, what capability of Tesla car currently,
3 what prior feature, which I was very sure it's
4 public information, like, a feature -- some of the
5 feature, like ACC, LCC. I told them what is -- what
6 are the features of the Tesla vehicle.

7 Q. Did you share with the people you're meeting
8 with any things that were under development but were
9 not yet public?

10 A. I -- I'm very sure I didn't. I actually was
11 very cautious to not share anything. As I said, I
12 tried, like, intentionally not bring any computer or
13 anything with me.

14 Q. How many XMotors employees did you meet with
15 over the course of the day?

16 A. I think the person I'm talking to, I mean,
17 with some real conversation are the list of these
18 people. But on the way I met -- I may say "Hi" and
19 I saw some -- some people. I guess you didn't want
20 me to include those. I mean, in the hallway -- I
21 don't even know them -- like, people say "Hi."

22 Q. After you finished your meeting at XMotors,
23 what did you do next? You had dinner, but then at
24 the end of that day, what did you do the next day?

25 A. I went back to my room and sleep.

1 Q. Okay. And then after that?

2 A. That's it. That's the next day.

3 Q. I'm sorry?

4 A. Then it's the next day.

5 Q. Right. Then what did you do?

6 A. I -- I think -- I think I -- I spend
7 another, like, a couple hours at XMotors. It was --
8 it was not arranged, but -- but since I had extra
9 time, I just went back.

10 I think I talked to Zhiguang a little bit.
11 Then everyone was busy. I was left in the
12 conference room before I -- I -- before I need to go
13 to airport to meet my flight.

14 Q. Again, so in that -- when you went back to
15 XMotors and you met with Zhiguang, did you talk
16 about your work at Tesla?

17 A. No.

18 Q. And then you went to the airport. And where
19 did you go from the airport?

20 A. I went back to see my parents, because I
21 haven't seen them for quite a while.

22 Q. Okay. And how long were you visiting your
23 parents?

24 A. I went -- I arrived, like, sometime before
25 the evening. Then I stayed there the --

1 tried plotting something -- plotting something. I
2 always sort of --

3 (Clarification requested by Reporter.)

4 THE WITNESS: Plot, plotting anything. So I
5 believe it was, like, just instantaneous decision.
6 I want -- I thought that that would be a good idea
7 to put it on the USB drive.

8 (Clarification requested by Reporter.)

9 THE WITNESS: Would. Would. Yes.

10 BY MR. NORTON:

11 Q. How did you -- so you had source code on the
12 thumb drive. What did you -- at the time you
13 decided to leave Tesla, what did you do with that
14 source code? Or let me ask: What did you do with
15 the thumb drive?

16 A. So around the -- could you repeat your
17 question.

18 Q. What did you do with the SanDisk Cruzer
19 thumb drive?

20 A. So around the -- the time I decided to
21 accept the -- the -- the offer, I start deleting all
22 Tesla information from my personal devices, so I --
23 I destroyed the thumb drive.

24 Q. Specifically how did you destroy it?

25 A. I used a hammer. Like, I smashed the hard

1 drive, and I even, like, flushed the broken pieces
2 in my toilet, because I didn't want anyone to know I
3 ever stored Tesla information.

4 Q. Given that you simply hit Command --

5 MR. CONRAD: I'm sorry. The transcription
6 is "that I had ever stored Tesla information." What
7 he was said was "stored Tesla information."

8 MR. NORTON: It should be "stored." That
9 was the testimony.

10 BY MR. NORTON:

11 Q. When you wanted to get rid of the entire
12 source code repository that was on your computer,
13 you hit Delete --

14 A. Yes.

15 Q. -- right? Why didn't you simply delete the
16 information on the thumb drive?

17 A. Because I -- I mean, my -- the whole goal of
18 the deletion was to try to protect the Tesla
19 information. I did not want anyone be able to
20 access. I didn't want -- even want anyone to know I
21 ever downloaded or saved Tesla information on my
22 personal devices. So the goal was just deleted
23 that, delete and destroy the thumb drive. At that
24 time I thought that would be best, most safe option
25 for me at that time.

1 Q. Had you -- in your prior employment at your
2 prior work, had you ever had occasion to destroy a
3 hard drive using a hammer?

4 A. No.

5 Q. This is the first time you ever destroyed
6 valuable computer technology or software by using a
7 hammer?

8 A. Yes. But this was also the first time I
9 stored any personal, like, company information on my
10 personal devices.

11 Q. And you felt that the best way to protect
12 the information from Tesla was to smash the hard
13 drive with a hammer?

14 A. It was not hard drive. It was, like, this
15 little USB.

16 Q. It's a thumb drive?

17 A. A thumb drive, yes.

18 Q. All right. And so where were you when you
19 smashed it with a hammer?

20 A. At home.

21 Q. All right. And was anybody else there?

22 A. No.

23 Q. In which room of your house were you in?

24 A. I believe it was in the -- I smashed in --
25 in the -- let me try to recall exactly. I believe

1 it was in the kitchen, yeah.

2 Q. Where in the kitchen?

3 A. In the -- on the island of the kitchen.

4 Q. What's your island made of?

5 A. Stone. Stone.

6 Q. So you -- you -- you placed -- the SanDisk,
7 it's like a little piece of plastic --

8 A. Yeah.

9 Q. -- the size of my thumb; right?

10 A. Yes.

11 Q. And what kind of hammer is this?

12 A. Like -- like, the metal, the hammer, like,
13 this big.

14 Q. A steel hammer?

15 A. Yes.

16 Q. They're used to drive nails?

17 A. Yes.

18 Q. All right. And this is a hammer you have in
19 your house?

20 A. Yes.

21 Q. And you set this thumb drive on your --

22 A. Yeah.

23 Q. -- just directly on the stone countertop?

24 A. Yes.

25 Q. How many times did you have to hit it?

1 A. I hit it, like -- I think, like, two or
2 three times, I believe.

3 Q. All right. And then what happened?

4 A. It -- the -- it -- the -- it broke into
5 pieces. I also hit the -- the -- I mean, after it
6 hit -- broke into pieces, I also hit the -- the
7 circuit part of that.

8 Q. The actual part that stores the
9 information --

10 A. Yeah.

11 Q. -- not --

12 (Clarification requested by Reporter.)

13 THE WITNESS: Yeah. The -- the -- the
14 actual -- the part that actually store the pieces,
15 because I -- I remember the first time I --

16 MR. CONRAD: Circuit board.

17 THE WITNESS: -- I hitted that the cover
18 fell -- fell off then I hitted that so --

19 BY MR. NORTON:

20 Q. So first you broke the plastic cover?

21 A. Yes.

22 Q. And then you say you took another swing with
23 the hammer?

24 A. Yeah.

25 Q. All right. And this is still sitting on top

1 of your -- your stone kitchen counter at home?

2 A. I don't know. It was still sitting there
3 but I basically put it back and hit it again.

4 Q. And how many pieces did you have?

5 A. You mean the -- the whole thing? The -- all
6 the pieces? I don't remember. Probably, like, four
7 or five pieces, I would say.

8 Q. All right. And then help me. You flushed
9 them down the toilet?

10 A. Yes.

11 Q. Why?

12 A. It probably sounds -- now, looking back, it
13 was something -- like, a stupid thing to do. I
14 mean, the whole thing, smash it, was the stupidest
15 thing to do. But at that time I -- I was -- I
16 thought it was the best way because even, like, the
17 pieces of the circuit, when it goes to trash, maybe,
18 like, someone would get it. I -- so I just thought
19 it with passing totally get rid of it.

20 Q. You have a Ph.D. in electrical computer
21 engineering; right?

22 A. Yes.

23 Q. In all your course work, did you ever come
24 across any ways of removing -- of deleting
25 information from computer systems short of

1 destroying them?

2 A. Sorry. Could you repeat.

3 Q. In all -- in all your studies up to getting
4 a Ph.D. and then your professional work since, did
5 you ever come across ways of removing information
6 from storage devices short of destroying them?

7 A. I still did not get the last piece of the
8 sentence.

9 Q. I'm just -- the thing I'm struggling with,
10 right, because you're a -- you're a very
11 sophisticated, very well-educated person whose
12 specialty is electrical computer engineering; right?
13 And it is hard to believe -- it is frankly very hard
14 to believe that you concluded that the best way
15 to -- to remove information from a storage medium --
16 right? -- an electronic, a computer device was to
17 hit it with a hammer.

18 In all of your experience and studies, did
19 you ever come across any better way to simply remove
20 information from a thumb drive?

21 A. I mean, at that time I did not think very
22 carefully. The whole thing, I never -- I mean, if I
23 was actually trying -- intentionally try to do
24 something really bad, I would actually not do this
25 kind of stupid thing. I agree. Looking back, it's

1 kind of stupid.

2 But at that time I didn't think much. I
3 just -- I feel like I didn't want anyone see this
4 even like with any -- any possibility, so I -- I
5 mean, now you charge me on that. I agree that was a
6 stupid thing. But that was the truth. I -- at that
7 time I just thought, "Okay. Even these pieces may
8 go to, like" -- I mean, you are talking about the
9 hammering part. Because I didn't want anyone see
10 that if that still has any information on it.

11 Q. And you never considered simply handing that
12 thumb drive to Mr. Karpathy?

13 A. I didn't, because I thought I deleted
14 everything; I -- I should be fine. I mean, I did
15 not take any Tesla stuff with me when I leave Tesla,
16 and I never shared anything with anyone. So I
17 thought if I get rid of them, why did I bother to do
18 anything?

19 Also another fact is when anyone left Tesla,
20 I mean, except that we were told to turn in the --
21 the MacBook, no one were asked to turn in iPhone or
22 cloud storage space. I mean, now, I'm getting
23 whomped in this case.

24 (Clarification requested by Reporter.)

25 THE WITNESS: Or account for personal cloud

1 sp- -- storage space. I -- now, I mean, looking
2 back, I -- I acknowledged I did a stupid thing, but
3 I was punished. Like, my whole family were almost
4 destroyed, and I did not do anything trying to
5 damage Tesla and benefit.

6 I agree I did -- because I did not think,
7 carefully try to plot -- plot some- -- something
8 really bad. I just thought -- I mean, it's stupid;
9 right? I uploaded a file and -- for convenience at
10 the time. When I leave Tesla, I tried to get rid of
11 that. A big reason was actually I'm joining a
12 Chinese company, and the risk I mentioned -- now it
13 actually did become a risk, but I tried to get rid
14 of that at that time. I thought I just hammered
15 that.

16 Maybe I -- I didn't want to -- I think
17 maybe -- I now recall that I probably was also
18 worried if I connect it back maybe it will, like,
19 contaminate my computer again. But I don't know
20 what I was thinking at that time.

21 BY MR. NORTON:

22 Q. I'm trying to let you say what you feel you
23 need to say, but I'm going to interrupt you. Is
24 that something that -- the thing you just said, is
25 that something that you thought about at the time --

1 place to break.

2 MR. CONRAD: That's fine. I'm going to use
3 the bathroom so I'm going to step out. The witness
4 can stay here.

5 MR. NORTON: Okay. Let's --

6 MR. CONRAD: Can we go off the record if the
7 witness stays in the room?

8 MR. NORTON: Sure.

9 THE VIDEOGRAPHER: This is the end of
10 file 10. We are off the record at 6:01 p.m.

11 (Off the record.)

12 THE VIDEOGRAPHER: This is start of file 11.
13 We are back on the record at 6:04 p.m.

14 MR. CONRAD: Let the record reflect that I
15 and Ms. Kipnis left the room to use the rest room,
16 but Mr. Cao did not and stayed in the room.

17 MR. NORTON: Agreed.

18 BY MR. NORTON:

19 Q. You testified earlier today that the SanDisk
20 Cruzer USB was the only SanDisk Cruzer USB drive
21 that you had. Do you recall that?

22 A. I -- I -- yes.

23 Q. The forensic information we have is that a
24 SanDisk Cruzer USB was plugged into your XMotors
25 laptop.

1 A. I --

2 Q. Can you provide me any explanation of when
3 you would have plugged a SanDisk Cruzer USB into
4 your XMotors laptop?

5 A. This -- I could not believe this is true.
6 I --

7 Q. Let me ask you this. Have you put -- have
8 you used any external storage devices with your
9 XMotors work laptop from the time you started in
10 January 14, 2018 -- -19 through the last time you
11 had access to that computer?

12 A. I -- I mean, there are, like -- like,
13 external, like, cable, mouse, those kind of thing I
14 believe I connected to my XMotors computer. But
15 what you are telling me is something completely out
16 of my mind. You were saying I connected my thumb
17 drive to the --

18 Q. What I'm telling you is that the forensic
19 information that we have is that a SanDisk Cruzer
20 USB was connected to the Tesla -- to the XMotors
21 laptop that was provided to us in discovery by
22 XMotors. You've told me that you only had one such
23 drive.

24 A. Yes.

25 Q. Can you help me understand why we would see

1 that.

2 A. It -- it -- I'm very sure it was not my
3 SanDisk thumb drive. I -- I mean, I don't know.
4 Maybe -- maybe at work people bring me some data and
5 plug it into my MacBook to show me something. If
6 that, what you said, is true, I swear that must be
7 the case, because I'm very certain I've never
8 plugged the thumb drive into XMotors computer.

9 Q. Let's do this. Have you ever -- to your
10 recollection, have you ever used an external storage
11 device -- storage device with your XMotors computer?

12 A. I -- before this date I -- I was -- I
13 thought I was sure I never used any external devices
14 on my XMotors computer. But if what you said is the
15 truth, I mean, if what you said is the truth, then I
16 could not argue with the truth.

17 But -- but I -- this, it's completely a
18 shock to me, because I did not remember that, and
19 I'm very, very sure it was not my thumb drive. It
20 must be some -- when I discuss something, some
21 people, like, try to show me something. I think
22 then it got plugged. And you are saying that was
23 also a SanDisk thumb drive. I'm very shocked,
24 honestly.

25 Q. And I understand your explanation. Do --

1 again, let me ask: Do you have a specific
2 recollection of someone actually bringing you
3 something and asking you to look at it that was on
4 an external drive? Or is that -- it's fine if it's
5 your best guess, if that's your best guess. But I
6 need to know if it's your best guess or if it's a
7 memory.

8 A. It's -- I would say it's a best guess
9 because I have no memory of I connected any device
10 to -- to my XMotors -- any storage device to my
11 XMotors computer. I'm honestly very, very shocked.
12 And -- and it was also SanDisk hard drive. This --
13 I mean, I -- I firmly believe I did not bring any
14 Tesla information, any source code to XMotors.

15 But what you said sounds -- making me really
16 difficult to argue, because -- in the connect the
17 hard- -- thumb drive was also SanDisk hard drive.
18 I'm -- honestly, I can understand your concern,
19 but -- but I -- I don't know what I can do to
20 convince you it was not thumb -- that thumb drive.

21 Q. I've heard you, and I do have more
22 information. So if there's anything you want to
23 share on the SanDisk drive, by all means tell me.
24 Otherwise, I want to go to the next fact of concern.

25 A. Is there a way to find out the serial number

1 of the Tesla source code that was on the iMac that
2 you deleted -- well, first, that you deleted off of
3 your iMac. Did you delete all of the Tesla
4 repositories off of your iMac?

5 A. That's what I believe at that time.

6 Q. Right. And then at any point after
7 January 4th, 2019 -- so you've left Tesla -- there
8 was ever a day after January 4th, 2019, where you
9 realized, "Oh, I didn't delete everything. Here is
10 some more source code still on my computer. I need
11 to delete that too." Did that ever happen?

12 A. No.

13 Q. Okay. The forensic information shows that
14 there's a Time Capsule backup. The Time Capsule
15 backup from February 3rd, 2010 -- I'm sorry --
16 February 3rd, 2019 indicates that on that date,
17 February 3rd, 2019, there was a copy of ACDC.zip in
18 an iCloud directory not deleted on your iMac. There
19 is no similar Time Capsule backup until March 10th,
20 2019. By March 10th, 2019, there is no record of
21 that file existing in an iCloud directory or in a
22 Trash directory.

23 A. You are talking about the iCloud, the online
24 iCloud Drive or --

25 Q. So there is a -- the Seagate Time Capsule

1 backup --

2 A. Uh-huh.

3 Q. -- indicates that there was an undeleted
4 copy -- in an iCloud directory there was an
5 undeleted copy of ACDC.zip still on your iMac on
6 February 3rd, 2019. However, the March 10th backup
7 indicates that by then it is gone. And that is
8 inconsistent with -- if true, that is inconsistent
9 with what you have told me about what you -- when
10 you deleted things and what you deleted.

11 A. Let me explain. I believe it was the case
12 that my computer was actually never turned on during
13 that period -- time period. I don't know if there's
14 a way to -- to -- to confirm that, but I believe
15 that that were the case, because I did all the
16 deletion. I remember correctly.

17 I hope we can find information to show,
18 because once I joined XMotors, I remember I was very
19 busy. I was sick for the whole time period. And
20 I -- I believe the iMac was turned off also. I
21 think that seemed to me was what happening.

22 Q. So let's walk through this. All right? And
23 I don't think that what you just said is an adequate
24 explanation of what we are trying to solve.

25 A. Okay.

1 Q. What you told me was that you deleted all --

2 A. First, I appreciate you -- you telling me
3 all -- all the forensic information, so I try my
4 best to recall all of the scenario.

5 Q. You testified that you deleted the iCloud
6 files in December.

7 A. Yes.

8 Q. As you now know -- perhaps knew then, but
9 you testified you have since learned iCloud files
10 remained on the computer for some period of time in
11 a Trash directory?

12 A. Yes, because after this litigation were
13 initiated and after forensic inspection was
14 conducted, I got to know the fact, like, even you
15 deleted a file, like, whichever way you've deleted,
16 which I don't remember, even Apple claimed you
17 deleted them permanently, they still actually
18 push -- push the file to a local invisible
19 directory.

20 So I -- that was a shock to me after this
21 litigation. So Apple actually pushes those files to
22 the local Trash directory without notifying the
23 user. They were telling the user they were
24 permanently deleted. So, I mean, this all -- I
25 understand all this makes my --

1 Q. Please continue.

2 A. I mean, that, I'm very sure, was what
3 happening from on my side.

4 Q. I understand. You're a little ahead of me,
5 though. Okay?

6 A. Excuse me.

7 Q. You are a little bit ahead of me, though, so
8 bear with me. Taking you at your word that you
9 deleted all those files off iCloud --

10 A. Yeah.

11 Q. -- in late December 2018 -- right? -- and
12 with -- taking you at your word that you were
13 unaware that those files remained on the computer
14 for another 30 days -- right? -- I still have a
15 problem.

16 A. Uh-huh.

17 Q. I want to explain to you what that problem
18 is.

19 A. Okay.

20 Q. If you deleted all the files in December and
21 they went to the Trash directory and they only
22 stayed there for 30 days, do you agree that 30 --
23 that by the end of January we should not see any of
24 those files on your computer any longer?

25 A. I -- I think that was what Apple claimed,

1 but that was clearly not the case. Depending --
2 that's my understanding was not the case in what
3 actually happened to iCloud Drive. Even after
4 30 days the -- I think they still push the file to
5 a local Trash folder. That's, unfortunately,
6 what the --

7 Q. Right. So --

8 A. -- the Apple system.

9 Q. -- stay with me now. So more than 30 days
10 after you've testified you deleted the source code
11 repositories, more than 30 days later -- now we're
12 all the way up to February 3rd. Okay? And your
13 Time Machine backup says that there's an undeleted
14 copy, never deleted or at least not deleted on
15 February 3rd, still in your iMac in a directory --
16 not Trash; an iCloud directory that is not Trash.
17 Okay? -- on February 3?

18 A. So that was in the Time Machine; right? So
19 I -- I believe what the case, I mean, my -- I try my
20 best to explain. I believe what was true is clearly
21 in my iCloud Drive, I mean, I -- from other evidence
22 on MacBook Pro, I did deleted those files. Why
23 there is still a file in my iCloud Drive in my iMac,
24 I believe it was -- I think -- I mean, I'm not a
25 forensic expert. I think --

1 Q. I'm not asking you about -- I'm asking you
2 to tell me what you did that would help me
3 understand what's happening.

4 A. I think the truth is I didn't do anything.
5 It's probably most likely because the -- the --
6 the -- I don't know how often the Time Machine back
7 up stuff, but probably before the iMac was
8 synchronized with my iCloud, the backup, the --
9 at -- before that -- before the synchronization
10 happened, I -- I think very likely that were the
11 case, because otherwise it's not consistent.

12 It's not -- it's in my iMac drive, iCloud
13 Drive, but it's not in my MacBook iCloud Drive,
14 because once I started -- once I left Tesla, my
15 recollection is I was -- started using the MacBook
16 Pro. And the -- and the forensic information showed
17 the iCloud Drive started to sync with my own iCloud
18 Drive. So I clearly deleted that.

19 I think why it was there in my Time -- Time
20 Machine, I think it was backed up the status before
21 I turned off the -- the iCloud -- my iMac. Then --
22 then in -- probably in February, late February, I
23 turned on my -- my iMac. Then they start sync --
24 iCloud Drive start synching to my iCloud.

25 Q. So -- so --