

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

LUCASYS INC.,

Plaintiff,

v.

POWERPLAN, INC.,

Defendant.

Civil Action No. 1:20-CV-02987-AT

Judge Amy Totenberg

**DECLARATION OF JAMES PERSINGER**

Pursuant to 28 U.S.C. § 1746, I, James Persinger, hereby declare as follows:

1. My name is James “Jim” Persinger. I am over the age of eighteen, and I am competent to provide this Declaration.

2. I am the Chief Executive Officer of PM Investigations, Inc. (hereinafter referred to as “PMI”), a private investigation agency specializing in digital forensics and technology. This Declaration is based on my own personal knowledge and observations.

3. I am a Georgia licensed Private Investigator of twenty (20) years and a South Carolina licensed Private Investigator of nine years (9). I am also a former Cobb County (State of Georgia) Police Officer of ten (10) years, where I taught over 525 recruits. I am a P.O.S.T. Certified Instructor for law enforcement and carry an Instructor's License for Private Investigators through the Secretary of State

of Georgia. I have taught at three Georgia colleges, including Clayton State College, American InterContinental University and Gwinnett Technical College. I was a Board Member of the Technology Advisory Board for American InterContinental University of Dunwoody for seven (7) years. I have been in the technology industry for over thirty (30) years. Attached as Exhibit “A” is a summary of my relevant experience (reference Bates stamped document Persinger-Summary of My Relevant Experience-000001).

4. I was retained by legal counsel on behalf of the Plaintiff, Lucasys, Inc. to locate and preserve publicly available information regarding software manufactured and serviced by the Defendant in this Civil Action, PowerPlan, Inc. (Hereinafter referred to as “PowerPlan”). My hourly rate is \$325 per hour.

5. My primary objective was to document and preserve information that could be located through ordinary or “layman” searches of the Internet, including YouTube and public source code repositories and applications freely available to download and install on smartphones.

6. It is my understanding that PowerPlan has asserted that Lucasys misappropriated certain alleged “trade secrets.” Plaintiff’s legal counsel discussed with me PowerPlan’s Interrogatory responses regarding the categories of its alleged trade secrets. I was also advised by Plaintiff and Plaintiff’s legal counsel

of publicly available sources on the Internet that contained information about PowerPlan and its software.

7. Attached to this Declaration as exhibits (the “Exhibits”), as described in more detail herein, are documents, videos, source code files and folders, screenshots, and other files that I preserved during my services on behalf of the Plaintiff.

8. I did not use any special technical expertise to locate or download any of the Exhibits.

9. I did not circumvent any encryption or other security measures, apply any process to circumvent any password, or apply any custom scripting to locate, download or preserve any of the Exhibits.

10. I obtained most of the Exhibits from PowerPlan’s website, which is freely accessible via the Internet, and PowerPlan’s smartphone application, which is freely available for download from the Google Play Store and the Apple App Store.

11. Some of the Exhibits I downloaded are videos from PowerPlan’s YouTube channel, which were freely accessible from the Internet or from a smartphone app. YouTube is a website that allows users to upload video content for viewing by other users.

12. I obtained some of the Exhibits from GitHub and Bitbucket, two separate and independent software code repository services that are available to the public for use. Anyone can obtain a free GitHub or Bitbucket account and can access any code repository that has been designated as a “public” repository. Software code repositories generally contain software source code, but other types of files can be uploaded to them. All of the Exhibits obtained were from “public” accounts separately identified and located on GitHub and Bitbucket.

13. All the Exhibits were publicly available to anyone with an Internet connected computer or smartphone.

14. I was not required to sign any agreements, including any licensing or non-disclosure agreements, prior to accessing and downloading any of the Exhibits.

15. I preserved copies of the Exhibits using standard techniques that did not require sophisticated technical expertise or specialized software.

16. Any user on the Internet could have identified and downloaded the Exhibits by using Google, Bing, or a comparable search engine and using simple search terms such as “PowerPlan tax presentations” and following the links in the first few pages of the search results.

17. I created screenshots (the “Screenshots”) to document the process for some of the searches conducted. A screenshot is similar to taking a photograph of

what appears on a computer screen or smartphone screen at a given time. The Screenshots are fair and accurate representations of what I observed when preserving the Exhibits.

18. I located and downloaded one hundred seventy-eight (178) PDF files from PowerPlan's Website that I identified through web searches. Attached as Exhibit B is a screenshot of one such search that I ran using Google's search engine, which lead me to multiple links associated with PowerPlan's software (reference Bates stamped document Persinger-Website000001).

19. Exhibit B also contains true and correct copies of the PDF files that I downloaded from PowerPlan's website (reference Bates stamped documents Persinger-Website000002 – Persinger-Website002891).

20. Using BlueStacks, a software application commonly used to emulate a cellphone (which is in use by an estimated 85 million users worldwide<sup>1</sup>), I searched for "PowerPlan" in the Google Play Store.

21. The first result was an app titled "PowerPlan" (the "PowerPlan App"). I created a screenshot of the PowerPlan App result, which is attached to this Declaration as Exhibit C (reference Bates stamped document Persinger-App002893).

---

<sup>1</sup> Source <https://www.chartattack.com>

22. The PowerPlan App was free to download and install. As I continued using BlueStacks, I opened the PowerPlan App but was not required to enter any username or password.

23. The PowerPlan App allows users to navigate to “events.” At the time I used the PowerPlan App, the “Past” tab showed three (3) events and the “Current and Upcoming” tab showed zero (0) events. A screenshot of the “Past” events tab is included in Exhibit C, which documents the three (3) events displayed: “Elevate 2020,” “Elevate 2019,” and “Planet 2017” (reference Bates stamped document Persinger-App002892).

24. The Elevate 2020 event page could not be accessed without logging in to the PowerPlan App; therefore, I was unable (nor did I attempt) to access any content for that specific event.

25. The Elevate 2019 event page could be accessed simply by clicking “Open” next to the event’s name. Doing so brought the user to a “home page” for this event that had a menu of different options. A screenshot of the home page for the Elevate 2019 event is included in Exhibit C (reference Bates stamped document Persinger-App002900).

26. Next, I clicked on “Agenda”, which brought me to a page with the agenda for each day of the event. The agenda page contains the names and times of various presentations that would take place throughout the day.

27. Clicking the name of a presentation brings up information about the presentation, including a description of the topic, the speakers, photos (if any), and at the bottom any “documents” to be used in the presentation. Screenshots of the presentation page for the “ASU 2017-07 Pension Non-service costs, a reporting approach: OneGas Case Study” presentation is included in Exhibit C (reference Bates stamped document Persinger-App002905).

28. At the bottom of the event page shown in Exhibit C was a link to a PDF file. Clicking the link would open the PDF File. A screenshot of the first page of the file is included in Exhibit C (reference Bates stamped document Persinger-App002908). Using the download option at the bottom of the page on the PowerPlan App, I freely downloaded each PDF.

29. After downloading the files from the Elevate 2019 event, I returned to the menu and selected the “Planet 2017” event. A screenshot showing the menu from the Planet 2017 event is included in Exhibit C (reference Bates stamped document Persinger-App002894). From the event menu, I selected the “My Schedule” option and then selected the “All Sessions” tab. A screenshot of the All-Sessions tab for Monday, November 13, 2017, is included in Exhibit C (reference Bates stamped documents Persinger-App005668 - Persinger-App005675).

30. The presentations under each day of the All-Sessions tab have the same structure as the items under each day of the “Agenda” tab from the Elevate

2019 event. A Screenshot of the presentation page for the “AMP Community Orientation” presentation is included in Exhibit C (reference Bates stamped document Persinger-App005682).

31. I went through each presentation from the Planet 2017 event and downloaded the PDF files for each presentation for which they were available. Exhibit C contains the PDF files from the Planet 2017 event and Elevate 2019 event (reference Bates stamped documents Persinger-App003529 – Persinger-App008871).

32. During this portion of my services, I located and downloaded one hundred fifty-eight (158) PDF files from PowerPlan’s smartphone app. Some of the PDFs I collected from the PowerPlan App appear to be identical to files I downloaded from the PowerPlan website, meaning that the information is publicly available from more than one source.

33. In addition, I accessed YouTube’s homepage at [www.youtube.com](http://www.youtube.com). I typed “PowerPlan” in the search bar at the top of the page. The first search result is a link to the PowerPlan Inc. YouTube channel. From the home page of the first channel, I selected the “Videos” tab and downloaded each individual video, which are provided in greater detail in Exhibit D attached to this Declaration (reference Bates stamped documents Persinger-YouTube008872 – Persinger-YouTube009087).

34. I preserved a total of thirty-eight (38) videos from the PowerPlan, Inc. YouTube channel, which are included in Exhibit D, as well as screen captures of non-selective frames related to each video (reference Bates stamped documents Persinger-YouTube008872 – Persinger-YouTube009087).

35. Prior to my work on this case, I had an account on GitHub, which is an Internet service that software developers use for sharing source code with other developers. GitHub can be used for both public and private collaboration.

36. Like many web services, GitHub has a feature for searching repositories. I typed “powerplan” into the GitHub search bar and located six (6) public repositories potentially relevant to this Civil Action, as previously described to me by the Plaintiff and Plaintiff’s legal counsel. A screen capture of one return is attached as part of Exhibit E (reference Bates stamped document Persinger-Github009088).

37. Also attached as Exhibit E are copies of the folders and respective files contained in these repositories (reference Bates stamped documents Persinger-Github009088 – Persinger-Github011001).

38. I located the public Bitbucket repository named “PowerPlanBuilds-powerplan-snaplogic” to which I was directed by Plaintiff’s personnel and Plaintiff’s legal counsel. I typed “PowerPlan” into the Bitbucket search bar and located one (1) public repository potentially relevant to this Civil Action.

39. Attached as Exhibit F are copies of the folders and files contained in the Bitbucket repository described above (reference Bates stamped documents Persinger-Bitbucket011002 – Persinger-Bitbucket011021).

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Sworn to and subscribed, this 2nd day of May 2022.

  
James Persinger