e-Discovery: What Litigation Lawyers Need to Know

Risk Management Handouts of Lawyers Mutual

LAWYERS MUTUAL | LIABILITY INSURANCE COMPANY OF NORTH CAROLINA

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About the Author

Monica McCarroll is a partner with Williams Mullen. She focuses her practice on commercial litigation, with an emphasis in e-Discovery issues. She also has experience with IP litigation, fiduciary litigation, and tax litigation. Williams Mullen is an AmLaw 200 law firm providing comehensive legal sevices to regional, national, and international business clients.

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RISK MANAGEMENT HANDOUTS OF LAWYERS MUTUAL

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INTRODUCTION

In the five years since the Federal Rules of Civil Procedure were amended to address electronically stored information (ESI) in the discovery process[1], the concept of a "litigation hold" or "legal hold" has transformed how litigants and practitioners approach even the simplest of cases. A litigation hold is a notice, provided to any person or entity that may have information in his or its possession, custody or control that could be considered pertinent to the underlying dispute, and directs him or it to preserve that information. At its essence, a litigation hold is the first, and oftentimes, best defense that a litigant has to allegations of spoliation of evidence. While litigation holds have been employed by diligent lawyers for decades, they have become an absolute "must" in this Information Age, where most, if not all, of the potential evidence in a dispute exists in electronic form, which means that it can easily, and often unknowingly, be altered, modified, deleted or otherwise destroyed.

The litigation hold acts as a reminder to litigants of their common law duty to preserve evidence. This duty is owed to the court by every litigant, regardless of the type of case, the location of the court or the amount in controversy. A court cannot adequately adjudicate a dispute regarding a stolen ring, for example, if neither the ring nor extrinsic evidence that the ring existed and belonged to the claimant, is presented to the court for its consideration. Likewise, a court cannot adequately adjudicate a dispute that an employee was being harassed and otherwise discriminated against by her supervisors if the harassing emails are no longer available for review. Accordingly, the duty to preserve is generally enforced in the breach.[2]

When evidence existed solely in physical form (*e.g.*, paper documents), the duty to preserve was fairly easy to satisfy. When a lawsuit was filed alleging wrongful termination, the lawyer would direct her client to send over the employee's personnel file, and perhaps a correspondence file, and that would be that. Now, the lawyer needs to seek not only the employee's personnel and correspondence file, but also any emails, voice mails, text messages, IM chats, Facebook postings, etc. that may relate to the employee's claim, as well as information from the payroll database, the electronic timekeeping system, the HR SharePoint site that posts all company policies, and the list goes on and on. The sheer amount of potential evidence has increased exponentially at the same time that the sources or locations of that evidence have multiplied. Meanwhile, very little of this information is static; it can be accessed, moved, copied, altered, or deleted at any time by any number of people, thus exposing litigants to the possibility of sanctions for spoliation of evidence.

The law regarding spoliation of evidence varies from jurisdiction to jurisdiction as to the level of culpability required versus the amount of prejudice that a movant must show. There is little doubt, however, that a litigant can be sanctioned for even the inadvertent destruction of evidence if that evidence was destroyed after the duty to preserve had attached and is found to have been highly relevant to the dispute, so that its absence prevents the aggrieved party from proving a key claim or defense.[3] Sanctions can range from monetary damages to an adverse inference instruction to the entry of default judgment. The first, and oftentimes best, defense against spoliation sanctions is the litigation hold.[4]

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1 *See* Bennett B. Borden, Monica McCarroll, Brian C. Vick & Lauren M. Wheeling, *Four Years Later: How the 2006 Amendments to the Federal Rules Have Reshaped the E-Discovery Landscape and are Revitalizing the Civil Justice System*, XVII RICH. J.L. & TECH. 10 (2011), http://jolt.richmond.edu/v17i3/article10.pdf

2 *See Zubulake v. UBS Warburg, LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004) ("Zubulake V")

3 *See Silvestri v. General Motors Corp.*, 271 F.3d 583 (4th Cir. 2001); *see also Goodman v. Praxair, Inc.*, 494 F.3d 458 (D. Md. 2009); *Rimkus Consulting Grp., Inc. v. Cammarata*, 688 F. Supp. 2d 598 (S.D. Tex. 2010).

4 *See, e.g., E.I. DuPont v. Kolon Industries, Inc.*, 2011 WL 2966862 (E.D.Va.).

"REASONABLE" ANTICIPATION OF LITIGATION

The first step in implementing a litigation hold protocol is defining when the duty to preserve has attached and the litigation hold must be issued. Conventional wisdom is (and most case law states) that the duty to preserve arises when one reasonably anticipates litigation. This is far from a bright-line test.[5] While there are certain circumstances where one clearly should reasonably anticipate litigation, *i.e.*, the receipt of a filed lawsuit, other "triggering events" can be more subjective. Moreover, triggering events differ depending on whether one is the plaintiff or the defendant in a particular matter. While the defendant may not reasonably anticipate litigation until it receives the filed lawsuit, the plaintiff clearly anticipates litigation some time prior to filing that same suit. The duty to preserve applies to all litigants, regardless of their posture in the case, so a litigation hold protocol should not depend on what side of "v." one generally practices.

TRIGGERING EVENTS

As noted above, the receipt of a filed lawsuit clearly triggers one's duty to preserve. Other straightforward triggering events include the *unlawful* termination of an employee; the *intentional* breach of a contract; the *known* violation of a statute or regulation. In other words, if a client acts in a manner that violates another's rights in some way, that individual or organization should reasonably anticipate litigation arising from that action and should take steps to preserve potentially relevant evidence.

Assuming most clients don't deliberately violate the rights of others, however, there are still a number of triggering events that should cause a reasonable person to anticipate litigation. These include the receipt of a complaint or demand that threatens litigation; notification of an investigation being conducted by a government agency or regulatory body; the decision to conduct an internal investigation into potential wrongdoing by an employee; as well as any event outside of the ordinary course of business resulting in injury or damage to either employees or third parties, *e.g.*, an on-the-job incident resulting in disability or death; an accident involving a company's vehicle resulting in damage to others; and a security breach resulting in the disclosure of sensitive customer data (*e.g.*, credit card numbers). Counsel should work with clients to create a litigation profile and then develop documentation as to what actions or events will constitute "triggering events." This will help clients avoid making *ad hoc* decisions that could prove costly later.

On the plaintiff's side, while a demand letter threatening litigation constitutes a triggering event, other scenarios are not as easy to discern because an individual may be involved in an investigation or accident but not make the decision to file suit until months, or even years, later. Likewise, a party could be aware of a breach of contract or similar "wrong" that has been committed, but try to resolve the matter without considering litigation. When a party is considering litigation, but counsel is uncertain whether they have crossed the threshold of "reasonable anticipation," a good rule of thumb is to use the work product doctrine as a guide. The work product doctrine applies only to materials prepared for, or as part of, litigation. Accordingly, if counsel plans to seek work product protection on the notes she jots down after her first meeting with her client, she should recognize that her client has crossed the threshold and direct her client to preserve any potentially relevant information from that point forward.

5 *See, e.g., Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 521 (D. Md. 2010)

SCOPING THE LITIGATION HOLD

Once a triggering event has occurred, it is important to act promptly to determine the scope of the litigation hold in order to issue the hold in a timely fashion. A litigation hold protocol allows counsel to move quickly after learning about a triggering event, as time is truly the enemy of preservation. There are numerous factors to consider when scoping a litigation hold, including:

- who are the key custodians?
- what is the potentially relevant information?
- where is the potentially relevant information located?
- is there any potentially relevant information that is particularly vulnerable to inadvertent destruction?

CUSTODIANS

In many disputes, the key custodians are also the key witnesses. However, when it comes to the preservation of potentially relevant information, it is best to cast a wide net. Counsel should determine persons with knowledge of the events underlying the dispute, and then consider the chain of command in both directions, *i.e.*, to whom did the persons with knowledge report, and who reported to them? In certain matters, *e.g.*, employment disputes, the colleagues or peers of a person with knowledge also may need to be considered as potential custodians.

In addition to persons with knowledge and those surrounding them, whether physically or on an organization chart, counsel also should consider individuals who may have no knowledge of the underlying dispute, but nonetheless have possession or control of information that could be critical to its resolution. For example, personnel in the accounting department may know nothing about the performance of the contract at issue, but they do control information that will be used to show the company's alleged damages.

Persons responsible for the organization's IT services and infrastructure, as well as its HR representatives, also fall under this category. IT personnel manage auto-delete functions, back-up procedures, reboots and upgrades, just to name a few of the tasks that could have an impact on the litigant's duty to preserve, so it is a good practice to include an IT "point person" on all litigation holds, regardless of subject matter. Likewise, HR representatives handle the departure of all employees, so they should be made aware of ongoing litigation holds, which will allow them to take appropriate actions to ensure that any information being preserved by a departing employee is not destroyed inadvertently. For instance, HR can direct IT to remove the employee's access to the organization's computer systems, but also to maintain or image the employee's laptop/desktop before it is wiped and reissued to another employee.

Counsel also should determine whether there are third parties who may be potential custodians in that matter. Many small organizations and 'mom and pop' operations outsource "traditional" business functions, including IT, accounting, payroll, web hosting, etc., any or all of which may prove critical to the underlying dispute. If the third-party is acting as the party's agent, or the party otherwise has control over the information in that third-party's possession or custody, then the third-party should be considered a custodian for purposes of the litigation hold.

TYPES OF INFORMATION

At the same time that counsel identifies the custodians who should receive the litigation hold, counsel also should start preparing a list of what information should be preserved. While the preservation net should be cast wide, the more specificity that a litigation hold provides, the better. Without sufficient specificity as to what information is subject to the litigation hold, many custodians default to saving everything. While that may not seem like such a bad practice in the abstract, it is simply unworkable for most organizations, who may be involved in numerous lawsuits and investigations that span the course of months, years, even decades.[6]

6 "Must a corporation, upon recognizing the threat of litigation, preserve every shred of paper, every e-mail or electronic document, and every backup tape? The answer is clearly, "no." Such a rule would cripple large corporations … that are almost always involved in litigation." *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 217 (S.D.N.Y. 2003) ("Zubulake IV").

When identifying the types of information that a custodian should be preserving, it is important to focus on the content of the information, not the form. For example, many attorneys make the mistake of advising custodians to save "email," rather than specifying that they should save correspondence or communications "with x" or "relating to y." Counsel should consider what types of information they will need to prosecute or defend their client's position, and then switch hats and identify what their opposition will need to do the same.

SOURCES OF INFORMATION

Once counsel is comfortable that his net is cast wide enough, both as to the custodians who will receive the litigation hold and the types of potentially relevant information those custodians should preserve, he should provide those custodians with some guidance as to where that information may be. This requires that counsel gain a basic understanding of how the party or organization creates and maintains information.

The best approach for gaining this understanding is for counsel to talk with the custodians who create the information and the IT personnel responsible for maintaining it. It is often helpful to talk with IT first and gain a basic understanding of the organization's IT infrastructure, as well as any policies or practices relating to the maintenance of the organization's information. For example, it is helpful to know whether an organization uses Microsoft Exchange, Gmail, or some other tool to create and manage email and whether there are policies or practices in place relating to the storage of email that could affect its preservation, *e.g.*, do users have mailbox size limitations? Is there an auto-delete policy in effect? How often, if at all, are backups performed, and how long are they maintained? Can users save email to external media? If the user has a SmartPhone, do emails sync up? Similar questions should be asked to determine how an organization stores non-email files, whether it uses proprietary software, how it extracts data from databases, how it operates its website, etc.

If talking with IT first is overwhelming, then counsel can start with key custodians. For example, in a breach of contract dispute, counsel may inquire of a custodian whether she emailed with the breaching party about the contract, if she has saved those emails, and, if so, where or how did she save them (*e.g.*, in a document management system, in a personal storage file or PST, on a CD, on a network drive, on her SmartPhone, and/or in her "in" box, along with hundreds, or thousands, or hundreds of thousands, of other emails). Armed with this information, counsel can then talk with IT about how best to ensure that the sources or locations identified by the custodians are being maintained and that the potentially relevant information located there is being preserved properly.

VULNERABLE INFORMATION

There are certain types of electronically stored information that are particularly vulnerable to inadvertent destruction. When scoping a litigation hold, counsel should consider whether any of these types of information may be potentially relevant to the underlying dispute, and if so, act quickly to ensure proper preservation.

a. **Text messages** – Once confined to teenage girls and cheating spouses, text messaging is becoming more common in the business world, where SmartPhones are ubiquitous and email becomes increasingly difficult to manage. By their very nature, text messages are not intended to be "business records," and under many service plans, they are deleted regularly. Text messages may be critical in certain disputes, however, and not just divorces or harassment cases, but also for all manner of business disputes where if texting was the parties' primary means of communication.

b. **Voice mail** – many voice mail systems are designed to preserve messages for only a short duration after they are accessed. Like text messages, voice mail is generally not intended to be a "business record." However, there are certain disputes where voice mail may be important, including internal investigations and employment disputes.

c. **Social media postings** – Facebook and other social media sites have staked a claim in the business world and must be considered as sources of potentially relevant information for all manner of disputes. The preservation issue posed with most social media sites is not one of time but of access. When multiple parties within an organization have access to a social media site,

potentially relevant information may regularly be removed from the site as stale or outdated.

d. **Legacy data** – Legacy data poses the exact opposite problem as the others. Legacy data refers to data that an organization is no longer accessing or maintaining and may be readying for destruction. This data may be important to a new dispute that has had a long gestation period, including certain regulatory investigations that can seek information 10 and 20 years old.

ISSUING THE LITIGATION HOLD

The most effective and defensible litigation holds are in writing and require the recipients to acknowledge receipt. Not only does this allow counsel to track who has received the hold and follow up with custodians who may be on vacation or have left the organization, it also provides the organization with some protection if a custodian intentionally destroys information after being instructed to preserve. To that end, it is important for counsel to consider whether the subject matter of the dispute requires anticipatory preservation measures prior to the issuance of the litigation hold. For example, if an employee quits and files an EEOC claim accusing her supervisor of sexual harassment, including sending inappropriate email communications, then the organization should act quickly and discreetly to preserve both parties' relevant emails before issuing the litigation hold. This requires working with IT or an outside expert to take action from the "back end" of the computer system by accessing and imaging or copying pertinent information from the organization's servers and the personal computers or hard drives of both the employee and the supervisor to ensure the integrity of the information.

Once any such anticipatory measures are taken, the written litigation hold should be distributed to all custodians identified during the scoping process, including third parties. While it is acceptable to distribute a litigation hold by email if the organization generally communicates in that manner, the receipt should be a separate page or attachment that should be completed by hand and returned to the issuer. In addition to the specifics of the hold discussed above, the issuer should provide the recipients with contact information for counsel to ensure that any questions that may arise out of the process can be protected by privilege. To the extent that the organization wants the underlying matter kept confidential, that should be addressed in the hold as well.

It is important that the issuer of the litigation hold send periodic reminders to the recipients that the hold remains in place. Many disputes drag on for months or years with little "action," so it is a good practice to make a record that custodians have been reminded of their duty to preserve. It also is important to revise a litigation hold if circumstances change, whether that requires broadening the scope based on new information, *e.g.*, the Complaint is amended to add new counts, or narrowing the scope due to stipulations or negotiations with the opposition, *e.g.*, the parties stipulate to liability and disagree only as to damages. Likewise, it is critical to remove a litigation hold once a matter is resolved or otherwise concluded so that custodians are able to return to their normal business practices.

A final point regarding the issuance of a litigation hold – when a litigation hold is drafted or issued by counsel, it clearly constitutes an attorney-client communication and should be labeled and protected accordingly. It also may be considered attorney work product, as it is prepared solely for purposes of litigation. However, if an issue arises regarding the potential spoliation of evidence, it is highly likely that a litigant may consider waiving the privilege or otherwise disclosing the contents of the litigation hold as a defense. For this reason, every litigation hold should be drafted as if opposing counsel and the court will one day see it.

LITIGATION HOLD NOTICE - PLAINTIFF

To: [**KEY CUSTODIANS**]

From: [**LEGAL/OFFICER**]

Date:

Re: **Litigation Hold Notice – Effective Immediately**
[**CASE NAME**]

[**CLIENT**] has recently filed a civil lawsuit against [**DEFENDANT**] in the [**COURT**]. We have retained counsel to prosecute the case and are being represented by [**ATTORNEY(S)**], who can be contacted at [**CONTACT INFO**].

[**CLIENT**] asserts [**GENERAL DESCRIPTION**]. Specifically, [**DESCRIBE EACH COUNT**]. We have a legal duty to preserve all documents (paper and electronically stored information, or ESI) and other evidence that are, or may be, relevant to this dispute. For this reason, it is essential that you immediately preserve and retain all potentially relevant evidence.

You are receiving this Notice because we believe you may have potentially relevant evidence. The purpose of this Notice is to instruct you on the preservation process. *These instructions supersede any other record retention policy. The relevant documents MUST be preserved, even if [**CLIENT**]'s record-keeping guidelines (formal or informal) otherwise would allow you to delete or otherwise destroy material.*

General Instructions re: Preservation

Preservation should be interpreted broadly to accomplish the goal of identifying all potentially relevant documents, maintaining the integrity of the documents as they currently exist and **ensuring that they are not altered, deleted, destroyed or otherwise modified.** If you have any doubt as to whether a document or category of documents is covered by this Notice, please err on the side of preservation. Among other things, saving these documents will assist [**CLIENT**] in its prosecution of this case against [**DEFENDANT**]. Your obligation to preserve extends to all potentially relevant documents in your possession, custody or control. Examples of documents that are not in your possession or custody, but remain subject to your control, include documents in the possession or custody of employees who report to you, or documents in the possession or custody of third parties such as contractors or advisers hired to do work for [**CLIENT**].

At this time, this Notice requires only that you preserve potentially relevant documents. You should NOT copy, move, forward or otherwise collect potentially relevant documents unless directed to do so by our attorneys. This is especially critical for ESI, as there is electronic information called "metadata" that does not appear on the printed version of an electronic document, but provides critical information about the data and must be preserved, along with any directory and/or folder information about where the data is stored.

What to Preserve

Until further written notice from counsel or from me, you must not alter, delete, destroy or otherwise modify potentially relevant documents. Please note that you must preserve all non-identical copies of potentially relevant documents, so if one copy contains handwritten notes and the other does not, both should be preserved. Similarly, drafts of potentially relevant documents, to the extent they exist, should be preserved. **Unless otherwise stated, the relevant time period begins on [DATE], and continues into the future.**

Potentially relevant documents include but are not limited to the following categories:

* [**INSERT SPECIFIC CATEGORIES]**

Where Are the Documents Located?

While it generally is easy to locate and preserve potentially relevant paper records, potentially relevant electronically stored information may exist in many different forms and be found in a variety of locations. The following, while not exhaustive, should be considered as sources of potentially relevant ESI:

1. Email messages and their attachments, including messages in your "Inbox," "Sent Items," and "Deleted Items" folders, in any personal folders, "archives" or PSTs you have created, and in any other email accounts you may use, including personal accounts (*e.g.*, Gmail, Yahoo, Facebook, etc);

2. Word processing documents, spreadsheets, analyses and presentations, including items stored in your "My Documents" folder, in shared folders, on network drives, on the home drive of your company desktop/laptop, or on your personal or home computer;

3. Any of the above stored in common locations (such as Intranet or SharePoint sites); on portable electronic devices (such as a BlackBerry or other SmartPhone or cell phone); or on external storage devices (such as CDs, DVDs, external hard drives, flash drives);

[**ONLY INCLUDE FOLLOWING IF CASE WARRANTS**]

4. Electronic calendars, diaries, notes and/or tasks;

5. Databases;

6. Websites/Social Media sites;

7. Voicemail;

8. Legacy Equipment (equipment [**CLIENT**] no longer uses in the normal course of business); and

9. Former Employees' Computers: Take any necessary steps to preserve information from computers or other devices with potentially relevant information of former employees or other equipment no longer in use but still within [**CLIENT**]'s possession or control.

Please note that these lists are not all-inclusive, but simply represent our best assessment at this time of (i) what categories of information might be relevant and (2) where documents might be located. Please interpret these lists broadly and err on the side of preservation.

We will continue to work with our attorneys and our IT staff to determine the most reasonable and least disruptive way to identify and preserve potentially relevant documents. I will contact you if any additional steps should be taken to review, segregate, or collect any paper documents or ESI. **For now, there is no need for you to take any steps other than continuing to make sure you do not alter, delete, destroy or otherwise modify potentially relevant documents.**

[**CLIENT**] takes its preservation obligations very seriously. T**he procedures described in this Notice override any routine retention or destruction policies that you currently follow. If you have any questions regarding any aspect of the Notice or the preservation process, please err on the side of caution and contact counsel or me.** Thank you for your cooperation with respect to this important matter.

ACKNOWLEDGMENT

I have reviewed the above Notice and agree to follow the preservation instructions in that Notice.

Signature: _____

Name (printed): _____

Date: _____

PLEASE RETURN THIS SIGNED DOCUMENT TO [SENDER] BY [DATE]

DISTRIBUTION LIST

[INSERT KEY CUSTODIANS]

[INSERT IT REPRESENTATIVE]

[INSERT HR REPRESENTATIVE]

LITIGATION HOLD NOTICE - DEFENDANT

To: [**KEY CUSTODIANS**]

From: [**LEGAL/OFFICER**]

Date:

Re: **Litigation Hold Notice – Effective Immediately**
[**CASE NAME**]

[**CLIENT**] has been named a defendant in a civil lawsuit filed by [**OPPOSING PARTY**] in the [**COURT**]. We have retained counsel to defend the case and are being represented by [**ATTORNEY(S)**], who can be contacted at [**CONTACT INFO**].

The Plaintiff alleges [**GENERAL DESCRIPTION**]. Specifically, the Plaintiff claims [**SPECIFIC DESCRIPTION OF EACH COUNT**]. We have a legal duty to preserve all documents (paper and electronically stored information, or ESI) and other evidence that are, or may be, relevant to this dispute. For this reason, it is essential that you immediately preserve and retain all potentially relevant evidence.

You are receiving this Notice because we believe you may have potentially relevant evidence. The purpose of this Notice is to instruct you on the preservation process. *These instructions supersede any other record retention policy. The relevant documents MUST be preserved, even if [**CLIENT**]'s record-keeping guidelines (formal or informal) otherwise would allow you to delete or otherwise destroy material.*

General Instructions re: Preservation

Preservation should be interpreted broadly to accomplish the goal of identifying all potentially relevant documents, maintaining the integrity of the documents as they currently exist and **ensuring that they are not altered, deleted, destroyed or otherwise modified**. If you have any doubt as to whether a document or category of documents is covered by this Notice, please err on the side of preservation. Among other things, saving these documents will assist [**CLIENT**] in its defense against the Plaintiff's claims. Your obligation to preserve extends to all potentially relevant documents in your possession, custody or control. Examples of documents that are not in your possession or custody, but remain subject to your control, include documents in the possession or custody of employees who report to you, or documents in the possession or custody of third parties such as contractors or advisers hired to do work for [**CLIENT**].

At this time, this Notice requires only that you preserve potentially relevant documents. You should NOT copy, move, forward or otherwise collect potentially relevant documents unless directed to do so by our attorneys. This is especially critical for ESI, as there is electronic information called "metadata" that does not appear on the printed version of an electronic document, but provides critical information about the data and must be preserved, along with any directory and/or folder information about where the data is stored.

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2. Word processing documents, spreadsheets, analyses and presentations, including items stored in your "My Documents" folder, in shared folders, on network drives, on the home drive of your company desktop/laptop, or on your personal or home computer;

3. Any of the above stored in common locations (such as Intranet or SharePoint sites); on portable electronic devices (such as a BlackBerry or other SmartPhone or cell phone); or on external storage devices (such as CDs, DVDs, external hard drives, flash drives);

[**ONLY INCLUDE FOLLOWING IF CASE WARRANTS**]

4. Electronic calendars, diaries, notes and/or tasks;

5. Databases;

6. Websites/Social Media sites;

7. Voicemail;

8. Legacy Equipment (equipment [**CLIENT**] no longer uses in the normal course of business); and

9. Former Employees' Computers: Take any necessary steps to preserve information from computers or other devices with potentially relevant information of former employees or other equipment no longer in use but still within [**CLIENT**]'s possession or control.

Please note that these lists are not all-inclusive, but simply represent our best assessment at this time of (i) what categories of information might be relevant and (2) where documents might be located. Please interpret these lists broadly and err on the side of preservation.

We will continue to work with our attorneys and our IT staff to determine the most reasonable and least disruptive way to identify and preserve potentially relevant documents. I will contact you if any additional steps should be taken to review, segregate, or collect any paper documents or ESI. **For now, there is no need for you to take any steps other than continuing to make sure you do not alter, delete, destroy or otherwise modify potentially relevant documents.**

[**CLIENT**] takes its preservation obligations very seriously. **The procedures described in this Notice override any routine retention or destruction policies that you currently follow. If you have any questions regarding any aspect of the Notice or the preservation process, please err on the side of caution and contact counsel or me.** Thank you for your cooperation with respect to this important matter.

ACKNOWLEDGMENT

I have reviewed the above Notice and agree to follow the preservation instructions in that Notice.

Signature: _____

Name (printed): _____

Date: _____

PLEASE RETURN THIS SIGNED DOCUMENT TO [SENDER] BY [DATE]

DISTRIBUTION LIST

[**INSERT KEY CUSTODIANS**]

[**INSERT IT REPRESENTATIVE**]

[**INSERT HR REPRESENTATIVE**]

PRESERVATION NOTICE - THIRD PARTY

[**DATE**]

[**NAME**]
[**ADDRESS**]

Re: Preservation Notice – Effective Immediately

Dear [NAME]:

I am writing to you on behalf of my client, [**CLIENT**]. As you may know, [**CLIENT**] is engaged in a lawsuit with [**OPPONENT**] regarding [**BRIEF DESCRIPTION OF LAWSUIT**]. As a party to this suit, [**CLIENT**] is obligated to take steps to preserve all potentially relevant evidence. This can include evidence in the possession, custody or control of third parties like [**RECIPIENT**].

Accordingly, please take all necessary steps to preserve any documents or electronically stored information (ESI) that could be considered relevant to this dispute. All emails and ESI should be preserved in electronic form. Specifically, please preserve [**DESCRIPTION**]. To the extent that you have any other emails, ESI or documents that may be relevant, please preserve those as well. I will follow up with you as the case progresses to determine how best to retrieve what you are preserving.

I appreciate your prompt attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

[**COUNSEL**]