



DESIGNING, IMPLEMENTING, MAINTAINING AND RELEASING LITIGATION HOLDS

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EDiscovery Webinar Series
April 14, 2009

I. Introduction

The following paper discusses various aspects of a litigation hold: (1) when the duty to preserve attaches, (2) determining who to include and how to include them, (3) enforcing the litigation hold, (4) the litigation hold letter, and (5) releasing the litigation hold. Two appendices follow. Appendix A lists key cases and appendix B is a sample internal litigation hold letter.

Once a party reasonably anticipates litigation, the party has a duty to preserve information relevant to that litigation. A litigation hold satisfies that duty. A litigation hold suspends current document destruction policies, and informs certain persons that they must preserve relevant information.

II. When the Duty to Preserve Attaches

The duty to preserve attaches when litigation is reasonably anticipated.¹ This is a fact-specific inquiry based on a good faith and reasonable evaluation of the facts and circumstances as they are known at the time. The factors evaluated include the potency of the claim, and the experience and knowledge of the possible defendant.² Both of these factors are discussed below.

One factor is the potency of the claim. While a vague rumor or unreasonable threat does not trigger a duty to preserve, stronger signs of impending litigation can.³

¹ *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 217 (S.D.N.Y. 2003) (“*Zubulake IV*”); THE SEDONA CONFERENCE, THE SEDONA GUIDELINES: BEST PRACTICE GUIDELINES & COMMENTARY FOR MANAGING INFORMATION & RECORDS IN THE ELECTRONIC AGE 13 (2007) [hereinafter SEDONA GUIDELINES], available at http://www.thesedonaconference.org/content/miscFiles/TSG9_05.pdf. Note that the reasonably-anticipated rule only applies under common law. See *Keithley v. Homestore.Com, Inc.*, 2008 WL 3833384, at *5 (N.D.Cal. Aug. 12, 2008).

² A sampling of factors are listed in “The Sedona Conference Commentary on Legal Holds.” THE SEDONA CONFERENCE, THE SEDONA CONFERENCE COMMENTARY ON LEGAL HOLDS 3 (2007) [hereinafter SEDONA LEGAL HOLDS], available at http://thesedonaconference.org/content/miscfiles/Legal_holds.pdf.

³ SEDONA LEGAL HOLDS, *supra* note 2, at 6; see also *Cache La Poudre Feeds, LLC*, 244 F.R.D. 614, 621 (D. Co. 2007) (“[T]he duty to preserve relevant documents should require more than a mere possibility of litigation.”).

“The future litigation must be ‘probable,’ which has been held to mean ‘more than a mere possibility.’” *Keithley v. Homestore.com, Inc.*, 2008 WL 3833384, at *5 (N.D.Cal. Aug. 12, 2008). For example, receiving document preservation forms, a complaint or petition, notice of an administrative complaint, an inquiry from the government, or a third-party request for documents, can constitute reasonably anticipated litigation.⁴ Other triggers are more amorphous but deserve equal weight. These triggers include internal grievances, Human Resources disputes, pre-litigation communication with the opposing party that points towards impending litigation, or litigation involving similar products.⁵ Depending on the facts, any of these events could trigger a litigation hold.

Another factor is the experience or knowledge of the possible defendant. If a party is aware of events occurring that usually result in litigation—or of actual litigation—and that certain evidence is routinely requested in that litigation, the party has a duty to preserve that evidence.⁶ Conversely, if the events do not usually lead to litigation or the documents are not routinely requested, there is no need for a litigation hold.⁷ For corporate defendants, timing may hinge on which agent was aware of the claim or events. For example, the duty might attach sooner if corporate counsel was aware of the claim or events, because they may be better situated to anticipate which claims will evolve into full litigation.⁸

⁴ SEDONA GUIDELINES, *supra* note 1, at 44.; Jeffrey J. Bresch, et al, *Best Practices in Electronic Discovery and Document Retention*, 28 E. MIN. L. FOUND. § 4.02 (2008).

⁵ SEDONA GUIDELINES, *supra* note 1, at 44; Bresch, *supra* note 4.

⁶ See *Moore v. General Motors Corp.*, 558 S.W.2d 720, 735 (Mo. Ct. App. 1977).

⁷ See SEDONA GUIDELINES, *supra* note 1, at 47 (“[A] legal hold should be limited in scope to only that information and records that may be relevant to the litigation.”).

⁸ Heidi Fessler, Online Conference: Litigation Holds – the Good, the Bad and the Ugly (Nov. 11, 2008).

Plaintiffs are also responsible for implementing a litigation hold. As with defendants, plaintiffs must start a litigation hold when they anticipate litigation.⁹ Plaintiffs could have sufficient knowledge to trigger a hold when they articulate a time frame and strategy for litigation¹⁰, when they contemplate or actively plan for litigation¹¹, or when they begin examining evidence.¹² Moreover, once a party—plaintiff or defendant—anticipates litigation, “he still has an obligation to give the opposing party notice of access to the evidence or of the possible destruction of the evidence.”¹³ Therefore, plaintiffs may have an additional duty to warn possible defendants about destructible evidence.¹⁴

Because litigation hold decisions are based on subjective concepts like reasonableness and good faith, it is important to document when and why a hold was implemented. The party may wish to memorialize the facts known at the time, as well as the decision-making process used.¹⁵ Working from a company-specific set of guidelines that outline when a litigation hold is necessary may be helpful. For example, a party may wish to document why these guidelines apply to its circumstances. Given work-product and attorney-client issues, the documentation process may exclude extended discussions of strategy or legal analysis.¹⁶

⁹ See *Rambus, Inc. v. Infineon Tech. AG*, 220 F.R.D. 264, 281 (E.D. Va. 2004) (“[O]nce a party reasonably anticipates litigation, it has a duty to suspend any routine document purging system that might be in effect and to put in place a litigation hold.”) (emphasis added).

¹⁰ *Rambus, Inc.*, 220 F.R.D. at 284-85.

¹¹ *Struthers Patent Corp.*, 558 F.Supp. at 765.

¹² See *Silvestri v. General Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001).

¹³ *Id.* at 591.

¹⁴ See *id.* See also *Andersen v. Schwartz*, 687 N.Y.S.2d 232, 234-35 (N.Y. Sup. Ct. 1999) (holding that plaintiffs should have notified the defendant of the initial and only vehicle inspection).

¹⁵ Stanley M. Gibson, *Litigation Holds: Turning On—And Off—The Switch to Avoid Sanctions and Costly E-Discovery Blunders*, 158-59 (2007).

¹⁶ SEDONA LEGAL HOLDS, *supra* note 2, at 15.

III. Determining Who to Include and How to Include Them

An effective litigation hold captures only information that is relevant to the anticipated litigation.¹⁷ Therefore, only people who have that information will be subject to the hold.¹⁸ This includes people who made relevant documents, people for whom the relevant documents were made, and people directly named in the litigation.¹⁹ Persons without relevant information, but with structural knowledge may need to be included. This includes those who maintain the information, such as IT and records personnel, as well as the Human Resources and legal departments.²⁰ Also keep in mind third parties, such as outsourced-service providers or storage-facility operators, because they may also have relevant information.

Determining which persons may have relevant documents requires careful analysis. It may be helpful to first learn the company's personnel structure and document retention policies. The litigation can also inform hold procedures. For example, an employment-discrimination case may require capturing documents from several levels of personnel, while an SEC investigation may require targeting only certain departments.²¹ Once specific persons are identified, a party may wish to expand the hold to that person's administrative department and supervised employees. Administrative or lower-level employees may ghostwrite emails or letters, or discard

¹⁷ *Zubulake*, 220 F.R.D. at 217 ("[A] party need not preserve all backup tapes even when it reasonably anticipates litigation.").

¹⁸ *Id.* at 217-18; THE SEDONA PRINCIPLES, SECOND EDITION: BEST PRACTICES, RECOMMENDATIONS & PRINCIPLES FOR ADDRESSING ELECTRONIC DOCUMENT PRODUCTION 28 (2007) [hereinafter SEDONA DOCUMENT PRODUCTION], available at <http://www.thesedonaconference.org/dltForm?did=SedonaPrinciples200401.pdf>.

¹⁹ *Zubulake*, 220 F.R.D. at 218.

²⁰ See *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004) ("Zubulake V").

²¹ EDRM, Preservation – Implementation of Preservation/Litigation Hold, www.edrm.net/wiki/index.php/Preservation_-_Implementation_of_Preservation/Litigation_Hold

emails or letters, for their supervisors. Considering these details will help increase a litigation hold's effectiveness.

Tailoring the litigation hold not only increases its effectiveness, it also contains costs. Including everyone in the hold ensures relevant information will be retained, but netting every employee is costly. The hold itself will be more expensive, because it requires numerous employees to plan and administer it. A broad hold will also ensnare a larger volume of unresponsive documents, thus taking more time and effort to organize anything collected. Further, needlessly subjecting employees to litigation hold notices may reduce effectiveness because the warnings become too normalized. A smaller hold also lessens the risk that information about the litigation leaks outside the company. Tailoring the hold to a small groups, however, risks losing relevant information. A small hold could also trigger document destruction if the affected employees believe they are under investigation.²²

IV. Enforcing the Litigation Hold

Initiating the litigation hold is only the first step. Once the hold is in place, “counsel and client must take *some reasonable steps* to see that sources of relevant information are located.”²³ Enforcement requirements depend on the size of the company and the scope of the hold. No matter the size and scope, “it is *not* sufficient to notify all employees of a litigation hold and expect that the party will then retain and produce all relevant information.”²⁴

Effective enforcement begins with the initial distribution of the hold. Consider communicating the hold using a variety of methods. E-mail distribution is generally

²² SEDONA DOCUMENT PRODUCTION, *supra* note 18, at 32.

²³ *Zubulake*, 229 F.R.D. at 432 (emphasis in the original).

²⁴ *Id.*

accepted²⁵, but the message can be reinforced by also circulating letters, or having legal counsel talk to employees individually. Track the receipt of a hold notice, either automatically or by including a certification that should be signed and returned stating that the recipient read and understood his obligations.²⁶ Parties could also consider a litigation hold training program, conference call, or webinar.

After the initial distribution, parties should issue periodic reminders about the litigation hold. Solicit ideas from various departments, including IT, Human Resources, legal, and records, to develop a variety of methods. Reminders could include posting the litigation hold on the company's intranet, periodically issuing pop-up messages on individuals' work computers, leaving recorded messages on work phones, or simply reissuing the original litigation hold notice.

IV. The Litigation Hold Letter

A litigation hold letter formally requests that the recipient institute a litigation hold. This letter is not a discovery request; it is an attempt to avoid losing computerized data, either through misconduct or normal document preservation policies.²⁷ At a minimum, the letter should instruct the party to preserve digital evidence relevant to issues in the case, or evidence that may lead to the discovery of that evidence.²⁸ The letter should request the suspension of regular document preservation policies, describe the data to be preserved, and identify possible evidence locations.²⁹ Broad preservation

²⁵ EDRM, *supra* note 21.

²⁶ *Id.*

²⁷ *Stone v. Lockheed Martin Corp.*, 2009 WL 267688, at *2 (D.Colo. 2009) (describing the contents of a litigation hold letter and including references).

²⁸ *Id.*

²⁹ *Id.*

requests can be returned in-kind.³⁰ Therefore, it may be helpful to carefully tailor the letter's document requests, or establish a set scope of discovery.

V. Releasing the Litigation Hold

A party can release a litigation hold when litigation has concluded or is no longer reasonably anticipated. Litigation is concluded when all parties sign a final settlement and release, the court enters a dismissal with prejudice as to all parties, or the deadline for any further appeals has run and the entered judgment is final.³¹ Determining when litigation is no longer reasonably anticipated is not as straight-forward. Courts look for whether the party based the release decision on a good faith and reasonable evaluation of the facts and circumstances known at the time.³² This evaluation involves the same facts used in determining whether a litigation hold was originally triggered, such as potency of the claim, and the experience and knowledge of the possible defendant.

Litigation hold releases have three requirements: (1) documentation, (2) reviving normal document retention policies, and (3) notification to employees and third-parties. First, the company should document when and why a release was implemented. Litigation hold decisions are based on subjective concepts like reasonableness and good faith, and documentation helps demonstrate why the decision was reasonable at that time. As with litigation hold implementation decisions, the company may wish to memorialize the known facts and the decision-making process.³³ This documentation

³⁰ CHRISTOPHER H. MILLS & RHONDA WILCOX, E-DISCOVERY CHECKLIST (2008)

<http://www.abanet.org/labor/lel-annualcle/08/materials/data/papers/063.pdf>.

³¹ Alan M. Anderson, *Issuing and Managing Litigation-Hold Notices*, 64-AUG BENCH & B. MINN. 20, 23 (2007).

³² *Consolidated Aluminum Corp. v. Alcoa, Inc.*, 244 F.R.D. 335, 345 n.18 (M.D. La. 2006) (referencing *The Sedona Principles: Best Practices Recommendations & Principles for Addressing Electronic Development Production*).

³³ Gibson, *supra* note 15, at 158-59.

process may also exclude strategy or legal analysis discussions because of work-product and attorney-client issues.³⁴

Second, the company should revive normal document retention policies. Before reviving, however, a party should determine whether the held documents are subject to other holds.³⁵ If some documents might be relevant to future claims while others are no longer necessary, a party may decide only to partially release a hold.³⁶ Any documents previously held may be folded into regular document retention policies. Therefore, if a party usually discards documents after five years and the documents under the hold are five years old or older, those documents can be discarded immediately.

Finally, the company should notify all employees and third parties subject to the hold. These employees could include records management, IT personnel, and any other department involved in structuring the litigation hold. The importance of following the release should be emphasized. Unnecessarily retaining records can cause inefficiency, inconsistency, overloaded computer systems, and increased discovery costs.³⁷

³⁴ SEDONA LEGAL HOLDS, *supra* note 2, at 15.

³⁵ SEDONA GUIDELINES, *supra* note 1, at 17.

³⁶ See *Consolidated Aluminum Corp.*, 244 F.R.D. at 345.

³⁷ Gibson, *supra* note 15, at 161.

Appendix A: Key Cases

When the duty to preserve arises:

- *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 217 (S.D.N.Y. 2003) (“*Zubulake IV*”) (duty attaches “at the time that litigation was reasonably anticipated.” In that case, meaning when the plaintiff’s former supervisors became reasonably aware of possible litigation).
- *Stevenson v. Union Pac. R.R. Co.*, 354 F.3d 739, 746 (8th Cir. 2004) (duty attaches when party “knew or should have known that the documents would become material” and “should have preserved them.”).
- *Kronish v. United States*, 150 F.3d 112, 126 (2d Cir. 1998) (duty attaches “when the party has notice that the evidence is relevant to litigation – most commonly when suit has already been filed, providing the party responsible for the destruction with express notice, but also on occasion other circumstances, as for example when a party should have known that the evidence may be relevant to future litigation.”).
- *Testa v. Wal-Mart Stores, Inc.*, 144 F.3d 173, 177-78 (1st Cir. 1998) (duty attaches when there is “institutional notice – the aggregate knowledge possessed by a party and its agents, servants and employees.”).
- *Silvestri v. General Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001) (duty attaches when the party knows or reasonably should know that the evidence may be relevant to pending or anticipated future litigation).
- *Fujitsu Ltd. v. Federal Express Corp.*, 247 F.3d 423, 436 (2d Cir. 2001) (duty attaches “when the party has notice that the evidence is relevant to litigation or when a party should have known that evidence may be relevant to future litigation.”).
- *In re Kmart Corp.*, 371 B.R. 823, 842 (N.D. Ill. 2007) (duty attaches to specific documents only if “the party controlling the documents has notice of those documents’ relevance.”).
- *Rambus, Inc. v. Infineon Tech. AG*, 220 F.R.D. 264, 281 (E.D. Va. 2004) (“[O]nce a party reasonably anticipates litigation, it has a duty to suspend any routine document purging system that might be in effect and to put in place a litigation hold to ensure the preservation of relevant documents–failure to do so constitutes spoliation.”).
- *Keithley v. Homestore.com, Inc.*, 2008 WL 3833384, at *5 (N.D.Cal. Aug. 12, 2008) (“A preservation obligation may arise from many sources, including common law, statutes, regulations, or a court order in the case.”).

- *Phillip M. Adams & Assocs., L.L.C. v. Dell, Inc.*, 2009 WL 910801, at *13 (D.Utah Mar. 30, 2009) (Preservation duty triggered when defendant's industry was "sensitized to the issue" in the case; also discusses importance of centralized document retention policies).

Scope of discovery:

- *Mosaid Techs. Inc. v. Samsung Elecs. Co.*, 348 F.Supp.2d 332, 336 (D.N.J. 2004) (a litigant is under no duty to keep or retain every document in its possession, but it must preserve what it knows, or reasonably should know, will likely be requested in foreseeable litigation).
- *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309, 324 (S.D.N.Y. 2003) ("Zubulake I") (plaintiff is entitled to all relevant electronic documents, including backup tapes; because of the burden and expense of restoring inaccessible backup tapes, a cost-shifting analysis is appropriate).
- *Concord Boat Corp. v. Brunswick Corp.*, No. LR-C-95-781, 1997 WL 33352759, at *4 (E.D. Ark. Aug. 29, 1997) ("[T]o hold that a corporation is under a duty to preserve all email potentially relevant to any future litigation would be tantamount to holding that the corporation must preserve all email.").
- *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354 (D.Md. 2008) (discussing federal discovery rules and lawyers' discovery responsibilities).
- *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251, 259-264 (D.Md. 2008) (discussing evidence search and retrieval methodology).
- *Qualcomm Incorporated v. Broadcom Corp.*, 2008 WL 66932, at *7 (S.D. Cal. Jan. 7, 2008) (demonstrating need for proactive discovery plan and discussing discovery rules).

Sanctions for destroying electronic documents that should have been preserved:

- *Conner v. Sun Trust Bank*, 546 F. Supp. 2d 1360 (N.D. Ga. 2008) (adverse inference instruction)
- *In re September 11th Liability Ins. Coverage Cases*, 243 F.R.D. 114 (S.D.N.Y. 2007) (sanction of \$1.25 million)
- *Wachtel v. Health Net, Inc.*, 239 F.R.D. 81 (D.N.J. 2006) (deeming facts admitted, precluding evidence, striking privilege claims, striking trial witnesses, and fine)

- *Paramount Pictures Corp. v. Davis*, 234 F.R.D. 102 (E.D. Pa. 2005) (spoliation inference)
- *Ingoglia v. Barnes & Noble College Booksellers*, 852 N.Y.S.2d 337 (N.Y. A.D. 2008) (dismissal)
- *QZO, Inc. v. Moyer*, 594 S.E.2d 541 (S.C. App. 2004) (answer stricken)
- *United States v. Philip Morris, USA, Inc.*, 327 F.Supp.2d 21 (D.D.C. 2004) (\$2,750,000 fine and barring witness testimony)
- *Acorn v. County of Nassau*, 2009 WL 605859, at *4 (E.D.N.Y. Mar. 9, 2009) (awarding motion costs and attorneys fees for failure to implement a litigation hold; holding that “the failure to implement a litigation hold at the outset of litigation amounts to gross negligence.”).

Appendix B: Sample Internal Litigation Hold Letter

To:

From:

Cc: .

Date:

Re: XXXXXX-Related Documents

DO NOT FORWARD

ATTORNEY-CLIENT-PRIVILEGED AND COMPANY CONFIDENTIAL

This memorandum is to [inform or remind] you about the ongoing litigation [or potential litigation] in connection with _____ and your [continuing] obligation to preserve all documents that relate in any way to _____, in accordance with the policy explained to you [previously, and again] below. We are required by law to preserve all documents and records relevant to the inquiry in any way. You have been identified as a person who may have relevant documents and data, and your assistance is required so that we can preserve all corporate information related to the inquiry. The document retention obligations described in this memorandum are in addition to obligations to preserve documents in connection with other investigations and litigation with respect to [company name], **all of which continue to be in effect.** [Your responsibilities are similar to those that were outlined in previous memoranda concerning document retention with respect to the [describe other matters], but it is important that you review this memorandum and ensure that you understand and are in compliance with the document retention policies it describes.]

The directive in this memorandum is extremely important; please read it carefully and do not forward it without permission of the sender.

1. Severe Consequences of Failure to Comply With This Directive

The failure to preserve relevant documents and data can result in severe sanctions against _____ (the "Company"). Thus, it is of critical importance that you comply with the instructions below. Please note that you may be called to give testimony about your document and data preservation efforts. No one is permitted to destroy or delete relevant evidence that could be helpful to an adversary or support our case and/or defenses.

2. Departing Employees

All departing employees in receipt of this memorandum are under an obligation to inform the legal department about any impending departure from the Company. You MUST contact [Company Name] Legal Department when you learn of your departure so

that we can arrange for a preservation of your electronic data (from your computer and other sources) and collection of all relevant hard copy documents. **Do not send any computer to the deployment center without first going through Legal.** Please contact [REDACTED] at [REDACTED] if you are departing.

3. The Matter

[Describe litigation or potential litigation] As a result of this litigation [or potential litigation], the Company requests that you continue to retain all related documents.

4. The Types of Data That You Must Retain

You must maintain hard copies of documents as well as all e-mail and other electronically stored information. Electronic information includes e-mail, [REDACTED], word processing documents, spreadsheets, databases, calendars, networks, computer systems (including legacy systems), servers, archives, backup and disaster recovery systems, tapes, disks, drives, cartridges, other storage media, laptops, internet records, web pages, personal computers, and other information storage devices. Retain any copies you have on any storage medium, and do not overlook sources of data such as portable hard drives, memory cards, "thumb drives," blackberry, personal digital assistants, mobile telephones, iPods® and smartphones.

The term "documents" includes handwritten notes, drafts, tabulations, calculations, summaries, and work papers; it is not limited only to "formal" or "final" documents. Examples of documents (whether in electronic or hard copy) that should be retained include letters, correspondence, memoranda, reports, tabulations, calculations, invoices, vouchers, ledgers, journals, external and internal literature, books, notes, schedules, worksheets, plans, minutes, bulletins, brochures, catalogs, notices, press releases, transcripts, calendars, diaries, charts, forecasts, and drafts of all such documents that mention or relate to the subject matter of the aforementioned investigation. This list is not exhaustive; it is provided by way of example only, and all documents relating in any way to the topics discussed in this memorandum must be preserved.

If you use a home computer or personal laptop to perform work on behalf of the Company, you must preserve any relevant information from that computer as well. If you use a personal email account to send emails related to work, you must preserve those emails. If you store hard copy documents in locations other than the office, those documents also must be preserved.

**YOU MUST MAKE DILIGENT AND REASONABLE EFFORTS TO PRESERVE
RESPONSIVE DOCUMENTS IN ALL LOCATIONS WHERE THEY MAY BE FOUND.**

5. The Categories of Documents and Data You Must Retain

Documents you should retain include those that mention or discuss any of the following subjects with respect to [REDACTED]:

-
-
-
-

There may be other categories of documents relevant to this issue. If you are unsure about the relevance of a document, be cautious and preserve it.

Please do not discard any documents (including email) relating to these topics or any other aspect of the [REDACTED] issue. This request applies to documents now in your possession, as well as those you create or receive subsequent to this memorandum. We also ask that you not create any documents in response to this memorandum. We want to emphasize that normal attorney-client privilege will apply to many documents, so as with all attorney-client consultations, you should be assured that the document itself may remain confidential but you must take the ordinary steps to preserve the attorney-client privilege (e.g., not sharing the document with non-lawyers unless they have a need to know, not sharing the document with those outside the company).

Your only obligation at this time is to identify and preserve relevant documents. Please do not sort, categorize, index or summarize any documents—including electronic documents—that are responsive to this memo, but rather merely identify them and preserve them intact in the way that they were collected or created and filed in the ordinary course of business (e.g., if you created a personal folder in your e-mail, leave it intact and do not try to copy it to a CD or external drive). Also, please do not mark up any documents or create any new documents in response to this memo.

6. “Instant Messaging”

[Different language to be used if IM can be saved at server] The instant message/chat application currently in use at [Company] does not allow for messages to be readily saved at a Company level. As a result, and in order to comply with the requirements of this document hold memo, you should refrain from using instant messaging as a means of communicating information in any way relating to [issue subject to hold] until further notice. If you find that someone has communicated with you on via instant messaging in any way relating to [issue subject to hold], the document hold requires that you manually save the entirety of that communication.

7. Suspension of Document Destruction Policies

Please suspend all standard document destruction programs, including programs or processes that automatically delete electronic information at the conclusion of a set period of time. [Destruction of backup tapes must be suspended, as well as any process that overwrites or destroys relevant information - determine how back-ups will be handled and edit accordingly.] If you are unsure whether some of your electronic information is subject to routine destruction, please contact [REDACTED] in the

IT Department at corporate extension [REDACTED]. If you are unsure whether you have any archived hard copy documents, please contact [REDACTED] in the Records Department at corporate extension [REDACTED].

8. Please Err On The Side Of Retaining Documents, And Contact [Legal Contact] With Any Questions Regarding This Memo or Document Preservation

We understand that these categories of information are broad; however, we do not know at this time which specific documents or categories of documents may be requested in the future. As a result, the Company must ensure that all documents of potential relevance are preserved. If you are not sure whether particular documents or records should be retained, please err on the side of caution; you must not destroy, discard, or delete those documents without prior approval from [Company] legal. If you have questions as to whether particular documents should be preserved, please contact [Legal Contact]. Further, if you believe that an employee who has documents or records subject to this directive has not been advised of his or her preservation obligations, please contact [Legal Contact] with the name of that employee.

9. General Information

We anticipate that you will have questions about this retention effort, including questions about whether to retain specific documents or about saving email. Please do not hesitate to contact [Legal Contact] with any questions. In addition, if you believe that someone else at the Company may have important related material that should be included in this special document retention program, please contact [Legal Contact] rather than discussing this memorandum with that person.

Please do not discuss the lawsuit or any potential claims or issues with anyone outside the Company unless specifically directed otherwise. This letter is confidential and its contents may not be shared or discussed. Do not forward or distribute this memorandum without the permission of the sender.

We will continue to do our best to minimize inconvenience to you, but the need to comply with Court rules on this issue is very important. We appreciate your ongoing cooperation and assistance with this process.