

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Billy Austin,
Plaintiff,

v.

Waypoint Resource Group, LLC,
Defendant.

Case No.: 0:23-cv-456

COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
2. This action arises out of violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, by Defendant and their collection agents

in their illegal efforts to collect a consumer debt from Plaintiff.

JURISDICTION

3. Jurisdiction of this Court arises under U.S.C. § 1692k(d), 15 U.S.C. § 1681, and 28 U.S.C. § 1367 for pendent state law claims.
4. Venue is proper because the acts and transactions occurred here, Plaintiff resides in Minnesota, and Defendant transacts business here.
5. Defendant and its collection employees have transacted business within the State of Minnesota by attempting to collect a debt from Plaintiff via the telephone, the mails, and/or through the use of email while Plaintiff was located within and permanently residing within the State of Minnesota.
6. Defendant has transacted business within the State of Minnesota by operating a collection agency, making collection calls into Minnesota, and directing debt collection activities to Minnesota.

PARTIES

7. Plaintiff Billy Austin (hereinafter “Plaintiff”) is a natural person who resides in the County of Isanti, State of Minnesota, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3) or a person affected by a violation of that law, and a “consumer” as that term is defined by 15 U.S.C. § 1681a(c).
8. Plaintiff has suffered an injury in fact that is fairly traceable to Defendants’ collective conduct and that is likely to be redressed by a favorable decision in this matter.
9. Defendant Waypoint Resource Group, LLC (hereinafter “Defendant”) is a

collection agency operating from a principal office address of 8625 Crown Crescent Court, Suite 200, Charlotte, NC 28227, and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

10. Defendant’s registered agent of process in Minnesota is Cogency Global, Inc., 6160 Summit Dr. N., Suite 205, Brooklyn Center, MN 55430.
11. Defendant uses interstate commerce and the mails in a business the principal purpose of which is the collection of debts.
12. Defendant regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).
13. Defendant and its employees and agents directly and indirectly participated in the unlawful efforts to collect an alleged debt from Plaintiff, as further described in this complaint.

PURPOSE OF THE FAIR CREDIT REPORTING ACT

14. Consumer credit plays a major role in the lives of American consumers entering into the American marketplace and the economic system in general. Fair and accurate credit reporting acts as a gatekeeper to credit purchases, employment and income, basic commercial services, insurance coverage, housing rentals, and a broad range of other transactions. Robert J. Hobbs & Stephen Gardner, THE PRACTICE OF CONSUMER LAW 39-40 (2nd ed. 2006).
15. Congress investigated and determined that the banking system is dependent upon fair and accurate reporting, that inaccurate credit reports directly impair the

efficiency of the banking system, and that unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system. 15 U.S.C. § 1681(a)(1).

16. The FCRA was created to “ensure fair and accurate credit reporting, promote efficiency, and protect consumer privacy.” *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 52 (2007).
17. The FCRA was proposed in 1968 as an amendment to the original Truth in Lending Act. Senator Proxmire (D-WI) announced her intention to create legislation addressing the growing frequency of cases in which a consumer “is unjustly denied because of *faults or incomplete information in a credit report*,” and entered an initial draft of what would eventually become the FCRA into the Congressional Record. Anthony Rodriguez et al., *FAIR CREDIT REPORTING* 8 (5th ed. 2002) (citing 114 Cong. Rec. 24904 (Aug. 2, 1968)) (emphasis added).
18. Senator Proxmire listed five types of abuses requiring Congressional response, including biased or one-sided information and incomplete information. Anthony Rodriguez et al., *FAIR CREDIT REPORTING* 8 (5th ed. 2002) (citing 115 Cong. Rec. 2411 (Jan. 31, 1969)).
19. Congress considered inaccurate and misleading information to be the most serious problem. Anthony Rodriguez et al., *FAIR CREDIT REPORTING* 10 (5th ed. 2002).
20. The FCRA applies to situations in which information relevant to a consumer’s “credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living” is collected. Anthony Rodriguez et al.,

FAIR CREDIT REPORTING 5 (5th ed. 2002) (citing 15 U.S.C. § 1681a(d)).

21. An inaccurate or misleading credit report can not only significantly and unfairly lower a consumer's credit worthiness, but can also prevent consumers from full access to the American marketplace and negatively impact a consumer's living standard and general reputation on the whole if a consumer's character and mode of living is not accurately portrayed. Congress enacted the FCRA to prevent this arbitrary and iniquitous result.
22. Furthermore, in 1996, Congress, in an effort to increase the "accuracy and integrity" of information supplied to credit reporting agencies, added 15 U.S.C. § 1681s-2 to the FCRA by passing the Consumer Credit Reform Act. The provision, "[r]esponsibilities of furnishers of information to consumer reporting agencies," subjected data furnishers, who were not previously covered by the FCRA, to requirements related to accuracy and the handling of consumer disputes. These provisions were originally scheduled to sunset in 2003 but were considered important enough to Congress to be made permanent in the Fair and Accurate Credit Transactions Act of 2003. (Federal Trade Commission Staff: 40 Years of Experience with the Fair Credit Reporting Act, pp. 1, 2, 92. Retrieved from the FTC website: <http://www.ftc.gov/os/2011/07/110720fcrareport.pdf>).

FACTUAL ALLEGATIONS

23. Within one year immediately preceding the filing of this complaint, Defendant attempted to collect from Plaintiff a financial obligation that was primarily for personal, family or household purposes, and is therefore a "debt" as that term is

defined by 15 U.S.C. § 1692a(5), by attempting to collect this debt from Plaintiff in the State of Minnesota.

24. Sometime on or before 2017, Plaintiff allegedly incurred a debt to Comcast Cable in Minnesota (“debt”) which was a \$435 charge for equipment which it claims Plaintiff did not return.
25. Plaintiff disputes this alleged debt, the final bill on this account, and any remaining balance, and is represented by the undersigned counsel both with respect to this debt and to the claims made herein.
26. Sometime thereafter, the debt was consigned, placed, or otherwise transferred to Defendant for collection from Plaintiff.

Plaintiff Attempts to Settle this Disputed Debt

27. Sometime around June 23, 2022, Plaintiff received a Credit Karma alert that this alleged debt had appeared on his credit report.
28. Plaintiff had never received anything in writing from Defendant and had never talked with any debt collectors employed by Defendant prior to this credit alert.
29. Thereafter, Plaintiff called Defendant and made arrangements to pay this disputed debt in settlement by paying \$285, because he was in the middle of trying to buy a house with his girlfriend.
30. Plaintiff then later called Defendant back repeatedly to make this settlement payment, but Defendant did not answer the phone and Plaintiff never had any further communication with Defendant.

31. At this point, Plaintiff believed that this account was a scam and decided that he would thereafter dispute it with the credit bureaus rather than pay it to Defendant.

Defendant Falsely Credit Reports the Account

Defendant's Violations of the Regulation F "Debt Parking" Prohibitions

32. Under its rulemaking authority, the Consumer Financial Protection Bureau issued Regulation F, effective November 30, 2021, which further constrains Defendant's lawful debt collection conduct and further expands Plaintiff's rights under the FDCPA ("Reg. F"). 12 C.F.R. § 1006, *et seq.*

(a) Authority. This part, known as Regulation F, is issued by the Bureau of Consumer Financial Protection pursuant to sections 814(d) and 817 of the Fair Debt Collection Practices Act (FDCPA or Act), 15 U.S.C. 1692l(d), 1692o; title X of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act), 12 U.S.C. 5481 *et seq.*; and paragraph (b)(1) of section 104 of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act), 15 U.S.C. 7004.

(b) Purpose. **This part carries out the purposes of the FDCPA, which include eliminating abusive debt collection practices by debt collectors, ensuring that debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and promoting consistent State action to protect consumers against debt collection abuses. This part also prescribes requirements to ensure that certain features of debt collection are disclosed fully, accurately, and effectively to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with debt collection, in light of the facts and circumstances.** Finally, this part imposes record retention requirements to enable the Bureau to administer and carry out the purposes of the FDCPA, the Dodd–Frank Act, and this part, as well as to prevent evasions thereof. The record retention requirements also will facilitate supervision of debt collectors and the assessment and detection of risks to consumers.

12 C.F.R. § 1006.1 (emphasis added).

33. A violation of Reg. F with respect to a consumer is a violation of the FDCPA.
34. Section 12 C.F.R. 1006.30(a)(1) of Reg. F prohibits a debt collector from furnishing information to a consumer reporting agency about a debt before taking specific actions to contact the consumer about that debt.
35. A debt collector can satisfy this requirement by: (i) speaking to the consumer about the debt in person or by telephone; or (ii) placing a letter in the mail or sending an electronic message to the consumer about the debt and waiting a reasonable period of time to receive a notice of undeliverability, provided certain other conditions are satisfied. A validation notice is one type of letter or electronic communication debt collectors can use to satisfy § 1006.30(a)(1)(ii).
36. Defendant violated Reg. F when it credit reported this disputed account on Plaintiff's all three of major consumer credit reports before ever communicating with Plaintiff. 12 C.F.R. 1006.30(a)(1).
37. Defendant did not speak with Plaintiff, send Plaintiff a letter, or send an electronic message before furnishing this information about this disputed account to Experian, Trans Union, and Equifax.
38. The failure to communicate first with a consumer before furnisher adverse credit information is an unfair debt collection practice in violation of the FDCPA. 12 C.F.R. 1006.30(a)(1); 15 U.S.C. § 1692e(8).
39. The above-described communications and conduct from Defendant to Plaintiff represent numerous and multiple violations of the FDCPA, including but not limited

to 15 U.S.C. §§ 1692d, 1692e, 1692e(2), 1692e(5), 1692e(7), 1692e(8), 1692e(9), 1692e(10), 1692f, and 1692f(1), amongst others.

FCRA Violations by Defendant on Equifax Credit Report

40. Sometime in or around October 2022, Plaintiff discovered that Defendant had added a collection tradeline on Plaintiff's Equifax credit report for this alleged debt on or about June 23, 2022.
41. In or around October 2022, Plaintiff disputed this account directly in writing online with Equifax, after Defendant had first furnished it to this consumer reporting agency, as a prerequisite to preserving Plaintiff's rights under the FCRA. 15 U.S.C. § 1681s-2(b).
42. Plaintiff disputed the false and fraudulent account information with Equifax credit reporting agency pursuant to 15 U.S.C. § 1681i, by doing a consumer dispute of the item directly with Equifax.
43. Thereafter, upon good faith information and belief, Equifax forwarded Plaintiff's dispute information to Defendant for investigation as required by 15 U.S.C. § 1681(a)(2).
44. Upon good faith information and belief, Equifax sent an automated consumer dispute verification ("ACDV") to Defendant regarding the disputed account on this alleged debt.
45. In or around October 2022, Plaintiff received information back from Equifax indicating that it had received Plaintiff's written dispute of this fraudulent account but confirmed it as accurate with Defendant.

46. Despite such written dispute under the FCRA from Plaintiff, Defendant has not removed the negative tradeline related to this account from Plaintiff's credit report with Equifax and instead confirmed it as accurate.
47. According to Equifax, Defendant verified that the disputed account belonged to Plaintiff and was accurately reporting on Plaintiff's credit report, in violation of 15 U.S.C. § 1681s-2(b).
48. Defendant's credit reporting on Equifax's consumer report on Plaintiff adversely and/or negatively affected Plaintiff's credit profile when Defendant was aware that Plaintiff's dispute was legitimate.
49. Defendant violated 15 U.S.C. §1681s-2(b) when it received the notification of dispute from Equifax concerning the Plaintiff's disputed account and thereafter failed to conduct a reasonable investigation and failed to delete the fraudulent account.
50. Plaintiff obtained and reviewed a consumer credit report from Equifax again on December 7, 2022.
51. Specifically, Plaintiff's Equifax credit report still contained the Defendant's fraudulent account and still listed this collection account tradeline against Plaintiff.
52. As a result of Defendant's inaccurate and malicious credit reporting, Plaintiff has suffered reduced credit, emotional distress, embarrassment, frustration, distraction from work, loss of sleep, and anxiety constituting actual damages pursuant to 15 U.S.C. § 1681o(a)(1) and § 1681n.

53. Defendant's false and negative credit reporting on the Equifax report caused Plaintiff's credit score to go down during this time frame.
54. Plaintiff takes great care in working and guarding Plaintiff's credit report/score and is now embarrassed and humiliated that the score is not as good as it should be without the Defendant's adverse account on Equifax's credit report.
55. Defendant's conduct has caused Plaintiff to delay refinancing opportunities to obtain the best possible rates and/or obtaining other credit until the Defendant's adverse and harmful reporting is removed from Plaintiff's credit profile with Equifax.
56. Defendant failed to conduct a reasonable reinvestigation, or follow the procedures required by FCRA, 15 U.S.C. § 1681s-2(b), in regard to Plaintiff's dispute.
57. Defendant negligently failed to comply with the requirements of the FCRA.
58. As a result of Defendant's failure to comply with the requirements of the FCRA, Plaintiff has suffered and continues to suffer, actual damages, including damage to credit worthiness, lost opportunity to receive credit, damage to reputation, emotional distress, and interference with Plaintiff's normal and usual activities for which Plaintiff seeks damages in an amount to be determined by the jury, as well as attorney fees under 15 U.S.C. § 1681o(a).
59. Defendant willfully failed to comply with the requirements of the FCRA.
60. As a result of Defendant's failure to comply with the requirements of the FCRA, Plaintiff has suffered and continues to suffer, actual damages, including damage to credit worthiness, lost opportunity to receive credit, damage to reputation, emotional

distress and interference with Plaintiff's normal and usual activities for which Plaintiff seeks damages in an amount to be determined by the jury.

61. Plaintiff also seeks punitive damages in an amount to be determined by the jury, as well as attorney fees under 15 U.S.C. § 1681n(a).
62. Plaintiff is entitled to attorney's fees and costs from Defendant pursuant to 15 U.S.C. § 1681o(a)(2) and § 1681n.

Plaintiff has Suffered Concrete Harm

63. The above-described collection conduct by Defendant in its efforts to collect this alleged debt from Plaintiff were oppressive, deceptive, misleading, unfair and illegal communications in an attempt to collect this alleged debt, all done in violation of numerous and multiple provisions of the FDCPA and FCRA.
64. These collection actions taken by Defendant, and the collection employees employed by Defendant, were made in violation of multiple provisions of the FDCPA and FCRA, including but not limited to all of the provisions of those laws cited herein.
65. These violations by Defendant were knowing, willful, negligent and/or intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violations.
66. Defendant's collection efforts with respect to this alleged debt from Plaintiff caused Plaintiff to suffer concrete and particularized harm because the FDCPA and FCRA provide Plaintiff with the legally protected right to be treated fairly and truthfully with respect to any action for the collection of any consumer debt.

67. Defendant's deceptive, misleading, and unfair representations with respect to its collection effort were material misrepresentations that affected and frustrated Plaintiff's ability to intelligently respond to Defendant's collection efforts because Plaintiff could not adequately respond to the Defendant's demand for payment of this debt.

Respondeat Superior Liability

68. The acts and omissions herein of the individuals employed to collect debts by Defendant, and the other debt collectors employed as agents of Defendant who communicated with Plaintiff as further described herein, were committed within the time and space limits of their agency relationship with their principal, Defendant.

69. The acts and omissions by these individuals and these other debt collectors were incidental to, or of the same general nature as, the responsibilities these agents were authorized to perform by Defendant in collecting consumer debts.

70. By committing these acts and omissions against Plaintiff, these individuals and these other debt collectors were motivated to benefit their principal, Defendant.

71. Defendant is therefore liable to Plaintiff through the Doctrine of Respondeat Superior for the intentional and negligent acts, errors, and omissions done in violation of state and federal law by its collection employees, including but not limited to violations of the state and federal law in its attempts to collect this debt from Plaintiff.

TRIAL BY JURY

72. Plaintiff is entitled to and hereby respectfully demands a trial by jury on all issues

so triable.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 *et seq.*

73. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
74. The foregoing acts and omissions of Defendant and its agents constitute numerous and multiple violations of the FDCPA including, but not limited to, each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 *et seq.*, with respect to Plaintiff.
75. As a result of Defendant's violations of the FDCPA, Plaintiff is entitled to actual damages and statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3), from Defendant herein.

COUNT II.

VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

U.S.C. § 1681 *et seq.*

76. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
77. Defendant violated 15 U.S.C. §1681s-2(b) by failing to conduct a reasonable investigation with respect to the disputed information.

78. As a result of Defendant's violations of the FCRA, Plaintiff has suffered actual damages not limited to out-of-pocket expenses, detriment to Plaintiff's credit rating, emotional distress, embarrassment, mental anguish, anxiety, and humiliation in an amount to be determined at trial.
79. Defendant's conduct, actions, and inactions were willful, rendering it liable for damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n.
80. Alternatively, Defendant's violations were negligent, rendering it liable for damages under 15 U.S.C. § 1681o.
81. Plaintiff is entitled to recover actual damages, statutory damages, and costs and attorneys' fees from Defendant in an amount to be determined by the Court pursuant to 15 U.S.C. §§ 1681n and 1681o.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant as follows:

- for an award actual damages and statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A);
- for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);
- for an award of actual, statutory, and punitive damages, and costs and attorney's fees for violations of the FCRA pursuant to 15 U.S.C. §§ 1681n and 1681o, in an amount to be determined at trial;
- for an award of all actual compensatory damages suffered;

- for all other recoveries and fees otherwise permitted by these claims and by law;
- for an award of attorney's fees and costs of suit as provided by state and federal law;
- for both pre- and post-judgment interest at the maximum allowable rate on any amounts awarded;
- and for such other and further relief as may be just and proper.

Respectfully submitted,

Dated: February 23, 2023

THE BARRY LAW OFFICE, LTD

By: s/ Peter F. Barry

Peter F. Barry, Esq.

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Attorney for Plaintiff

VERIFICATION OF COMPLAINT AND CERTIFICATION

The undersigned verifies, certifies, and declares as follows:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information, best recollection and belief formed after reasonable inquiry.
3. I believe that this Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each exhibit I have provided to my attorneys that has been attached to this Complaint, if any, is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorney where appropriate, I have not altered, changed, modified, or fabricated any attached exhibits, except that some of those exhibits may contain some of my own handwritten notations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746.

Date Feb 23, 2023 Signature Bill Austin Bill Austin, 2023 16:32 CST

Printed Name Bill Austin

NOTICE TO PRESERVE ALL DOCUMENTS, RECORDINGS, AND TANGIBLE THINGS, AND ALL ELECTRONICALLY STORED INFORMATION (“Notice”)

To the Defendant(s) Above:

As you know, this law firm has been retained to represent the Plaintiff in the above captioned matter (“Lawsuit”). As used in this notice, the terms “you” and “your” refer to the Defendant(s) above-named and their predecessors, successors, parents, subsidiaries, divisions and affiliates and its respective officers, directors, agents, attorneys, accounts, employees, partners, contractors and other persons occupying similar positions or performing any functions on behalf of Defendant.

My client respectfully demands that you preserve all recordings, documents, tangible things and electronically stored information that are in anyway relevant to the Lawsuit. A civil suit has been commenced against you by my client in the District Court herein, related to the matters described herein.

You have a legal duty to preserve evidence in this matter. This duty to preserve evidence exists not only after the formal commencement of litigation, but whenever a party knows or should know that litigation is reasonably foreseeable. The Minnesota Supreme Court has specifically addressed this issue:

We have said that the spoliation of evidence is the “failure to preserve property for another’s use as evidence in pending or future litigation.” *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 436 (Minn.1990) (quoting *County of Solano v. Delancy*, 264 Cal.Rptr. 721, 724 n. 4 (Cal.Ct.App.1989)). Further, we have recognized that, regardless of whether a party acted in good or bad faith, “the affirmative destruction of evidence has not been condoned.” *Patton*, 538 N.W.2d at 119. The duty to preserve evidence² exists not only after the formal commencement of litigation, but whenever a party knows or should know that litigation is reasonably foreseeable. *See id.* at 118–19. Breach of the duty to preserve evidence once such a duty arises may be sanctioned, under a court’s inherent authority, as spoliation. *See id.* at 118. Here, we specifically reaffirm our rule that custodial parties have a duty to preserve relevant evidence for use in litigation. *Id.* at 116. We also reaffirm our previously stated rule that, even when a breach of the duty to preserve evidence is not done in bad faith, the district court must attempt to remedy any prejudice that occurs as a result of the destruction of the evidence. *Id.*

Miller v. Lankow, 801 N.W.2d 120, 127–28 (Minn. 2011)

Once a duty to preserve evidence has arisen, the breach of that duty may subject a party to sanctions under a court's inherent authority as spoliation. "Courts have long afforded redress for the destruction of evidence * * *." *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 436 (Minn.1990).

Much of the information that is subject to disclosure or responsive to discovery in this case may be stored on your current and former computer systems and other media and devices, including personal digital assistants, voice messaging systems, online repositories, telephone recording systems, hard drives and cell phones. The term Electronically Stored Information (hereinafter "ESI") should be afforded the broadest possible meaning and includes (by way of example and not as an exclusive list) potentially relevant information electronically, digitally, magnetically, optically or otherwise stored as:

- Audio and/or video records of any telephone calls and conversations made related to the events described in the Lawsuit
- digital communications (for example email, voicemail, imaging, scanning, and/or instant messaging);
- email service stores and server information (for example SQL Server, Oracle, Dropbox, Box, lotus, domino.nsf, Microsoft exchange.edb, Google Corporate Gmail, etc.);
- word processing documents (for example Microsoft Word or WordPerfect files and all drafts thereof);
- spreadsheets and tables;
- accounting application data;
- imaging and facsimile files;
- recordings of any conversations with my client;
- phone records of any calls to my client;
- databases (for example Access, Oracle, SQL Server data);
- Contact and relationship data management (for example Outlook, Ask or Interaction);
- Calendar and diary application data;
- online access data (for example temporary internet files, history files and cookies);
- presentations (for example PowerPoint and Corel presentations);
- network access and server activity logs relating to information exchanged between you and third parties, and by you with third parties;
- project management application data;
- backup and archival files;
- letters, documents, or correspondence of whatever kind related to existing loss prevention policies, and changes, updates, alterations made to loss prevention policies for the past three (3) years

My client hereby demands that you preserve both accessible and inaccessible ESI. This demand is reasonable and necessary. Pursuant to the Rules of Civil Procedure, in the event of an eventual civil suit you must identify all sources of ESI you decline to produce and demonstrate why such sources are not reasonably accessible. For good cause shown in that event, the Court may order production of ESI even if it is not reasonably accessible. Accordingly, you must preserve ESI that you deem inaccessible so as not to preempt the Court's authority.

Preservation requires your immediate intervention. You must act immediately to preserve potentially relevant ESI, including, without limitation, information and the earlier of a created or last modified date for ESI concerning any activity, updates, changes, alterations, or modifications to the information maintained by you related to the events described in the above-referenced lawsuit, through the date of this demand. Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must immediately intervene to prevent loss due to routine operations or malfeasance and employ proper techniques and protocols to preserve ESI. Booting a drive, examining its contents or running any application may irretrievably alter the evidence contained therein and constitute spoliation of evidence.

You are also directed to immediately initiate a litigation hold for potentially relevant ESI, documents and tangible things, and to act diligently and in good faith to secure and audit compliance with that litigation hold. You are further directed to immediately identify and modify or suspend features of your information systems and devices, which, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations that could result in spoliation include:

- purging the contents of email repositories by age, capacity or any other criteria
- using data or media wiping, disposal, erasure or encryption utilities or devices
- overriding erasing, destroying or discarding backup media
- reassigning, re-imaging or deposing of systems, servers, devices or media
- running antivirus or other programs affecting wholesale metadata alteration
- releasing or purging online storage repositories
- using metadata stripper utilities
- disabling server, packet or local instant messaging login
- executing drive or file defragmentation or compression programs
- shredding or other destruction of documents, routine or otherwise

You should anticipate that your officers, employees, or others may seek to hide, destroy or alter ESI. This is not a concern that is unique to you or your organization.

Rather it is simply conduct that occurs with such regularity that any custodian of ESI and their counsel must anticipate and guard against its occurrence. You are directed to preserve complete backup tape sets (including differentials and incrementals) containing recordings, emails and ESI for any person involved in the activity, updates, changes, alterations, or modifications to the information maintained by you related to the events described in the above-referenced lawsuit, through the date of this demand, whether inside or outside of your organization and control. You should also take affirmative steps to prevent anyone with access to your data, systems or archives from seeking to modify destroy or hide ESI.

As an appropriate and cost-effective means of preservation, you should remove from service and securely sequester the systems, media and devices housing potentially relevant ESI. In the event that you deem it impractical to sequester those systems, we believe that the breadth of preservation required, coupled with the modest number of systems implicated, dictates that forensically sound imaging of the systems identified above is expedient and cost effective. As we anticipate the need for forensic examination of one or more of the systems and the presence of relevant evidence in forensically accessible areas of the drives, we demand that you employ forensically sound ESI preservation methods. Failure to use such methods imposes a significant threat of spoliation and data loss. Be advised that a conventional copy, backup or ghosting of a hard drive does not produce a forensically sound image because it only captures active, unlocked data files and fails to preserve forensically significant data.

You should anticipate that certain ESI, including but not limited to recordings, spreadsheets and databases will be sought in the forms or form in which it was ordinarily maintained, that is in native form. Accordingly, you should preserve ESI in such native forms and should not employ methods to preserve ESI that remove or degrade the ability to search ESI by electronic means or that make it difficult or burdensome to use that information.

You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Metadata may be overwritten or corrupted by careless handling or improper preservation, including by moving, copying or examining the contents of files. As hard copies do not preserve electronic search ability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you should preserve both the forms.

We desire to work with you to agree upon an acceptable protocol for forensically sound preservation and can supply a suitable protocol if you will furnish an inventory and description of the systems and media to be preserved. Alternatively, if you

promptly disclose the preservation protocol you intend to employ, perhaps we can now identify any points of disagreement and resolve them.

A successful and compliant ESI preservation effort requires expertise. If you do not currently have such expertise, we urge you to engage the services of an expert in electronic evidence and computer forensics. Perhaps our respective experts can work cooperatively to secure a balance between evidence preservation and burden that is fair to both sides and acceptable to the Court. I am available to discuss reasonable preservation steps; however, you should not defer preservation steps pending such discussions if ESI may be lost or corrupted as a consequence of delay. Should your failure to preserve potentially relevant evidence result in the corruption, loss or delay of production of evidence to which we are entitled, that failure would constitute spoliation of evidence.

Please confirm in writing no later than five (5) business days from the date of this Notice, that you have taken the steps outlined in this Notice to preserve ESI and tangible documents potentially relevant to this pending action. If you have not undertaken the steps outlined above, or have taken other actions, please describe what you have done to preserve potentially relevant evidence.

If you retain legal counsel with respect to these matters, please direct this Notice to their immediate attention. Thank you for your anticipated cooperation in this vital matter.