**Part 1—Litigation Hold Notice**

Attorney: We need to discuss our discovery obligations and what we are doing to comply with the court’s order on discovery.

Client 1: As soon as we heard that Monkey See Monkey Do was going to sue us, we started preserving all of the email of all of the company’s employees. It has been several months since this lawsuit has been filed, and we have stored a tremendous amount of data. We now have 12 terabytes of data on backup tapes! That is 1 million phone books! Do we have to keep that data stored?

Attorney: Yes, let’s hold on to that data. But, we can limit future email retention to the custodians we have identified since the beginning of the lawsuit as well as those we have identified since that time.

Client 2: We sent out the litigation hold notice immediately after the lawsuit was filed to communicate and inform our inventor, Dr. Simon Zaius, and all of his direct reports, to preserve documents. That was 8 people. Are you saying that we need to send the litigation hold to more people? Who will that be?

Attorney: We need to include everyone who is likely to have information relevant to the lawsuit. Based what we know now, I think that besides Simon and his team, additional custodians are those who helped Simon with development of the Peach Z product—Curley, Larry and Moe—and the finance person Bigbean Cownter as well as all the finance people who worked on this project.

Client 2: Okay. And, must we retain all of their email?

Attorney: Yes. But, the litigation hold notice should be re-sent to everyone who received the first hold notice.

Client 2: But, they already received it the first time.

Attorney: We think it is a good practice to re-send the litigation hold notice to remind everyone of their obligation to preserve documents, communications, and other evidence relevant to the lawsuit. We have an obligation to preserve evidence. We should get a litigation hold notice re-sent immediately, including to the new custodians.

Client 1: But, what about the company’s document destruction policy?

Attorney: What is your document destruction policy?

Client 1: Emails are automatically deleted after 1 year unless they are filed in a PST folder in the user’s inbox.

Attorney: Well, you will have to suspend deletion of all custodians’ emails. What about instant messages? Are those being saved?

Client 2: I am not sure how long instant messages are saved.

Attorney: We should also preserve custodians’ instant messages.

Client 1: Is there anything else we may need to preserve?

Attorney: Yes, we need to preserve technical documents, sales and marketing documents, and financial documents relevant to the lawsuit. We have a list right here.

[Client 1 and Client 2 to turn to look at each other at once]

Client 2: Wow! That’s a lot of data. We’ll have to check with IT.

Client 1: Is there an easier way to do this?

Attorney: Well, you could get your information technology department to get an image each custodian’s computer. With that, you would have a reference image. Then, in the litigation hold, just advise them to preserve their email in a PST folder dedicated to this litigation and preserve all relevant documents in a special folder. Here’s a sample litigation hold template that you can use.

[Client 1 and Client 2 glance down at the sample litigation hold document]

Client 1: So, basically custodians have to preserve everything! Oh boy. Well let’s get the litigation hold notice out ASAP!

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Attorney: Before I go, let’s look at this Request for Production. We have to respond to this by the deadline, and it’s coming up soon. They are asking for our all our Global sales information for the Peach Z smartphone product.

Client 2: So, let me please do a search of how many documents we have in our repository for global sales information. Let me see….We have 200,000 documents that are responsive to this request!

Client 1: [Turning to ask the Attorney] Can’t we object to the Court that this is too burdensome?

Attorney: Well we could do that, but have you tried to determine whether these documents are truly responsive?

Client 2: Well, maybe some of these are duplicates. Let me check to see if there are any duplicates here.

[Client 2 pauses a moment to look at her computer]

Client 2: Guess what? By de-duping the 200,000 documents, I have now reduced this by one half to 100,000 documents.

Client 1: 100,000 documents is still quite a few! Is there any way that these can be reduced further?

Attorney: [Looking down at her notes] Well, let’s see, the date range we are looking for is from January 2010 to June 30, 2017.

[Client 2 taps on her keyboard]

Client 2: Hey, the 100,000 includes a lot more sales documents; some as old as 2008 and some more recent documents, after June 2017. Let me date-range bound it and see.

[A few seconds later]

Client 2: Yes, we can reduce this to 30,000 documents!

Attorney 2: That’s great, is there anything else we can do?

Attorney: Did you look to see that these are all relevant to the Peach Z smartphone product, which is in question?

Client 2: Not yet. How about giving me a minute to run this…. Yes! There are only 5,000 documents that are relevant to Peach Z smartphone sales between January 2010 and June 30, 2017.

Client 1: Wow, from 400,000 to 5,000 documents. That is quite a difference!

Attorney: But, 5,000 documents is still too many. We will have to bring this up with the Court as overly burdensome.

Client 2: Well, the documents were sent to me and when you are ready for them, I have them ready to send.

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Attorney: We have also gotten a very broad request for source code - including all versions of source code for your facial recognition software, including the one in production.

Client 1: Well, as you know, Peach considers its source code to be its **crown jewels**. These documents go to the core of our business, and we simply can’t let our competitors get access to our source code.

Attorney: We have to produce it. It is court ordered.

Client 2: Is there any way that we can keep Monkey See Monkey Do from looking at our source code?

Attorney: Don’t worry, we would only produce the source code after there is a protective order in place - this order will keep the source code restricted to viewing only by outside attorneys and their experts.

Client 1: I still don’t completely trust the process - what happens if Monkey’s outside counsel or their experts disclose our source code to Monkey?

Attorney: Violations of the protective order are taken very seriously, and attorneys can get into serious trouble if they break any terms of the protective order.

Client 2: What types of protection can we get for our source code under a protective order?

Attorney: Well, first, the source code viewing can be done on a computer at our office. We typically get our Information Technology folks to lock down a computer, so that it has no internet access. This computer will not have USB ports and no ability to make copies or email or send the code out.

Client 1: I don’t think that’s enough. How do we know what they are doing with that code? What if they pull out their phones and start taking pictures of the code?

Attorney: We will collect their phones and keep them separate from the attorneys and experts viewing the code, and can have someone in the room to monitor their review of the code.

Client 2: OK - but why do they need so many versions of our code? Some of this code is in production, and what if whomever they hire to view our code learns our secret sauce for facial recognition - after all, we are the only company that has figured out how to tell Twins apart!

Attorney: I agree their request for every version is too broad. We plan to go to the Court to fight that issue. Though we will have to produce some code, we should not have to give them every possible source code version for every product.

Client 2: OK – Please let the Court know how important our source code is to our business. Monkey See Monkey do is just upset we are beating them in the market with better technology!