

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:18-cv-03249

MARIA CHAVEZ, CHELSA PARSONS, and NICOLE GARNER,

Plaintiffs,

v.

THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, COLORADO; in its official capacity;  
THE LAKE COUNTY SHERIFF'S OFFICE; a governmental entity;  
RODNEY FENSKE; in his official and individual capacity;  
FERNANDO MENDOZA; in his official and individual capacity;  
MARY ANN HAMMER; in her official and individual capacity;

Defendants.

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**PROTOCOL FOR THE PRESERVATION AND DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

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The below is a protocol the parties have agreed to for the search and production of electronically stored information ("ESI") in the litigation.

**I. INTENT**

Having reviewed the Court's Guidelines Addressing the Discovery of Electronically Stored Information and the accompanying checklist, the parties have discussed ESI and agreed on the following protocols with a goal of handling ESI discovery as effectively and efficiently as possible, taking into account proportionality, and with a maximum amount of collaboration.

This protocol is also intended to be an initial working framework, which may need adjustment as discovery is ongoing. Should adjustment or modification be required, all parties agree to revisit the protocol, and confer and collaborate over any necessary adjustments. Should the parties be unable to reach an agreement on changes to the protocol, the parties will call the Court for a telephone conference to resolve the issue.

## II. PRESERVATION OBLIGATIONS

The following preservation obligations are provided only to the extent the identified parties possess any such information. The Parties acknowledge there is no presumption ESI or other materials are or were in the custody, control and/or possession of either the Plaintiffs or Defendants.

- a. **Time Periods.** Unless otherwise specified, the Parties agree to preserve all extant ESI according to the following dates:
  - i. With respect to any electronic personnel records, including personnel files, discipline, and pay and benefits records, the Lake County Sheriff's Office and Board of County Commissioners will maintain all such records for Plaintiffs and the Individual Defendants, regardless of duration of employment.
  - ii. With respect to all other ESI, including emails, texts messages, and social networking, the relevant time period is February 23, 2014 to present.
- b. **Substantive Scope.** The Parties agree to preserve extant ESI for the duration of this litigation with respect to the following subject matter:
  - i. Government Defendants: All non-privileged communications, including emails (and attachments), text messages, faxes, audio and video recordings, and other electronic communications found on the entities' computer and email systems and telephone devices discussing or referring to the following: (1) Plaintiffs' or Individual Defendants' end of employment, and, where applicable, rehire; (2) Plaintiffs' complaints of harassment and retaliation, or their testimony relating thereto; (3) all investigation done as a result of Plaintiffs' complaints or their testimony as to same; (4) all communications between October 1, 2017 and December 1, 2018 to or from the Individual Defendants, attorneys at Lyons Gaddis, Bill Kirkland, John Padgett, the County Commissioners, and/or the District Attorneys' office discussing or referring to Plaintiffs or the other Individual Defendants; (5) all communications after October 2017 to or from Whitney Smyth-Smith, Sarah Mudge, Mark Glenn, and Dolores Semsack discussing or referring to Plaintiffs or the Individual Defendants; (6) any employee handbooks, policies, training materials applicable to this case, including but not limited to, EEO polices, sexual harassment policies, and complaint procedures; and, (7) all documents and communications which are required to be preserved pursuant to the Colorado Open Records Act, the Colorado Criminal Justice Records Act, and the Colorado Open Meetings Law, and any other applicable local or state preservation laws, as well as Federal Regulation 29 C.F.R. § 1602.14 regarding preservation of records relevant to, *inter alia*, investigations by the EEOC under Title VII.
  - ii. Individual Defendants: All non-privileged communications, including emails (and attachments), text messages, faxes, audio and video recordings, and other electronic

communications found in the personal accounts or devices discussing or referring to the following: (1) Individual Defendants' end of employment; (2) any reference or discussion of sexual harassment and retaliatory hostile work environment at the Lake County Sheriff's Office; (3) the prosecution of Defendant Mendoza; (4) communications about this instant action; (5) with respect to Defendants' Mendoza and Fenske, any communications, including emails, texts, or downloaded websites containing sexual content; and, (6) any communications with or about the Plaintiffs on or after February 23, 2014 to present.

- iii. Plaintiffs: All-non privileged communications, including emails (and attachments), text messages, recordings, and other electronic communications found in the personal accounts or devices discussing or referring to: (1) the prosecution of Defendant Mendoza; (2) communications about this instant action; and, (3) communications with Individual Defendants on or after February 23, 2014 to present.

### III. PRODUCTION FORMAT

The parties agree that ESI should be preserved in native format to the extent possible. The parties agree, however, that ESI need not be produced in native format unless the requesting party requests that the information be produced in native format. Such requests, for example, could include requests for excel databases or other formats which allows the sorting, sifting, or filtering of data when produced in native format. All such requests shall be governed by Fed. R. Civ. P. 26(b)(1), 26(b)(2)(B), and 26(b)(2)(C). Unless native format is produced within the parameters specified above, the Parties will exchange ESI in logically unitized PDF format. For example, if an email with attachments is produced, both the email and attachments should be produced and bates-numbered consecutively so that the relationship between the parent and child are unambiguous.

### IV. PROTOCOL FOR SEARCH OF EMAIL ACCOUNTS, TEXTS MESSAGES, AND SOCIAL NETWORKING WEBSITES

- a. **Custodians.** The parties agree that each side<sup>1</sup> will identify no more than 10 custodians with the understanding that the custodians' accounts must be within possession, custody, or control of the parties. The parties assume that all government email accounts and similar such property owned by the separate Governmental Entity Defendants are in the possession, custody, or control of the respective Governmental Entity Defendants, and that the Individual Parties do not have possession, custody, or control of said accounts or devices. The parties agree to identify all relevant social media accounts and the custodians of such accounts by **June 19, 2019**.

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<sup>1</sup> For purposes of this ESI Protocol, Marie Chavez, Chelsa Parsons, and Nicole Garner constitute a "side." The Board of County Commissioners, Lake County's Sheriff's Office, Rodney Fenske, Fernando Mendoza, and Mary Ann Hammer are also collectively a "side."

- b. Search Terms.** The parties agree to a search of no more than 20 search terms per custodian. When a search using a specified term yields a resultant communication, the searching party will produce the entire correspondence linked to the resultant communication (i.e., when a search of an email account produces a hit, the searching party will produce the entire email chain, not just the email that resulted in the hit). The parties will consider various strategies to minimize the risk and burden of over production, if necessary, including:
- i.** If the search term is a proper name, that search term will not be applied to that individual's email or social networking accounts;
  - ii.** If a word is reasonably calculated to produce relevant discovery, but may also yield to the production of a large number of irrelevant communications, the parties will contemplate use of Boolean operators, word combinations, and/or limiting the search further to only certain custodians or time periods in the attempt to yield narrower results.

The parties recognize, however, that search parameters may require adjustment, including the unanticipated narrowing or refinement of search terms. The parties agree that if either party believes adjustment is necessary, the parties will attempt to reach agreement on what adjustment is necessary, and failing agreement, will contact the Court for a telephone conference to discuss the matter.

**V. PROTOCOL FOR SEARCHING AND PRODUCTION OF OTHER ESI (STRUCTURED DATA), INCLUDING INVESTIGATIVE AND PERSONNEL RECORDS, PAYROLL AND BENEFITS DATA, POLICIES, AND HUMAN RESOURCES SYSTEM INFORMATION**

This ESI protocol distinguishes between “structured data” and “unstructured data.” “Structured data” as used in this protocol refers to records such as employee files, policy handbooks, investigative files, personnel records, payroll and benefits data, and human resources system information (i.e., materials that are unambiguously identifiable, discrete). Because data searches using search terms are not necessary to identify and produce this type of material, the custodians and search terms will not apply to discovery requests for structured data. Rather, the parties will request these structured data sources by means of discrete discovery requests (for example, an ordinary request for production for a Plaintiff's or Defendant's employee file). If there is any dispute regarding these requests, the parties will attempt to informally resolve such dispute, and failing agreement, will call the Court for a telephone conference to discuss the matter as required by the Court.

“Unstructured data” as used in this protocol refers to materials such as text messages, social media posts, blog posts, emails, etc. (i.e., materials that are multitudinous and diffuse). The custodians and search terms references above will be used to identify and produce such materials in response to discovery requests seeking unstructured data, such as requests for emails between parties. The documents discovered in the identified custodians' accounts or in their devices after

application of the search terms will comprise the universe of communications and documents which the parties must search for materials responsive to discovery requests for unstructured data.

#### **VI. INADVERTENT DISCLOSURE OF PRIVILEGED INFORMATION (CLAWBACK PROVISION)**

The parties agree that they will take reasonable steps to protect against inadvertent disclosure of materials protected by the work product doctrine, attorney-client privilege, and governmental deliberative process privilege recognized by the federal courts (“protected materials”). The parties also agree that the inadvertent disclosure of protected materials shall not constitute a waiver of the attorney work product doctrine, attorney-client privilege, or the government deliberative process privilege. Any party that discovers it has sent or received protected materials shall immediately notify the opposing party so that appropriate steps to return or destroy the protected materials may be taken. By operation of the Parties’ agreement, the Parties are specifically afforded the protections of Fed. R. Evid. 502(d) and (e). This agreement supplements, and does not supersede, any protections already afforded by Fed. R. Evid. 502 or Fed. R. Civ. P. 26(b)(5)(B).

#### **VII. PRESUMPTION OF PRIVILEGE**

All emails and text messages after the inception of this lawsuit on December 18, 2018 where one or more recipient on the email and text message with the following email domains are presumptively privileged and need not be logged on to a privilege log:

@rmlawyers.com  
@LawInColorado.com  
@warllc.com  
@vaughandemuro.com  
@bhgrlaw.com  
@HallEvans.com  
@lyonsgaddis.com  
@parlinlaw.com

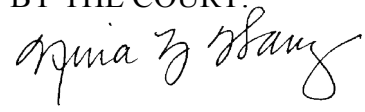
To the extent that counsel with different domain names enter appearances in this case for either side in the future, such domain names will be afforded a similar presumption.

#### **VIII. NO WAIVER OF OTHER OBJECTIONS**

Entry into this Protocol does not waive the right of any party to object to the production of documents on any other grounds.

DATED at Denver, Colorado, this 5th day of June, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Nina Y. Wang", written in a cursive style.

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Hon. Nina Y. Wang  
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 20-cv-01936-STV

TIMOTHY JAMES COATES, GENE CLAPS, MARK MITCHELL, and KEVIN CURRIER

Plaintiffs,

v.

THE ADAMS COUNTY SHERIFF'S OFFICE, a governmental entity;  
RICHARD A. REIGENBORN, in his official and individual capacity

Defendants.

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**STIPULATED ORDER REGARDING THE PRESERVATION AND DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

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The parties, by and through their respective counsel, have jointly stipulated to the terms of this protocol for the search and production of electronically stored information ("ESI Protocol") and request that the Court make it an order of the Court (the "Motion") [#29]. With the Court being fully advised, **GRANTS** the Motion and hereby **ORDERS**:

**I. INTENT**

The parties and the Court recognize that this Stipulated Order is based on facts and circumstances as they are currently known to each party, that the electronic discovery process is iterative, and that additions and modifications to this ESI Order may become necessary as more information becomes known to the parties.

**II. APPLICABILITY**

This Stipulated Order will govern the production of computer generated information or data of any kind, stored in or on any storage media located on computers, file servers, disks, tape or other real or virtualized devices or media ("ESI").

**III. PRESERVATION OBLIGATIONS**

The following preservation obligations are provided only to the extent the identified parties possess any such information. The parties acknowledge there is no presumption ESI or other

materials are or were in the custody, control and/or possession of either the Plaintiffs or Defendants.

**a. Time Periods.** Unless otherwise specified, the Parties agree to preserve all extant ESI according to the following dates:

- i.** With respect to any electronic personnel records, including personnel files, discipline, and pay and benefits records, the Adams County Sheriff's Office and Sheriff Richard Reigenborn will maintain all such records for Plaintiffs, regardless of duration of employment.
- ii.** Unless otherwise specified, with respect to all other ESI, including emails, texts messages, and social networking, the relevant time period is November 1, 2016 to present.

**b. Substantive Scope.** The Parties agree to preserve extant ESI for the duration of this litigation with respect to the following subject matter:

- i.** Adams County Sheriff's Office: All non-privileged communications, including emails (and attachments), text messages, faxes, audio and video recordings, and other electronic communications found on the entities' computer and email systems and telephone devices discussing or referring to the following: (1) Plaintiffs' end of employment; (2) Defendants' development and implementation of its 2019 "At-Will Employment Policy and Termination Procedures"; (3) Defendants' January 9, 2019 decision to rescind all employment and personnel policies of former Sheriffs; (4) Defendants' decision to retain Terrance O'Neill after initially sending Mr. O'Neill a termination letter substantially similar to the letters received by Plaintiffs; (5) Defendants' personnel decisions, including any proposed decisions, with respect to Terrance O'Neill, Jim Gerdeman, Manuel Carillo, Paul Gregory, Kirsten "Sam" Thede, Michael McKinney, Rick McNair, Scott Miller, Mark Toth, Chris Laws, Dirk Budd, Michael Bethel, Glover "Scott" Jarmin, J.D. Cordova, Mike Drumright and William Dunning; (6) all communications exchanged between or among Richard Reigenborn and: Michelle King, Undersheriff Tommie McLallen, Sarah Manzanares, Judy Najera, Susan Nielsen, Sam Thede, Paul Gregory, Chris Laws, Glover "Scott" Jarmin, Terrance O'Neill, Robert Nanney, Manuel Carrillo, John Bungartz, Karl Smalley, Aaron Pataluna, Jim Hinrichs, John Bitterman, Susan Argo, Mark Toth, Dirk Budd, Michael Bethel, Glover Jarmin, J.D. Cordova, Mike Drumright and William Dunning; (7) any employee handbooks, policies, training materials applicable to this case.
- ii.** Richard A. Reigenborn, in his individual capacity: All non-privileged communications, including emails (and attachments), text messages, faxes, audio and video recordings, and other electronic communications found in Richard Reigenborn's personal accounts or devices, sent or received between November 2016 and the present, discussing or referring to the following: (1) Plaintiffs; (2) Plaintiffs' end of employment; (3) Adams



County Sheriff's Office employment and personnel policies; (4) any personnel decisions, including any planned or proposed decisions, at the Adams County Sheriff's Office; (5) communications about this instant action; (6) all communications exchanged between or among Richard Reigenborn and any of the following: Tyler Brown, Mark Nicastle, Karmen Kelsay, Judy Najera, Mark Toth, Dirk Budd, Michael Bethel, J.D. Cordova, Mike Drumright and William Dunning, and/or any individuals listed as likely to have discoverable information in Defendants' initial disclosures, including Tommie McLallen, Sarah Manzanares, Glover "Scott" Jarmin, Terrance O'Neill, Paul Gregory, Robert Nanney, Sam Thede, Manuel Carrillo, John Bungartz, Karl Smalley, Aaron Pataluna, Jim Hinrichs, John Bitterman, Susan Argo, and Susan Nielsen.

- iii.** Plaintiffs: All non-privileged communications, including emails (and attachments), text messages, recordings, and other electronic communications found in the personal accounts or devices discussing or referring to: (1) Plaintiffs' termination; (2) communications about this instant action; (3) the 2018 Adams County Sheriff election; (4) Richard/Rick Reigenborn; (5) Tommie McLallen; (6) leadership positions at the Sheriff's Office; (7) Dirk Budd; (8) Mark Toth; (9) JD Cordova; (10) Chris Laws; (11) Mickey Bethel; (12) gender or sex discrimination; (13) EEOC charges; (14) employee complaints; (15) severance; (16) non-privileged communication about retaining a lawyer; (17) concern or fear of termination or demotion; (18) inquiries or applications for employment; (19) inquiries or requests for employment recommendation; (20) Fraternal Order of Police (FOP), union, collective bargaining; (21) endorsement or contribution for candidates for elected office in Adams County; (22) retirement and retirement benefits; (23) packing or moving of office.

#### **IV. PRODUCTION FORMAT**

The parties agree that ESI should be preserved in native format to the extent possible, such that embedded data and metadata are preserved. The parties agree, however, that ESI need not be produced in native format unless the requesting party requests that the information be produced in native format. Such requests, for example, could include requests for excel databases or other formats which allows the sorting, sifting, or filtering of data when produced in native format. All such requests shall be governed by Fed. R. Civ. P. 26(b)(1), 26(b)(2)(B), and 26(b)(2)(C). Unless native format is produced within the parameters specified above, the Parties will exchange ESI in logically unitized, text-searchable PDF format, to the extent the Parties have the technological capability to do so. For example, if an email with attachments is produced, both the email and attachments should if possible be produced and bates-numbered consecutively so that the relationship between the parent and child are unambiguous.

**V. PROTOCOL FOR SEARCH OF EMAIL ACCOUNTS, TEXTS MESSAGES, AND SOCIAL NETWORKING WEBSITES**

- a. Custodians.** The parties agree to a limit of fifteen (15) custodians of record per side, with the understanding that the custodians' accounts must be within possession, custody, or control of the parties. The parties agree that custodians for Defendant Adams County Sheriff's Office will include Richard A. Reigenborn, Tommie McLallen, Michelle King, Sarah Manzanares, Judy Najera, Chris Laws, Glover "Scott" Jarmin, Karmen Kelsay, Michael Bethel, and Doug Templeton.<sup>1</sup> The parties agree that to the extent Defendants have possession, custody, or control over Adams County Sheriffs' Office employees' personal devices and accounts, those devices and accounts will fall within the scope of this document. The parties agree that Defendant Richard Reigenborn, in his individual capacity, is custodian of his personal accounts and devices, and that each named Plaintiff is custodian of his personal accounts and devices. The parties agree to identify all relevant email and social media accounts and the custodians of such accounts by February 5, 2020. The parties also acknowledge that there may be individual requests for production of discrete sets of documents not within the possession, custody, or control of the custodians of record identified here. Production of documents will not be limited to those documents within the possession, custody, or control of those custodians of record expressly identified here.
- b. Search Terms.** The parties agree to a search of no more than 50 search terms per side. When a search using a specified term yields a resultant communication, the searching party will produce the entire correspondence linked to the resultant communication (i.e., when a search of an email account produces a hit, the searching party will produce the entire email chain, not just the email that resulted in the hit). The parties will consider various strategies to minimize the risk and burden of overproduction, if necessary, including:
- i.** If the search term is a proper name, that search term will not be applied to that individual's email or social networking accounts;
  - ii.** If a word is reasonably calculated to produce relevant discovery, but may also yield to the production of a large number of irrelevant communications, the parties will contemplate use of Boolean operators, word combinations, and/or limiting the search further to only certain custodians or time periods in the attempt to yield narrower results.

The parties recognize, however, that search parameters may require adjustment, including the unanticipated narrowing or refinement of search terms. The parties agree that if either party believes adjustment is necessary, the parties will attempt to reach agreement on what adjustment

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<sup>1</sup> The parties agree that Adams County Sheriff's Office may have possession, custody, or control of county-issued email accounts and devices of former employees. Adams County Sheriff's Office does not, however, have possession, custody, or control over former employees' personal devices or accounts.

is necessary, and failing agreement, will contact the Court for a telephone conference to discuss the matter.

**VI. PROTOCOL FOR SEARCHING AND PRODUCTION OF OTHER ESI (STRUCTURED DATA), INCLUDING INVESTIGATIVE AND PERSONNEL RECORDS, PAYROLL AND BENEFITS DATA, POLICIES, AND HUMAN RESOURCES SYSTEM INFORMATION**

This ESI protocol distinguishes between “structured data” and “unstructured data.” “Structured data” as used in this protocol refers to records such as employee files, policy handbooks, investigative files, personnel records, and human resources system information (i.e., materials that are unambiguously identifiable, discrete). Because data searches using search terms are not necessary to identify and produce this type of material, the custodians and search terms will not apply to discovery requests for structured data. Rather, the parties will request these structured data sources by means of discrete discovery requests (for example, a request for production for a Plaintiff’s or Defendant’s employee file). If there is any dispute regarding these requests, the parties will attempt to informally resolve such dispute, and failing agreement, will call the Court for a telephone conference to discuss the matter as required by the Court.

“Unstructured data” as used in this protocol refers to materials such as text messages, social media posts, blog posts, emails, etc. (i.e., materials that are multitudinous and diffuse). The custodians and search terms references above will be used to identify and produce such materials in response to discovery requests seeking unstructured data, such as requests for emails between parties. The documents discovered in the identified custodians’ accounts or in their devices after application of the search terms will comprise the universe of communications and documents which the parties must search for materials responsive to discovery requests for unstructured data.

**VII. INADVERTENT DISCLOSURE OF PRIVILEGED INFORMATION (CLAWBACK PROVISION)**

The parties agree that they will take reasonable steps to protect against inadvertent disclosure of materials protected by the work product doctrine, attorney-client privilege, and governmental deliberative process privilege recognized by the federal courts (“protected materials”). The parties also agree that the inadvertent disclosure of protected materials shall not constitute a waiver of the attorney work product doctrine, attorney-client privilege, or the government deliberative process privilege. Any party that discovers it has sent or received protected materials shall immediately notify the opposing party so that appropriate steps to return or destroy the protected materials may be taken. By operation of the Parties’ agreement, the Parties are specifically afforded the protections of Fed. R. Evid. 502(d) and (e). This agreement supplements, and does not supersede, any protections already afforded by Fed. R. Evid. 502 or Fed. R. Civ. P. 26(b)(5)(B).

**VIII. NO WAIVER OF OTHER OBJECTIONS**

Entry into this Protocol does not waive the right of any party to object to the production of documents on any other grounds.

SO ORDERED

DATED this 26th day of January, 2021

BY THE COURT

s/Scott T. Varholak  
Hon. Scott T. Varholak  
United States Magistrate Judge