

ATTACHMENT III

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May 7, 2008

VIA ELECTRONIC MAIL

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Re: *Evans et al. v. City of Durham et al.*, No. 1:07cv739

Dear Reggie, Matt, and Ana:

I am writing to summarize the sources of electronically stored information ("ESI") in the possession, custody, or control of David Evans and Collin Finnerty that might be potentially relevant to their claims in the above-referenced litigation and, where necessary, the steps taken to preserve them. Please note that the fact that a particular item has been identified or preserved does not necessarily mean that it contains ESI that is potentially relevant to Mr. Evans's or Mr. Finnerty's claims, or that it is discoverable. Moreover, certain of this ESI is privileged. The efforts to identify and preserve this ESI began prior to our receipt of the City's letter of September 26, 2007, which requested preservation of information relating to the investigation and prosecution of Ms. Mangum's allegations, and prior to our letter to the City of August 16, 2007 requesting the same.

1. E-mail Accounts. Since March 2006, Mr. Evans and Mr. Finnerty have had several different e-mail accounts, either through their academic institution (Duke or Loyola), a Web-based e-mail service (AOL, Gmail, or Hotmail), or Mr. Evans's employer (Morgan Stanley or CyrenCall Communications). Not all of these accounts contain potentially relevant e-mails. For those that do, such e-mails have been retained online in electronic form since before the August 16 and September 26, 2007 letters and, in some cases, also are retained in hard copy, with the following exceptions. In the case of Duke e-mail, Duke University has been preserving Mr. Evans's and Mr. Finnerty's accounts and at our request provided us with electronic copies of these e-mails in January 2008, which we are preserving. In the case of Mr. Evans's CyrenCall e-mail, any such e-mail in Mr. Evans's possession, custody, or control would be stored on a personal computer and possibly a Motorola Q device that have been preserved as described below. Mr. Finnerty's AOL e-mail account does not contain potentially relevant e-mail; because

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this account automatically deleted e-mails after 30 days, any e-mails from the relevant period would already have been deleted before the August 16 and September 26, 2007 letters.

2. Computer Data. The Durham Police Department seized and imaged Mr. Evans's computer data in March 2006. In the summer of 2006, Mr. Evans purchased a new laptop computer. In January 2008, we retained a third-party vendor to image this computer's hard drive, and we are preserving the imaged data. Prior to that time, Mr. Evans undertook not to alter or delete intentionally any data on this computer that might be potentially relevant to his claims. Mr. Finnerty used a Dell laptop computer until last summer; we are in possession of the computer, and we also retained a third-party vendor to create an image of the computer's hard drive, which we are also preserving. Since last summer, Mr. Finnerty has used an Apple laptop computer; although the only potentially relevant data on this computer is privileged, Mr. Finnerty will not intentionally alter or delete such data.

3. Portable Devices. Mr. Evans has used two portable e-mail devices, both for work: a Motorola Q device used during his employment with Cyrencall Communications (beginning Fall 2006); and a Blackberry issued by Morgan Stanley (in or around May 2007). Any e-mail on these devices should be duplicative of other sources of e-mail identified above, and we have not determined whether the Motorola Q device still contains any Cyrencall e-mail. However, Mr. Evans is preserving the Motorola Q device. Neither Mr. Evans nor Mr. Finnerty used portable media storage, such as a flash drive or CD-ROM, to store potentially relevant ESI.

4. Third-party ESI. The City's letter of September 26, 2007 requested that Mr. Evans and Mr. Finnerty also take steps to preserve potentially relevant information in the possession of their families and their criminal defense counsel. Our clients' families are not parties to the litigation; however, we did contemporaneously forward a copy of the City's September 26, 2007 letter to Mr. Evans's and Mr. Finnerty's parents and ask that they preserve potentially relevant information. We also contemporaneously forwarded a copy of the City's September 26, 2007 letter to Mr. Evans's and Mr. Finnerty's criminal defense counsel, who have informed us that they have taken measures to segregate and preserve potentially relevant ESI.

Sincerely,



Charles Davant IV

cc: David S. Rudolf (by e-mail)
Barry C. Scheck (by e-mail)
Richard D. Emery (by e-mail)
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