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### Topics for Discussion

- Anticipate Litigation
- Readiness Plan
- Know when to act
- Key people—know who is responsible to act
- Know what systems / documents are implicated
- Litigation can be expensive—ignoring a claim can be more expensive



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### Anticipate Litigation

- It will happen to you.
- Small, medium, large business – claims do not respect the size of your business
- Litigation spending is increasing for companies
- Where is your risk?
  - Customers? Clients?
  - Sub-contractors?
  - Employees?
  - Regulators?
  - Compliance?
  - Local? Regional? National? Cross-borders?
- What is your risk?

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### When do I need to act?

- Duty to preserve
  - Reasonable anticipation of litigation
- How do you define and recognize the triggers?
  - Obvious triggers—lawsuit or subpoena served
  - Subtle triggers—meeting, conversation, email
  - Mixed circumstances—accident, termination
- Define triggers
- Document occurrences
- Send Litigation Hold Notice – communicate!

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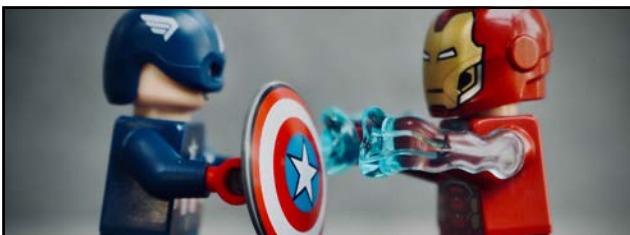
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Litigation Hold Notice

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## Sample Litigation Hold Notice Wake County

- **ATTENTION PLEASE:** This Legal Hold Notice ("Notice") contains important legal information regarding the need to save and preserve certain documents and information related to *Iron Man v. Captain America Lawsuit*. All employees have a duty to ensure that *Marvel, Inc.* is preserving all appropriate records and information as described below. As discussed in more detail below, document preservation encompasses a number of different obligations. First and foremost, **do not delete, alter or destroy any Potentially Relevant Documents (as defined below). Any routine or ad hoc deletion of electronically-stored information should be suspended and should not occur, even as to electronically-stored information on back-up tapes.**
- Please understand that document preservation is both a company and an individual responsibility, and we require your full attention and cooperation in this matter. **Any failure to follow these procedures may result in severe penalties** against *Marvel, Inc.* and could form the basis of legal claims for destroying evidence. Therefore, please review this memorandum carefully and adhere to the mandatory document retention policy outlined below.

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## Sample Litigation Hold Notice Wake County

**REASON FOR THE NOTICE:** *Marvel, Inc.* possesses documents and ESI are potentially relevant to the *Iron Man v. Captain America Lawsuit*.

- **OBIGATION TO PRESERVE:** It is imperative that you **immediately take every reasonable step necessary to preserve**, and to not lose, alter, or destroy, any Potentially Relevant Documents (as defined below). This means that you must save and preserve every paper and electronic document and any and all data now in existence or that may be created in the future that is related in any way to the subject of this dispute. The obligation to preserve and retain documents extends to all recipients of this Notice.
- **CONFIDENTIALITY, NOTIFICATION REGARDING DISTRIBUTION LIST:** The fact that a lawsuit has been filed, and any communication regarding it, including this litigation hold Notice, should be kept strictly confidential and should not be discussed with anyone except *Natasha Romanova, Esq.* or with counsel at *Maximoff & Loki Law Firm, PLLC*. If you are aware of anyone else (whether or not he or she is currently an employee) who may possess documents concerning this matter and who does not appear on the attached distribution list, please immediately inform *Natasha Romanova, Esq.* or her staff or counsel at *Maximoff & Loki Law Firm, PLLC*.
- **POTENTIALLY RELEVANT DOCUMENTS:** **Documents or physical things in your possession or under your control - whether located on your work or home computer, personal electronic device, cell phone, or any other device over which you have control, whether in your office or elsewhere - concerning *Iron Man* or *Captain America* and their dispute.** Potentially Relevant Documents must be saved and preserved because they may be relevant to the litigation.

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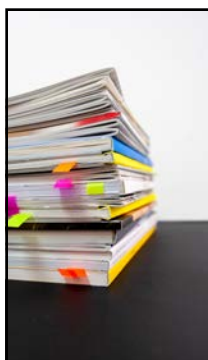
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## Sample Litigation Hold Notice Wake County

- **DEFINITION OF DOCUMENTS:** "Documents" are more than just paper records. The term "Documents" is used in this Notice in its broadest possible context and covers all computer files and written, recorded, or graphic materials of every kind. It means all documents and **all forms of information** of any type, and all other preserved data, regardless of whether it is hard copy or electronic and regardless of the storage medium. All Potentially Relevant Documents must be preserved, including any "personal" copies you have saved separately from any "official" or "firm" file.

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### Sample Litigation Hold Notice Wake County

- **PRESERVATION IN PLACE AND IN CURRENT FORM:** *Marvel, Inc.* has a legal obligation to preserve all relevant paper and electronic documents and all relevant physical things in the form in which they were created and maintained in the normal course of business.
  - For example, if the document is paper clipped, leave the paper clip on it. If the document has post-it notes on it, leave the post-it notes on it. Documents should be filed as you normally maintain them.
  - Do not copy electronic files and delete the originals, and **do not change the format of electronic files** (e.g., from .doc to .pdf).
- All files containing Potentially Responsive Documents must be retained, including any files that have been sent to storage or to other individuals, or any files kept by you or your assistant. Your preservation obligation extends to the preservation of relevant data on external media, including hard drives, DVDs, CDs, flash drives, personal home computers, laptops and mobile devices, including PDAs, cell phones and tablets. If you have any doubt about whether a document falls within a category listed above, please retain it. For any potentially relevant documents, you should preserve the original and all non-identical copies and drafts of the same documents. You should preserve the documents in the files in which they would be normally stored and should not segregate them in response to this memorandum.
- You need not — **and should not** — create any records that do not currently exist to respond to this request. You must simply preserve all documents in the categories described above that have already been created or that are created in the future as part of your normal business activities.
- This Notice is intended to preserve Potentially Relevant Documents. **As a follow-up to this Notice, counsel for *Marvel, Inc., Maximoff & Loki Law Firm, PLLC*, will be involved in the company's process of searching for, collecting and duplicating your Potentially Relevant Documents for possible use in the court litigation.**

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### Sample Litigation Hold Notice Wake County

- **CONTINUING OBLIGATION TO PRESERVE DOCUMENTS:** Even after your Potentially Responsive Documents have been collected, **you must continue to preserve your responsive documents until instructed otherwise.** Your preservation obligations are ongoing requirements. Any responsive documents that you receive or create after your documents have been collected also must be preserved.

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### What does Notice look like?

- Summons and complaint
- Subpoena
- Notice of investigation
- Notice of audit
- Threat by employee
- Complaint by customer
- Social media post
- Accident / injury / other event

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### Litigation Readiness (before a claim happens)

- Assess needs and priorities
- Budget
- Make risk assessment / response a priority
  - Assign person to manage
  - Someone responsible for identifying company's claims and deadlines
    - Statutes of limitations (do not let these expire)
- Legal team can be an asset
  - Recognize risk
  - Document risk
  - Avoid risk
  - Respond timely

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### People Involved

- Managers
- HR
- Accounting
- IT
- Compliance
- Legal / Outside legal

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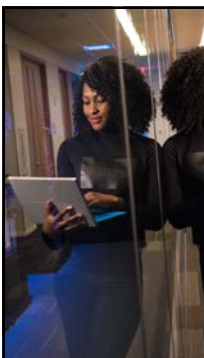
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### Systems Involved

- IT systems
- Document storage
- Emails
- Texts
- Chats
- Information databases
- Outside devices
  - Laptops
  - Smart devices, tablets, and phones
  - Multiple offices

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### Necessary Notices

- Insurance company
- Regulatory body
- Licensing authority
- Contractual notice
- Notice to Board or shareholders, partners or members
- Loan agreements

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### Litigation can be expensive; ignoring litigation can be VERY expensive

- Federal Court
  - 21 days to respond to summons and complaint
- NC State Court
  - 30 days to respond to summons and complaint
- Subpoena
  - (NC) 10 days to serve objections or before response date in subpoena
  - (Federal) 14 days to serve objections or before response date in subpoena
- Regulatory Notice
  - Must respond by date set forth in notice

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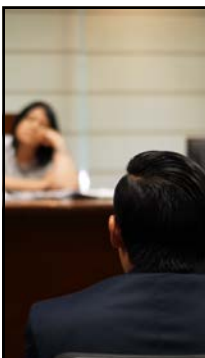
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### Consequences for Late or No Response

- Entry of Default
  - Forfeit ability to answer and assert defenses
- Entry of Default Judgment
  - Judgment may be entered as requested by Plaintiff
- Waiver of objections to requests or subpoena
  - Confidentiality, trade secrets, attorney-client communications
- Potential regulatory penalties or fines

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**Questions?**

If you have any questions or comments, please let us know.

1720 Hillsborough St. Suite 200,  
Raleigh, NC 27605

(919) 510-8585

info@vannattorneys.com

vannattorneys.com

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Vann Attorneys, PLLC 20

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