

# PETER J. SCHAFFER ATTORNEY AT LAW

## NOTICE OF SPOILIATION AND INVESTIGATION

January 23, 2023

Via Email

### **Confidential information contained herein**

Please be advised that I am the general counsel for CAHA. The executive committee has instructed me to commence an investigation into possible CAHA and USAH violations pertaining to alleged libelous and slanderous statement. This matter is only an investigation and includes The Colorado Avalanche, CAHA, Kroenke Sports Entertainment (KSE), Kroenke Sports Charities (KSC), Aces Hockey Academy, Okanagan Hockey Colorado and Drill House Sports Center (“the Parties”)

As part of the investigation we are requesting from you as a member of CAHA the following documents and information.

### I. RECORDS PRODUCTION

Please produce the following records within twenty-one (21) calendar days:

1. All records concerning, regarding, referring to, or relating to any conversations, correspondence, texts, emails etc. pertaining to any aspect of financial matters of CAHA, CAHA and Kroenke Sports Entertainment, CAHA and the Colorado Avalanche, CAHA and Kroenke Sports Charities, CAHA and the Colorado Thunderbirds, CAHA and Littleton Hockey Association, CAHA and Ricci Hockey Consulting, CAHA and the Rampage, CAHA and the Rocky Mountain RoughRiders and/or CAHA and any third parties in any form, manner or fashion. The relevant time for this request is January 1, 2021 to the present.

Your production should utilize the following procedures:

- For purposes of this request, records shall be produced in their entirety, without abbreviation, modification, or redaction, including all attachments and materials affixed thereto.
- All records should be produced in the same order as they are kept or maintained in the ordinary course, or the records should be organized and labeled to correspond to the categories of the records requested.
- If the request cannot be complied with in full, it shall be complied with to the extent possible, with an explanation of why full compliance is not possible. Any document withheld in whole or in part due to privilege, or for any other reason, shall be identified on a privilege log submitted with response to this request. The log shall state the date of the document, its author, his or her occupation and employer, all recipients, the title and/or subject matter, the privilege claimed, and a brief explanation of the basis of the claimed privilege.
- Records shall be produced in electronic form instead of paper productions. Records shall be delivered as delimited text with images and native files. Alternatively, all records derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable, shall be produced in text searchable PDF format. Spreadsheets shall also be provided in their native format. Audio and video files shall be produced in their native format, although picture files associated with email or word processing programs shall be produced in PDF format along with the document it is contained in or to which it is attached.
- Other than native files produced along with TIF images, records should be sequentially numerically indexed (a.k.a. Bates stamping) and reference should be made to the request to which the records are responsive (E.G., Item 1). All files produced shall be numerically identified within the range that the file contains (E.G., 00001-000050).
- Searches for records in electronic form should include searches of all relevant mobile devices, hard drives, network drives, offline electronic folders, thumb drives, removable drives, records stored in the cloud, and archive files, including, but not limited to, backup tapes. Do not time stamp or modify the content, the create date, or the last date modified of any record and do not scrub any metadata (other than to numerically index, as described above). Electronic records should be produced in native format. For emails, please place responses in one

- .pst file per employee. For .pdf files, please provide searchable file format and not image file format.
- All email searches should be conducted by the agency's information technology department, or its equivalent, and not by the individuals whose records are being searched. Please provide the name and contact information of the individual(s) who conducted the search, as well as an explanation of how the search was conducted.
  - Should you have any questions about the method or format of production please contact the undersigned to coordinate.

As used in this Notice of Investigation and Records Request:

“Record” means all recorded information, regardless of form or characteristics, made or received, and including metadata, such as email and other electronic communication, social media posts, texts, word processing documents, PDF documents, animations (including PowerPoint<sup>TM</sup> and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term “recorded information” also includes all traditional forms of records, regardless of physical form or characteristic

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In addition, this letter means that you are or may be involved in the dispute and now under a legal duty to preserve all evidence, whether printed, audio, video, computer, hard drive or electronic that might become relevant to this matter. Some of this information may be in your possession or control, and as a potential or actual party to this suit, you have a legal duty to preserve that information. The purpose of this letter is to explain to you what that obligation means.

We have been charged to manage this situation and has identified the following information as being potentially relevant to the dispute: *any* and *all* pertinent information regarding dissemination of information from any employee, representative, and or agent of The Colorado Avalanche, CAHA, Kroenke Sports Enterprises (KSE), Kroenke Sports Charities (KSC), Aces Hockey Academy, Okanagan Hockey Colorado and Drill House Sports Center (“Parties”) and any member of the media or the hockey community. This includes all cell phone records and email correspondences of all such employees, above parties and any member of the media from the time period of January 1, 2021, to the present and moving forward.

This letter is also meant to advise you that you must also preserve all data of any type relating to the dissemination of any information as it pertains to The Parties. This includes any written material such as witness statements, logbooks, incident reports, inspections, medical records, bills, electronic data of any kind; any video or audio recordings, as well as any data relating to the use of any cell phones or other communication devices prior to or during the time of the dates above.

You are required to take the following steps immediately to protect and preserve any of that information that is in your possession or under your control until further notice. Specifically, you will need to do the following immediately:

1. Suspend deletion, overwriting, or any other destruction of electronic information relevant to this dispute that is under your control. This includes electronic information wherever it is stored – on a cellphone, workstation, on a laptop, or at a home. It includes all forms of electronic communication –e.g., e-mail, word processing, calendars, voice messages, videos, photographs, and home surveillance. This electronic information must be preserved so that it can be retrieved at a later time. The information must be preserved in its original electronic form, so that all information contained within it, whether visible or not, is also available for inspection –i.e., it is not sufficient to make a hard copy of electronic communication. Your responsibility is for the information that is under your control.

2. Similarly, preserve any new electronic information that is generated after you receive this letter that is relevant to this dispute.
3. Preserve any hard copy under your control.
4. Do not destroy any photographs, emails, cell phone records and or bills, videos, or other tangible evidence in your possession. As you may know, under the “spoliation law,” when a party has possession of a piece of evidence at a time he knows or should know that it will be evidence in controversy, and thereafter disposes of it, makes it unavailable, or fails to produce it, there is a presumption in law that the piece of evidence, had it been produced, would have been unfavorable to the party who did not produce it.

This is an important legal duty and failure to follow these instructions may subject you to discipline, as the failure to preserve this information has very serious consequences for you.

The importance of immediate action cannot be overstated. Electronically stored information is easily corrupted, altered, and deleted in normal daily operations. Even booting a drive, running an application, or reviewing a document can permanently alter evidence. An important method for preserving data in its original state is to have a forensic image (mirror image or clone image) made of pertinent hard drives of both office and home computers used for business and of network servers. This image captures all current data, including the background or metadata about each document. Simply copying data to a CD-ROM or other common backup medium is not adequate. For each captured image file, record and identify the person creating the image and the date of creation. Secure the file to prevent subsequent alteration or corruption and create a chain of custody log. Once the forensic data image file is created, the pertinent computer or other device can be placed back into operation.

We are available to confer with you to further explain your obligations or respond to any questions you may have about this litigation hold. Please do not dispose of any of this material. We anticipate that it will be both discoverable and admissible in any litigation that may arise out of this claim. Current law and rules of civil procedure clearly apply to the discovery of electronically stored information just as they apply to other evidence and

confirm the duty to preserve such information for discovery. You and your employees, agents, and affiliated organizations must take all reasonable steps to preserve this information until this legal matter is finally resolved. Failure to take the necessary steps to preserve the information addressed in this letter or other pertinent information in your possession or control may result in serious sanctions or penalties. Failure to preserve this material will result in a request for a spoliation instruction at any trial in this matter.

Further, to properly fulfill your preservation obligation, stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the sale, gift, or destruction of hardware. Notify all individuals and affiliated organizations of the need and duty to take the necessary affirmative steps to comply with the duty to preserve evidence.

We look forward to working with you on this matter and thank you in advance for your cooperation.

Sincerely,

**Peter J. Schaffer, Esq.**  
**PETER SCHAFFER, ATTORNEY AT LAW**

CC: Randy Kanai, President CAHA