

**NOTICE TO PRESERVE EVIDENCE**  
**READ IMMEDIATELY**

**TO:** The Mountaineers Community who potentially may have documents related to The Mountaineers Foundation, dba Keta Legacy Foundation

**FROM:** The Mountaineers Litigation Committee

**DATE:** March 30, 2020

**RE:** Preservation of Documents for Litigation regarding The Mountaineers Foundation, dba Keta Legacy Foundation

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The Mountaineers is involved in a dispute with The Mountaineers Foundation, dba Keta Legacy Foundation (“Keta”) concerning the right to use The Mountaineers name and mark. Specifically, the dispute arises from Keta’s assertion that it is entitled to use, and to prevent The Mountaineers from using, The Mountaineers mark in connection with charitable fundraising. The Mountaineers will defend its right to continue to use the name they have used for nearly 115 years, and has demanded that Keta cease its infringing use.

The Mountaineers will likely need to review and produce information potentially relevant to these issues. To ensure that review and production is possible, The Mountaineers is obligated to take affirmative steps immediately to preserve documents (both paper documents and electronically stored information (“ESI”)) and any other evidence that is or may become relevant to this dispute, and that is within The Mountaineers’ possession, custody, or control (“Relevant Information”). This obligation extends to The Mountaineers’ officers (former and current), directors, employees, consultants, counsel, and accountants, among others. You have received this notice because you may have, or know of, Relevant Information.

The failure to preserve Relevant Information, including by deleting or altering electronically stored information, even if unintentional, could subject The Mountaineers to a variety of sanctions, including monetary sanctions, legal rulings adverse to The Mountaineers’ position in this dispute, or entry of judgment against The Mountaineers.

*A. Relevant Information that The Mountaineers Is Obligated to Preserve*

The Mountaineers is obligated to preserve Relevant Information as it exists in any media, including paper documents, electronically stored information, and tangible objects (machinery, models/mock-ups, etc.).

Paper documents include, among other things, letters, faxes, memoranda, notes, desk files, meeting minutes, forms, donor materials, promotional materials, solicitations, spreadsheets, calendar books, address books, agreements, telephone logs, and print-outs of electronically stored documents.

Electronically stored information may exist in a variety of forms and locations. Sources of potentially relevant electronically stored information that you should take steps to preserve include, but are not limited to, emails (regardless of whether they reside in an inbox, sent items folder, deleted items folder, or other location), electronic document files (such as PDFs and Microsoft Word, Excel, and PowerPoint files), databases, audio/video files, image files, voicemail, text messages, instant messages, calendar entries, internet browser history, and online postings and other data stored on social networking sites (such as LinkedIn, Facebook, and Twitter).

This data may reside on network servers, personal computers, portable storage media (such as hard drives, thumb drives, flash drives, and optical discs), tablets, smartphones, backup tapes and disaster recovery systems, third-party internet sites, or cloud-based storage systems.

The preservation obligation extends to data on any devices, computers, email and online accounts, and other storage media that you own or control *personally*, in addition to any sources owned or controlled by The Mountaineers. You should not distinguish between “official” company files and “personal” or other “nonofficial” files for purposes of preserving Relevant Information.

This preservation obligation should be construed broadly and extends to drafts and duplicates of relevant documents. If there is any doubt about whether you should preserve a particular category or source of Relevant Information, you should err on the side of caution and do so.

#### *B. What You Must Do*

Please take the following steps immediately to ensure that Relevant Information is preserved:

1. Do not destroy, erase, delete, overwrite, or alter any Relevant Information.
2. Cease any process, practice, or procedure that might result in the destruction, erasure, deletion, or alteration of any Relevant Information.
3. Preserve any hardware and software that contains or is necessary to access any Relevant Information.
4. Preserve any passwords, decryption procedures (and accompanying software), network access codes, ID names, manuals, tutorials, written instructions, and decompression or reconstruction software.
5. Keep all project files, paper, or electronic documents or files related to this claim.

#### *C. Duration of Litigation Hold*

This preservation obligation will continue until further notice from The Mountaineers or Miller Nash Graham & Dunn LLP. You should preserve all Relevant Information now and

continue to preserve Relevant Information in the future until you are directed to cease doing so. If you expect that any of these preservation steps will impose a significant hardship (including because of the inability to access electronic files), please let Tom Vogl know immediately, and we will work to reduce the burden.

We will contact you when it becomes necessary to collect some or all of the Relevant Information that you are preserving.

Please acknowledge receipt of this notice and your agreement to abide by these procedures by signing and dating the acknowledgment below and returning it to [info@mountaineers.org](mailto:info@mountaineers.org). Any questions regarding this notice should be directed to Tom Vogl at [tomv@mountaineers.org](mailto:tomv@mountaineers.org).

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### **ACKNOWLEDGEMENT**

I acknowledge receipt of the above Notice to Preserve Evidence and agree to abide by the procedures set forth therein.

By (Signature): \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_