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10
 11 **IN THE UNITED STATES DISTRICT COURT FOR THE**
DISTRICT OF ARIZONA

13
 14 United States,

15 Plaintiff;

16 v.

17 Town of Colorado City, Arizona, *et al.*,

18 Defendants.
 19

No. 3:12cv8123-HRH

**THIRD JOINT STATUS REPORT
 CONCERNING ALTERED POLICE
 REPORTS**

21 On February 11, 2015, this Court ordered the Town of Colorado City to work with
 22 In-Synch Systems, Inc., to ascertain, among other things, whether a defect in the software
 23 system used to generate and store police reports prepared by the Colorado City Marshal’s
 24 Office (“CCMO”), “preclude[s] recovery of the missing police report data.” Order at 3,
 25 ECF No. 578 (setting forth four questions for Colorado City to address regarding a defect
 26 in the Town’s police report software).

27 Colorado City contracted with In-Synch Systems to determine the answers to the
 28 questions presented in the Court’s February 11, 2015 Order, and on March 11, 2015, In-

1 Synch Systems provided the parties with a report. *See* Letter from In-Synch Systems,
2 Inc., to U.S. Dep't of Justice and Town of Colorado City (Mar. 10, 2015) (attached as Ex.
3 A). The Court's February 11, 2015 Order also directed the Parties, following receipt of a
4 report from In-Synch Systems, to provide the Court with a further joint status report. *See*
5 Order at 3, ECF No. 578. Colorado City and the United States accordingly provide the
6 following status report:

6 **The United States' Position:**

7 As this Court is aware, the United States has been attempting to determine, since
8 May of 2013, how many CCMO reports were altered prior to production to the United
9 States and how they were altered. *See* Motion for Sanctions for Spoliation of Evidence
10 (May 9, 2014), ECF No. 353. *See also* Order at 11, ECF No. 438 ("The evidence also
11 suggests that some police reports were materially altered prior to being produced."); *id.* at
12 20 ("Colorado City shall provide plaintiff with the list of altered police reports and how
13 they were altered, or copies of the unaltered reports, on or before August 18, 2014.").

14 The United States has repeatedly pointed out that Colorado City has failed to show
15 what alterations were made to CCMO reports for at least two periods: (1) for the period
16 January 26, 2013, to April 23, 2013; and (2) for the period April 23, 2013, to the present.
17 *See* Second Joint Status Report at 5, ECF No. 577 (pointing out that Colorado City's
18 production of a "copied virtual machine" does not cover the period from January 2013 to
19 *the present*, a period during at which at least one police report, Helaman Barlow's
20 December 2013 report regarding Willie Jessop, was altered).

21 It is now clear that alterations to, and deletions from, CCMO police reports during
22 these two combined periods—*i.e.*, from January 23, 2013, to the present—cannot be
23 recovered. *See* Exhibit A (In-Synch Letter). Because of a software defect in the program
24 the CCMO used to generate, edit, and store police reports, it is impossible to recover
25 changes to the most important portions of the CCMO reports, the officers' narratives. *Id.*
26 (noting that a software defect was introduced in June 27, 2011, that makes it impossible to
27 recover edits to the "Narrative" portions of CCMO reports). In other words, the original
28 substance of any CCMO reports changed in anticipation of production to the Department
of Justice cannot be recovered.

1 Colorado City has consistently and successfully engaged in efforts to prevent the
2 United States from obtaining certain evidence in this case. As this Court is aware, the
3 United States set forth substantial and detailed evidence of Colorado City's failure to
4 preserve and produce documents, including dispatch calls, CCMO police reports, and
5 notes of officer meetings. *See generally* United States' Motion for Sanctions for
6 Spoliation of Evidence, ECF No. 353. Indeed, this Court found that there is "evidence
7 that material alterations were made to police reports." *See* Order: Motion for Sanctions
8 for Spoliation of Evidence at 9, ECF No. 438. This Court found that "the possibility may
9 exist that Colorado City destroyed some officer meeting minutes after it had notice of this
10 lawsuit." *Id.* at 11. This Court also found that Colorado City had failed to preserve two
11 dispatch calls, and that the failure to preserve those calls "may create an inference that
12 Colorado City acted with a culpable state of mind." *Id.* at 15. And, as this Court is aware,
13 the United States was forced to move this Court for an order to show cause in connection
14 with continuing efforts to identify how CCMO officers altered their police reports before
15 producing them to the United States. *See* United States' Motion [] For an Order to Show
16 Cause, ECF No. 467 (quoting Colorado City employee Lorenzo Barlow as stating, "[City
17 Manager] David Darger said we need to be careful what we do give out. We need to
18 make sure we re-read it and make sure there's nothing that really implicates the city or
19 makes the city look bad . . .").

20 It is now clear that, like the two deleted dispatch calls, certain CCMO police
21 reports have been altered beyond recovery. The United States therefore renews its request
22 that the Court grant the United States a missing-evidence instruction. *See* Motion for
23 Sanctions, ECF No. 353. In the alternative, the United States requests that the Court
24 direct the Parties to provide further briefing on this issue of the appropriate remedy for
25 Colorado City's conduct.

26 **The Town of Colorado City's Position:**

27 The facts and law do not support a missing-evidence instruction against Colorado
28 City because the evidence is not missing. The United States already has every completed,
pending, and submitted police report and call note from January 1, 2010 through January
26, 2013, in a version as they existed before the United States' April 23, 2013 request for

1 production. See Second Joint Status Report [Doc. 577], at pp. 8 – 10. The United States
2 can therefore complete a page-by-page comparison to determine whether any material
3 alterations occurred to any report or call. For the three-month gap between January 26,
4 2013 and April 23, 2013, the United States has not identified any issue relevant to its case
5 that occurred during that short timeframe. But even if it did, In-Synch Systems can tell it
6 whether any alterations occurred, who made the alteration, when it occurred, and whether
7 certain information was removed. The United States also has all the reports and calls from
8 January 26, 2013 to April 23, 2013, the police officers’ affidavits regarding any changes
9 that were made, and the deposition testimony from its own expert witness who confirmed
10 that the officers’ changes were appropriate. Id., at pp. 10 – 11. The United States
11 therefore has all the information it requested in its April 23, 2013 request for production;
12 therefore, this Court should deny its request for a missing-evidence instruction.

12 **A. In-Synch Systems.**

13 On February 11, 2015, this Court directed Colorado City to proceed with In-Synch
14 Systems to answer four questions related to the potential defect within its software
15 program and how that defect impacts In-Synch Systems’ database. See Order [Doc. 577].
16 Colorado City hired In-Synch Systems and paid it \$10,000.00 to complete this work. In-
17 Synch Systems then issued its report on March 10, 2015. That report is attached hereto as
18 Exhibit A and contains the following relevant information:

- 19 • A computer bug was introduced into In-Synch Systems’ software
20 on June 27, 2011. This bug causes the “update history” of
21 specific fields to be lost once future edits are made to those
22 fields.
- 23 • Due to the bug, In-Synch Systems can only recover data as it
24 appears after the most recent modification to a report. However,
25 In-Synch Systems can still determine when a modification was
26 made and which user account made the modification. In-Synch
27 Systems can also still recover other historical data, including text
28 field modifications (such as a change to names or times) and

1 removal of linked records (such as removing a person or vehicle
2 from a report).

- 3 • In-Synch Systems has now fixed the bug and is currently
4 releasing a new version of its software to its customer. This new
5 version will fix the bug within the Colorado City Marshal's
6 Department's database.

7 By obtaining this report from In-Synch Systems, Colorado City complied with this
8 Court's order. This report also confirms that In-Synch Systems can still provide historical
9 data regarding modifications to any particular report or call, and that this data would
10 enable the United States to determine whether any report or call was modified.

11 **B. Hard-Copies Of Reports.**

12 The United States' argument that it cannot determine whether any alterations
13 occurred is factually incorrect. As explained in Colorado City's Motion Regarding
14 Sanctions [Doc. 529] and the parties Second Joint Status Report [Doc. 577], Colorado
15 City produced all reports and calls, as they existed on January 26, 2013. This date is
16 before the United States sent its request for production on April 23, 2013. Therefore, the
17 reports and calls from January 26, 2013 are the "unaltered" versions.

18 Colorado City produced these unaltered versions to the United States in November
19 2014. The United States has thus had these reports and calls for several months. It also
20 has what it believes are the "altered" reports and calls. As a result, the United States can
21 conduct a page-by-page comparison between the "unaltered" reports and calls and the
22 "altered" reports and call to determine whether any material alterations actually occurred.
23 Colorado City is confident that none have, but the United States has the documents in its
24 possession to make that determination for itself. And, certainly, the United States'
25 inability to thus far inform this Court and Colorado City that it has actually located a
26 material alteration to any report or call is consistent with the police officers' affidavits that
27 no material alterations occurred.

28 **C. Three-Month Gap.**

In its February 11, 2015 Order, this Court recognized that, based upon the hard-
copies already produced, "the information gap is about three months: January 26, 2013 to

1 April 23, 2103.” See Order [Doc. 578], at p. 2. Colorado City hoped that In-Synch
2 Systems could help fill this gap, but the bug prevents it from doing so. However, the
3 United States has still not suffered any undue prejudice for several reasons. First, the
4 United States already has in its possession all the reports and calls from January 26, 2013
5 to April 23, 2013. It can review these reports and calls to determine whether any incident
6 is relevant to its claims in this case. Second, if it locates a relevant report or call, it can
7 then contact In-Synch Systems and request (at its own cost, now) that In-Synch Systems
8 determine whether any modification was made to that report or call, which user account
9 made the modification, when the modification was made, the text field modifications
10 made, and the linked records removed. According to In-Synch Systems’ report, it can
11 provide all this information to the United States. Third, the United States has the police
12 officers’ affidavits, which explain what changes they made to any remaining reports or
13 calls in April 2013 and why they made those changes. See Second Joint Status Report
14 [Doc. 577], at pp. 10 – 11. And fourth, the United States can speak to its own expert
15 witness, who testified during his deposition that the police officers’ conduct after
16 Colorado City received the United States’ discovery request was proper. Id. By taking
17 these steps, the United States can obtain all the information it seeks for the three-month
18 gap at issue.

18 **D. Conclusion.**

19 Colorado City denies that its police officers made any material alterations to reports
20 or calls. But Colorado City also understands that the United States has a different opinion.
21 Colorado City has therefore done everything it can to try and locate old versions of reports
22 and calls so that the United States can compare these prior versions with the current
23 versions to determine whether any material alterations were made. The United States’
24 request for production covered a three-year period, from January 1, 2010 to April 23,
25 2013. Colorado City produced prior versions of all reports and calls for January 1, 2010
26 to January 26, 2013. This timeframe is therefore no longer at issue. For the remaining
27 three-month period, Colorado City produced affidavits from its police officers and worked
28 with In-Synch Systems, which confirms that it can provide additional information

1 regarding whether any modification was made to any report or call for this three-month
2 period (and any period thereafter).

3 For these reasons, Colorado City requests that this Court deny the United States'
4 request for a missing-evidence instruction because the evidence is not missing and
5 Colorado City has not engaged in any willful misconduct or bad faith. If the United States
6 wants to still argue at trial that Colorado City altered police reports, it can do so, and
7 Colorado City will have the opportunity to present evidence to defend against this
8 argument. The jury will then serve as the ultimate factfinder on this issue and give it
9 whatever weight it deems appropriate during its deliberations on the pending claims.

10 Respectfully submitted,

11 FOR THE UNITED STATES:

12 STEVEN H. ROSENBAUM
13 Chief
14 Housing and Civil Enforcement Section

15 JONATHAN M. SMITH
16 Chief
17 Special Litigation Section

18 R. TAMAR HAGLER
19 CHRISTY E. LOPEZ
20 Deputy Chiefs
21 ERIC W. TREENE
22 Special Counsel

23 /s/ Sean R. Keveney
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FOR COLORADO CITY:

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/s/ Jeffrey C. Matura with permission
Jeffrey C. Matura
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*Attorneys for Defendant Town of
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CERTIFICATE OF SERVICE

I certify that on March 20, 2015, I caused a copy of the foregoing *Third Joint Status Report Concerning Altered Police Reports* to be sent via the Court's ECF system to the following:

Jeffrey C. Matura
Asha Sebastian
Graif Barrett & Matura, P.C.
1850 North Central Avenue, Suite 500
Phoenix, Arizona 85004
Attorneys for Defendant Town of Colorado City

R. Blake Hamilton
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111 East Broadway, Suite 900
Salt Lake City, Utah 84111
Attorneys for Defendants City of Hildale, Twin City Water Authority, and Twin City Power

/s/ Sean R. Keveney
SEAN R. KEVENEY
Attorney for the United States

Exhibit A

Keveney, Sean R (CRT)

From: Kirk Farra [Kirk.Farra@in-synch.com]
Sent: Wednesday, March 11, 2015 5:47 AM
To: Jeff Matura; Keveney, Sean R (CRT)
Cc: Blake Hamilton (bhamilton@djplaw.com); Donnelly, Matthew (CRT); Crockett, Jessica (CRT)
Subject: RE: U.S. v. Colorado City, et al.
Attachments: Answers to questions in court order.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

All,

Our response to the questions posed in the court order are in the attached document.

Regards,

Kirk

Kirk Farra
President
In-Synch Systems, LLC
www.in-synchrms.com
Kirk.Farra@in-synch.com
Phone: 800-243-6540 x 103

From: Jeff Matura [<mailto:JMatura@gbmlawpc.com>]
Sent: Thursday, February 12, 2015 11:56 AM
To: Keveney, Sean R (CRT); Kirk Farra
Cc: Blake Hamilton (bhamilton@djplaw.com); Donnelly, Matthew (CRT); Crockett, Jessica (CRT)
Subject: RE: U.S. v. Colorado City, et al.

Kirk:

I was drafting an e-mail to you when I received Sean Keveney's below e-mail. As Sean mentioned, the Court in our case issued an order regarding Colorado City's continued efforts to work with In-Synch Systems. Pursuant to that order (which is attached to Sean's e-mail), Colorado City requests that In-Synch Systems determine the following:

1. When the defect was introduced into the Town's software program for police reports.
2. Whether or not that defect will in fact preclude recovery of the missing police report data.
3. When the defect was cured.
4. If the defect was cured prior to January 26, 2013, can In-Synch Systems recover unaltered police report data entered between January 26 and April 23, 2013.

Can you please confirm for us that In-Synch Systems is willing to answer these questions? The Court also asked that this work be done within 30 days. Can In-Synch Systems meet that deadline? Finally, as stated in the Court's order, Colorado City will pay In-Synch Systems for its time to answer these questions.

If you have any questions, please let me know.

Thanks.

Jeffrey C. Matura

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From: Keveney, Sean R (CRT) [<mailto:Sean.R.Keveney@usdoj.gov>]
Sent: Thursday, February 12, 2015 9:46 AM
To: Kirk Farra
Cc: Jeff Matura; Blake Hamilton (bhamilton@djplaw.com); Donnelly, Matthew (CRT); Crockett, Jessica (CRT)
Subject: U.S. v. Colorado City, et al.

Kirk,

The Court in our case issued the attached order yesterday evening.

Thanks,

Sean

Sean R. Keveney
Trial Attorney
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530
(202) 514-4838



CONNECT. ANYWHERE.™

March 10th, 2015

Dear Sirs,

Here are In-Synch System's official findings with respect to the request for information detailed in Quote Number AAAQ1334 which was a result of the court order in Case 3:12-cv-08123-HRH Document 578. These findings are based on the database provided by the Town of Colorado City to our In-Synch Support Staff for analysis on November 24th, 2014. I will address these questions in the original order.

1. When the defect was introduced into the Town's software program for police reports.

The software system at the agency was updated to version 4.7 on June 27th, 2011. It was at this point that the software bug was introduced that caused the update history of specific fields (including the Call Notes and the Narratives) to be lost upon future edits to these fields.

2. Whether or not that defect will in fact preclude recovery of the missing police report data.

The bug affects blob field data stored in the RMS, such as the Call Notes and Narrative data. For any affected fields In-Synch Systems would only be available to recover data as it appears after the most recent modification and all history information from the time of the 4.7 Software Update until that point would be lost. We can determine when a modification was made, and by which user account, but we cannot determine what the modification was to the blob fields, such as Call Notes and Narratives. We also cannot recover police reports from a previous point in time, all reports would be generated using the most current information in the system. In-Synch Systems could recover certain historical data (i.e. text field modifications, such as the change of a First or Last name or a change to a Timestamp) and the removal of linked records (such as the removal of a person or vehicle from a call or case).

3. When the defect was cured.

The bug was fixed internally with a software correction, committed on July 14th, 2014 to our internal build process. The defect is remedied to our customers in our current release, 4.8.1 - dated March 3rd 2015, which is currently being rolled out to customers. The agency will have this issue remedied when they receive this update.

4. If the defect was cured prior to January 26, 2013, can In-Synch Systems recover unaltered police report data entered between January 26 and April 23, 2013.

The bug was not cured in this time frame. The response to question two explains what unaltered data we could recover and what data would be affected by the bug.

Hopefully this addresses all of your current questions. If any additional information is needed please don't hesitate to contact myself, Christopher Yohe, or Kirk Farra, whom you have previously had contact.

Sincerely,

A handwritten signature in black ink that reads "Christopher Yohe". The signature is fluid and cursive, with the first and last names being clearly legible.

Christopher Yohe
Director of Development
In-Synch Systems