

4. A ruling from the Southern District of California denying a plaintiff's request to mandate that the defendants respond to discovery requests using specific search terms and custodians identified by the plaintiff.

In *Hastings v. Ford Motor Company*, 19-cv-2217-BAS-MDD, 2021 WL 1238870 (S.D. Cal. Apr. 2, 2021), U.S. Magistrate Judge Mitchell D. Dembin denied the Plaintiff's request to mandate that the Defendants respond to discovery requests using specific search terms and custodians identified by the Plaintiff.

This case stemmed from the purchase of an allegedly defective truck. *Id.* at \*1. Plaintiff filed a motion to compel Defendant to produce additional records in discovery, including a request that the court direct the manner in which Defendants responded to discovery requests by mandating which search terms, custodians, and databases were to be used in Defendants' response.

Magistrate Judge Dembin began his analysis with Federal Rule of Civil Procedure 34, which requires (1) a request for "information" and (2) a production or objection to that request. *Id.* (quoting Rule 34(a)(1), (b)(2)(B)). He noted that Rule 34 does not differentiate between requests for information that exists physically versus digitally and that nothing in the rule "requires a requesting party to identify custodians or search terms or for a producing party to accede to demands that particular custodians' files be searched or that particular search terms be used."

Magistrate Judge Dembin next explained that he subscribed to the view expressed in Principle No. 6 of the Sedona Principles, that responding parties are best "best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information." *Id.* at \*3 (quoting *The Sedona Principles, Third Ed.* 19 SEDONA CONF. J. 1, Principle 6, 118 (2018)). Magistrate Judge Dembin further noted that the world of e-discovery has "moved well beyond search terms" due to technological advancements and new software tools and that using them is disfavored in some courts.

Magistrate Judge Dembin ruled that he would not decide "whether any proposed custodians are appropriate nor on the use of the requested search terms." *Id.* at \*3. He reiterated the standard by which discovery is to be conducted: "A party requests information and the burden is on the producing party to locate and produce it or object legitimately to production." If a responding party fails to preserve or disclose material information due to "an unreasonable choice," those actions may be sanctionable. He further noted that parties should cooperate and be as transparent as possible in discovery. Magistrate Judge Dembin ultimately denied Plaintiff's motion: "To the extent Plaintiff is seeking to compel Defendants to conduct discovery as directed by Plaintiff, the Court declines to issue such an order."