

3. In *Lundine v. Gates Corporation*, No. 18-1235-EFM, 2020 WL 1503514 (D. Kansas March 30, 2020), U.S. Magistrate Judge James P. O'Hara of the District of Kansas found that Defendant did not have to re-produce data in Microsoft Excel format that had been produced in PDF format because Defendant ordinarily maintained the data in PDF format and Plaintiff did not show that the data was inaccessible in PDF format.

In this Fair Labor Standards Act collective litigation, Defendant produced pay data for the members of the class in PDF format, and Plaintiff filed a motion seeking to compel Defendant to produce the data in Excel format so that Plaintiff would not have to manually enter all of the relevant data points into Excel to calculate damages, or, in the alternative, to allow Plaintiff's experts access to Defendant's payroll data to download the data themselves. Defendant opposed the motion. 2020 WL 1503514, at \*1.

Magistrate Judge O'Hara started his analysis by reviewing the relevant standards under Fed. R. Civ. P. 34, including that "[i]f a request for electronically stored information does not specify the form or forms of production, a responding party must produce the information in a form or forms in which it is ordinarily maintained, or in a form or forms that are reasonably usable." *Id.* (quoting Fed. R. Civ. P. 34(b)(2)(E)(ii)). In addition, "a party need not produce the same electronically stored information in more than one form." *Id.* (quoting Fed. R. Civ. P. 34(b)(2)(E)(ii)). Magistrate Judge O'Hara noted that as the party objecting to discovery, Defendant had the burden to show facts justifying its objection by demonstrating that the time or expense involved in responding to the requested discovery of ESI was unduly burdensome. Defendant provided an affidavit stating that re-production in Excel format would take an additional 25 hours of employee time and at least \$2,500 in attorneys' fees. *Id.* at \*2.

Magistrate Judge O'Hara stated that, absent agreement, the format of production is within the responding party's discretion. Here, Defendant maintained the data in PDF format, which meant that PDF was the native format of the data. Magistrate Judge O'Hara rejected Plaintiff's argument that in other cases involving the same timekeeper software used by the Defendant here, other defendants had produced the data in Excel format. He found that what other employers might do is not relevant because the relevant question is how the Defendant ordinarily keeps its timekeeping data. Magistrate Judge O'Hara also noted that Plaintiff had failed to show that the data was not readily accessible in PDF format, even if PDF was not Plaintiff's preferred format.

Ultimately, Magistrate Judge O'Hara found that requiring Defendant to re-produce data in Excel format would be duplicative and unduly burdensome. *Id.* at \*3. While he acknowledged that it would take time to convert the PDF pay data into Excel format, the data was still usable in PDF format because it could be manually converted, and re-production of the records in Excel format would not provide any further information than what was already provided in the PDF documents.

Finally, Magistrate Judge O'Hara rejected Plaintiff's alternative request that Plaintiff's experts be granted access to Defendant's timekeeping system, with supervision, to download the data at issue in Excel format. He found that it would unnecessarily burden Defendant to allow access because Defendant would still incur significant time and expense to supervise Plaintiff's experts and to prevent disclosure of private, unrelated data.