

**4. An opinion from the U.S. District Court for the Middle District of Florida compelling the Defendant to run specific search terms but declining to compel the Defendant to disclose its search history for the searches it had already conducted.**

In *United States Equal Employment Opportunity Commission v. Qualtool, Inc.*, No: 5:21-cv-229-ACC-PRL, 2022 WL 16963829 (M.D. Fla. Nov. 16, 2022), U.S. Magistrate Judge Philip R. Lammens addressed a motion by the plaintiff United States Equal Employment Opportunity Commission (EEOC) to compel Defendant to run searches with specific search terms and to disclose its search history.

In this employment discrimination case, the court had previously denied a motion brought by the EEOC to compel Defendant to (1) produce responsive documents in a native, usable format organized in the manner requested by EEOC, (2) provide an affidavit listing ESI repositories, and (3) cease unsupervised ESI self-collection and conduct supervised searches and had ordered the parties to meet and confer on these issues. *Id.* at \*1. However, the parties were unable to resolve the EEOC's issues with Defendant's ESI searches. On the discovery deadline, the EEOC filed a renewed motion to compel Defendant to rerun computer searches with specific search terms, covering six email accounts, and using agreed-on software for the searches.

In addressing the EEOC's renewed motion, Magistrate Judge Lammens first laid out the relevant rules under F.R.C.P. 37 surrounding motions to compel, including that the discovery requested must be proportional to the needs of the case and that objections may not be conclusory and boilerplate and "fail to explain the precise grounds that make the request objectionable." *Id.* at \*1-2 (internal quotations omitted).

Magistrate Judge Lammens then moved to a discussion of the issues surrounding the EEOC's search requests using Outlook and Windows File Explorer computer software. *Id.* at \*3. Based on meet and confers, the parties agreed that Defendant would search the entirety of the ESI documents using terms provided by the EEOC, and Defendant provided 10 email addresses that may be repositories for the searches. After further meet and confers, Defendant told the EEOC it would run only search terms covering five of the EEOC's first requests for productions and would search only two computers and two email addresses. After these searches failed to uncover responsive documents, the parties continued to meet and confer, during which Defendant never confirmed that it ran the searches using the computer software agreed on by the parties.

Magistrate Judge Lammens explained that while "the Sedona Principles caution that the parties must cooperate to craft search terms that will effectively capture all relevant information without being too burdensome, this cooperation must be in good faith, consistent with the local rules." *Id.* at \*4. "When a party has limited the search terms

following conferral according to the opposing party's input, that has been found sufficient to compel the opposing party to run the search."

According to the EEOC, its suggested search terms were "tailored to capture the discriminatory policy at issue, using the exact terms that are used in Defendant's statement of position submitted to the EEOC during the administrative investigation" and otherwise relevant to the case. Additionally, the EEOC requested that Defendant run the search terms on six email accounts, only two of which Defendant had searched to date, and five computers. The EEOC argued that several email accounts were relevant because they belonged to company officers who were deposed or listed on the parties' disclosures as having relevant information, and another was the email of Defendant's vice president. Finally, the EEOC designed the search terms to be solely compatible with Outlook and Windows File Explorer, which Defendant had represented it had used when searching the email accounts and computers it had already searched. *Id.* at \*5.

For these reasons, Magistrate Judge Lammens granted the EEOC's motion to compel "to the extent that the six search terms will be run on the six email accounts and five computers, using Outlook and Windows File Explorer, respectively."

Magistrate Judge Lammens then turned to EEOC's request to compel Defendant to produce its Outlook search history for the searches it conducted to determine whether the searches were done using proper terms and syntax. Magistrate Judge Lammens found that this request was "unnecessarily burdensome without a specific allegation of misconduct" given that Defendant's counsel represented in a hearing that the searches were properly conducted. He therefore denied this portion of the EEOC's motion.