

**4. An order from the U.S. District Court for the Northern District of California denying a motion to compel Plaintiff to use additional search terms to search his private email account for potentially responsive documents, finding that Plaintiff was in the best position to determine how to locate responsive information within his own files.**

In *Weinstein v. Katapult Group, Inc.*, 2022 WL 4548798 (N.D. Cal. Sept. 29, 2022), U.S. District Judge Phyllis J. Hamilton denied a motion to compel Plaintiff to use additional broad search terms for his private email account, finding that Plaintiff was in the best position to determine how to locate responsive information within his own files.

In this contract dispute, Plaintiff, a former finance consultant, claimed that he was wrongfully denied stock options owed as part of his compensation and that Defendant breached a contract by failing to make certain payments. *Id.* at \*1.

In its motion to compel, Defendant sought production of relevant email communications from Plaintiff's private email account. Judge Hamilton explained that Plaintiff had used a range of terms to search for relevant materials in his email inbox, but Defendant argued that the list of keywords should be expanded to capture additional communications, including terms such as "options," "advisor," "shares," and "equity." Plaintiff opposed the request on relevance and overbreadth grounds and because Defendant had already obtained some information from Plaintiff's former employers and companies where he provided similar services.

In addressing Defendant's motion, Judge Hamilton first described the relevant standards under Federal Rule of Civil Procedure 26(b)(1), which provides a broad definition of relevance for purposes of discovery: "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." She noted that "discovery is not limited to issues raised by the pleadings, for discovery itself is designed to help define and clarify the issues," "[n]or is discovery limited to the merits of a case, for a variety of fact-oriented issues may arise during litigation that are not related to the merits." Finally, she noted that the party resisting discovery "has the burden to show that discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections."

Judge Hamilton denied Defendant's motion, concluding that Plaintiff was in the best position to determine the appropriate scope of the search to respond to defendant's discovery requests. *Id.* at \*2. Quoting from the Sedona Principles, Judge Hamilton explained that "[r]esponding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information."

Judge Hamilton noted that Defendant's insistence on compelling Plaintiff to search for and review all documents that solely mention broad generic terms such as "options," "advisor," "shares," and "equity" over a seven-year period, without any reference to Defendant or the contract at issue, was "an improper fishing expedition, not proportional to the needs of the case."