3. A decision from the U.S. District Court for the Eastern District of Missouri rejecting a request by the Plaintiff to compel Defendants to add 63 additional custodians identified in Plaintiff's initial disclosures, instead requiring Defendants to add only 23 additional custodians.

In *Weisman v. Barnes Jewish Hospital*, 2022 WL 850772 (E.D. Mo. March 22, 2022), U.S. District Judge John A. Ross addressed a request to compel Defendants to add 54 additional custodians and to compel production of messages sent using the Telegram app that Defendants argued were not in their possession.

The Plaintiff in this litigation brought a motion to compel Defendants to search documents from additional custodians. In particular, Plaintiff complained that although he had identified 63 individuals with knowledge in his initial Rule 26 disclosures and interrogatory answers, Defendants searched the email accounts of only seven people. Plaintiff argued that Defendants should be compelled to conduct a search of the email accounts of all 63 individuals because these individuals worked with, supervised, or evaluated him and "likely communicated and/or received communications concerning [his] performance and/or his research laboratory." Defendants opposed the motion, arguing that Plaintiff had not established the relevance of searching the 63 email accounts and that, in any event, searching the accounts under the broad search terms proposed by Plaintiff would be unduly burdensome and expensive, particularly when he offered only speculation that the emails might contain some reference to him or his performance.

Judge Ross noted that while Defendants cannot unilaterally limit the scope of Plaintiff's discovery requests, Rule 26(b)(1) does not give a party "the unilateral ability to dictate the scope of discovery based on their own view of the parties' respective theories of the case." He found that although Plaintiff "would have had contact with and been supervised by a number of people," Plaintiff's request to search the email accounts of 63 individuals "because they worked with him and might have sent emails referring to him" was "entirely overbroad and amount[ed] to a fishing expedition."

Judge Ross then explained that because the parties failed to reach a reasonable compromise during no less than five meet-and-confer sessions, it was left to him to make a determination. He concluded that Plaintiff would be limited to a search of 23 email accounts — in addition to those that have already been identified — which was "a more realistic and reasonable number."

Plaintiff also sought to compel Defendants to produce messages from the "Telegram App," among other documents. *Id*. at *2. However, Defendants asserted that they do not require use of the Telegram app and have no control or possession of messages sent and received by residents and physicians using Telegram.

Judge Ross explained that under Federal Rule of Civil Procedure 34, a party need only produce those documents that are in its "possession, custody, or control," and a document is not in a party's possession, custody, or control if the document does not exist. *Id*. at *3. He noted that Plaintiff had not provided information sufficient to lead him to question the truthfulness of Defendants' representations that no responsive documents exist: "A mere belief, without any evidence, that a party has not produced documents or information in its possession, is insufficient to support a motion to compel."

While Judge Ross concluded that he had no basis upon which to compel Defendants to produce any additional documents, he nonetheless required Defendants to serve supplemental written responses affirming that they have searched all documents in their possession, custody, or control and produced all information and documents available to them that are responsive to Plaintiff's discovery demands.