

4. An opinion from the U.S. District Court for the District of Nevada compelling a Plaintiff to produce documents with a labeling system and organization sufficient to identify which documents were being produced in response to specific requests, where the Plaintiff had previously tried to satisfy its production obligation by providing the Defendants with access to 30 bankers boxes of documents.

In *Flynn v. Love*, No. 3:19-CV-00239-MMD-CLB, 2023 WL 2561158 (D. Nev. Mar. 16, 2023), U.S. Magistrate Judge Carla Baldwin addressed a motion to compel Plaintiff to provide labeling and organization to its production after Plaintiff provided a “document dump” on Defendants.

During discovery in this action, Defendants requested certain documents from Plaintiffs about expert work and related matters from a prior litigation. Plaintiff Michael Flynn, representing himself *pro se*, offered to let Defendants “come and copy” every document in Flynn’s possession related to the other case. At a prior hearing regarding this dispute, Magistrate Judge Baldwin had informed Flynn that this was not appropriate, explaining to him that “you have an obligation to go and look for documents that are responsive to the request for production of documents.... It is not the responsibility of the defense counsel to go and simply copy swaths of documents.”

Plaintiffs later moved for a protective order, asserting that their discovery obligations should be deemed “complied with” because they made 30 bankers boxes full of documents available for Defendants’ review “in a storage shed in an unspecified location.” *Id.* at *2. Plaintiffs argued that any requirement to copy, stamp, and deliver these documents to Defendants would “be oppressive and place undue burden and expense on Plaintiffs.” But Magistrate Judge Baldwin denied Plaintiffs’ request, noting that there appeared to be no organization of the documents from the prior litigation sufficient to indicate how those documents were maintained in the ordinary course of business, and she ordered Plaintiffs to search their files to identify and provide those documents responsive to Defendants’ requests, including specifically organizing the documents, with some sort of labeling system, and identifying which documents are responsive to the specific requests served by Defendants.

When Plaintiffs failed to produce the documents as directed by the Court, Defendants filed a renewed motion to compel and motion for sanctions, seeking an order compelling Flynn to organize and unitize the documents in his production with some sort of labeling system and identify which documents responded to the specific request. Defendants argued that Flynn did not specifically organize and produce all documents responsive to the requests and that the documents that were produced were often grouped together and produced as a single PDF with as many as 2,625 pages.

Magistrate Judge Baldwin began her analysis by noting that “discovery is supposed to proceed with minimal involvement of the Court” and that “counsel should strive to be cooperative, practical, and sensible, and should seek judicial intervention only in extraordinary situations that implicate truly significant interests.” *Id.* at *2. She further explained that when a dispute arises that the parties cannot work out and must submit to the Court, the party moving for an order to compel discovery bears the initial burden of informing the Court (1) which discovery requests are the subject of the motion to compel; (2) which of the responses are disputed; (3) why the party believes the response is deficient; (4) why defendants’ objections are not justified; and (5) why the information he seeks through discovery is relevant to the prosecution of this action. Then the burden shifts to the party seeking to avoid discovery to show why that discovery should not be permitted, but the party may not rely on boilerplate, generalized,

conclusory, or speculative arguments: “Arguments against discovery must be supported by specific examples and articulated reasoning.” *Id.* at *3.

Magistrate Judge Baldwin then quickly granted the motion to compel. *Id.* at *5. She found that Flynn had not complied with her prior order directing him to provide responsive documents specifically organized with a labeling system and to identify which documents were responsive to the specific requests. She explained that Flynn and any Plaintiffs were “not at liberty under federal discovery rules to dump massive amounts of documents, which apparently have no logical order to them, on [his] adversaries and demand that they try to find what they are looking for.” She noted that the documents that were produced had been provided in a “do it yourself document dump fashion,” which flew in the face of both the spirit of Rule 34 and established case law.

Accordingly, Magistrate Judge Baldwin ordered Flynn to search his files to identify and provide those documents responsive to Defendants’ document requests within 30 days — including specifically organizing the documents, with some sort of labeling system, and identifying which documents were responsive to the specific requests.

Magistrate Judge Baldwin also granted Defendants’ motion for sanctions and ordered Flynn to pay Defendants’ reasonable attorneys’ fees associated with filing the motion to compel. *Id.* at *6. She declined to find either Plaintiff in contempt but warned them that continued discovery issues or failures could result in a recommendation that the action be dismissed pursuant to Rule 37(b)(2)(v).