

**3. A ruling from the U.S. District Court for the District of Colorado compelling the Defendant to produce the contents of his personal laptop computer, finding the contents to be both relevant and proportional where the record showed that the personal laptop had been connected to a hard drive that was used to download electronic records belonging to the Plaintiff.**

In *Kosmicki Investment Services LLC v. Duran*, No. 21-CV-03488, 2023 WL 4899541 (D. Colo. Aug. 1, 2023), U.S. Magistrate Judge Susan Prose addressed the standards for compelling the production of a personal laptop in connection with allegations of unauthorized access to computer files.

The Defendant in *Kosmicki*, Joseph Duran, was a prior employee of Plaintiff's who allegedly accessed sensitive client information stored on cloud storage platforms after his termination, in violation of various Colorado civil statutes and the Computer Fraud and Abuse Act. *Id.* at \*1. Plaintiff's computer forensics investigator found that Duran had accessed client information and downloaded it from the cloud onto Duran's devices for use at Duran's new place of employment. Plaintiff alleged that Duran downloaded the improperly accessed information onto both Duran's personal computer and a Seagate-branded hard disk drive that the parties dubbed "the Seagate drive." *Id.* at \*2.

A prior court order required Duran to produce the Seagate drive. Although the court ordered Duran to refrain from accessing the Seagate drive and to turn it over to Plaintiff's forensic examination firm unaltered, Duran accessed the drive anyway; his counsel "segregate[d] certain data" from the drive, copied it in its entirety — which overwrote metadata of the drive's files — and added seven files to the drive. A special master appointed by the court later found that this behavior was improper. *Id.* at \*3.

Subsequently, Plaintiff moved to compel Duran's personal laptop for inspection to assess whether it contained improperly accessed files, because Duran had admitted that the laptop was "used in connection with the Seagate drive," he admitted that the Seagate drive was connected to the computer on multiple occasions, and he had previously offered to forensically image the computer in connection with the production of the Seagate drive. *Id.* at \*3. Duran objected to production of the laptop.

Magistrate Judge Prose found both that the files on the personal computer were relevant to the case and that their production was proportionate to the needs of the case. She held that the files were relevant because they went to "the very essence" of the case, which was that Duran improperly downloaded Plaintiff's files for personal use. She noted that Plaintiff alleged that some of the files Duran had downloaded were placed directly onto Duran's personal computer and never made their way to the Seagate drive. *Id.* at \*5-6. She rejected Duran's argument — that Plaintiff must first identify which files were to be found on the laptop — as "inconsequential" to the information's relevance, and she also rejected the argument that Plaintiff would lose on summary judgment anyway as both inconsequential and speculative.

In finding that imaging the laptop was also proportionate, Magistrate Judge Prose noted that Duran had not demonstrated that such a production would be unduly burdensome relative to the files' relevance to the action. *Id.* at \*6. But in doing so, she acknowledged that the production of Duran's personal laptop would involve the surrender of personal and business information and would inconvenience Duran personally. To that end, she ordered the parties to agree to a proposed ESI protocol for the production and submit it jointly to the court for review and adoption. Such a protocol, she noted, would allow the forensic imaging to occur quickly and safely.