

3. A ruling from the U.S. District Court for the Central District of California requiring the Defendant to re-produce pure native versions of technical project files, where the versions that Defendant had produced after processing them through Relativity were not usable, because the file structure and relationships had been stripped from the files.

In *Energy Mgmt. Collab., LLC v. Darwin Tech LLC, et al.*, 22-cv-00952 JWH (ADS), 2024 WL 2335629 (C.D. Cal. Apr. 25, 2024), U.S. Magistrate Judge Autumn D. Spaeth addressed the standards applicable to production of technical project files that require specialized software programs to view.

In this action for breach of contract, fraud, conversion, and unjust enrichment, Plaintiff alleged that Defendant breached the parties' contract under which Defendant was to design and develop software and hardware for an emergency light-testing system. *Id.* at *1. Plaintiff claimed that Defendant failed to provide Plaintiff with the firmware source code, circuit-board design files, and other deliverables in connection with Defendant's work under the contract. Defendant claimed that it was not obligated to provide Plaintiff with these materials because they were Defendant's own intellectual property.

During discovery, Plaintiff served Defendant with requests for, among other things, documents relating to the work Defendant performed for Plaintiff under the parties' agreement. *Id.* at *2. Plaintiff's requests instructed Defendant to produce documents either "as they are kept in the ordinary course of business or organized and labeled to correspond with a particular request."

In response to Plaintiff's document requests, Defendant produced over 20,000 technical production files with extensions such as ".s37" or ".hex" files that generally could only be opened using specific technical software programs and not with standard e-discovery programs like Relativity. Out of these technical files, Plaintiff's discovery vendor identified 17,857 that could not be opened through Relativity. In addition, the folder structure for these technical files was modified when Defendant processed them for production through Relativity, such that the technical files could be viewed as they were kept in the ordinary course of Defendant's business only by opening the native versions of the files in the original technical programs used to create them.

Plaintiff filed a motion to compel Defendant to produce the "pure" native technical files, arguing that Defendant failed to produce the files "in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms" under Rule 34(b)(2)(E)(ii). *Id.* at *4. Plaintiff argued that the individual technical files were part of groups of files called "projects" that need to be opened simultaneously using

certain software programs and that processing them through Relativity resulted in loss of the organizational structure.

Defendant opposed the motion, arguing that it produced the technical files as it kept them in the ordinary course of business and consistent with the federal rules. Defendant also argued that it provided the metadata that permitted Plaintiff to re-create the folder structure of the production and identified the software needed to view those file types.

Magistrate Judge Spaeth began her analysis with a survey of Rule 26, which permits discovery of “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case,” considering various factors. *Id.* at *3 (quoting Rule 26(b)(1)). She noted that the party seeking to compel discovery has the burden of establishing that its request satisfies the relevancy requirements of Rule 26(b)(1), and the party opposing discovery then has the burden of showing that the discovery should be prohibited and the burden of clarifying, explaining, or supporting its objections. She further noted that “[t]he district court enjoys broad discretion when resolving discovery disputes, which should be exercised by determining the relevance of discovery requests, assessing oppressiveness, and weighing these factors in deciding whether discovery should be compelled.”

Applying these rules, Magistrate Judge Spaeth concluded that the technical files were unquestionably relevant and that Rule 34(b)(2)(E)(ii) therefore required Defendant to produce the files in a form in which they were ordinarily maintained or in a reasonably usable form (because Plaintiff’s requests did not specify a form for producing ESI). *Id.* at *4.

Although Defendant claimed to have already produced the files in native format, Magistrate Judge Spaeth noted that Plaintiff was seeking the files in “pure” native format without processing through Relativity, in order to maintain their hierarchical structure. She explained that Defendant did not contest that technical files are typically produced in pure native format or that the organizational structure of the technical files was stripped or changed when Defendant processed and produced them through Relativity.

Finally, Magistrate Judge Spaeth noted that Defendant failed to address Plaintiff’s assertion that sending the technical files in pure native form would be “quick and easy,” explaining that Defendant failed to articulate any undue burden in doing so. She therefore concluded that producing the technical files in pure native form “would be of little burden” and ordered Defendant to produce the pure native technical files.