

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Smahi v. STMicroelectronics, Inc.

No. 23-cv-06645-PCP (N.D. Cal. Mar. 31, 2025) · No. 23-cv-06645-PCP · Decided March 31, 2025

SUMMARY

The United States District Court for the Northern District of California denied STMicroelectronics, Inc.'s motion for case-terminating sanctions against plaintiff Rachid Smahi without prejudice, finding material factual disputes concerning preservation duties, data loss, and intent under Federal Rule of Civil Procedure 37(e). The court granted ST's motion to strike separately filed evidentiary objections. The court also granted sealing requests in part and ordered the parties to publicly file documents with only permitted redactions.

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
RACHID SMAHI, Case No. 23-cv-06645-PCP 8 Plaintiff, ORDER DENYING DEFENDANT'S
9 v. MOTION FOR SANCTIONS, GRANTING DEFENDANT'S MOTION 10
STMICROELECTRONICS, INC., et al., TO STRIKE, AND GRANTING IN PART
DEFENDANT'S SEALING 11 Defendants. MOTIONS 12 Re: Dkt. Nos. 53, 54, 61, 65, 67 13 14
Defendant and counterclaimant STMicroelectronics, Inc. ("ST") moves for case 15 terminating
sanctions against plaintiff Rachid Smahi.

For the reasons discussed herein, ST's 16 motion is denied without prejudice. ST's related motion
to strike and sealing motions are granted 17 in part. 18 BACKGROUND 19 Smahi was employed
by ST from October 2021 until late June 2023. During that time, 20 Smahi alleges he was
harassed and retaliated against at work for objecting to unlawful conduct 21 and faced
discrimination due to his disability.

He also alleges that he was physically assaulted and 22 verbally abused. Smahi filed this
employment discrimination lawsuit against ST on December 22, 23 2023, in Santa Clara County
Superior Court. ST removed it to this Court on December 28, 2023. 24 Smahi's operative second
amended complaint contains 14 causes of action under state and federal 25 law for retaliation,
disability discrimination, failure to reasonably accommodate disability, 26 harassment, assault and
battery, and failure to pay all wages owed 27 On July 11, 2024, Smahi produced responsive
documents that allegedly revealed to ST that 1 as internal ST company documents regarding the
same projects.

On November 1, 2024, allegedly because of this discovery, ST amended its answer to add additional counterclaims related to the alleged trade secrets violations. See Dkt. No. 52. I. ST's version of events On August 16, 2024, ST demanded that Smahi submit his devices and accounts for a forensic examination "to evaluate the scope of his improper retention of ST confidential and proprietary documents, as well as whether Plaintiff has transmitted such documents to other third parties aside from counsel." Smahi subsequently agreed to permit this examination, and it was scheduled for and take place on October 1–3, 2024.

During the investigation, the forensic investigators discovered that Smahi had tampered with his data and devices. According to ST, the investigation revealed that:

- Smahi had restored his iPhone on September 30, 2024, erasing its information and settings, and he may have deleted backup data prior to September 30, 2024;
- Smahi wiped his computer on September 30, 2024, by resetting it to factory settings, such that all prior data was lost;
- Smahi deleted an undisclosed iCloud account associated with his Yahoo email address on September 24, 2024 (the same day that Smahi's counsel finally agreed to the scope of forensic examination);
- Smahi recovered a password on September 30, 2024, for an undisclosed Gmail account and then deleted the account;
- Smahi had another Hotmail email account associated with his iPhone that was not disclosed and, because it had not been previously disclosed, the investigators did not have its password and could not review the account.

Lastly, the USB drive that Smahi had used to transmit the alleged trade secret documents to his attorneys was "accidentally" dropped into a pool in July 2024. Smahi subsequently As discussed below, Smahi has submitted a declaration that disputes many of these facts or their characterizations. 1 hammered the USB stick to pieces and threw the pieces away.

II. Smahi's version of events Smahi acknowledges that he "realized that he needed to preserve and present evidence of his unlawful treatment at ST" when he prepared the USB drive containing documents (the "retained documents") related to this litigation. He asserts that the USB drive accidentally fell into the swimming pool and as a result was discarded by Smahi prior to any discussion of imaging devices, and while Smahi was unaware of any obligation he may have had to retain the device.

Smahi likewise argues he had no duty to preserve the "iMac information" which he contends was wiped in late June or July 2024 for Smahi to prepare his computer for sale and "had nothing to do with this case and, at the time of deletion, ... contained none of the [retained documents] or any information related to them." Smahi explains that ST's counsel first reached out on August 8, 2024 to express concern about the retained documents.

He further alleges that ST told Smahi he need not wait "before destroying the documents in his possession, custody, or control" on August 16, 2024, and that ST expressly requested, on

August 21, 2024, that he “delete any/all confidential/proprietary ST or 16 third-party documents in his custody, possession or control,” prompting several of Smahi’s email 17 deletions.

Smahi further contends that on August 30, 2024, he agreed to the forensic examination 18 of his cell phone, his iMac, and his iCloud and email accounts because he understood its purpose 19 was to verify that he no longer had possession of the retained documents. Smahi says he had 20 “nothing to hide” because he had deleted the documents already. “He did not understand that ST’s 21 counsel and [forensic investigator] wanted to access all of his personal email accounts and those of 22 his family, since those accounts had no connection to this case or to ST in any way.” 23 Smahi contends that the late September deletions were in response to an alert he got that 24 someone had attempted to log into his account and that he worried he was being hacked.^{25 26 2} ST points out that, despite meet-and-confers with counsel about the issue, they did not hear this 27 explanation until Smahi filed his opposition to ST’s motion for sanctions.

Further, ST submits proof that Smahi admitted to trying to log into his own account around that time, so the 1 LEGAL STANDARDS 2 Federal Rule of Civil Procedure 37(e) applies to discovery issues arise regarding spoliation 3 of electronically stored information, which is all that is at issue on ST’s motion. See Gregory v. 4 Montana, 118 F.4th 1069, 1080 (9th Cir.

2024).^{3 5} A party engages in sanctionable misconduct triggering Rule 37(e) when it (1) “fail[s] to 6 take reasonable steps to preserve” electronically stored information that (2) “should have been 7 preserved in anticipation or conduct of litigation,” and (3) when such information “cannot be 8 restored or replaced through additional discovery.” Fed. R. Civ.

P. 37(e). Once a court is satisfied 9 that a party has engaged in such misconduct, it conducts a two-tiered analysis to determine the 10 appropriate sanction. The most severe sanctions—adverse inferences and terminating sanctions— 11 are available only if the court finds “that the party acted with the intent to deprive another party of 12 the [lost] information’s use in the litigation.” Fed.

R. Civ. P. 37(e)(2). “[T]he intent required by 13 Rule 37(e)(2) ‘is most naturally understood as involving the willful destruction of evidence with 14 the purpose of avoiding its discovery by an adverse party.’” Gregory, 118 F.4th at 1080. Lesser 15 sanctions are available if the court “find[s] prejudice to another party from loss of the 16 information,” and those sanctions must be “no greater than necessary to cure the prejudice.” Fed.

17 R. Civ. P. 37(e)(1). 18 “The Ninth Circuit has not set forth a specific standard of proof, but district courts in this 19 Circuit apply a preponderance of the evidence standard in making findings to determine whether 20 to impose spoliation sanctions under Rule 37(e).” Morehead v. City of Oxnard, No. CV 2:21-cv- 21 07689-SPG-ADSX, 2023 WL 8143973, at *4 (C.D.

Cal. Oct. 4, 2023) (collecting cases). 22 ANALYSIS 23 I. ST’s request for sanctions is denied without prejudice. 24 ST seeks sanctions in the form of (1) a directed verdict on ST’s

counterclaims, (2) 25 judgment against Smahi on each of Smahi's claims; (3) monetary sanctions. 26 27 3 At the hearing, ST acknowledged that Rule 37(e) "precludes [the] court from resorting to [its] 1 Based on the factual record before it, the Court is unable to conclude by a preponderance 2 of the evidence that sanctions are warranted.4 There are material conflicts of fact regarding 3 whether Smahi had any duty to preserve the electronically stored information given ST's supposed 4 requests to Smahi to delete the retained documents and Smahi's claimed belief that all of the 5 documents at issue with respect to ST's counterclaim had already been provided to his attorneys 6 for production to ST's counsel.

There are also material conflicts of fact about whether the 7 electronically stored information was lost because Smahi failed to take reasonable steps to 8 preserve it in light of the hacking that Smahi purportedly experienced. Likewise, the Court is 9 unable to determine whether Smahi possessed the requisite intent required by Rule 37(e)(2) to 10 impose terminating sanctions because this requires a credibility determination that the Court is 11 unable to make on the record before it.

In order for the Court to determine whether sanctions are 12 warranted, further factual development, such as a deposition of Smahi by ST, is necessary, and the 13 Court will likely require an evidentiary hearing including testimony from Smahi. See *Leon v. IDX 14 Sys. Corp.*, 464 F.3d 951, 956 (9th Cir. 2006) (noting that deposition of the purported spoiler and 15 an evidentiary hearing took place before the district court decided the motion).

16 Accordingly, the Court denies ST's motion without prejudice to its resubmission following 17 further factual development. The Court notes, however, that even if ST meets the requirements for 18 sanctions under Rule 37(e), "the fact that Rule[] 37(e) authorizes sanctions does not mean that 19 20 4 The Court grants ST's motion to strike Smahi's separately filed evidentiary objections because 21 they do not comply with Civil Local Rule 7-3(a), which requires such objections to be incorporated into the party's brief.

The Court notes, however, that Smahi also raised the crux of 22 those objections in his opposition brief, such that they are therefore properly before the Court. See *PNY Techs., Inc. v. SanDisk Corp.*, 2014 WL 1677521, at *2 n.4 (N.D. Cal. Apr. 25, 2014). Smahi 23 argues that ST's motion is inappropriately based on inadmissible evidence including (1) the declaration of ST's litigation counsel, who Smahi argues lacks personal knowledge and expertise; 24 and (2) the forensic investigation report, which Smahi argues is hearsay not accompanied with a declaration.

Whether or not these documents would be admissible on their own for the purposes of 25 the current motion, ST attached properly admissible evidence to its reply, including (1) a revised declaration of ST's litigation counsel asserting personal knowledge and including email 26 attachments; and (2) a declaration by the forensic investigator.

The Court exercises its discretion to allow this evidence because it is consistent with the evidence presented in ST's original motion. 27 See *Hodges v. Hertz Corp.*, 351 F. Supp. 3d 1227, 1249 (N.D. Cal. 2018) (citing *Edgen Murray Corp. v. Vortex Marine Constr., Inc.*, 2018 WL 4203801, at *3 (N.D. Cal. June 27, 2018)).

The 1 sanctions must be imposed. The Court retains discretion to determine what sanctions, if any, are 2 warranted." *Fast v. GoDaddy.com LLC*, 340 F.R.D. 326, 353 (D. Ariz. 2022). The committee 3 notes to Rule 37(e) expressly note that the "[t]he remedy should fit the wrong, and the severe 4 measures authorized by [Rule 37(e)(2)] should not be used when the information lost was 5 relatively unimportant." Fed.

R. Civ. P. 37(e), advisory committee notes to 2015 amendment. 6 Applying this principle, the Court is skeptical that terminating sanctions with respect to Smahi's 7 affirmative claims would be appropriate even if ST ultimately proves spoliation.5 8 II. ST's motions to seal are granted in part and denied in part. 9 ST asks the Court to seal various documents submitted in support of its motion and 10 Smahi's opposition to its motion.

11 The public has a longstanding and well-recognized "right to inspect and copy public 12 records and documents, including judicial records and documents." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). Public access bolsters "understanding of the judicial process" and 14 "confidence in the administration of justice," and it provides a "measure of accountability" for 15 courts.

Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096 (9th Cir. 2016). There is 16 thus a "strong presumption in favor of access" to court records. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). 18 To overcome this strong presumption, a party who wishes to seal a court record must 19 generally "articulate compelling reasons supported by specific factual findings... that outweigh 20 the general history of access and the public policies favoring disclosure." *Kamakana*, 447 F.3d at 21 1178–79 (cleaned up).

Sealing may be justified when "court files... become a vehicle for improper 22 purposes, such as... to gratify private spite, promote public scandal, circulate libelous statements, 23 5 Contrary to ST's arguments, the facts in *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 956 (9th Cir. 24 2006), are distinguishable from those here.

In *Leon*, the Ninth Circuit affirmed as not an abuse of discretion the district court's issuance of case terminating sanctions against an employee who 25 spoliated evidence by wiping 2,200 files off his company computer, some of which the employee admitted included pornography downloaded to the company computer in contravention of 26 corporate policy. *Id.* at 959.

This evidence bore directly upon the affirmative claims in *Leon*. Though ST argues that the destroyed evidence in this case might have related to Smahi's 27 residency, medical condition, and

efforts to mitigate damages, the relationship of the alleged 1 or release trade secrets.” *Jd.* at 1179. But without more, the “fact that the production of records 2 || may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation” does not 3 || merit sealing.

Jd. “Under this stringent standard,” the Court must “conscientiously balance the 4 || competing interests of the public and the party who seeks to keep certain judicial records secret.” 5 *Auto Safety*, 809 F.3d at 1096-99. Civil Local Rule 79-5(c)(1) and (f)(3) requires the party 6 || seeking to seal to provide “a specific statement” of the reasons for doing so, explaining the 7 interests that warrant sealing and the injury that will otherwise result.

8 The Court finds compelling reasons for and grants ST’s sealing requests at Dkt. Nos. 53 9 || and 65. The Court grants in part ST’s sealing request at Dkt. No. 61 as to the proposed Exhibit B 10 || Erlewine declaration redactions but denies the rest of its request because ST does not offer 11 compelling reasons to seal public documents, Smahi’s discussion of public documents, and other 12 || nonconfidential items.

Within 14 days, the parties shall file on the public docket each of the 13 documents previously filed under seal with only those redactions permitted by this Order. 14 IT IS SO ORDERED. a 16 Dated: March 31, 2025 P. Casey PMtts 19 United States District Judge 20 21 22 23 24 25 26 27 28