

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Graham v. Honeywell International Inc.

Graham · No. 3:23-cv-04865-RFL (KAW) · Decided October 10, 2025

OPINION

Graham v. Honeywell International Inc.

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 MAXWELL A. GRAHAM, Case No. 3:23-cv-04865-RFL (KAW) 8 Plaintiff, ORDER
GRANTING IN PART AND

DENYING IN PART PLAINTIFF'S

9 v. MOTION FOR SANCTIONS FOR

FAILIURE TO PRESERVE ESI

10 HONEYWELL INTERNATIONAL INC.,

Re: Dkt. No. 79 11 Defendant. 12 13 On July 4, 2025, Plaintiff Maxwell A. Graham filed a motion
for sanctions against 14 Defendant Honeywell International Inc. for failure to preserve
electronically stored information 15 (“ESI”) under Federal Rule of Civil Procedure 37(e). (Pl.’s
Mot., Dkt. No. 79.) Discovery 16 disputes in this case have been referred to the undersigned. 17
On October 2, 2025, the Court held a hearing, and, for the reasons set forth below, 18 GRANTS
IN PART AND DENIES IN PART the motion for sanctions and RECOMMENDS that 19 the
presiding judge instruct the jury of the spoliation by way of a short factual statement.

20 I. BACKGROUND

21 Plaintiff was employed by Defendant as a senior sales manager from 2019 until his 22
termination effective September 2022. (See First Am. Compl., “FAC,” Dkt. No. 43 ¶¶ 7, 23.) On
23 August 31, 2022, Honeywell notified Plaintiff that his employment was terminated, and, on
that

24 same day, Plaintiff sent David Bach, the executive he reported to, and Honeywell’s HR 25
department an email message requesting the following: “Please do not destroy any documents, 26
emails, saved files or pictures in my system.” (8/31/22 email from A. Graham to D. Bach, Decl. of
27 Maxwell A. “Andy” Graham, “Graham Decl.,” Dkt. No. 79-1 ¶ 4, Ex. A.) On September 1,
2022, 1 hold and are required to send back your devices to our litigation department.” (9/1/22
email from 2 L. Brafford to A. Graham, Graham Decl. ¶ 5, Ex. B.) 3 On September 9, 2022,
Plaintiff met Tim Lasko, Honeywell’s Senior Program Manager, at 4 Graham’s Honeywell office

in Roseville, California, where he handed his laptop and cellphone to 5 Mr. Lasko. (Graham Decl. ¶ 2.) Plaintiff looked in the office for agreements he had signed with 6 Honeywell and other hard-copy documents that he kept in his office, but the desk drawers and 7 filing cabinets in his office were empty. (Graham Decl. ¶ 3.) 8 On December 2, 2022, Plaintiff's attorneys sent Ms. Brafford a letter informing Honeywell 9 that it "is a potential party to litigation and, as such, has a duty to preserve information that may be 10 relevant to our client's potential claims, or that may lead to the discovery of relevant evidence." 11 The letter directed Honeywell to preserve "data in all forms," including "documents saved on 12 computer hard drives or on cloud servers or related devices, documents and text messages stored 13 on cell phones and data relating to the use of cell phones...." (Decl. of E. Jeffrey Banchero, 14 "Banchero Decl.," Dkt. No. 79-5 ¶ 5, Ex. G.) 15 This order assumes that the reader is familiar with the facts of the case and the parties' 16 legal arguments. In sum, while Plaintiff returned his company-issued laptop and cellphone, the 17 contents of those devices were not produced in discovery. After months of back and forth, Mr. 18 Lasko underwent deposition on April 10, 2025. (Pl.'s Lasko Dep., Banchero Decl. ¶ 3, Ex. E.) At 19 deposition, Mr. Lasko confirmed that he took the laptop and cellphone Graham handed to him and 20 put them in another office where he was storing laptops from other employees. (Pl.'s Lasko Dep. 21 at 22:18-23:24.) Mr. Lasko further testified that, to his knowledge, Plaintiff's laptop remained in 22 that locked office until the Roseville location closed in June 2024, and IT took custody of the 23 devices stored therein. (Pl.'s Lasko Dep. at 26:7-23.) 24 During the deposition of Defendant's Rule 30(b)(6) designee on the ESI retention issue 25 and missing data, it became apparent that the data was lost. (See Pl.'s Sawvell Dep., Banchero 26 Decl., Ex. F at 70:24-73:11.) The corporate witness testified that, Honeywell sent out a laptop 27 believed to be Plaintiff's to its vendor for forensic collection, but despite Plaintiff's name on the 1 Clawson, "Clawson Decl.," Dkt. No. 84-1 ¶ 4, Ex. 3 at 112:5-113:9, 119:4-12, 120:5-14.) The 2 vendor did not receive a cell phone under Plaintiff's name. (Def.'s Sawvell Dep. at 121:16-122:5.) 3 On July 4, 2025, Plaintiff filed the instant motion for sanctions. (Pl.'s Mot., Dkt. No. 79.) 4 On July 18, 2025, Defendant filed an opposition. (Def.'s Opp'n, Dkt. No. 84.) On July 25, 2025, 5 Plaintiff filed a reply. (Pl.'s Reply, Dkt. No. 85.) On September 22, 2025, the presiding judge 6 granted in part and denied in part Honeywell's motion for summary judgment. (Dkt. No. 96.)

7 II. LEGAL STANDARD

8 Federal Rule of Civil Procedure 37(e) concerns the failure to preserve electronically stored 9 information ("ESI"). "Rule 37(e) sets forth three criteria to determine whether spoliation of ESI 10 has occurred: (1) the ESI 'should have been preserved in the anticipation or conduct of litigation'; 11 (2) the ESI 'is lost because a party failed to take reasonable steps to preserve it'; and (3) '[the ESI] 12 cannot be restored or replaced through additional discovery.'" Porter v. City & Cnty. of San 13 Francisco, No. 16-CV-03771-CW (DMR), 2018 WL 4215602, at *3 (N.D. Cal. Sept. 5, 2018) 14 (quoting Fed. R. Civ. P. 37(e)). If these criteria are satisfied and there is "prejudice to another 15 party from loss of the information," the court "may order measures no

greater than necessary to 16 cure the prejudice.” Fed. R. Civ. P. 37(e)(1). 17 If, however, the court finds that “the party acted with the intent to deprive another party of 18 the information's use in the litigation,” the court may impose more severe sanctions, including an 19 adverse inference jury instruction or terminating sanctions. Fed. R. Civ. P. 37(e)(2). “Unlike Rule 20 37(e)(1), there is no requirement that the court find prejudice to the non-spoliating party under 21 Rule 37(e)(2).” Porter, 2018 WL 4215602, at *3. Intent, in turn, requires more than “[n]egligent 22 or even grossly negligent behavior.” Fed. R. Civ. P. 37 advisory committee's note (2015). Rather, 23 “courts have found that a party's conduct satisfies Rule 37(e)(2)’s intent requirement when the 24 evidence shows or it is reasonable to infer, that a party purposefully destroyed evidence to avoid 25 its litigation obligations.” Porter, 2018 WL 4215602, at *3.

26 III. DISCUSSION

27 Plaintiff moves for sanctions based on Defendant’s failure to preserve the contents of his 1 requests that the jury be given a short factual statement, an adverse jury instruction, and that he be 2 awarded reasonable attorneys’ fees and costs. (Pl.’s Mot. at 21-22.) 3 A. Hard copy files 4 As an initial matter, as Defendant notes in opposition, hard copy files are not electronically 5 stored information, so Rule 37(e) does not apply. (Def.’s Opp’n at 12.) In reply, Plaintiff argues 6 that Rule 37 permits sanctions pursuant to the court’s inherent power. (Pl.’s Reply at 7 (citing 7 Leon v. IDX Sys. Corp., 464 F.3d 951, 958 (9th Cir. 2006)).) Plaintiff’s motion, however, was 8 brought purely under Rule 37(e), so while this may be true, the Court declines to consider new 9 issues raised for the first time in the reply brief. See Cedano-Viera v. Ashcroft, 324 F.3d 1062, 10 1066 n. 5 (9th Cir. 2003). 11 Thus, the Court finds that the alleged destruction of Plaintiff’s hard copy files does not 12 warrant sanctions under Rule 37(e), because they are not ESI, and denies the motion as to the 13 office files. 14 B. Cellphone and Laptop records 15 With respect to the three criteria for finding spoliation, the parties do not meaningfully 16 dispute that the cellphone and laptop should have been preserved due to the litigation hold. 17 Honeywell’s argument that all data on Plaintiff’s company laptop was stored on his OneDrive 18 account, rendering that information available for discovery in this litigation simply defies logic. 19 (See Def.’s Opp’n at 13.) Without access to the laptop, there is no way to confirm that the 20 OneDrive files consisted of all files saved to the laptop. In fact, Defendant’s corporate 21 representative testified that there was no way to validate whether there was any unique data on the 22 laptop despite indications that OneDrive may have synced the documents on his computer’s 23 Desktop. (See Pl.’s Mot. at 14 (citing Pl.’s Sawvell Dep. at 78:24-79:24.) There is no dispute that 24 none of the cellphone data was preserved, and Honeywell concedes that any text messages, 25 including exchanges solely between Plaintiff and Mr. Bach, cannot be recovered. (See Def.’s 26 Opp’n at 13.) 27 Since the laptop and cellphone information should have been preserved, the Court must 1 preserve it.” Fed. R. Civ. P. 37(e). The Court finds that the record indicates that Defendant failed 2 to take reasonable steps to preserve the information by failing to ensure that the correct laptop was 3

retained and sent out for forensic collection— but that there is no evidence of intent to destroy the 4 evidence. While the mishandling of the laptop and cellphone may constitute gross negligence, 5 there is not enough evidence to show or reasonably to infer that the data was purposefully 6 destroyed. See Porter, 2018 WL 4215602, at *3. 7 Based on the record, the Court cannot find that there was no prejudice to Plaintiff. “For a 8 finding of prejudice under Rule 37(e)(1), the Court has discretion to determine whether the loss of 9 the information is prejudicial; neither party carries a burden of proving or disproving prejudice.” 10 Chinitz v. Intero Real Est. Servs., No. 18-CV-05623-BLF, 2020 WL 7389417, at *2 (N.D. Cal.

11 May 13, 2020). Here, as the Court previously found, “Plaintiff has identified types of files... that

12 have not been produced, including communications pertaining to his contract, as well as calendar 13 events, notes, and an Excel spreadsheet¹ estimating his commission for a transaction at issue in 14 this lawsuit that were located on his laptop but may not have been backed up to his OneDrive.” 15 (4/24/25 Order, Dkt. No. 75 at 3; see also Pl.’s Mot. at 16-17.) Moreover, Plaintiff has shown 16 prejudice in the missing text messages pertaining to his communications with Mr. Bach regarding 17 his planned retirement date because they are relevant to his remaining age discrimination claim.² 18 (Pl.’s Mot. at 16-17.) At the hearing, Plaintiff further argued that he used text messages to 19 communicate with Mr. Bach regarding his employment, including what compensation he might be 20 owed. Given the prevalence of text messaging, this argument is well taken. While Honeywell 21 argues that the OneDrive files can be produced through additional discovery, there is no way to 22 determine that the data contains all files from the missing laptop, and defense counsel conceded 23 this point at the hearing. (See Def.’s Opp’n at 12-13.) Furthermore, Honeywell concedes that the 24 text messages cannot be recovered. Thus, Plaintiff was prejudiced by the loss. 25 26 1 At the hearing, Defendant argued that an Excel spreadsheet created by Plaintiff would not be admissible, but the standard for relevancy in discovery and admissibility at trial are different, so 27 this argument is not well taken. 1 Even so, the Court finds that an adverse jury instruction is not warranted because there is 2 || no evidence that Defendant intentionally spoliated the data. Thus, the Court recommends a jury 3 instruction consisting of a short factual statement regarding the spoliation of this evidence. The 4 || statement should inform the jury that Defendant had a duty to preserve the data on Plaintiff’s 5 company-issued laptop and cellphone, but that despite this duty, information, including text 6 messages between Plaintiff and his supervisor, David Bach, are no longer available. See Resolute 7 Forest Prods., Inc. v. Greenpeace Int’l, No. 17CV02824-JST (KAW), 2022 WL 16637990, at *10 8 (N.D. Cal. Nov. 2, 2022), report and recommendation adopted, No. 17-CV-02824-JST, 2023 WL 9 4311255 (N.D. Cal. Apr. 10, 2023) (denying request for adverse jury instruction, but 10 || recommending a jury instruction consisting of a factual statement regarding spoliation).

11 IV. CONCLUSION

12 For the reasons stated above, the Court GRANTS IN PART AND DENIES IN PART 5 13 ||

Plaintiff's motion for sanctions and RECOMMENDS a jury instruction consisting of a short 14 ||
factual statement that Defendant had a duty to preserve Plaintiff's laptop and cellphone, and that 3
15 despite this duty, information, including text messages between Plaintiff and his supervisor,
David 16 || Bach, are no longer available. 3 17 The Court also finds that Plaintiff is entitled to an
award attorneys' fees, namely the 18 || reasonable fees incurred from meeting and conferring on
all document requests pertaining to the 19 laptop and cellphone records and any evidence, the
noticing, preparation and conducting the Rule 20 || 30(b)(6) depositions concerning defendant's
duty to preserve, and related matters, including meet- 21 and-confer efforts, as well as the time
spent on the motion for sanctions. 22 The parties shall meet and confer as to the attorneys' fees
amount. If the parties are unable 23 || to come to an agreement, Plaintiff shall file his motion for
attorneys' fees within 30 days of this 24 || order. 25 IT IS SO ORDERED. 26 Dated: October 10,
2025 ' 28 United States Magistrate Judge