IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TEWANA MITCHELL,	:	
	:	
Plaintiff,	:	**CIVIL ACTION FILE NO.**
	:	**1:15-cv-03814-AJB**
v.	:	
	:	
RELIABLE SECURITY, LLC,	:	
	:	
Defendant.	:	

O R D E R

This matter is presently before the Court for resolution of a dispute between the parties over the production of electronically stored information ("ESI"), specifically, whether ESI should be produced in native format or PDF format.[1] On April 6, 2016, the Court held a teleconference wherein the parties presented their positions. [Doc. 15]. During the teleconference, the Court ordered that by April 25, 2016, Defendant was to file a status report estimating the size of the production and the cost differential between native and PDF production. [*Id*.]. Plaintiff had through May 6, 2016, to file a response. [*Id*.].

[1] The issue was raised in the parties' Joint Preliminary Report and Discovery Plan, [Doc. 13 at 9], and, as is the Court's preference, the Court ordered a discovery teleconference in lieu of receiving a motion to compel or motion for protective order, [Doc. 14 at 1-2].

In the subsequently filed status report, Defendant estimates that the volume of potentially relevant ESI is 3GB. [Doc. 21 at 2]. Defendant further represents that it will cost approximately $3,000 more to process and produce 3GB of ESI in native format than it would in PDF format, "comprised of a flat rate of $2,000 for ESI processing and production, plus approximately $1,000 for hourly paralegal time ($150/hour) to manage the production of native emails and Excel spreadsheets." [*Id*.]. Defendant also argues that the damages in the case, absent attorneys' fees, "are likely less than $10,000," and that the additional cost for native production of the ESI is therefore unreasonable. [*Id*.].

In response, Plaintiff contends that because Defendant asserts that it did not assign her shifts not due to her pregnancy but instead due to lack of shift availability and because the emails and spreadsheets supporting the defense theory are susceptible to *post hoc* manipulation, the production of emails and Excel spreadsheets in native format, with retention of metadata, is necessary in this case. [Doc. 22 at 2-4]. She also argues that Defendant's statement regarding the estimated additional costs to produce native files rather than PDF files is insufficient because Defendant did not explain how it arrived at the estimated cost it provided, did not provide an actual estimate from an ESI expert or vendor, and did not explain its contention that production of emails and

spreadsheets in native format would require more paralegal time to manage the production of native emails; because defense counsel's own marketing communications suggest that it employs discovery management software commonly used to streamline ESI production; because there are other free or low-cost means of production of the native files; and because Plaintiff's counsel has offered to assist in downloading emails in electronic format to minimize costs and avoid the retention of an expert or vendor to do the same. [*Id*. at 4-7]. Plaintiff also contends that Plaintiff's compensatory and punitive damages could range from $50,000 to $300,000, plus lost wages and benefits and reasonable attorneys' fees and costs. [*Id*. at 7-8].

On Friday, May 20, 2016, Plaintiff's counsel, representing that she was acting with consent of Defendant's counsel, contacted the Court to ask the status of the Court's decision regarding the dispute. When asked, Plaintiff's counsel further represented that neither party sought to file additional briefing.

With briefing complete, the Court has considered the oral arguments and the supplement briefs, and it finds in favor of Plaintiff. The Federal Rules of Civil Procedure allow for the Court to limit ESI discovery under certain conditions:

> A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom the discovery is sought must show

> that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause . . . .

Fed. R. Civ. P. 26(b)(2)(B). Here, Defendant has simply asserted that production of the files in native format rather than PDF format will require an additional expenditure of $2,000 for ESI processing and production, plus approximately $1,000 for hourly paralegal time, but it has not explained the reason for the additional costs. [Doc. 21]. Consequently, the Court remains—as it was at the time of the teleconference—at a loss to understand why the production of native documents is more costly than production of PDF files. The Court therefore finds that Defendant has not made an adequate showing that production of the native files is cost prohibitive.

Additionally, the Court finds that even had Defendant made a showing that it costs $3,000 more to produce the native files than to produce the PDF files, Plaintiff has shown good cause for the Court to order the production. While there has been no specific reason so far to believe that the emails and scheduling spreadsheets would have been modified since the time period at issue in the suit, it is not at all unreasonable for Plaintiff to wish to verify herself whether the emails or spreadsheets had been subsequently manipulated, modified, altered, or changed. Moreover, while it does appear that Plaintiff's suit is unlikely to be of an especially high dollar value, the Court

finds that the public value of allowing a civil-rights plaintiff opportunity to access information relevant and quite possibly necessary to her pregnancy-discrimination suit far outweighs the asserted $3,000 cost.

For these reasons, it is hereby **ORDERED** that Defendant produce the requested ESI in its native format with **FOURTEEN (14) DAYS** of the date of this Order. Failure to timely comply with this Order may result in sanctions, which could include the striking of pleadings.

IT IS SO ORDERED, this 23rd day of May, 2016.

ALAN J. BAVERMAN
UNITED STATES MAGISTRATE JUDGE