

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-14337-CIV-ROSENBERG/LYNCH

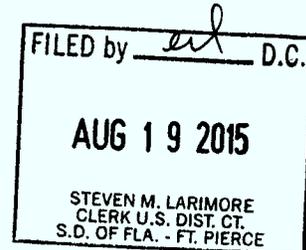
HEALTH MANAGEMENT ASSOCIATES, INC.,

Plaintiff,

v.

STEVEN SALYER, et al.,

Defendants.



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ORDER ON PLAINTIFF'S MOTION TO COMPEL FORENSIC EXAMINATION  
(DE 71)

THIS CAUSE comes before this Court upon the above Motion. The Plaintiff seeks to have a computer forensics expert to search Defendant Steven Salyer's personal computer devices and his personal email account. Having reviewed the Motion, Response, and Amended Reply, this Court finds as follows:

1. This Court begins by noting the standards that govern this dispute. First there is the obligation of a civil litigant to preserve relevant information, including electronically stored information, that is anticipated to be relevant. A civil litigant's breach of that duty opens the possibility of discovery by way of forensic examination of data storage devices. Such forensic examinations are still disfavored unless the requesting party can demonstrate a specific need for one. There are also important privacy concerns given a forensic

examination's inherent intrusiveness. This Court draws these guidelines from the case law cited by the parties, such as John B. v. Goetz, 531 F.3d 448, 459 (6th Cir. 2008), Wynmoor Community Council, Inc. v. QBE Ins. Corp., 280 F.R.D. 681 (S.D.Fla. 2012), Bank of Mongolia v. M&P Global Fin. Servs., Inc., 258 F.R.D. 514 (S.D.Fla. 2009), Klayman v. City Pages, 2014 WL 5426515 (M.D.Fla. 2014), and Brady v. Grendene USA, Inc., 2015 WL 4523220 (S.D.Calif. 2015). Simply put, the Plaintiff demonstrates here the predicate needed to warrant the extraordinary relief of forensic examination.

2. Several personal devices that might have stored data relevant to this lawsuit were lost or otherwise rendered inaccessible soon after the Defendant left his employment with the Plaintiff. He reported that his mobile phone was damaged or otherwise lost when he dropped it in (or alternatively had it on him when he jumped into) the Sebastian River. He submitted a claim against an insurance policy for a replacement phone but did not keep the old phone number. He reported that he unexpectedly lost a thumb drive on which he had saved all of his important documents. His laptop stopped working around this same time, and he thought his wife had thrown it out. The Defendant then located it after his deposition. He denied the Plaintiff's initial request to inspect it first because he said it would not start and then on his denial that it contained any relevant

information. The Defendant replaced his (temporarily) lost laptop and mobile phone with new devices. He denies having transferred (or even being able to transfer) any data to the replacement devices.

3. In addition to the above mentioned personal devices, the Plaintiff seeks a forensic examination of the Defendant's personal Yahoo email account. The Plaintiff seeks such relief given the Defendant's failure to search it for relevant information before his deposition and given the various representations he made about it that later proved inaccurate.

4. The Plaintiff makes a persuasive showing that the above devices (both old and new) and the email account are likely to contain information relevant to this litigation--- beyond speculation. The Plaintiff also makes a persuasive showing of non-cooperation by the Defendant in this regard. Thus the Plaintiff demonstrates the need for such relief. This Court finds that the Plaintiff makes a sufficient demonstration of the need for forensic examination even after taking into account the Defendant's counterargument that the Plaintiff is unfairly bringing this lawsuit against him.

5. Consequently this Court finds that the Plaintiff may conduct forensic examinations of the Defendant's old laptop (to which the Defendant already agrees), new laptop, old mobile phone, new mobile phone, and the subject thumb drive. This Court

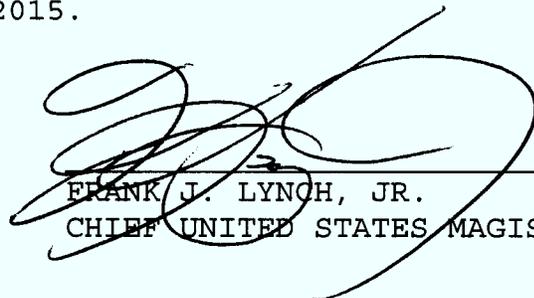
finds that the Plaintiff may conduct a forensic examination of the Defendant's personal Yahoo email account. The Defendant shall make all of these devices and his email account available for inspection.

6. Although this Court finds the Plaintiff entitled to such relief, this Court cautions the Plaintiff to give special care to the Defendant's privacy and the inherent intrusiveness of these examinations. The Defendant shall be allowed to be present and to participate. The Plaintiff shall prepare the search criteria ahead of time and shall chose search criteria that limit the scope of the search to matters directly relevant to its claims for relief. The Plaintiff shall apply the same safeguards and privacy measures that it would expect of a search of its own personal devices and personal email. Both parties agree to the Wynwood protocols, and the parties shall adhere to them. This Court trusts that the parties shall be able to carry out the forensic examinations without need for judicial intervention. Also this Court trusts that in return for the Plaintiff's due considerations of his privacy, the Defendant will give due consideration to the need to complete these forensic examinations by the overall discovery deadline of September 14, 2015.

It is therefore,

**ORDERED AND ADJUDGED** that the Motion to Compel Forensic Examination (DE 71) is **GRANTED**, consistent with the above instructions. The parties shall complete the forensic examination by the overall discovery deadline of September 14, 2015.

**DONE AND ORDERED** in Chambers at Fort Pierce, Florida, this 14<sup>th</sup> day of August, 2015.



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FRANK J. LYNCH, JR.  
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: M. Susan Sacco, Esq.  
Steven L. Schwarzberg, Esq.  
Joseph G. Galardi, Esq.