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## Judge Denies Redactions in Text Messages for Nonresponsive Content

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On December 18, 2024, Judge Gary Stein from the U.S. District Court for the Southern District of New York ordered a party to reproduce responsive text message chains in full, without redacting any nonresponsive portions. *We the Protesters, Inc. v. Sinyangwe*, 2024 WL 5154077 (S.D.N.Y. 2024). This ruling is yet another in a growing line of cases regarding the extent of discoverability of mobile data.

The parties in *We the Protesters* negotiated a discovery protocol containing specific provisions concerning the collection and review of text messages. The two sides agreed to review 24-hour transcripts of text messages where at least one message contained one of the agreed-upon search terms. The parties' agreement, however, was silent as to how responsive text chains were to be produced. The plaintiffs understood the agreement to allow them to redact the nonresponsive portions of such chains, whereas the defendants did not. Accordingly, after receiving redacted productions of text messages from the plaintiffs, the defendants moved to compel their full production.

The court first underscored the importance of clear agreements when dealing with electronic discovery, noting that the parties' lack of a comprehensive agreement led to this dispute. Without clear guidance from the parties' own discovery protocol, the court was forced to examine the applicable case law in its jurisdiction, turning to *Al Thani v. Hanke*, which held that a party must produce the entirety of a text message conversation if it contains at least one responsive message. No. 20 Civ. 4765 (JPC), 2022 WL 1684271 (S.D.N.Y. May 26, 2022). Against that backdrop, the court in *We the Protesters* found that absent clear agreement from the parties, the plaintiffs were precluded from implementing responsiveness redactions and were compelled to produce their text messages in full wherever at least one message in the 24-hour period was responsive.

This case highlights what can be gained via a thorough understanding of the potential sources of relevant information at the outset of litigation, including mobile devices. Having that knowledge can facilitate effective and specific negotiation regarding collection, review and production, including with respect to sources that tend to have a mixture of personal and business content, such as text messages, and therefore may be subject to a desire for additional protections. Any negotiated protections may fall by the wayside unless clearly and adequately memorialized in a discovery protocol or other agreement.

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