![eDiscovery Assistant — eDiscovery Begins Here]

Identifying Potential Basis for and Drafting Motion for Sanctions in Wrongful Termination Case

Plaintiffs' Employment Law Firm in California working on a contingency fee basis.

CHALLENGE

Counsel has sparse knowledge of ediscovery concepts and issues and needs to understand the law on sanctions in California as well as the facts required to support a sanctions motion in a matter where the opposing party failed to preserve and produce key ESI despite being on notice of its duty to preserve.
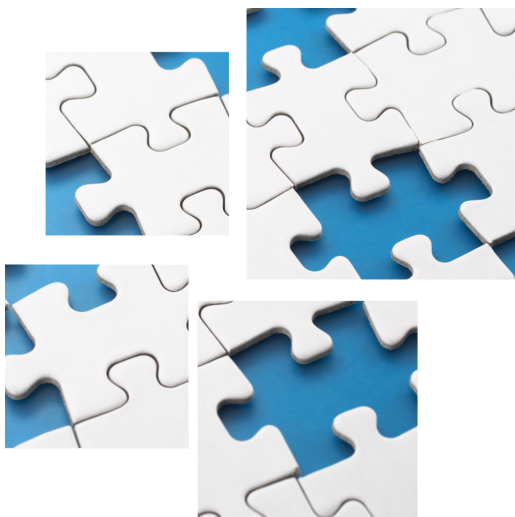
OBJECTIVES

- Understand and evaluate the likelihood of a sanctions motion by reviewing case law to determine
    - when a party's duty to preserve arises under California law,
    - whether a ransomware attack 2 years after the duty to preserve arose shields a party from it's preservation and production obligations,
    - what sanctions are available for failure to produce email and mobile device data, and
    - the framework for drafting a motion for sanctions and supporting briefs and affidavits for use in a mandatory arbitration while preserving the discovery issues for a larger PAGA matter.
- Utilize the framework and case law to draft a successful motion for sanctions seeking witness and issue preclusion for failure to produce email and mobile device data.

SOLUTION/STRATEGY

Use Issue tags and search filters in eDiscovery Assistant's curated case law database to find and review relevant decisions including:

- Use Failure to Preserve issue in jurisdictions of California and 9th Circuit to identify when the duty to preserve attaches under California law; select analogous decisions and those to be distinguished and draft section of brief on duty to preserve;
- Use Failure to Produce issue and "ransomware" as search term with no jurisdiction limiter to identify decisions from across the country in which there was a loss of data due to a ransomware attack and the impact on a party's preservation and production obligations
  - Review the Map of search results; note the total number of decisions on the issue across the country for use in brief
  - Drill down into the decisions in the 9th Circuit for review
  - Go back to initial search across U.S. when facts of 9th Circuit decisions are not analogous to current case
  - Identify decision in other jurisdictions supporting argument that employer's failure to produce when duty to preserve arose in advance of ransomware attack is sanctionable
- Use "Sanctions AND Failure to Preserve" as Issue search with "wrongful termination" as search term to identify decisions listing sanctions available from across U.S.
  - View 50+ results on Map and identify that cases exist in both 9th Circuit and California state court
  - Add jurisdiction filters for California state courts and 9th Circuit to search
  - Narrow Issue search to add Exclusion of Witness or Exclusion of Evidence as potential sanctions
  - Review 2 results and draft arguments based on case law for use on motion

- Review outline of Motion for Sanctions in Checklists and Forms section of eDiscovery Assistant to create case specific outline of issues, facts and relevant law for brief and affidavit needed on motion.

KEY BENEFITS

- Time savings – eliminated several hours of research time and cost with system's ability to drill directly into case law on the issues for the motion
- Eliminated need to filter through case law to find discovery decisions; curated database means searches are hitting on relevant discovery decisions
- Eliminated need to know search terms or language court uses in sifting through case law
- Ability to use case law and checklist to outline motion

CONCLUSION

eDiscovery Assistant allowed the Firm to get to the case law needed to understand the appropriate sanctions available under California law based on the facts of the case. We also saved hours of time by leveraging the issue tagging in the platform that drove us directly to decisions on each of the individual issues we faced, and the platform allowed us to store that research in a very organized fashion with the Cite Lists that we shared within our case team. With so many open tasks and issues, leveraging eDiscovery Assistant paid for its annual cost several times over on just one motion.

Ready to Learn More?
Visit ediscoveryassistant.com or email
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