

Evolution of Documents Appendix A: Recommended Case Law Summaries

APPENDIX A

PRESERVATION

Failure to Preserve Collaboration Application Data

[Waymo LLC v. Uber Techs., Inc.](#), 2018 U.S. Dist. LEXIS 16020, 2018 WL 646701 (N.D. Cal. Jan. 29, 2018) (William Alsup, US Dist. J.) SLACK

This is a case for trade secret misappropriation in which plaintiff accused defendants of myriad instances of intentional spoliation and other litigation misconduct, including deletion of Slack records. In footnote 2, the Court says: “Slack is a collection of tools and services — including, for example, chat messages — used to facilitate communication and collaboration in a digital workspace.” The Court granted sanctions, including the instruction to inform the jury that Uber deliberately concealed its destruction of evidence and other relief. The Court reserved the possibility of an adverse-inference instruction pursuant to FRCP 37(e) based on Uber's spoliation of evidence.

[Kelley v. BMO Harris Bank N.A. \(In re Petters Co.\)](#), 606 B.R. 803, 2019 Bankr. LEXIS 2001, 2019 WL 5109866 (U.S. Bankr. Ct. D. Minn. Jul. 1, 2019) (Kathleen H. Sanberg, US Bankr. J.) LOTUS NOTES

In this bankruptcy matter, the issue was whether the bank intentionally or in bad faith destroyed or failed to preserve electronically stored information (ESI) on computer backup tapes that contained relevant information that it had a duty to preserve. M&I employees used a Lotus Notes email platform. The Lotus Notes team replicated the email data from all of the regional servers onto the two remaining centralized servers in Milwaukee and Brookfield, Wisconsin. Final backup tapes were then created from each regional server. The Minnesota tapes were destroyed sometime between October 2010 and January 2011, despite litigation holds and an Injunction Order requiring preservation. The person responsible for overseeing the destruction (decommissioning) project, admitted to receiving and knowing about the litigation holds. Despite the litigation holds, counsel was not consulted prior to the destruction. Based on the record and evidence available, the court found that Defendant intentionally destroyed and failed to preserve the Minnesota email backup tapes in bad faith to deprive Plaintiff of their use in this adversary proceeding, and the court ordered sanctions under both Rule 37(e)(1) and 37(e)(2).

MOTIONS TO COMPEL DISCOVERY

Motion to Compel re Production of Collaboration Application Data GRANTED

[Twitter, Inc. v. Musk](#), 2022 Del. Ch. LEXIS 219, 2022 WL 4095542 (Del. Chan. Sep. 7, 2022) (Letter Opinion) (Kathleen St. Jude McCormick, J) SLACK

This decision resolves the Motion to Compel Production of Slack Messages filed by Defendants Elon R. Musk, et al., ("Defendants") against Twitter in this Delaware Chancery Court action. Negotiations between the parties on scope of Slack discovery broke down. Defendants effectively abandoned their initial demand of 42 custodians in favor of a request only eight. Following Plaintiff's August 5 offer to provide text

messages from three custodians, Defendants countered on August 16 with a list of 42 "Messaging Platform Custodians." Defendants' proposal "governed the review of any messages sent or received by Plaintiff's document custodians on any messaging device and/or messaging platform" used by each of the Messaging Platform Custodians and identified "Slack" as a "Messaging Platform." Plaintiff rejected the counterproposal, and Defendants responded with a new proposal on August 18.¹⁰ Defendants' counsel stated that their new proposal "limits the number of Messaging Platform Custodians," and the proposal did indeed trim the initial list of 42 individuals down to eight. The August 18 proposal also preserved the "Messaging Platform Custodians" language from Defendants' August 16 proposal, including the specific reference to Slack as a "Messaging Platform." In response to the August 18 proposal, Plaintiff countered with an offer of six custodians, and Defendants responded again by demanding eight. Both of these proposals included the same language explicitly including Slack in the Messaging Platforms at issue. On August 23, Defendants changed tack and demanded that Plaintiff produce Slack messages from all 42 custodians. Defendants argue that they always wanted 42 Slack custodians. They contend that Plaintiff represented that Plaintiff was collecting and reviewing Slack messages from a broader set of custodians, and that was true early in the process. But Plaintiff's representations came before Defendants proposed and negotiated a protocol for Messaging Platform Custodians demanding a far narrower set of Slack custodians. Defendants' explanation for those later communications was that they "inadvertently failed to remove" the language. The Court was unimpressed with Defendants' argument and ordered that the Plaintiff produce discovery from the 8 custodians that was last requested. The court stated that generally, parties should be able to offer compromise positions without prejudicing their right to move for the full scope of relief to which they are entitled, but that is not what happened. Defendants gave Plaintiff the impression that they were seeking limited Slack custodians, only to then say that they never meant it.

Plaintiff was ordered to produce Slack messages from the two additional custodians proposed by Defendants: Egon Durban and Vijaya Gadde. This production may be provided pursuant to an agreement between the parties in line with this court's "quick peek" proposal made prior to oral argument. Alternatively, Plaintiff may review the messages and provide responsive documents to Defendants. The parties were ordered to meet and confer as to the manner of production and any related issues raised by this ruling.

On the issue of burden, the court [again] noted the substantial disparity in the discovery burden placed upon the warring factions. Plaintiffs have much more of the burden of production, and the Court was expressly hesitant to impose a large additional discovery burden on Plaintiff at this stage in litigation.

[Calendar Research LLC v. Stubhub, Inc.](#), 2019 U.S. Dist. LEXIS 65307, 2019 WL 1581406 (C.D. Cal. Mar. 14, 2019) (Suzanne Segal, M.J.) SLACK

Plaintiff alleges violations of the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836, and the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030, and numerous state law claims. While Defendants collectively produced over 23,000 documents in response to discovery, Plaintiff asserted that the production omitted "Slack" messages

from the relevant time period and that it learned of these omissions because Defendants' production contained Slack email notifications, which alert users to pending messages, but not the messages themselves. Plaintiff sought an Order requiring Defendants to produce "all relevant Slack messages" by a date certain in "JSON file format organized by Day, Date, and Conversation Group with metadata fields indicating the UserID and the date/time" and a declaration under oath from Defendants' vendor confirming that "all Block & Tackle Slack channels and messages have been searched using the parties' stipulated terms" and identifying the steps taken to perform the search. The Court Granted the Motion in part and ordered the Defendants to produce any outstanding non-privileged Slack message files, by a certain date and to have its vendor submit a declaration confirming that "all Block & Tackle Slack channels and messages" made available to it "have been searched using the parties' stipulated terms" and identifying the steps taken to perform the search. Defendants complied by beginning to produce the Slack files and represented that they will supplement that production as soon as they receive the remaining Slack files from their vendor. Plaintiff sought inherent authority adverse inference and monetary sanctions for discovery violations, which were denied by the court.

[Benebone LLC v. Pet Qwerks, Inc., 2021 U.S. Dist. LEXIS 43449, 2021 WL 831025 \(C.D. Cal. Feb. 18, 2021\)](#) (Alexander F. Mackinnon, M.J.) SLACK

The opinion states that Slack is a cloud-based software system that allows a company to organize its electronic discussions into user-defined categories called "channels." Plaintiff Benebone used Slack, as well as standard email, for its internal communications. During the parties' early discussions regarding discovery of electronically stored information, Defendants sought to include Benebone's Slack messages in the parties' Stipulated ESI Order, and Benebone took the position that Slack messages should be excluded from discovery. During a telephonic discovery conference, the Court concluded that Benebone's Slack messages are relevant, but it lacked sufficient information to determine whether Slack discovery would be proportional to the needs of the case. Accordingly, the Court ordered the parties to meet and confer further regarding possible Slack production after Benebone had obtained additional information about its Slack account and what would be required to search and produce responsive Slack messages.

As part of the meet and confer process, Benebone informed Defendants that its Slack account contains approximately 30,000 messages. Benebone also estimated that it would cost \$110,000 to \$255,000 to extract, process, and review these 30,000 messages. Based on these cost estimates, Benebone maintained that searching and producing documents from Slack would be an undue burden and would not be proportional to the needs of the case. Defendants disagreed and filed the present motion to compel.

In connection with the motion to compel, Defendants submitted a declaration from an expert who stated that he has been involved in multiple lawsuits where Slack messages have been produced. He described a number of tools that software vendors have developed to streamline review and production of Slack messages and explained how extracting, processing, and reviewing Slack messages could take place using currently available software tools. He also provided a cost estimate for doing so of \$22,000 for

Benebone to find and produce its responsive Slack messages using contract attorneys at \$40 per hour. Benebone, on the other hand, stood by its prior estimate of \$110,000 to \$255,000 based on a blended attorney rate of \$400 per hour for Slack review. Benebone did not provide a declaration from an e-discovery expert to support its conclusions or respond to the evidence from Plaintiff's expert.

Based on the evidence presented in the parties' briefing and at the hearing, the Court found that requiring review and production of Slack messages by Benebone is generally comparable to requiring search and production of emails and is not unduly burdensome or disproportional to the needs of this case — if the requests and searches are appropriately limited and focused. Defendants' evidence supports this conclusion, and Benebone has responded largely with attorney argument but no witness or declarant on the e-discovery issues. E-discovery tools are available for this process, and the Slack messages to be reviewed can be narrowed based on the channels or users likely to have responsive information given the relevant issues in this case. Accordingly, the Motion to Compel production of the Slack messages was GRANTED. The parties were further ordered to meet and confer to resolve the question of specific request categories and search methodologies to be used for identification, review and production of Benebone's Slack messages. Benebone was required before the meet and confer to provide to Defendants a list of its Slack channels, including the title and a brief description of each Slack channel, the number of messages in each Slack channel, the users associated with each Slack channel, and any other data that will assist the parties in tailoring the Slack review and production.

[Bidprime, LLC v. Smartprocure, Inc., 2018 U.S. Dist. LEXIS 222868, 2018 WL 6588574, at *2 \(W.D. Tex. Nov. 13, 2018\)](#) (Robert Pitman, US Dist. Judge) SLACK

A motion to compel discovery arose regarding evidence sought by plaintiff while seeking a preliminary injunction. GitHub and Slack were messaging platforms that Defendant SmartProcure employees used to communicate with one another and with third-party software developers. BidPrime sought "all responsive documents, including communications and documents housed in GitHub or Slack accounts." SmartProcure has agreed to produce GitHub documents to resolve that portion of BidPrime's motion. As for Slack communications, SmartProcure represented that it has produced all relevant communications other than "automated 'bot' messages related to script development that mention BidPrime." SmartProcure avered that these bot messages are not related to the pending motion for preliminary injunction without explaining why. SmartProcure does not offer any other reason that it should not have to produce the bot messages. The Court GRANTED the Motion to Compel and ordered production of the remaining Slack messages because "they may be relevant and SmartProcure has not provided a specific objection to the contrary." A party objecting to discovery must state with specificity the objection and how it relates to the request being opposed, and not merely that it is overly broad and burdensome or oppressive or vexatious or not reasonably calculated to lead to the discovery of admissible evidence. 2018 WL 6588574, at *2-3.

[Cooley v. Target Corp., 2021 U.S. Dist. LEXIS 253610, 2021 WL 6882660 \(D. Minn. Sep. 17, 2021\)](#) (David T. Shultz, M.J.) SLACK

This is a copyright infringement lawsuit in which Plaintiff Kristen Cooley contends her son created certain artwork used by Target. Plaintiff moved to compel Target to search for ESI, using the agreed search term in Target's collaboration platforms and to produce the responsive results of such searches. Plaintiff relied on the testimony of Target's 30(b)(6) witness Erickson that Target can perform searches on platforms such as SharePoint, OneDrive, Yammer, and Slack. Target argued that it failed to prepare its expert on the topic of searchability of Slack and that any search would be futile at this point because Target's retention policy automatically deletes Slack messages after 13 months, meaning any messages from 2017 or 2018 — from Ms. Davis or anyone else — were deleted. Because Target did not demonstrate that it lacked the capability to perform ESI searches of Slack, the Court ordered it to do so. The Motion to Compel was GRANTED as to requiring a Slack search.

[*Gopher Media, LLC v. Spain*, 2020 U.S. Dist. LEXIS 260540 \(S.D. Cal. Aug. 24, 2020\)](#) (Karen S. Crawford, M.J.) SLACK

Plaintiff Gopher Media, LLC, alleged misappropriation of trade secrets by a former employee and a competitor. Defendants asserted that Plaintiff's response to its RFPs produced 139,311 documents, the majority of which are single-page PDFs and many irrelevant documents. Defendants complain that the documents plaintiff produced are not organized, such that it is impossible to tell which documents correspond to which document request and that Defendants over-designated trade secret information for attorney eyes only. Regarding the manner of production, plaintiff's counsel explained that the "bulk" of the 139,311 documents produced to date represent a collection of Slack messages that were initially produced to plaintiff as a data file and were not Bates-numbered.

The parties argued in the Motion to Compel and during conference with the Court over whether the Slack messages were produced as they are kept in the ordinary course or whether plaintiff was required to organize and label them as responsive to particular requests. The Court noted that where ESI is concerned, Rule 34 requires production "in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms" pursuant to Fed. R. Civ. P. 34(b)(2)(E)(ii). Counsel acknowledged at the conference that the Slack messages are normally kept (and were initially produced) as a data file, but when defendants' counsel could not open the file, the parties agreed that the Slack messages would be produced as TIFF images instead. The Court doubted that the secondary production of over 130,000 single-page images constitutes a "reasonably usable format," and plaintiff's counsel conceded that when the parties agreed to convert the data file to images, neither he nor defendants' counsel anticipated the volume of documents that would result from the conversion.

As for mass designation of trade secrets, Plaintiff's only explanation for its designation of its entire document production is that the documents in question are Slack messages and Slack was the platform on which plaintiff's employees communicated about clients. The fact that Slack was the preferred method by which plaintiff's employees communicated, however, says nothing about whether the communications contain trade secrets. Indeed, plaintiff did not persuade the Court that Slack messages are any different from emails,

memoranda, handwritten notes, or any other mode of intraoffice communication and failed to demonstrate it had a good faith basis for designating any, let alone all, of the 139,311 documents in its production "For Counsel Only."

The Court also found that plaintiff's indiscriminate designation of the totality of its document production as "For Counsel Only" was abusive and improper. The Court GRANTED the Motion to Compel and required Plaintiff to serve amended responses to defendants' Requests for Production, indicating which documents in the 139,311 document production correspond to each request and re-designate the 139,311 documents produced to date. The "For Counsel Only" designation shall be used only for the most sensitive information, consistent with the terms of the Protective Order.

[Warner Bros. Ent. Inc. v. Random Tuesday, Inc., 2021 U.S. Dist. LEXIS 250597, 2021 WL 6882166 \(C.D. Cal. Dec. 8, 2021\)](#) (Paul L. Abrams, M.J.) SLACK

Plaintiff asserted that certain discovery -- such as Facebook messages and communications from the "Slack" instant messaging platform - was produced in an unreadable format and therefore is "virtually useless." Defendant failed to produce relevant discovery that it promised to produce. While defendants encountered technical challenges when attempting to download Facebook and Slack messages that delayed the discovery production, it appeared from defendants' representations at the time of the Motion to Compel hearing that such problems have been resolved. Accordingly, the Court GRANTED in part plaintiff's Motion to Compel. Defendant RTI was ordered to produce in readable format all non-privileged, responsive Facebook and Slack communications. To the extent necessary, plaintiff was ordered to consult with defendants and/or defendants' e-discovery vendor to resolve any difficulties in production. Defendant RTI was required to confirm compliance with the production in a declaration signed under penalty of perjury by a corporate representative.

[Mobile Equity Corp. v. Walmart Inc., 2022 U.S. Dist. LEXIS 1135, 2022 WL 36170 \(E.D. Tex. Jan. 4, 2022\)](#) (Roy S. Payne, M.J.) SLACK...GITHUB...JIRA

The hearing that gave rise to this opinion and order involved multiple motions to compel by MEC, including a reopening of a Motion to Compel hearing on MEC's first Motion to Compel dealing with three collaboration software applications. The opinion displays some frustration on the part of the Court with the resistance displayed by Walmart in producing eDiscovery pursuant to the Court's previous order on the First Motion to Compel. MEC's Motion to Reopen Hearing on its First Motion to Compel was GRANTED. Plaintiff moved to compel Walmart to produce additional GitHub source code information, Slack channels, and additional JIRA documentation. The Court expressed concern "about the continuing resistance—and perhaps defiance—Walmart has shown with respect to the full production of its source code and accompanying documentation." The Court previously ordered "Walmart to produce any source code contained in the "Store Services" module. Walmart apparently did not. Plaintiff demonstrated that there is additional source code in the "Store Services" module that Walmart failed to produce, despite this Court's order.

Walmart was ordered to export all code in the "github" directory for "Store Services." and to produce all JIRA documents described by Plaintiff at this hearing in native format. Also, there were roughly forty Slack channels Plaintiff identified as relevant. The Court indicated that it was sensitive to the burden that Walmart would incur if all forty channels are ordered to be produced, so the parties were ordered to meet and confer and narrow the list of forty channels. The Court was hesitant to place a limit on the number of channels that were to be produced but indicated that the Court would resolve any dispute remaining after the parties' meet and confer efforts.

Note: GitHub is a web-based platform where users can host document repositories. It helps you facilitate easy sharing and collaboration on projects with anyone at any time. GitHub also encourages broader participation in open-source projects by providing a secure way to edit files in another user's repository. A GitHub repository can be used to store a development project. It can contain folders and any type of files (HTML, CSS, JavaScript, Documents, Data, Images). A GitHub repository should also include a license file and a README file about the project. A GitHub repository can also be used to store ideas, or any resources that you want to share.

JIRA is commonly used to track bugs of a particular application and to track issues relating to software use. Others also use this product for project management purposes. With JIRA, users and administrators are purportedly able to assign, prioritize, and/or analyze issues that are brought about by certain bugs in the application software.

[Podium Corp. v. Chekkit Geolocation Servs., 2022 U.S. Dist. LEXIS 98197, 2022 WL 1773016 \(D. Utah Jun. 1, 2022\)](#) (Daphne A. Oberg, M.J.) SLACK

Defendants moved to compel Podium to identify by Bates number any documents it already produced in response to discovery requests. Podium argues it produced the documents as they are kept in the ordinary course of business, and it claims identifying the documents produced in response to each request would be unduly burdensome. However, Rule 34 requires that: A party must produce documents as they are kept in the usual course of business ***or must organize and label them to correspond to the categories in the request.*** When the requested documents are voluminous, the responding party has an obligation to organize the documents in such a manner that the requesting party may determine, with reasonable effort, which documents are responsive to its requests. The motion to compel was granted insofar as it seeks to compel Podium identify documents produced in response to each request. At the hearing, Podium indicated it has produced over 1400 documents comprising thousands of pages, which are organized by custodian and type of document (such as emails and Slack messages). This production is voluminous, and Podium has not shown the documents are organized in such a manner that Defendants may determine which documents are responsive to each request. Podium also has not demonstrated identifying Bates ranges produced in response to each request would cause an undue burden. Without such identification, neither Defendants nor the court can determine whether Podium has adequately responded to the discovery requests. For these reasons, Podium was ordered to identify by Bates number the documents it has produced in response to each request.

Motion to Compel re Production of Collaboration Application Data DENIED

[Milbeck v. TrueCar Inc.](#), 2019 U.S. Dist. LEXIS 165649, 2019 WL 4570017 (C.D. Cal. May 2, 2019) (Alicia Rosenberg, M.J.) SLACK

Plaintiff Milbeck alleged that Defendant TrueCar made materially false and misleading statements regarding TrueCar's reliance for business activity based on USAA's website without alerting the public of the risk and by falsely representing that USAA would be a key driver of unit and revenue growth in 2017. Relevant evidence resided on Slack channels with communications between TrueCar and USAA. TrueCar and USAA exchanged information about USAA's website redesign — an event that is at the heart of this case — through dedicated Slack channels. The Rule 26(f) conference took place and discovery opened on February 13, 2019. *Trial was set less than six months later on August 6, 2019.* The discovery requested was significant to resolution of the case. However, Defendants argued that the information in Slack may turn out to be cumulative of the emails, agendas and other electronic communications that Defendants have already produced. And, based on evidence from their eDiscovery provider, Defendants showed that the Slack data would be so extensive that it could not be processed and produced in time for discovery and trial. Defendant received 1.67 gigabytes of compressed data from Slack with no way to isolate any specific information, such as particular channels or users and limit the collection to only that data. The entire Slack data must be processed before any information can be extracted. Although it is not possible to know the volume without processing, 100 megabytes of Slack data in another matter resulted in 1.7 million messages. Applying the same metrics, 1.67 gigabytes of Slack data could generate up to 17 million messages. The initial conversion process could take three to four weeks, followed by another two or more weeks of processing time to address any conversion anomalies. The format of Slack data as extracted text means that a reviewer must scroll through the extracted text to identify the start and end of relevant conversations. There are no native files.

The upshot of Defendants' showing is that the Slack data would not realistically be available for use in discovery. Conversion and processing of the Slack data — which is necessary before any information can be extracted or any specific channel identified — will likely take at least six weeks and perhaps up to eight weeks. According to Defendants' eDiscovery provider, which has experience with Slack data, manual review will be necessary to identify the start and end of relevant conversations. Even assuming review for production could be completed in another four to six weeks after conversion and processing, the data would be available for production roughly at or close to the time of trial.

The Court determined that the burden and expense of the discovery was too great and would clearly outweigh any likely benefit given the compressed discovery and trial schedule, and the amount of discovery requested by Plaintiff that is already underway. The Motion to Compel was DENIED without prejudice and the trial was continued to allow time for discovery of the Slack data.

[Lamaute v. Power, 339 F.R.D. 29, 2021 U.S. Dist. LEXIS 93942, 2021 WL 1978971 \(D.D.C. May 18, 2021\)](#) (Royce C. Lamberth, US Dist. J.) SLACK

In this Employment Discrimination case, Plaintiff requested that the government Agency she worked for "Produce all communications—including but not limited to email, fax, memorandum, text messages, instant messages sent using third party messaging services (such as Google chat and iMessage, Slack) regarding Denise Lamaute sent to or from numerous persons and entities, to which the Agency objected based on burden, proportionality, and relevance. In its order granting relief in part, the Court narrowed the requests significantly without further mention of Slack. ESI deemed within the scope of ordered production from any of the named programs or platforms, including Slack, was presumably ordered produced.

**Motion to Compel re Production of Collaboration Application Data DENIED-
PROPORTIONALITY**

[Laub v. Horbaczewski, 2020 U.S. Dist. LEXIS 247102, 2020 WL 7978227 \(C.D. Cal. Nov. 17, 2020\)](#) (Karen L. Stevenson, M.J.) SLACK

Plaintiff Laub brought this action on several breach of contract claims against Nicholas Horbaczewski and Drone Racing League, Inc. ("Defendants"). In the Motion to compel and for spoliation sanctions, the parties dispute whether Plaintiffs are entitled to five categories of discovery, including messages stored on the Slack instant messaging platform. In August 2018, the Court held that because the ESI housed at Slack.com was not within the possession, custody, and control of DRL, Defendants were not obligated to produce Slack messages in response to Plaintiffs' RFPs. The Court instructed Plaintiffs to pursue the Slack messages through third party subpoenas, and held that its ruling was without prejudice to Plaintiffs' ability to seek further discovery from Defendants related to the Slack information at a future date. Slack objected to the subpoena, citing the Stored Communications Act ("SCA"). Plaintiffs argued that they are entitled to the responsive Slack messages because the messages were relevant; that Defendants may now have access to the messages and Defendants may be able to provide them to Plaintiffs, rather than obtaining them from Slack by subpoena, because DRL upgraded its Slack plan, which would permit it to retrieve archived messages that are responsive to Plaintiffs' RFPs; and if so, Defendants should produce those messages. Alternatively, if Defendants still cannot access the messages, Defendants should be required to consent to Slack and cooperate in its production of messages responsive to the subpoena, with Defendants remaining able to review the messages prior to production. Defendants countered that the Slack plan to which DRL upgraded did not grant them access to the messages at issue, which still remain inaccessible to DRL and Defendants argued that, Plaintiffs' request was not proportional to the needs of the case because the requested messages would be cumulative of the substantial existing record evidence concerning Plaintiffs' involvement in and contributions to DRL. Defendants state that they have already agreed to produce relevant messages sent directly over Slack's public channels, yet, Plaintiffs insisted, without ample justification, that they are entitled to the messages on the private channels as well. These additional messages, Defendants contended, would require an overly burdensome review of the messages. Defendants contended that the subpoena Plaintiffs

served on Slack was untimely overbroad in scope, prompting Defendants to decline consent and that Plaintiff did not propose a narrower scope of the subpoena that would be acceptable, and Plaintiffs had the burden to show that the information sought was relevant and proportional to the needs of the case.

*In support of their position that DRL's upgraded Slack plan granted it access to the messages sent over Slack's private channels, Plaintiffs cited Calendar Research LLC v. StubHub, Inc., 2019 U.S. Dist. LEXIS 65307, 2019 WL 1581406, at *4 (C.D. Cal. Mar 14, 2019). However, that case was distinguishable. Calendar Research LLC case presents a similar scenario to the dispute at issue—the defendants initially used a free Slack account without access to messages sent over private channels, they subsequently upgraded to a premium account that included a utility tool allowing them to extract private channel messages, and the court in that case granted the motion to compel those messages. However, in this case DRL did not upgrade to premium plan that included the utility tool at issue in Calendar Research LLC.*

The Court concluded that Plaintiffs' request for the Slack messages was not proportional to the needs of the case and Plaintiffs' request to compel production of those documents was DENIED.

Are Hyperlinked Documents Attachments?

[Nichols v. Noom Inc., 2021 U.S. Dist. LEXIS 46860, 2021 WL 948646 \(S.D. N.Y. Mar. 11, 2021\)](#) (Katherine H. Parker, M.J.) GOOGLE DRIVE...SLACK

Plaintiffs sought to "clarify" the Court's previous orders and rulings regarding Defendants' production of documents linked to Google Drive documents and Gmail communications via hyperlink. Plaintiffs contend that Noom employees frequently link to internal documents in lieu of attachments to emails or other documents. They argue that hyperlinks are akin to attachments and should be produced as part of a document "family." They argue that without metadata linking the underlying hyperlinked Noom document to the document containing the hyperlink, they will not be able to determine families of documents or that some of the hyperlinked documents may not be produced at all. Plaintiff proposed that Noom could write a program to utilize Google's Application Programming Interface ("API") to extract links to Google Drive documents from other Google Drive documents, emails, and Slack communications. They urged the Court to require Noom to re-collect Google Drive and Gmail documents so that any hyperlinked documents are also pulled as part of the document "family" or to create a program using Google's application programming interface to extract links from responsive Google Drive documents, retrieve those linked documents, and produce them as attachments. Plaintiffs estimated it will take only one to two weeks to write a program to extract the links. They do not state what the time or costs would be for processing, de-duplication, and re-review of documents. Noom opposed Plaintiffs' motion, arguing that the hyperlinks are not attachments and that it is separately collecting and producing relevant internal documents on Google Drive such that there should be no concern that Plaintiffs will not receive relevant internal documents. Noom objected to collection through both a

direct collection and a collection through hyperlinks that would dramatically increase redundancies in the collection, increase costs, and delay discovery

The issues raised by Plaintiffs raised complex questions about what constitutes reasonable search and collection methods in 2021—when older forms of communicating via emails and documents with attachments and footnotes or endnotes are replaced by emails and documents containing hyperlinks to other documents, video, audio, or picture files. It also highlights the changing nature of how documents are stored and should be collected. After fully hearing the parties' arguments, the Court held that Noom could use its preferred software to collect email documents, finding that method reasonable and deferring to the principle that a producing party is best situated to determine its own search and collection methods so long as they are reasonable. Proportionality was also a factor. Further, the Court did not agree that a hyperlinked document is an attachment. While hyperlinked internal documents could be akin to attachments, this is not necessarily so. When a person creates a document or email with attachments, the person is providing the attachment as a necessary part of the communication. When a person creates a document or email with a hyperlink, the hyperlinked document/information may or may not be necessary to the communication. For example, a legal memorandum might have hyperlinks to cases cited therein. The Court did not consider the hyperlinked cases to be attachments. A document also may contain a hyperlink to another portion of the same document. That also is not an attachment. A document might have a hyperlink shortcut to a SharePoint folder. The whole folder would not be an attachment. An email might have hyperlinks to a phone number, a tracking site for tracking a mailing/shipment, a facebook page, a terms of use document, a legal disclaimer, etc. Many of these underlying hyperlinked documents may be unimportant to the communication. The Motion was DENIED because Plaintiffs failed to show that the value of obtaining the metadata establishing the linkages for all hyperlinked documents is proportional to the needs of the case.

Families for Freedom v. U.S. Customs & Border Prot., 2011 U.S. Dist. LEXIS 113143 (S.D.N.Y. 2011) EMAIL/ATTACHMENTS

The Court found that defendants inappropriately separated “parent-child” pairs by withholding the non-responsive “parent” while producing the responsive “child”. The court found that this “created an artificial distinction between the attachments, which contain the statistics, and the emails, which solicit, provide, define, categorize, and otherwise discuss those same statistics. Context matters. The attachments can only be fully understood and evaluated when read in the context of the emails to which they are attached. That is the way they were sent and the way they were received. It is also the way they should be produced.”

S2 Automation LLC v. Micron Tech., Inc., 2012 U.S. Dist. LEXIS 120097 (D.N.M. 2012) EMAIL/ATTACHMENTS

The Court required plaintiff to produce attachments along with the email transmissions. The court cites to the advisory committee notes to Rule 34(b) for guidance: “But the option to produce in a reasonably usable form does not mean that a responding party is

free to convert electronically stored information from the form in which it is ordinarily maintained to a different form that makes it more difficult or burdensome for the requesting party to use the information efficiently in the litigation.” The court found that by separating the email from their attachments the plaintiff made “it more difficult or burdensome for the requesting party to use the information efficiently in litigation.” The court also noted that all messages that are part of a chain should be produced, noting that, as an evidentiary matter, every part of a conversation can become admissible upon the admission of other portions of a conversation. “Failing to produce an entire conversation could lead to a situation where the opposing party may feel the omission of part of a conversation in discovery is misleading. Generally parties are entitled to present an entire part of a conversation to avoid leaving the jury or factfinder with a false impression.” **[The courts reference to the entire conversation being produced can apply to both the document linked to an email AND the snapshot/running conversation issue regarding producing the entire channel of conversation or just snapshots of it for Teams/Slack/texts, etc.]**

In re Denture Cream Prods. Liab. Litig., 292 F.R.D. 120 (D. D.C. 2013)
EMAIL/ATTACHMENTS

Rule 45 mandates that documents be produced as they are kept in the ordinary course of business which applies equally to traditional hard copy documents and ESI. Courts have held that emails should be produced along with their attachments (listing cases with that holding). Defendants represented that email correspondence was produced with attachments divorced from parent emails, making it nearly impossible to identify which email corresponds with which attachment, numerous email attachments were never produced. The court found that the document production did not comply with the requirements of Rule 45.

Symettrica Entertainment, Ltd. v. UMG Recordings, Inc., 2020 WL 13311682 (C.D. Cal. 2020)
EMAIL/ATTACHMENTS

Indicating that courts in the Ninth Circuit have long recognized that an email and its attachment are one document or message unit and require the producing party to re-link the emails with the attachments and ordering plaintiffs to produce any linked attachments to emails, notwithstanding its contentions that those attachments may be irrelevant.

Judge Rotenberg Educ. Ctr., Inc. v. United States FDA, 2019 WL 1296957 (D.D.C. 2019)
EMAIL/ATTACHMENTS

The court found defendants’ withholding of non-responsive attachments troubling because they split emails and their attachments into multiple records. The court stated that “[w]hile emails and their attachments are not per se a single record, at a minimum ‘attachments should reasonably be considered part and parcel of the email by which they were sent’ when the email ‘makes explicit reference to, or includes discussion of, the missing attachments’” and cited several cases indicating that emails and attachments should be produced together.

IQVIA, Inc., v. Veeva Systems, Inc., 2019 WL 3069203 (D.N.J. 2019) GOOGLE DRIVE

Order and Opinion of the Special Master upon a Motion to Compel by IQVIA for Veeva to produce all responsive Google Drive documents that any custodian authored, edited, reviewed, accessed, or otherwise had access to, including Google Drive documents linked in emails. Veeva represented that it collected and produced all of the Google Drive documents a custodian authored, edited, or had access to. Veeva produced 2200 documents that link to documents from the Google Drive without attaching the documents from the Google drive. IQVIA argued that this is akin to producing emails without attachments which federal courts have disallowed. Veeva argued that there was no legal basis to require documents referenced in emails to be produced. Courts require that attachments to emails be produced with emails because that is how they are kept in the usual course of business. The court found that there is no dispute that linked documents are relevant to the claims or defenses. While Veeva argued that the linked documents are not stored with emails in the ordinary course of business, IQVIA has no way to link the documents, where Veeva is capable of linking the emails to the Google drive documents. The Special Master was not convinced that relinking the 2200 documents was unduly burdensome and ordered Veeva to do so.

Milgard Mfg. v. Liberty Mut. Ins. Co., 2015 U.S. Dist. LEXIS 54108 (W.D. Wash. 2015)
EMAIL/ATTACHMENTS

Court compelled defendant to produce documents in an easily accessible format when defendant failed to produce documents in a format that allows plaintiff to match emails and documents with their associated attachments and hyperlinks.

Pom Wonderful, LLC v. Coca-Cola Co., 2009 WL 10655335 (C.D. Cal. 2009)
EMAIL/ATTACHMENTS

Defendant refused to produce email attachments for 138 emails on the grounds that they had no legal obligation to re-link the emails and their attachments because it produced them in the usual course of business. The court was not persuaded, finding that the initial email that contains the attachment constitutes one responsive document or document family or message unit. Similarly, any responsive forwarding email that takes some action with respect to the attachment constitutes another responsive document or message unit. Plaintiff must have the ability to identify which attachment belongs to which emails. The court cites Sedona Conference's view of an email and attachments as one document or message unit. The court found that defendant was obligated to provide plaintiff with either the ability to re-link the emails with the attachments or re-produce the emails with their attachments. Defendant failed to make a showing of undue burden and found that even if there was a showing of burden, that "the 'fact that production of documents would be burdensome and ... would hamper the party's business operations may not be a reason for refusing to order production of relevant documents'" (citations omitted).

PSEG Power New York v. Alberici Constr., 2007 US Dist. LEXIS 66767 (N.D.N.Y. 2007)
EMAIL/ATTACHMENTS

Court was tasked with deciding whether PSEG had to reproduce 3000 emails and their corresponding attachments co-joined. After a technical glitch divorced emails from their attachments and various fruitless attempts to remarry the emails and attachments, PSEG indicated that it would cost over \$200,000 to retrieve the original emails with attachments, where the requesting party indicated that it's vendor would be able to do it for \$40,000. PSEG rejected the \$40,000 estimate because it did not want the opposing side's consultant to have access to its database. PSEG proposed that the requesting party identify the missing attachments that they needed for depositions. The court found PSEG's proposal of identifying a concise group of emails and attachments was not a fair and practical solution. The court noted that this may reveal some of the requesting party's thinking and strategy which would trample on work product. The court found the reproduction of all 3000 emails with attachments warranted.

SUBPOENAE DUCES TECUM

Motion to Compel Production of Slack Documents in Response to Subpoena Duces Tecum GRANTED

[W. Publ. Corp. v. LegalEase Solutions, LLC, 2019 U.S. Dist. LEXIS 227892, 2019 WL 8014512 \(D. Minn. Nov. 22, 2019\) \(Elizabeth Cowan Wright, M.J.\) SLACK](#)

West Publishing ("West") brought this case against LegalEase Solutions, LLC ("LegalEase") alleging breach of contract. West moved to compel production of documents from ROSS Intelligence, Inc. ("ROSS") in response to a Subpoena Duces Tecum. West sought production of responsive documents "in whatever form those documents exist," including communications from the Slack messaging application used by ROSS employees. ROSS and West also disputed how to allocate costs with respect to the production of those Slack communications, the sufficiency of the descriptions in ROSS's privilege log, and whether ROSS has properly asserted attorney-client privilege and/or work-product protection over certain documents. In its opposition, ROSS asked the Court to award the costs, including attorneys' fees, it had incurred to date in responding to the Subpoena. After two court-ordered meet and confers, ROSS and West resolved certain disputes, but disputes remained, inter alia, as to production of Slack communications and cost-shifting for the \$80,000 ROSS incurred by complying with the Subpoena and the production of Slack communications. West stated it was willing to share in some costs but maintained it is not obligated to share in the attorneys' fees incurred by ROSS in connection with its review of the Slack communications and that it needed more certainty as to costs. At the hearing, the Court ordered ROSS to provide West with a more detailed estimate with respect to the Slack costs. ROSS committed to providing West with detailed costs for producing the Slack communications. West's Motion to Compel was GRANTED insofar as it seeks production of responsive Slack communications, subject to the parties' agreement or a decision from the Court as to search terms and custodians. West and ROSS were ordered to share equally the costs of processing the Slack communications, including extracting, processing for review, de-duplicating, running search terms, and converting the results to a producible format for West. The Court ordered further that, if West and ROSS were unable to reach an agreement as to attorney's fees, ROSS may move the Court for compensation for

reasonable attorneys' fees that are necessary to its production of Slack communications after the production is complete. As to costs already incurred by ROSS, because ROSS did not provide notice to West (other than with respect to the Slack communications) before making its production, the Court denies ROSS's request for cost-shifting with respect to documents already produced by ROSS.

Motion to Limit Scope of Subpoena Duces Tecum DENIED

[*Bolus v. Carnicella*, 2020 U.S. Dist. LEXIS 32539, 2020 WL 930329 \(M.D. Pa. Feb. 26, 2020\) \(Matthew W. Brann, US Dist. J.\) MICROSOFT TEAMS](#)

In this opinion, non-party Northridge Group, Inc., moved the Court to modify a subpoena's scope, which Northridge found objectionable. The Court sanctioned the full breadth of a subpoena that defined "Document" as follows:

"Document" is used in the broadest sense possible and includes, without limitation, any and all written, printed, typed, electronically generated, electronically stored information ("ESI"), electronically recorded, graphic and/or photographic material of any kind now or at any time in your possession, custody, or control, including without limitation, drafts, drawings, diagrams, photographs, photocopies, charts, graphs, email attachments, email families, metadata where available, text messages, and messages from any social media platform or chat application (e.g. Skype, **Microsoft Teams**, WhatsApp, Facebook, LinkedIn, etc.).

SANCTIONS

Sanctions for Failure to Make Discovery

[*Red Wolf Energy Trading, LLC v. BIA Cap. Mgmt., LLC*, 2022 U.S. Dist. LEXIS 162470, F.Supp.3d , 2022 WL 4112081 \(D. Mass. Sep. 8, 2022\) \(Mark L. Wolf, US Dist Judge\) SLACK](#)

This case assesses issue dispositive sanctions for failure to timely produce ESI and is remarkable for its prognostic opening line: "As the court has repeatedly told defendants ..., this case has generated more meritorious motions to compel and for sanctions against defendants for failure to produce documents than any other case in which this court has presided in more than 37 years." In April 2022, plaintiff received additional Slack communications that should have been produced in 2019. After reviewing those documents and taking a key defendant's deposition, Red Wolf determined that it still had not received all relevant Slack messages. The case involves successive motions for sanctions involving discovery ordered by the court, successive productions with sworn claims of compliance, postponement of trial, and multiple continuances to allow compliance, and ultimate failure to produce. Not surprisingly, the Court allowed the sanctions motion and ordered drastic sanctions. The parties were being ordered to confer and report concerning what proceedings should be conducted to determine the amount of damages, and the nature of possible injunctive relief, Red Wolf should be awarded.

This is a lengthy opinion in which the Court reviews the history of discovery failures on the part of defendants, much of which deals with Slack communications. Defendant Moeller testified that Slack messages were omitted from earlier productions due to a mistake made by an independent contractor in Kazakhstan, who wrote a program to search and produce relevant Slack messages. It is apparent from the opinion that the deposition testimony disclosed that limited budget was the reason for choice of the search programmer. Moeller claimed lack of knowledge of the Slack program. Moeller also claimed that he tried and could not find any outside vendors who could do the work, but he did not disclose that, as his attorney later reported, she had at the outset of the case found a vendor who could produce an Excel sheet of messages containing Search Terms. The detail of the opinion is rich with information on the capability of searching, archiving, and producing relevant Slack messages as well as the inconsistent testimony, misrepresentations, and unconvincing excuses provided by defendants. An example of the behavior that led to the Court's basis for sanctions is as follows:

Moeller has provided changing, unconvincing explanations for why Bia did not employ an experienced vendor to search the Slack messages. Initially, Moeller claimed that in 2019 "there was no ready mechanism to export the messages so they could be produced in litigation." Nov. 9, 2021 Moeller Aff. at ¶5. This was not true and there is reason to believe that Moeller knew it was not true. His attorney has stated that in 2019 she consulted a vendor who could have produced Slack messages in an Excel spreadsheet. See Aug. 10, 2022 Tr. at 92-93. Red Wolf's expert, who has eight years of experience as a litigation data vendor, states that in 2019 defendants could have used "a standard eDiscovery processing tool" to search and produce Slack messages for a cost of about \$10,000. Duarte Aff. at ¶¶6-7. Defendants' expert, with nine years of experience as a litigation data vendor, did not refute this. Rather, he states that while his firm had not in 2019 developed its own tool to search Slack messages, it was then the firm's practice to engage third-party vendors to do that. See Amis Aff. at 516.

Moreover, both Amis and Duarte agree that, in 2019, Slack had a built-in search functionality that could be used to verify the accuracy of a Slack production based on search terms, although Amis states that the search function is not always reliable. See Amis Aff. at ¶¶17-19; Duarte Aff. at ¶¶8-9.

See 2022 U.S. Dist. LEXIS 162470 *65-66.

The opinion shows that judge Wolf had an excellent understanding of the Slack product and its use. The opinion describes Slack, Slack channels, "user profile," and archiving of Slack data. It is perhaps one of the most useful Slack opinions to date and serves as an excellent indicator of discovery responsibilities with regard to collaboration software in general and Slack in particular.

[*Cleveland v. Behemoth*, 2021 U.S. Dist. LEXIS 157985, 2018 WL 646701 \(S.D. Cal. Aug. 19, 2021\) \(Gonzalo P. Curiel, US Dist. Judge\) SLACK](#)

Plaintiff alleged a hostile work environment, sexual harassment, retaliation, wrongful termination, and related claims arising from Plaintiff's work for Defendant, a video game company. On December 23, 2020, Defendant made an untimely production of documents, including Slack chats and other items—all of which Plaintiff alleged to be responsive to RFPs. On January 11, 2021, Plaintiff filed a Motion for Evidence Preclusion and Monetary Sanctions for an untimely production of discovery, which Defendant opposed. The Magistrate Judge below issued an Order Denying Plaintiff's Motion for Sanctions.

As to the Slack discovery, Plaintiff objected to the Magistrate Judge's finding that the belated production of supplemental Slack messages was substantially justified and harmless. Defendants conceded that the supplemental Slack messages are responsive to Plaintiff's RFPs. However, Magistrate Judge Skomal concluded that Defendant's detailed explanation of the flaw in Logikcull's algorithm constituted substantial justification. Furthermore, the belated production was harmless because Magistrate Judge Skomal was not convinced that there was any basis for differentiating the supplemental Slack materials from Slack messages that had already been produced between Plaintiff and Mr. Banes. In his Motion for Sanctions, it is Plaintiff's role as the objecting party to convince this Court that Magistrate Judge Skomal committed clear error. Neither party provided the District Court Judge with the supplemental Slack messages for this Court's review. Without the messages themselves, this Court is unable to evaluate whether, and how, TRC_007806-007809 would be different from the others showing that there was clear error. Magistrate Judge Skomal found that both exceptions under Fed. R. Civ. P. 37(c)(1) applied to the supplemental Slack messages, where only one exception would be required to excuse their belated production. Even if the Court were to find that the late production of TRC_007806-007809 (and other supplemental Slack messages) were not harmless, Defendant would still be excused under the substantial justification exception. Therefore, the Court found no clear error in Magistrate Judge Skomal's conclusions regarding the supplemental Slack messages and DENIED the relief requested as to the Slack messages.

[Cleveland v. The Behemoth](#), 2021 U.S. Dist. LEXIS 101685, 2021 WL 2184852 (S.D. Cal. May 28, 2021) (Bernard G. Skomal, M.J.) (*underlying order to previous case*) SLACK

Plaintiff alleged a hostile work environment, sexual harassment, retaliation, wrongful termination, and related claims arising from Plaintiff's work for Defendant, a video game company. Plaintiff moved for sanctions for late production of certain Slack messages. Defendant argues the late production of the ten slack messages was substantially justified and not unfairly prejudicial to Plaintiff. Defendant conceded the messages are responsive to Plaintiff's RFPs.

As to substantial justification Defendant explained that Defendant spent thousands engaging Logikcull as a vendor to search more than 21,000 pages of Slack files, agreed on search terms with Plaintiff, ran the searches, and produced almost 3,000 pages of Slack messages. However, these ten Slack messages were missed because of a flaw in Logikcull's algorithm. Defendant explained in some detail how the deficiency was identified, raising it with the vendor, rerunning the agreed upon search terms after discovering the flaw, and producing the ten additional messages discovered. The Court

found the late production of the Slack messages is harmless and substantially justified. Also, based on the parties' arguments, the Court was not convinced the messages sought were distinguishable in any important respect from those messages already produced. Sanctions were DENIED as to the Slack messages.

Trigger of Duty to Preserve

[*Drips Holdings, LLC v. Teledrip LLC*, 2022 U.S. Dist. LEXIS 153668, 2022 WL 3282676 \(N.D. Ohio Apr. 5, 2022\) \(Carmen E. Henderson, M.J.\) SLACK](#)

In this Trademark infringement case, Plaintiff moved for sanctions for Defendants' spoliation of their Slack data. Teledrip used Slack as a typical mode of communication for both internal communications as well as customer communications. On October 25, 2019, Murray downloaded a portion of the Slack data, which did not include Slack channels containing internal communications. On October 28, 2019, Murray changed the retention setting of Teledrip's Slack from unlimited to seven days and deleted the previously exported Slack data. On November 26, 2019, Drips brought the instant action and the following day Teledrip received a litigation hold letter from Drips along with service of the complaint. Teledrip did not change the seven-day retention policy for its Slack communications until September 2020. The Court found that Defendants' duty to preserve the Slack data was triggered no later than August of 2019 as it was reasonably foreseeable that Defendants faced a trademark dispute with Drips at that time. Defendants asserted that their 7 day retention was instituted to protect the privacy of customers, but the Court determined there were less intrusive ways to accomplish that objective and that the failure to preserve after receiving a litigation hold letter was inexcusable. The Magistrate Judge found that Defendants had a duty to preserve the Slack data beginning in August of 2019 when it was on notice of or should have had notice of potential litigation from Drips; that Defendants failed to preserve the Slack data in order to deprive Drips of the evidence; that the deleted/lost Slack data was relevant to Drips's claims and/or defenses; and that a permissive adverse-inference instruction balances the interests of the parties and adequately punishes Defendants' culpable behavior.

[*Fast v. GoDaddy.com LLC*, 340 F.R.D. 326, 2022 U.S. Dist. LEXIS 19857, 111 Fed. R. Serv. 3d \(Callaghan\) 1535, 2022 WL 325708 \(D. Ariz. Feb. 3, 2022\) \(David G. Campbell, US Senior Dist. J.\) SLACK...TELEGRAM](#)

In this employment discrimination case, Plaintiff used evidence she saved from Slack communications in her suit against her employer. As early as May 2, 2018, while still employed at GoDaddy, Plaintiff started coordinating with a co-worker Lee Mudro to gather instant messages from her work Slack account for use in potential litigation. (May 2, 2018, message from Mudro: "So if GoDaddy deletes ours on slack between what u have saved and I have u will be good to sue"). The Court agreed that the duty to preserve arose in May 2018 when she began gathering evidence to use in a potential lawsuit against GoDaddy.

Following oral argument, the Court requested supplemental briefing from the parties on whether the Telegram Messenger messages were spoliated. Plaintiff's supplemental brief

asserted that she "cannot remember if she ever communicated with Mudro on Telegram. Plaintiff argued that "it is likely there never were Telegram messages" between her and Mudro because (1) Mudro's screenshot of the empty message inbox associated with Plaintiff's Telegram contact contained a note that read "No messages here yet," and the same note appears in Plaintiff's Telegram inbox associated with Mudro's contact; and (2) Plaintiff and Mudro "continued extensive conversations — including about deeply personal topics — on Facebook Messenger within days after Mudro stated she downloaded Telegram in June 2018, suggesting that Facebook Messenger remained their method of communication." But the Court was not persuaded by those arguments. Defendants' forensic expert avowed that the "No messages here yet" notation does not mean that messages were never sent between Plaintiff and Mudro because the same notation appears when messages have been sent and then deleted. A hallmark of Telegram is that a user can delete sent and received messages for both parties. The "No messages here yet" note is consistent with a deleted message chain. And the fact that Plaintiff and Mudro resumed communications on Facebook Messenger five days after they talked about using Telegram does not mean that they did not also exchange messages on Telegram. The evidence shows that Plaintiff and Mudro regularly switched between messaging platforms, including text, email, phone, Slack, and Facebook, rather than using one platform exclusively.

EDiscovery Protocols

[Weisenberger v. Ameritas Mut. Holding Co., 2022 U.S. Dist. LEXIS 139966, 2022 WL 3042165 \(D. Neb. Aug. 2, 2022\)](#) (Susan M. Bazis, M.J.) SLACK...MICROSOFT TEAMS...YAMMER

This matter was before the Court on the parties' Stipulation Regarding Production of Electronically Stored Information and Paper Documents. The Stipulation was approved, including the following specification for metadata in FN 1: "For electronically stored information other than email and e-docs that do not conform to the metadata listed here, such as text messages, Instant Bloomberg, iMessage, Google Chat, Yammer, Slack, Microsoft Teams, etc., the parties will meet and confer as to the appropriate metadata fields to be produced."

Note: Yammer is a Microsoft 365 collaboration tool that helps you connect and engage across an organization, start conversations, share knowledge, and build communities. Yammer is designed to connect leaders, communicators, and employees to build communities, share knowledge, and engage everyone.

Natives/Snapshots

Charter Communications Operating LLC v. Optymyze LLC, 2021 WL 1811627 (Del. Ch. 2021) - TEAMS

In a decision granting a motion to dismiss counterclaims and granting attorneys' fees, the court references some of the discovery misconduct by the defendant. The court notes that Optymyze refused request for native files of Microsoft Teams messages for which

Optimize had produced as 87,000 individual emails rather than as complete conversations. Charter's vendor stated that the messages could be reassembled into conversation but only using the native version. The court granted Charter's motions and the native files revealed extensive spoliation of evidence.

MEDICAL RECORD COLLABORATION APPLICATIONS AND PROGRAMS

[Hon. Ralph Artigliere, Chad P. Brouillard, Dr. Reed D. Gelzer, Kimberly Reich & Steven Tepler, Diagnosing and Treating Legal Ailments of the Electronic Health Record: Toward an Efficient and Trustworthy Process for Information Discovery and Release, 18 Sedona Conf. J. 209 \(2017\).](#)

PRINCIPLES RELATING TO DISCOVERY PRODUCTION METHODS

[Who Determines the Methodology for Production of ESI from Collaboration Programs? \(Sedona Principles Excerpt\)](#)