1. In Gross v. Chapman, 2020 WL 4336062 (N.D. Ill. July 28, 2020), United States Magistrate Judge Jeffrey Cole held that "discovery on discovery" is appropriate only where the requesting party can show tangible evidence of a failure by the responding party to meet its obligations, especially where such additional discovery is not proportional to the needs of the case.

As an intended bride and groom planned their wedding, a dispute arose over whether children should be invited. This led to another dispute related to surveillance in the couple's home, and, ultimately, the groom-to-be called off the wedding. The bride's family, out over $100,000 in wedding costs, sued the groom's family in federal court. Id. at *1.

During discovery, the defendants produced nearly 5,000 text messages and emails based on multiple requests from the plaintiffs. Unsatisfied with the information produced, the plaintiffs sought additional interrogatories and to depose the defendants' vendor regarding the process used to identify relevant text messages. Specifically, the plaintiffs were suspicious because there were only 28 text messages between the would-be bride and groom produced for the period following the demise of the relationship. The plaintiffs believed this was "too low" when compared with the production of text messages between the couple from the time period in which their relationship was active.

Magistrate Judge Cole disagreed: "Of course it is much lower. It covers a period after the breakup, when common experience and common sense would dictate that the number be lower." Id. at *2. He further rejected the plaintiffs' subjective distrust of the defendants' production: "It must be remembered that evaluation and analysis of cases is not determined by the tendentious speculation of necessarily interested parties but rather is guided by common sense and ordinary human experience." Id (quoting United States v. Montoya De Hernandez, 473 U.S. 531, 542 (1985) (internal quotations omitted)). In this case, nearly 5,000 texts total was "more than ample proof of the propriety of production."

Magistrate Judge Cole characterized the plaintiffs' motion as "discovery about discovery." Such discovery is appropriate only when "one party's discovery compliance has reasonably been drawn into question" so that there is "an adequate factual basis for an inquiry." Otherwise, "neither a requesting party nor the court should prescribe or detail the steps that a responding party must take to meet its discovery obligations." Id. (quoting The Sedona Conference, The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 Sedona Conf. J. 1 (2018)). Here, the plaintiffs had provided only mere speculation that based on the total number of text messages between the couple, a certain production appeared suspect. This was "the definition of speculation, and speculation is never sufficient." Id. at *3 (citations omitted). With the exception of an attachment to one text message that the plaintiffs had shown was missing, they had not provided any evidence that additional relevant messages existed.

Finally, Magistrate Judge Cole found that the discovery sought was not proportional to the needs of the case under Federal Rule of Civil Procedure 26(b)(1). "It should be obvious that given what this case is about, and that a large volume of [electronically stored information] has already been produced at significant expense to the defendants, discovery on discovery with no basis other than plaintiffs' hopeful guess that there must be more texts about an engagement breakup is substantially out of proportion to the needs of the case." Id. at *4.