

4. An opinion from the Central District of California granting a defendants' motion to compel discovery of messages from the plaintiff's internal Slack messaging application.

In *Benebone LLC v. Pet Qwerks, Inc.*, 2021 WL 831025 (C.D. Cal. Feb. 18, 2021), U.S. Magistrate Judge Alexander F. MacKinnon granted defendants' motion to compel discovery of messages from plaintiff's internal Slack messaging application.

During the parties' initial discovery conferences discussions in this litigation regarding the production of ESI, defendants sought to include messages from plaintiff's internal Slack messaging application, but plaintiff took the position that Slack messages should be excluded. *Id.* at \*1. Magistrate Judge MacKinnon explained that Slack is a cloud-based software system that allows a company to organize its electronic discussions into user-defined categories called channels. Plaintiff's employees used Slack, as well as standard email, for their internal communications.

The parties had submitted the issue to the court earlier in discovery, and the court had determined that plaintiff's Slack messages were relevant but that the court lacked sufficient information to determine whether such discovery would be "proportional to the needs of the case." The court ordered plaintiff to obtain additional information about its Slack account and the burden of searching and producing such messages and for the parties to meet and confer thereafter.

Defendants later filed a motion to compel plaintiff to include Slack messages in response to certain discovery requests. Plaintiff submitted that its Slack account consisted of approximately 30,000 messages and estimated that review and production of the Slack messages would cost between \$110,000 and \$255,000, based on a blended attorney rate of \$400 per hour for Slack review. Defendants submitted a declaration from their vendor describing a number of tools that software vendors have developed to streamline review and production of Slack messages and explaining how extracting, processing, and reviewing Slack messages could take place using currently available software tools. Defendants' vendor estimated that it would cost \$22,000 for plaintiff to find and produce its responsive Slack messages.

Magistrate Judge MacKinnon began his analysis by discussing the limits of discovery under Fed. R. Civ. P. 26(b). *Id.* at \*2. "[A]ny nonprivileged" information "that is relevant to any party's claim or defense and proportional to the needs of the case" is discoverable. *Id.* (quoting Fed. R. Civ. P. 26(b)(1)). "Discovery need not be admissible in evidence to be discoverable." The court is to consider factors such as "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* (quoting Fed. R. Civ. P. 26(b)(1)). However, discovery should be limited to the extent it is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive." *Id.* (quoting Fed. R. Civ. P. 26(b)(2)(C)(i)).

Magistrate Judge MacKinnon then discussed the burden in moving to compel discovery. A moving party has the burden to demonstrate the relevance of its requests. The opposing party then has the burden of showing why discovery should not be allowed and must support its objection "with competent evidence."

Magistrate Judge MacKinnon stated that there was no real dispute as to the relevance of plaintiff's Slack messages because plaintiff "uses Slack as part of its internal business communications," and therefore its "Slack messages are likely to contain relevant information." The crux of the issue then became whether searching for and producing such messages "would be unduly burdensome and disproportional to the needs of th[e] case."

Magistrate Judge MacKinnon noted in this regard that defendants had submitted evidence to support its position in the form of the declaration and live testimony from its e-discovery vendor, while plaintiff had relied on attorney arguments and no witnesses. *Id.* at \*2-3. Magistrate Judge MacKinnon credited the testimony from defendant's witness, finding that third-party tools were available for collecting and reviewing Slack messages, and that review and production of Slack messages had become comparable to email document production through use of these tools. Magistrate Judge MacKinnon also credited defendants' estimate of \$40 per hour contract reviewers for first-level review over plaintiff's estimate of a blended \$400 hourly attorney rate, finding that although defendants' estimate was "on the low side," plaintiff's estimate was "substantially inflated."

Magistrate Judge MacKinnon determined that the review and production of Slack messages "is generally comparable to requiring search and production of emails and is not unduly burdensome or disproportional to the needs of this case," provided that the requests and search are appropriately limited and focused "based on the channels or users likely to have responsive information given the relevant issues in this case." *Id.* at \*3. He noted that while plaintiff is a small company in comparison to defendants, plaintiff nevertheless sought the full range of monetary damages plus injunctive relief against defendants related to "millions of dollars" in sales, and therefore "a focused search for and production of Slack messages is proportional to the needs of this case where [plaintiff] regularly uses Slack messaging for internal business communications and users of Slack include [plaintiff's] marketing director, COO, and CEO." *Id.* at \*3. Magistrate Judge MacKinnon therefore granted defendants' motion to compel to include plaintiff's Slack messages in response to certain discovery requests.

Magistrate Judge MacKinnon ordered the parties to meet and confer regarding specific requests and ordered plaintiff 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."