

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-02612-SVW (AGRx)	Date	May 2, 2019
Title	Leon D. Milbeck v. Truecar, Inc., et al.		

Present: The Honorable	Alicia G. Rosenberg, United States Magistrate Judge		
	Karl Lozada	n/a	n/a
	Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiff & Movant:

None

Attorneys Present for Defendants:

None

Proceedings: MINUTE ORDER RE PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Pursuant to the court’s Order dated April 17, 2019 (Dkt. No. 113), Lead Plaintiff filed a motion to compel the production of documents. (Dkt. No. 125.) Defendants filed an opposition. (Dkt. No. 128.) The matter is appropriate for adjudication without further oral argument.

Plaintiff seeks a court order requiring (1) Defendant TrueCar to produce Slack data responsive to the first set of requests for production of documents (“Requests”) to all Defendants; and (2) the Officer Defendants and Director Defendant Claus to produce text messages responsive to the Requests.

“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering 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.” Fed. R. Civ. P. 26(b)(1). District courts have broad discretion to control the timing and sequence of discovery. *Crawford-El v. Britton*, 523 U.S. 574, 599 (1998). “District courts have broad discretion in determining relevancy for discovery purposes.” *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005).

Factual Background

TrueCar is an online car-buying service and maintains co-branded websites with affinity partners. (First Amended Complaint ¶ 3, Dkt. No. 47.) The most significant affinity partner was United Services Automobile Association (“USAA”). (*Id.* ¶ 4.) In January 2017, Plaintiff alleges that TrueCar learned that USAA planned a significant website design to be implemented by June 2017 that would reduce traffic to TrueCar’s website. (*Id.* ¶¶ 6, 39-48, 50.) In June 2017, TrueCar implemented USAA’s website redesign and thereafter experienced a marked decline in USAA member traffic and unit sales. (*Id.* ¶¶ 75-76.) Plaintiff alleges that TrueCar “made materially false and misleading statements by

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making risk statements regarding TrueCar’s reliance on USAA’s website without alerting the public that the risk had already come to fruition and by falsely representing that USAA would be a key driver of unit and revenue growth in 2017.” *See Milbeck v. TrueCar, Inc.*, 2019 U.S. Dist. LEXIS 21215, *3 (C.D. Cal. Feb. 5, 2019).

Slack Data

Slack is a service, including chat messages, used to facilitate communication and collaboration in a digital workspace. (Anderson Decl. ¶ 2); *see Waymo LLC v. Uber Techs., Inc.*, 2018 U.S. Dist. LEXIS 16020, *56 n.12 (N.D. Cal. Jan. 29, 2018).

Plaintiff attaches evidence that TrueCar and USAA exchanged information about USAA’s website redesign – an event that is at the heart of this case – through dedicated Slack channels.¹ The discovery requested is therefore significant to resolution of the case. Defendants argue that the information in Slack may turn out to be cumulative of the emails, agendas and other electronic communications that Defendants have already produced.

Defendants’ strongest argument is that the burden and expense of the discovery is 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 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. Fed. R. Civ. P. 26(d); (Birn Decl. ¶¶ 2-3). Plaintiff served the Requests, consisting of 63 individual document requests, on February 8, 2019. Defendants promptly requested Plaintiffs’ list of search terms and custodians, and served responses on March 11, 2019. (*Id.* ¶¶ 6-7 & Exhs. 2-3.) The parties exchanged Rule 26 initial disclosures on February 25, 2019. (Dkt. No. 95 at 7.) Defendants represent that, in the span of only 10 weeks, they will have produced over 2 million pages of documents from 37 custodians by April 30, 2019, including email, files stored locally on laptops, and hard copy documents. (Birn Decl. ¶¶ 8-13.) After that, Defendants will prepare a privilege log that may contain as many as 4000 entries. (*Id.* ¶ 23.) In the three months remaining before trial, the parties will also have to review the document productions, take depositions (which the parties hope to complete by mid June), and complete pretrial proceedings, motions and papers.

Apparently, Plaintiff’s first mention of Slack during discovery negotiations occurred by letter dated March 15, 2019, which covered a host of discovery issues. (Exh. 4 at 5 to Birn Decl.)² At the

¹ Plaintiff also argued that TrueCar’s CEO held company wide meetings following earnings releases and answered questions submitted by employees via Slack. However, Defendants represent that they are producing the recorded videos of these meetings. (Birn Decl. ¶ 30.) Therefore, this particular reason would not support discovery of Slack data given the burdens described below.

² Page citations are to the page numbers assigned by CM/ECF in the header.

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subsequent telephonic conference among counsel on March 18, Defendant states that it described the burden of searching Slack given the current trial schedule. (Birn Decl. ¶ 17.) By letter dated March 19, Plaintiff narrowed the production from individuals to Director Claus and the Officer Defendants; requested production from several data sources including Slack; and added 24 custodians. (Exh. 5 at 3-5.) Defendants responded by letters on March 22 and April 2 with an explanation of the burdens associated with collection, search and production from Slack and text messages. (Exh. 6 at 4; Exh. 8 at 3-4.) Other document discovery proceeded.

Defendants present a declaration from their eDiscovery provider, which has received 1.67 gigabytes of compressed data from Slack (“Slack data”). (Anderson Decl. ¶¶ 1, 5.) “There is no way to isolate any specific information, such as particular channels or users and limit the collection to only that data.” (*Id.* ¶ 3.) The entire Slack data must be processed before any information can be extracted. Although it is not possible to know the volume without processing, Ms. Anderson relates that, in another unrelated matter, 100 megabytes of Slack data resulted in 1.7 million messages. Applying the same metrics, 1.67 gigabytes of Slack data could generate up to 17 million messages. (*Id.* ¶¶ 4, 6.) Ms. Anderson estimates that 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. (*Id.* ¶¶ 7-9.) 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. (*Id.* ¶¶ 10-13.)

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 particular 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. Even if the court has somewhat overestimated the length of time, the parties would not have an opportunity to use the information during discovery, expert discovery or pretrial motions. And even assuming the production would be far less than 17 million messages, production at such a late date would defeat the purposes of discovery. *See generally Pacific Fisheries, Inc. v. United States*, 484 F.3d 1103, 1111 (9th Cir. 2007) (“purpose of discovery is to aid a party in the preparation of its case”); *Allen v. Bayer Corp.*, 460 F.3d 1217, 1239-40 (9th Cir. 2006) (“‘important purpose of discovery is to reveal what evidence the opposing party has, thereby helping determine which facts are undisputed – perhaps paving the way for a summary judgment motion – and which facts must be resolved at trial’”) (citation omitted); *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1140 (9th Cir. 2006) (“Trial by surprise is no longer countenanced.”).

Plaintiff argues that Defendants are to blame for this state of affairs because the complaint filed in August 2018 should have put Defendants on notice that Slack data would be relevant to the allegations, and the hearing in October 2018 should have put Defendants on notice that the schedule would be compressed. Plaintiff’s argument is unpersuasive. Defendants obtained the Slack data and do

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not dispute the relevance of it. Defendants' argument is that the processing, search and production of Slack data is not feasible given all of the other discovery that is also relevant and that Plaintiff has also demanded. The discovery period commenced in February 2019. The parties promptly and diligently began discovery negotiations, and have completed a tremendous amount of discovery in a short period. No one is to blame.

IT IS ORDERED that Plaintiff's motion to compel production of Slack Data is DENIED WITHOUT PREJUDICE to its renewal in the event that Plaintiff seeks, and the Court grants, a continuance of the trial date so that production of Slack data could be accomplished in time to be used in depositions and expert discovery.

Text Messages

Plaintiff moves to compel Director Claus and the Officer Defendants to search for text messages on personal devices in response to the Requests. Plaintiff provides evidence of an email that post-dates the end of the Class period and TrueCar's release of third quarter results. That email references several texts sent by Director Claus to USAA's COO concerning the impact of USAA's declining volumes. Unlike the Slack data, Plaintiff's proffered information about text messages appears cumulative and post-dates the key events. There is no indication in the record that the Officer Defendants have communicated with USAA by text message.

Defendants' eDiscovery provider states that, for text messages, an image is taken of a user's mobile device. Once processed through forensic tools, the text messages are uploaded into a reviewable format for attorney review. (Anderson Decl. ¶¶ 14-15.) The text messages are exported into a spreadsheet format and sorted by time, person or phone number to identify conversations. A reviewer manually reviews the texts to determine the beginning and end of a text, determine responsiveness and identify privileged or personal material. Search terms with proximity elements or root expanders cannot be used. (Birn Decl. ¶¶ 24-27.)

It is unknown whether Director Claus communicated with USAA's CEO or COO by text message concerning USAA's website redesign prior to November 6, 2017. Plaintiff's request for all text messages responsive to the Requests is not proportional to the needs of the case given the burden of the discovery, the short time remaining for discovery, and the absence of any indication that a broader scope of discovery or time period would be important to the resolution of this case on the merits. Fed. R. Civ. P. 26(b)(1).

IT IS ORDERED that Plaintiff's motion to compel is GRANTED IN PART in that Defendant is ordered to determine whether Director Claus sent text messages to USAA's CEO or COO, or received text messages from USAA's CEO or COO, regarding USAA's planned website redesign or its impact on TrueCar during the period January 1 – November 6, 2017. If so, Defendant shall produce the responsive text messages by May 31, 2019 or on a date mutually agreed by counsel.

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IT IS FURTHER ORDERED that Plaintiff's motion to compel the Officer Defendants to produce text messages responsive to the Requests is DENIED WITHOUT PREJUDICE.

Initials of Preparer kl : _____