

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 17-6210-JAK (KSx) Date: August 29, 2018

Title *Justice Laub, et al. v. Nicholas Horbaczewski, et al.*

Present: The Honorable: Karen L. Stevenson, United States Magistrate Judge

Roxanne Horan-Walker
Deputy Clerk

XTR
Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Stephen C. Steinberg
Joseph Fraresso

Kenneth A. Kuwayti

**Proceedings: MINUTES OF TELEPHONIC CONFERENCE RE: MOTION re
INFORMAL DISCOVERY DISPUTE**

Case called. Counsel made their telephonic appearances. The Court held a further conference with counsel regarding Plaintiffs' Requests for Production ("RFP") of Defendants' data stored on the Slack instant messaging platform.¹ After further discussion, the Court ruled as follows:

1. Slack Instant Messaging Documents

Plaintiffs had urged that Defendants should be required to obtain archived information from this instant messaging platform that Plaintiffs used to communicate with Defendants in 2015 and Defendants continue to use for certain internal communications. (*See* Dkt. No. 69.) Pursuant to the Court's order following the August 20, 2018 discovery conference (*id.*), on August 27, 2018, Defendant submitted a Declaration of Alvin Blackshear ("Blackshear Decl."). Blackshear confirmed through communications with Slack personnel that Defendant Drone Racing League ("DRL") uses Slack's Free plan, which does not permit a customer direct access to retrieve all archived files. (Blackshear Decl. ¶ 2.) Slack "retains all messages and files for the

¹ See <https://slack.com> (last visited August 29, 2018).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 17-6210-JAK (KSx)

Date: August 29, 2018

Title Justice Laub, et al. v. Nicholas Horbaczewski, et al.

lifetime of a user’s workspace” and customers using Slack’s Free plan only have access to the last 10,000 messages.” (*Id.*)

In order to obtain access to the “Corporate Export” tool that would permit DRL to retrieve historical data from a Slack workspace, DRL would first have “to upgrade to a Slack Plus plan at a cost of \$15 per user per month, or \$150 per user per year.” (*Id.* at ¶ 5.) There have been 91 DRL users created over the life of the workspace. (*Id.*) The estimated cost of upgrading the [DRL] workspace to a Plus plan for 91 users is \$13,350. (*Id.*) It is unclear whether there is a minimum time that DRL must maintain a Plus plan before it can then downgrade back to a Free plan. (*Id.*) Further, DRL cannot activate the Corporate Export tool only for individual users, but would have to upgrade “for all of the users who have ever had an account with the owner of the workspace.” (*Id.*)

In any event, notwithstanding the potential cost, after careful review of the Blackshear Declaration and further discussion with counsel, the Court finds that the information housed at Slack.com is electronically stored information (“ESI”) that is not reasonably accessible within the meaning of Rule 26 of the Federal Rules of Civil Procedure. Fed.R.Civ. P. 26(b)(2)(B) (“A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost.”); *and see, e.g., General Elec. Co. v. Wilkins*, No. 1:10-cv-00674 LJO JLT, 2012 WL 570048 (E.D. Cal. Feb. 21, 2012) (finding back-up tapes not reasonably accessible and requesting party failed to show good cause to require producing party “to expend the resources necessary to make them reasonably accessible”). More importantly, however, the ESI housed at Slack.com is not within the possession, custody, and control of DRL.

Accordingly, the Court concludes that Defendants are not obligated to produce ESI housed at Slack.com in response to Plaintiffs’ RFP.² Plaintiffs may pursue the Slack.com information through a third party subpoenas under Rule 45. This ruling is without prejudice to

² A magistrate judge has discretion to resolve a discovery dispute through informal conference without a formal motion. *See* Fed. R. Civ. P. 16, Advisory Committee Notes to 2015 Amendment (“Many judges who hold such conferences find them an efficient way to resolve most discovery disputes without the delay and burdens attending a formal motion, but the decision whether to require such conference is left to the discretion of the judge in each case.”).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 17-6210-JAK (KSx) Date: August 29, 2018

Title *Justice Laub, et al. v. Nicholas Horbaczewski, et al.*

Plaintiffs’ ability to seek further discovery from Defendants related to the Slack.com workspace information if Plaintiffs so chooses at some future date.

2. Defendant Horbaczewski’s Laptop Data Preserved

At the discovery conference on August 20, 2018, the Court ordered Defendants “to search for and produce any responsive documents from the Horbaczewski laptop within thirty (30) days.” (Dkt. No. 69.) Counsel for Defendant Horbaczewski reported that while the laptop Horbaczewski previously used has since been recommissioned for use by other DRL personnel, all of the files from that device have been preserved and will be searched for any relevant information in responsive to Plaintiffs’ RFP.

Initials of Preparer : 14 mins.
rhw