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"Betting" on Collaboration Tools and Navigating the Discovery Challenges they Present

Alicia Trinley

Amy Furness

Dave Martyn

Eric Sedwick

Timothy M. Opsitnick

Agenda

01   **Meet the Panelists**

02   **Defining Collaboration Tools**

03   **What Makes the Discovery Unique and Burdensome**

04   **Information Governance Considerations: Preservation and Policies**

05   **Other Discovery Best Practices**

06   **Q&A**

LET'S BEGIN!

ALICIA TRINLEY

Vice President, Associate General Counsel, Office Depot, Inc.

AMY FURNESS

Shareholder, Carlton Fields

DAVE MARTYN

Solutions Architect, TCDI

ERIC SEDWICK

Senior Director, Head of Legal Operations, Legal, Risk & Compliance, TIAA

TIMOTHY OPSITNICK

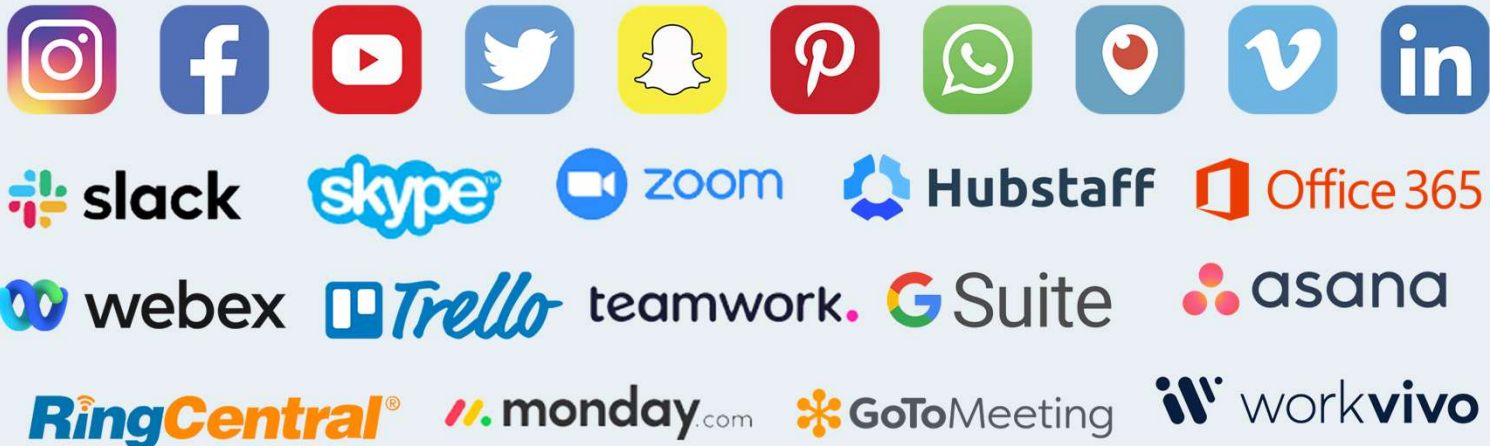Executive Vice President and General Counsel, TCDI

MEET THE PANELISTS | tcdi

Collaboration Tools

Primary types are file sharing tools that allow teams to communicate, share and edit documents, record, and present.

- 80% of workers used collaboration tools in 2021
- Increased 44% since the pandemic began
- Meeting solutions increased – the shift-away from in-person meetings is expected to continue. Gartner predicts that by 2024, in-person meetings will drop from 60% to 25%

Florida Rule of Civil Procedure

"Document" including, without limitation, writings, agreements, contracts, and printed matter of every kind and description; photographs and drawings; notes and records of any oral communications; and recordings (tape, disc or other) of oral communications.

inserted in 2011
"electronically stored information"

Increasing Evidentiary Value

Twitter, Inc. v. Elon Musk, et al. Subpoena

"Document" shall have the broadest meaning permitted under the Court of Chancery Rules and shall include … videotapes, disks, diskettes, web-sites, email and other electronically transmitted messages, text messages, chat or communicator transmissions, voicemail messages, ==online chat or instant messages (e.g., Slack, Teams, Discord, WhatsApp, or Signal messages), Twitter direct messages==, interoffice Communications, and any other writings, papers, or tangible things of whatever description; and including any Electronically- Stored Information (including (a) information on or in computer memory,"

EFiled: Aug 22 2022 10:53AM EDT
Transaction ID 67954288
Case No. 2022-0613-KSJM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TWITTER, INC.,

    Plaintiff and
    Counterclaim-Defendant,

v.   C.A. No. 2022-0613-KSJM

ELON R. MUSK, X HOLDINGS I, INC., and X HOLDINGS II, INC.,

    Defendants and
    Counterclaim-Plaintiffs.

**SUBPOENA *DUCES TECUM*
JACK DORSEY**

TO:
Jack Dorsey
c/o George M. Garvey
Munger, Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, California 90071-3426

This subpoena is issued pursuant to Delaware Court of Chancery Rules 26, 34, and 45. Court of Chancery Rules 45(c) and (d), attached hereto, set forth your

Benebone, LLC v. Pet Qwerks, Inc., et al.

Defendant's Position:

Benebone's 30,000 message dataset confirms how vital the Slack messaging system is to Benebone's business operations. Instead of 30,000 emails to review, Benebone has Slack messages categorized and grouped by channel. Benebone cannot block production by asserting that messages sent using Slack instead of email are somehow different and therefore immune to discovery.

Plaintiff's Position:

There are two primary factors that make Slack discovery extremely costly and time consuming: (i) the process of obtaining and processing Slack data into a reviewable form and (ii) the process of actually reviewing Slack Messages for relevance/privilege.

1   Steven J. Nataupsky (SBN 155,913)
    steven.nataupsky@knobbe.com
2   Ali S. Razai (SBN 246,922)
    ali.razai@knobbe.com
3   Adam R. Aquino (SBN 324,526)
    adam.aquino@knobbe.com
4   KNOBBE, MARTENS, OLSON & BEAR, LLP
    2040 Main Street, Fourteenth Floor
5   Irvine, CA 92614
    Telephone: (949) 760-0404
6   Facsimile: (949) 760-9502
7   Benjamin B. Anger (SBN 269,145)
    ben.anger@knobbe.com
8   KNOBBE, MARTENS, OLSON & BEAR, LLP
    12790 El Camino Real
9   San Diego, CA 92130
    Telephone: (858) 707-4000
10 Facsimile: (858) 707-4001

11 *Attorneys for Defendant*
    PET QWERKS, INC.
12
13 *Attorney information continues on next page*
14
15   THE UNITED STATES DISTRICT COURT
16   FOR THE CENTRAL DISTRICT OF CALIFORNIA
17
18 BENEBONE LLC,   ) Civil Action No. 8:20-cv-00850-AB-AFM
19   Plaintiff,   )
20   v.   ) DEFENDANTS PET QWERKS, INC.
) AND DOSKOCIL MANUFACTURING
21 PET QWERKS, INC. and   ) COMPANY, INC. d/b/a PETMATE'S
    DOSKOCIL   ) NOTICE OF MOTION AND MOTION
22 MANUFACTURING   ) TO COMPEL PRODUCTION OF
    COMPANY, INC. d/b/a   ) SLACK COMMUNICATIONS
23 PETMATE,   )
) Hearing: January 26, 2021 (Tuesdays)
24   Defendants.   ) Time: 10:00 a.m.
) Place: Courtroom #780
25   ) Judge: Hon. Alexander F. MacKinnon
26   ) Fact Discovery Cutoff: March 12, 2021
27   ) Pretrial Conference: September 10, 2021
) Trial: September 28, 2021
28

Cardi B (Belcalis Marlenis Almánzar)

Almánzar v. Kebe - Trial Exhibits

AO 187 (Rev. 7/87) Exhibit and Witness List

UNITED STATES DISTRICT COURT

| Northern | DISTRICT OF | Georgia, Atlanta Division |

PLAINTIFF'S EXHIBIT LIST

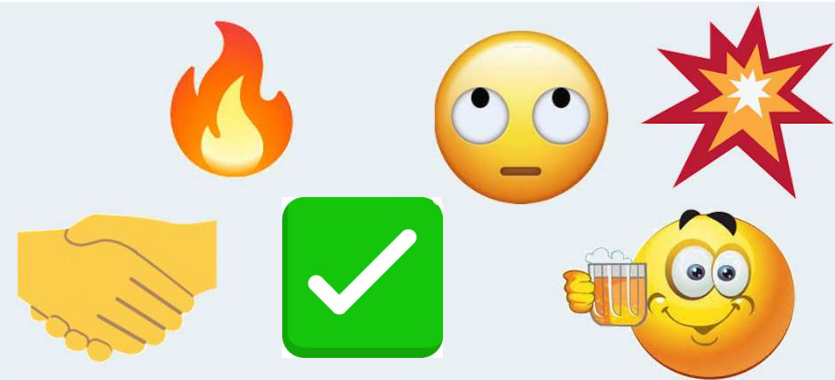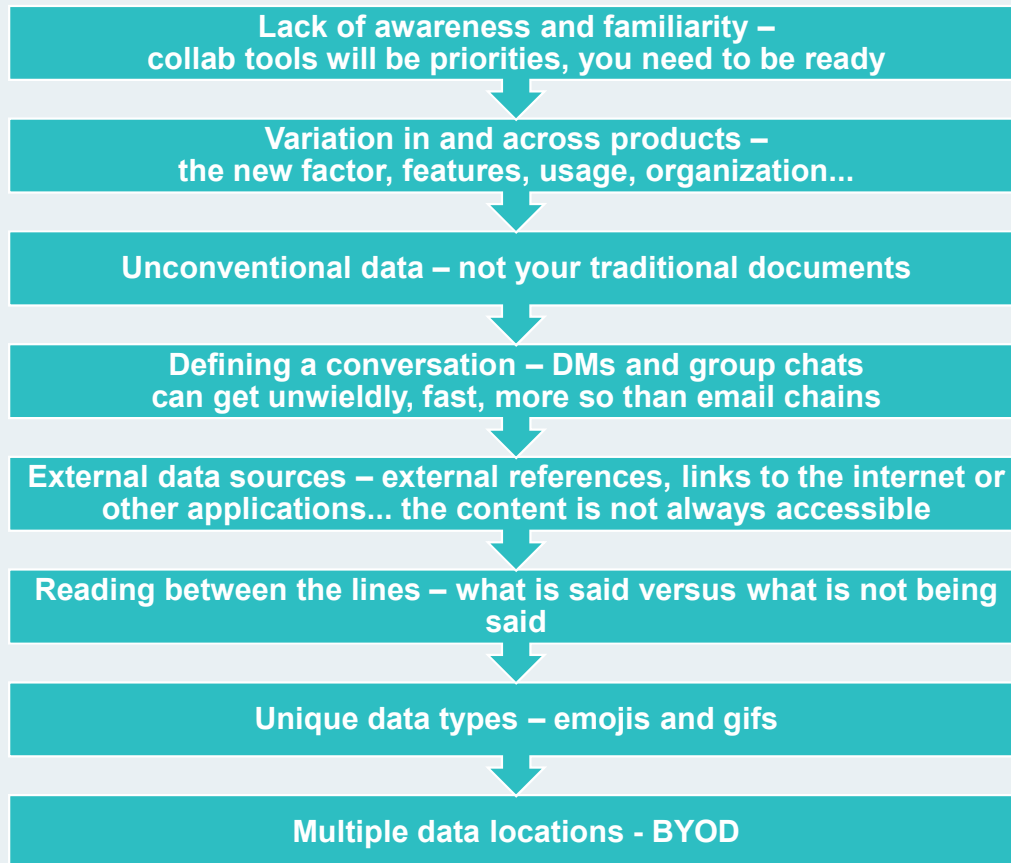BELCALIS MARLENIS ALMANZAR,
Plaintiff
V.
LATASHA TRANSRINA KEBE et al.,
Defendants.

Case Number: 1:19-cv-01301-WMR

PRESIDING JUDGE	PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
William M. Ray II	Lisa Moore Andrew Pequignot Sarah Marz	Olga Izmaylova Sadeer Sabbak

| TRIAL DATE(S) | | | | COURT REPORTER | COURTROOM DEPUTY |

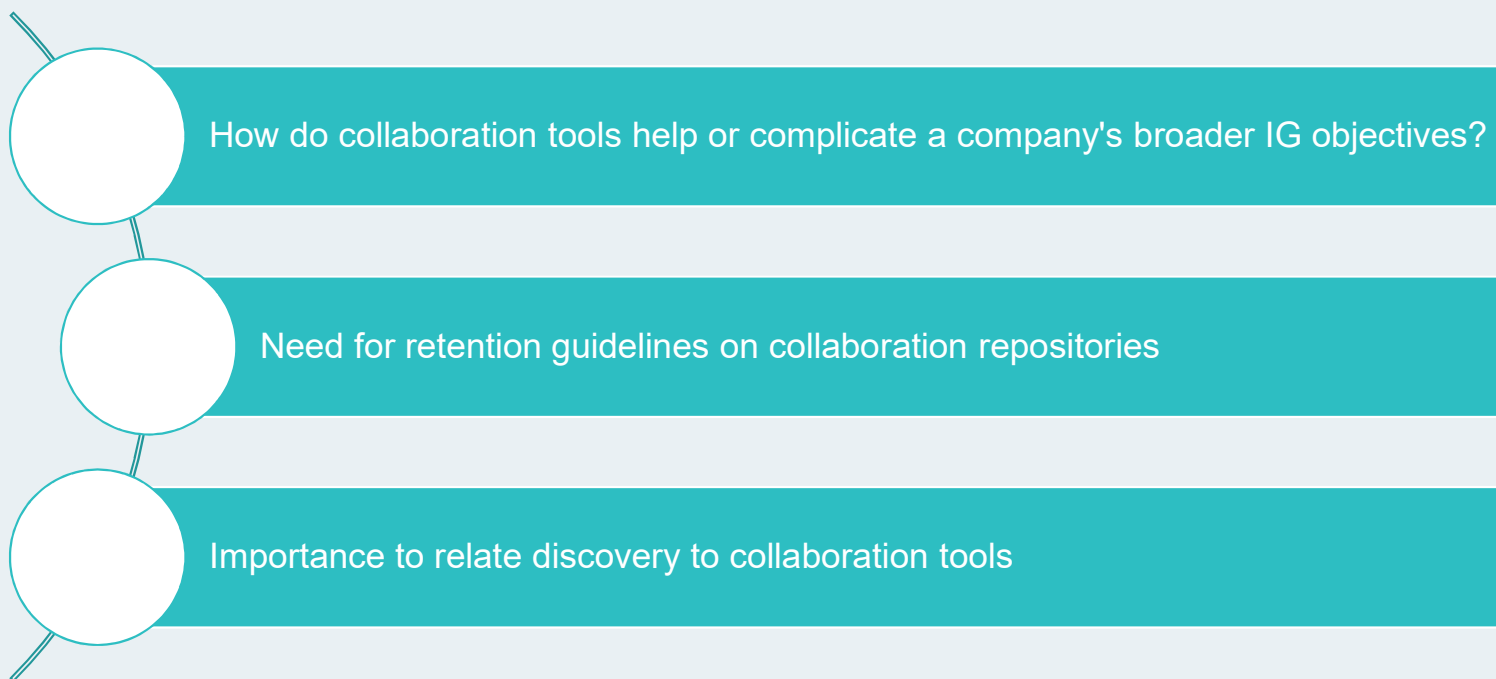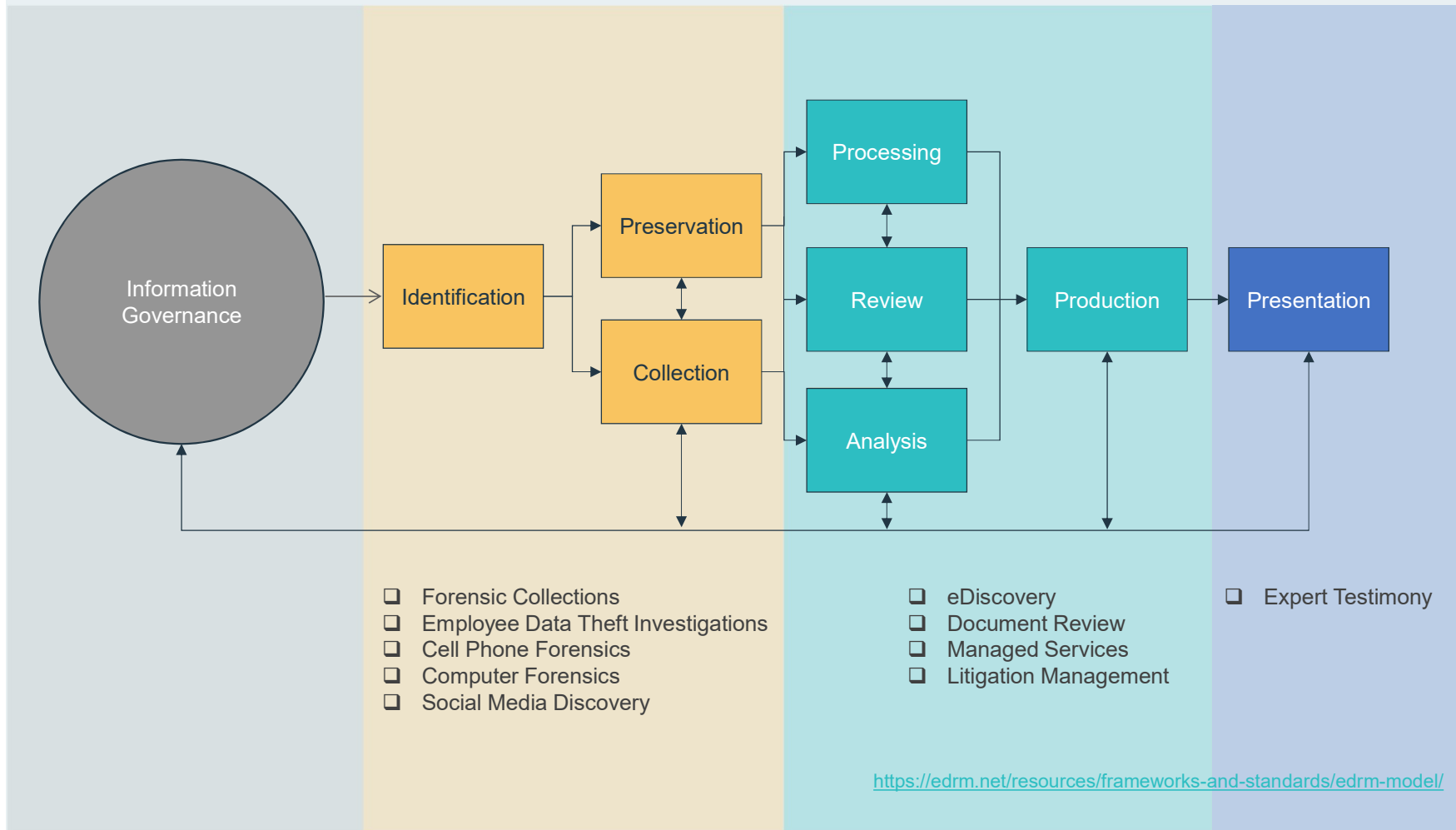| PLF NO	DEF NO	DATE OFFERED	MARKED	ADMITTED		Description of Exhibits
P-1.					CARDI_000146-CARDI_000149	Medical Test Results from UCLA Health
P-2.					CARDI_000231	Medical Test Results from UCLA Health
P-3.					CARDI_000774-CARDI_000777	Medical Test Results from UCLA Health created on August 27, 2020
P-4.					CARDI_000376	Invoice from Dr. Sherry Blake's Office created on November 1, 2018
P-5.					CARDI_000407	Therapeutic coaching summary from Dr. Sherry Blake
P-6.					CARDI_000408	Therapeutic coaching summary from Dr. Sherry Blake created on October 26, 2020
P-7.					CARDI_000703	Email from Lynda Burton sent on September 17, 2020
P-8.					CARDI_000704	Texts between Lynda Burton and Johnny Lester sent on November 1, 2018
P-9.					CARDI_000705	Email from Lynda Burton sent on September 17, 2020
P-10.					CARDI_000706	Texts between Lynda Burton and Johnny Lester sent on November 1, 2018
P-11.					CARDI_000707	Email from Lynda Burton sent on September 17, 2020
P-12.					CARDI_000708	Texts between Lynda Burton and Johnny Lester sent on November 1, 2018
P-13.					CARDI_000709	Email from Lynda Burton sent on September 17, 2020
P-14.					CARDI_000710	Texts between Lynda Burton and Johnny Lester sent on November 1, 2018
P-15.					CARDI_000711	Email from Lynda Burton sent on September 17, 2020
P-16.					CARDI_000712	Texts between Lynda Burton and Johnny Lester sent on November 1, 2018
P-17.					CARDI_000713	9.17.2020 Email from Lynda Burton sent on September 17, 2020
P-18.					CARDI_000714	Texts between Lynda Burton and Johnny Lester sent on November 1, 2018
P-19.					CARDI_000715	Email from Lynda Burton sent on September 17, 2020
P-20.					CARDI_000716	Texts between Lynda Burton and Johnny Lester sent on November 1, 2018
P-21.					CARDI_000717	Email from Johnny Lester concerning Dr. Sherry Blake trip itinerary sent on November 2, 2018
P-22.					CARDI_000718-CARDI_000724	Email from Johnny Lester with flight receipt for Dr. Sherry Blake sent on November 2, 2018
P-23.					CARDI_000725	Email from Johnny Lester concerning Dr. Sherry Blake trip itinerary sent on November 2, 2018

1

Unique and Burdensome

Lack of awareness and familiarity –
collab tools will be priorities, you need to be ready

Variation in and across products –
the new factor, features, usage, organization...

Unconventional data – not your traditional documents

Defining a conversation – DMs and group chats
can get unwieldly, fast, more so than email chains

External data sources – external references, links to the internet or
other applications... the content is not always accessible

Reading between the lines – what is said versus what is not being
said

Unique data types – emojis and gifs

Multiple data locations - BYOD

Information Governance Considerations

How do collaboration tools help or complicate a company's broader IG objectives?

Need for retention guidelines on collaboration repositories

Importance to relate discovery to collaboration tools

Electronic Discovery Reference Model (EDRM)

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- ❑ Forensic Collections
- ❑ Employee Data Theft Investigations
- ❑ Cell Phone Forensics
- ❑ Computer Forensics
- ❑ Social Media Discovery

- ❑ eDiscovery
- ❑ Document Review
- ❑ Managed Services
- ❑ Litigation Management

- ❑ Expert Testimony

https://edrm.net/resources/frameworks-and-standards/edrm-model/

Communication Policies & Preservation

Policy Recommendations

- Implement training as part of on-boarding employees
- Establish good user behavior - before discovery, minimize the risk up front and create clear policies governing how employees use these tools
- Advise employees data might be used later in litigation
- Require consent or acknowledgement that employer maintains control over business information on personal devices
- Remind people not to let guard down when communications are informal
- Explain how long the data will be kept

Communication Policies & Preservation

Policy Recommendations

- Ensure users cannot introduce unnecessary data in the conversation
- Actively apply settings and permissions through administrators
- Clearly identify "privilege" communications
- Most important - enforce your policies

Other Best Practices

Other Recommendations

- Find a Good Vendor/Use a Good Tool - a vendor with development or a discovery tool that has active development to keep up with the growing number of data sources and frequent changes

- Restrict the Eyes and Hands on this Data - most collections of structured data are all or nothing... and there is a high probability of sensitive data

- Establish a Defensible Process and Fight for it – ESI orders can get a little too detailed; have a working process and/or example, make your case and stand your ground

- Review is Not Standard – your typical document review process and review team members will need unique training and understanding

Other Best Practices

Other Recommendations

- Understand your tool's data structure and usage

- Licensing – different application licenses offer different retention periods and export capabilities

- Threads versus Individual Messages

- The data footprint is relatively small, but the costs are higher

Key Takeaways

Go "All in" - Collab tools are here and sticking around

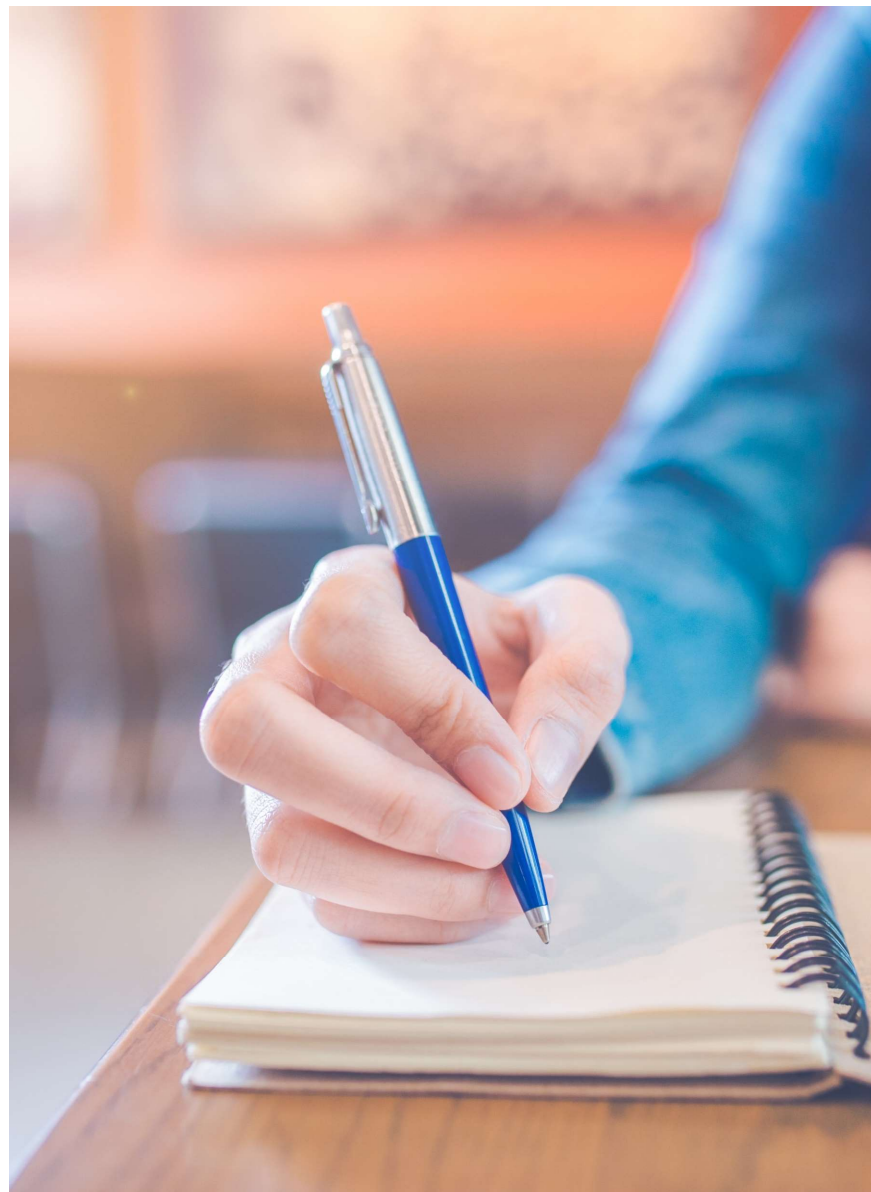Keep up your "poker face" - Strict communication policies are a must

Know your "hand" - be prepared

This is "high stakes" data

Don't "bluff" – ask for assistance early

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Questions?

Timothy M. Opsitnick
Executive Vice President & General Counsel
216.664.0900
t_opsitnick@tcdi.com

Dave Martyn
Solutions Architect
704.345.5996
d_martyn@tcdi.com

For further information

Connie Smith
Senior Director, Legal Services
910.470.0929
c_smith@tcdi.com