

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

BILLY & LACY HURSH,

Plaintiffs,

v.

**STATE FARM FIRE AND CASUALTY
COMPANY;**

MARK D. WELTY; and

**MARK D. WELTY INSURANCE
AGENCY, INC.,**

Defendants.

Case No. CJ-2025-2626
Honorable Amy Palumbo

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO COMPEL RE-
PRODUCTION OF ELECTRONICALLY STORED INFORMATION IN THE FORM
DEFENDANT STATE FARM ELECTED**

State Farm’s lead authority holds State Farm to the .DAT and .OPT load files it elected to produce. *See* Mot. at 1, 3, 9-10; *see also National Jewish Health v. WebMD Health Services Group, Inc.*, 305 F.R.D. 247, 250 (D. Colo. 2014) (producing party committed in writing to a “.DAT file using standard concordance delimiters and containing metadata”—and delivered it; compliance followed). State Farm’s Response quotes the same *without* its operative clause: the production “is searchable, sortable, paired with relevant metadata, and includes Concordance load files, as requested by NJH. Therefore, WebMD produced its ESI as NJH requested it and in the form in which it is ordinarily maintained.” *National Jewish Health* at 254. The “reasonably usable” default the Response invokes applies by its terms only “if a request does not specify a form.” 12 O.S. § 3234(B)(2)(e)(2).

The one-form rule does not excuse deficiency. Courts applying the identical federal provision have ordered replacement productions. *United States v. Briggs* quoted the one-form rule and ordered the producing party to “replace the production ... and produce it in another way,” rejecting objections of cost and capacity. 2011 WL 4017886, at *8 (W.D.N.Y. Sept. 8, 2011). *EPAC Technologies, Inc. v. Thomas Nelson, Inc.*, which the Response cites for the purported sufficiency of searchable PDFs, ***ordered re-production***, holding the form rules “will be enforced absent a court order or a stipulation by the parties.” 2016 WL 11944036, at *11 (M.D. Tenn. July 6, 2016). State Farm has not observed the rule it invokes. *See* Suppl. at 2-4.

State Farm’s declarations contradict themselves. The Response rests on the premise that the disputed fields were produced. First, Siff states that for documents “redacted for privilege, State Farm produced the Bates-range, document-family-range, and attachment-count fields, as well as text files facilitating searching.” Resp. Ex. A (Siff Decl.) ¶ 14. She identifies ***only three fields***. Favro states he “found that the .DAT or load file included several metadata fields,” and lists

roughly twenty, expressly including “Custodian,” “authors, recipients, and subject lines for emails,” “Date_Sent,” and “Author,” drawing no distinction between redacted and unredacted documents. Resp. Ex. C (Favro Decl.) ¶ 26. Both cannot be true.

Favro examined no production package. He reviewed the Motion and its exhibits, Siff’s declaration, and four documents bearing Bates numbers that do not exist in this production. *Id.* ¶ 12. His conclusion rests on Siff: “I understand from the Declaration of Laura Siff ... that State Farm has produced all of these fields of metadata in its TIFF+ productions.” *Id.* ¶ 30. Plaintiffs’ expert, by contrast, was provided the produced documents themselves, identified by Bates number, and not counsel’s description of them. Exhibit 23 (Whitten Decl.) ¶¶ 4-12.

Siff confirms lesser-inclusive messages within threads were not separately produced. Resp. Ex. A (Siff Decl.) ¶ 21. Favro answers that authorship and recipients “are readily apparent on the face of the email.” Resp. Ex. C (Favro Decl.) ¶ 30. A message not produced has no face.

Siff’s \$43,000 to \$50,000 estimate prices native re-production of HUR00000001 through HUR00346767. *Id.* ¶ 24. The Response describes the request as “reproducing just a portion.” Resp. at 19. Her statement that Consilio cannot redact a native file, *id.* ¶ 23, answers a request Plaintiffs have not made: Plaintiffs ask that the elected fields be exported into the elected .DAT load file, as Consilio did for the rest of the production.

Privilege governs withholdings, not production. The Legislature has answered the question State Farm raises. Section 3237(A)(2) prescribes what must be disclosed for a document withheld in its entirety: “a. the author or authors, b. the recipient or recipients, c. its origination date,” its length, its nature, and the basis for the objection. *Scott v. Peterson*, 2005 OK 84, ¶ 16, 126 P.3d 1232, 1237. Fields that must be disclosed for a document withheld in full are not privileged for a document produced in part. *See Mot.* at 12-13.

The Response cites *Scott* for the proposition that Oklahoma requires no privilege log. That case granted a writ vacating every order denying discovery of an insurer's claims file and directed the documents be lodged under seal and a log filed. *Id.* ¶¶ 13, 15, 28.

Williams v. Sprint/United Management Co., on which the Response draws for the purported limitations of metadata, holds that “when a party is ordered to produce electronic documents as they are maintained in the ordinary course of business, the producing party should produce the electronic documents with their metadata intact, unless that party timely objects ..., the parties agree ..., or the producing party requests a protective order.” 230 F.R.D. 640, 652 (D. Kan. 2005). This Court so ordered. Mot. at 17; Exhibit 12 (Court Minute). *Williams* rejects both arguments made here: that metadata may be inaccurate, which “is not sufficient justification for removing” it, and that it is irrelevant, as to which a producing party “should have asserted a relevancy objection instead of making the unilateral decision” to strip it. *Id.* at 653.

Nor is this material work product. The test is “whether the document was secured in the regular course of duties performed by the individual as an employee of the insurance company,” and if it was, “good cause need not be shown.” *Hall v. Goodwin*, 1989 OK 88, ¶ 12, 775 P.2d 291, 295. On the alternative rationale, “[t]he allegation of bad faith is sufficient to sustain a good cause showing for substantial need,” because “there is no other method to precisely determine the facts upon which [the insurer] based its decision to deny the claim.” *Id.* ¶ 13, 775 P.2d at 296. The burden of showing work-product protection rests with the party asserting it. *Id.* at 295 n.7. *See* Mot. at 13.

State Farm's authorities establish relevance. The Response quotes *Aguilar v. Immigration & Customs Enforcement Division* for the proposition that most system metadata “lacks evidentiary value because it is not relevant.” Resp. at 16 (quoting 255 F.R.D. 350, 354 (S.D.N.Y. 2008)). The

next sentence reads: “System metadata is relevant, however, if the authenticity of a document is questioned or if establishing ‘who received what information and when’ is important to the claims or defenses of a party.” *Id. Aguilar* turned on the size of the production before that court. The court declined to order metadata for word processing and presentation files because only “about 5,200 pages of documents ha[d] thus far been produced,” “the equivalent of slightly more than one ‘banker’s box’ of documents,” and it distinguished “a case involving hundreds of boxes of documents in which the Plaintiffs’ concern about their ability to search and sort the documents would carry some force.” 255 F.R.D. at 361. The email universe there was “only 500 or so,” so the plaintiffs did not “need the metadata in order to be able to manage the ESI that they have received.” *Id.* at 360. State Farm has produced 156,748 files. Mot. at 1.

The Oklahoma inquiry is the same. “The knowledge and belief of the insurer during the time period the claim is being reviewed is the focus of a bad-faith claim.” *Newport v. USAA*, 2000 OK 59, ¶ 10, 11 P.3d 190, 195. 23 O.S. § 9.1(A) directs the jury to weigh “the duration of the misconduct and any concealment of it” and “the number and level of employees involved in causing or concealing the misconduct”; subsection (E) makes those factors mandatory. Neither can be answered from a flattened image bearing three fields. State Farm’s expert concedes the principle: “nonprivileged metadata reflecting this information should still be produced in discovery.” Resp. Ex. C (Favro Decl.) ¶ 30.

Nor is this discovery on discovery. The Response quotes *LKQ Corp. v. Kia Motors America, Inc.* for the proposition that process discovery is not relevant to a claim or defense. Resp. at 17. That court was construing Rule 26(b)(1), which it held inapplicable, and it then located the authority elsewhere: “Rule 26(g) provides a court authority to allow this type of discovery.” 345 F.R.D. 152, 159 (N.D. Ill. 2023). Oklahoma’s analogue, 12 O.S. § 3226(G), carries a mandatory

sanction. *LKQ* states that a court “should select the narrowest discovery tool possible,” *id.* at 163, as Plaintiffs propose. And *Chick-fil-A, Inc. v. Ogden* recites the Advisory Committee’s example of “information about organizational arrangements or filing systems” as relevant to a claim or defense when “suitably focused.” 2026 OK 13, ¶ 14, 589 P.3d 138, 141.

Plaintiffs withdraw no part of the motion. Because three document families are presently obstructing identified proof, Plaintiffs ask the Court to order those first: the SEO email chains; the Farney “Fix Profit Task Force” materials; Exhibit 133, and the Massa and “Industry Best” communications, Suppl. at 5. State Farm’s own expert endorses that course, Resp. Ex. B (Gensler Decl.) ¶¶ 25-28, and it is the order entered in *Williams*, which required production with metadata intact while permitting removal of “the metadata directly corresponding to the redacted information.” 230 F.R.D. at 656.

The request for expenses should be denied. In *National Jewish Health* the prevailing producing party sought its fees and was refused: “reasonable minds could—and often do—differ with regard to ESI.” 305 F.R.D. at 256.

Plaintiffs respectfully request that the Court order State Farm to produce the .DAT and .OPT load files it elected to provide, *see* Mot. at 17-18 and Suppl. at 7-8, beginning with the three document families identified herein; order that any field withheld on privilege grounds be identified in a log conforming to 12 O.S. § 3237(A)(2), with the documents lodged under seal; and award Plaintiffs their expenses under 12 O.S. § 3237(A)(4).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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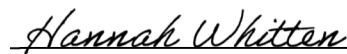
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FARM FIRE AND CASUALTY**



Hannah Whitten

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DECLARATION OF HANNAH E. WHITTEN

EXHIBIT

23

1. My name is Hannah E. Whitten. I am over the age of eighteen years, am competent to testify, and make this declaration from my own personal knowledge.

2. I am an attorney with Whitten Burrage, counsel of record for Plaintiffs Billy and Lacy Hursh in this action. Among my responsibilities in this matter, I assisted in the process by which Whitten Burrage identified and transmitted documents to Avansic, Inc. for forensic examination.

3. I submit this declaration to set out that process and to identify the documents Whitten Burrage provided to Avansic. I do not offer any opinion concerning the results of Avansic's examination. Those results are addressed in the affidavit of Lance E. Watson.

THE DOCUMENTS PROVIDED TO AVANSIC

4. On October 2, 2026, Whitten Burrage transmitted to Gavin W. Manes, Meredith Lee, and Lance E. Watson of Avansic a set of twenty-two Portable Document Format files. The transmittal was made at my direction.

5. Each file transmitted was a copy of a document as State Farm produced it, or a compilation of consecutively produced pages assembled without alteration of the pages themselves. Whitten Burrage did not alter, annotate, re-image, re-compress, or otherwise modify the content of any page before transmitting it, except that two of the files are compilations assembled from consecutively numbered production pages, as identified in paragraphs 8 and 9 below.

6. The twenty-two files comprise sixteen documents. Six of the twenty-two are exact duplicates of other files in the set, transmitted under different file names because the same

produced page had been saved under more than one name in the course of this litigation. The duplicates are byte-for-byte identical to the files they duplicate.

7. The sixteen documents Whitten Burrage provided to Avansic, identified by the Bates numbers appearing on their faces, are:

Bates range	Pages	Description
HUR00039527	1	Email, K. Ress, Oct. 21, 2021
HUR00039528–HUR00039534	7	Attachment, “10.26.21 SEO Fire Claims Service & Quality Update.docx”
HUR00039527–HUR00039534	8	Compilation of the two documents immediately above
HUR00039527–HUR00039534	8	Exhibit-stamped compilation of the same pages
HUR00158701	1	Email, S. Welsh, Oct. 26, 2021
HUR00158702–HUR00158709	8	Attachment to the Welsh email
HUR00158710	2	Email; two pages, second bears no legible Bates number
HUR00158712–HUR00158719	8	Attachment
WEST00037726	1	Email, K. Ress, Oct. 21, 2021
WEST00037727–WEST00037733	7	Attachment
WEST00158701	1	Email, S. Welsh, Oct. 26, 2021
WEST00158702–WEST00158709	8	Attachment to the Welsh email
WEST00158701–WEST00158709	9	Exhibit-stamped compilation of the two documents immediately above
WESTNEI00136281PROD	1	Email, K. Ress, Oct. 21, 2021
WEST-RFP44-Sub. Prod. 000274	1	Email, K. Ress, Oct. 21, 2021
HOSIERGAR0075574PROD / HURPROD-00051762	1	Email, S. Welsh, Oct. 26, 2021

8. Two of the sixteen are compilations. The file transmitted as a single eight-page document bearing HUR00039527 through HUR00039534 was assembled on September 22, 2026 from the individually produced pages bearing those numbers. The file transmitted as a single nine-page document bearing WEST00158701 through WEST00158709 was assembled on September 16, 2026 from the individually produced pages bearing those numbers.

9. The individually produced pages from which each compilation was assembled were also transmitted to Avansic separately, so that Avansic had both the compilation and the underlying production files.

THE FORM IN WHICH THE DOCUMENTS WERE PROVIDED

10. Whitten Burrage provided each document to Avansic in the form in which Whitten Burrage received it from State Farm. Each of the production files is a Portable Document Format file.

11. Whitten Burrage did not provide Avansic with any load file, metadata field listing, or other extrinsic data accompanying these documents, because Whitten Burrage had received no load file or metadata field listing containing such data for these documents.

12. Whitten Burrage did not provide Avansic with any characterization, summary, or description of the documents in place of the documents themselves. Avansic was provided the produced documents and asked to examine them.

THE SCOPE OF THE EXAMINATION REQUESTED

13. Whitten Burrage asked Avansic to determine, from the documents themselves, the chronological and parent-child relationships among the messages and attachments; to identify every redaction, deletion, addition, annotation, exhibit stamp, and image-layer change; and to report all available creation, modification, author, producer, document-identifier, hash, and annotation metadata.

14. Whitten Burrage identified for Avansic the production ranges that serve as the baseline for comparison: WEST00158701 through WEST00158709; WEST00037726 through WEST00037733; and HUR00039527 through HUR00039534.

15. Whitten Burrage did not direct Avansic to reach any particular conclusion, and did not ask Avansic to assume any fact. The comparison among the produced versions was performed by Avansic on the documents Whitten Burrage provided.

MYBLOCK AND THE RECORDS NOW HOUSED IN WORKDAY

16. I submit the following to identify a separate production deficiency that Plaintiffs expect to raise with the Court. I took the deposition of State Farm's corporate representative Wayne Stewart on September 29, 2026. Mr. Stewart was designated to testify on Topic 25H, the use of a State Farm system identified as MyBlock.

17. Documents State Farm has produced identify MyBlock as an internal State Farm system. HUR00069466–68; WEST00112656. A memorandum within that range identifies a specific MyBlock assessment item, numbered 20077596, and describes reporting and follow-up activity associated with it. HUR00069467–68. A later message within the same range reflects an individual result for that assessment. HUR00069466. I do not characterize the contents of those documents further here.

18. Mr. Stewart's deposition confirms that the records associated with MyBlock are no longer maintained in that system. He testified that State Farm no longer uses MyBlock, that he does not have access to it, and that he reviewed nothing from it in preparing to testify on the topic for which he was designated. Stewart Dep. 33:2-23. He testified that he does not know what the system contained. *Id.* 34:4-13.

19. Mr. Stewart identified where those records now reside. He testified that the information formerly housed in MyBlock is now housed in a different application, which he identified as Workday, and that a record of a formal training program would have been included in MyBlock and is now housed in that different application. *Id.* 34:11-13; 35:2-7.

20. Mr. Stewart further testified that MyBlock would have included performance evaluations during the period it was in use, that he is unable to review evaluations of associates because he has no direct reports, and that he does not know when State Farm began or stopped using MyBlock. *Id.* 34:17-18; 36:1-5.

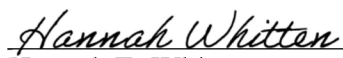
21. To my knowledge, State Farm has not produced the assessment identified as MyBlock item 20077596, any record of its assignment or completion, any result other than the single result appearing at HUR00069466, or any of the reports the memorandum at HUR00069467–68 describes.

22. To my knowledge, State Farm has not identified for Plaintiffs which MyBlock records were migrated to Workday, which were excluded from that migration, which were retained in any archive or backup, or which no longer exist. Plaintiffs intend to raise this deficiency with the Court.

VERIFICATION

I declare under penalty of perjury under the laws of the State of Oklahoma that the foregoing is true and correct.

Executed on October 21, , 2026.



Hannah E. Whitten