

## LITIGATION

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In *Nichols v. Noom Inc.*, 2021 WL 948646 (S.D.N.Y. 2021) the court basically says first understand the technology used for storage/attaching/linking and address issues in the ESI protocol (an up front decision or concern). “Later” can be too late as shown here, especially given the federal rules requiring proportionate costs.

The parties had agreed to Noom’s use of Google Vault (which is Google’s extraction tool for its services) to collect documents from Google Drive, even though file path metadata would not be available for documents that were collected using Google Vault. File path metadata is really important. If you want to understand where data came from and you want to be able to link any kind of documents back together again. Noom uses Google Vault to collect documents from Google Drive and from Gmail and produces those to the plaintiffs. The plaintiffs look at the production and realize that there are thousands of documents that contain hyperlinks to other Google Docs, and they have no way to be able to link the documents that may have been produced from Google Drive back to those emails. Plaintiff asked the court to order Noom to use a forensic tool to collect information instead of using Google Vault.

What’s really key here, though, is on the plaintiff’s motion for reconsideration, the plaintiffs did not plead or provide any information about the time or cost that be required for processing, deduplication and re-review of documents that had already been produced in its motion. The plaintiffs argue that the hyperlinks are akin to attachments and should be produced as part of a document family, and without the metadata linking the underlying hyperlinked Noom document to the document containing the hyperlink, they’re unable to determine the families of documents.



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To "Go Green", our firm uses recyclable paper or ceramic cups and no longer uses Styrofoam cups. In addition, we have adopted a less-paper office environment.

We hope that these changes make big differences in the future.

*Well done is better than well said.*

- Benjamin Franklin



From a practical perspective, there are massive implications here for any kind of party. There are many sophisticated business disputes going on right now with companies who use Google Apps. Microsoft Teams, in which you share links to SharePoint documents via Teams internally, are also going to have a very similar problem and this needs to be resolved as to how we're going to deal with this issue in eDiscovery.

Essentially parties need to know and understand the systems that they are dealing with before drafting an ESI protocol. This issue of hyperlinked documents is going to be more and more apparent as we deal with the pandemic. Many companies moved to Microsoft Teams. Microsoft Teams works with linked documents in the same way that Google Apps works with linked documents. We're going to have to start structuring protocols that specifically call out how those links are to be treated and if there is a document, a physical document that a hyperlink is included in an email with substantive content versus simply a hyperlink out to a Web based link or something else, a link to a YouTube video or otherwise, then that information needs to be produced as an attachment.

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