

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

**Austin Cook, Harrison Follett, Charlie Allen, Sophie Sanders,  
Thomas Bartell, Justin Roberts, Carson McMaster, Alonso  
Barrantes, Brady Perkins, Jeremy Thompson, Paige Ludden, Keaton  
Hales, Trooper Johnson, Ryan Grimmus, Aidan Walsh, et al. v.  
DAVA Marketing, LLC, a Utah limited liability company, and DOES**

**1-10**

Cook v. DAVA Marketing, LLC · No. 2:23-cv-00632-DBB-DBP · Decided June 15, 2026

SUMMARY

The United States District Court for the District of Utah granted in part Defendants’ short-form discovery motion concerning Plaintiffs’ redactions and privilege claims. Following an in camera review, the court ordered production of descriptive material that was not protected by attorney-client privilege or the work-product doctrine, while upholding specified privilege claims. The court also ordered production in searchable native format and individual ESI disclosures consistent with the parties’ agreements.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the District of Utah                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Dustin B. Pead                                                                                                                                                                                                                                                      |
| JURISDICTION          | United States District Court for the District of Utah                                                                                                                                                                                                               |
| DECIDED               | June 15, 2026                                                                                                                                                                                                                                                       |
| DOCKET                | 2:23-cv-00632-DBB-DBP                                                                                                                                                                                                                                               |
| DISPOSITION           | other                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Defendants moved for short-form discovery relief concerning Plaintiffs' redactions and privilege disclosures. The magistrate judge conducted an in camera review of the disputed materials and ruled on which portions were protected and which had to be produced. |
| STANDARD OF REVIEW    | The court conducted an in camera review of the disputed materials and applied federal common-law attorney-client privilege and the work-product doctrine under Federal Rule of Civil Procedure 26(b)(3).                                                            |
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**TOPICS**

discovery dispute

attorney client privilege

work product doctrine

evidence

civil procedure

**PRACTICE AREAS**

civil procedure

discovery

evidence

commercial litigation

**QUESTIONS PRESENTED**

1. Whether portions of the disputed documents consisting of descriptions of activities were protected by the attorney-client privilege.
2. Whether the disputed descriptive materials were protected by the work-product doctrine.
3. What portions of the identified documents had to be produced following the court's in camera review.
4. Whether the parties should be required to produce documents in searchable native format and provide individual ESI disclosures consistent with their agreements.

**HOLDINGS**

1. Descriptions of activities that were not confidential communications made to obtain legal assistance, or attorney-to-client communications conveying information for legal advice, were not protected by the attorney-client privilege and had to be produced.
2. The descriptive materials identified by the court were not protected by the work-product doctrine because they were not shown to have been prepared primarily in anticipation of real and imminent litigation rather than in the ordinary course of business.
3. The court upheld privilege for specified communication portions of COOK00246, COOK00255, COOK00258, COOK00261, COOK00266, and COOK00273, while ordering production of the descriptive portions identified in those documents and in COOK00260, COOK00262 through COOK00265, and COOK00267 through COOK00272.

**KEY QUOTATIONS**

*"The privilege "must be strictly construed and accepted only to the very limited extent that ... excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.""*

*"The doctrine does not protect work prepared in the ordinary course of business or investigative work unless it was done so under the supervision of an attorney in preparation "for the real and imminent threat of litigation or trial.""*

*"All items the court finds to be descriptive are to be produced within ten days of this order."*

**FACTUAL BACKGROUND**

Plaintiffs withheld or redacted portions of documents using claims of attorney-client privilege and work-product protection. Defendants challenged the breadth of those claims, alleging that counsel was not a party to numerous documents and requesting document-by-document in camera review. The court reviewed the materials and determined that some portions consisted only of descriptions of activities, while other portions contained protected attorney-client communications.

## PROCEDURAL HISTORY

The action was pending in the District of Utah and was referred to Magistrate Judge Dustin B. Pead under 28 U.S.C. § 636(b)(1)(A). Defendants filed a short-form discovery motion, asserting that Plaintiffs had improperly withheld or redacted documents as privileged. After Plaintiffs supplied the redacted information and unredacted materials for in camera review, the court granted the motion in part and ordered production of descriptive material within ten days.

## DISPOSITION

other

## CASES CITED

- *Upjohn Co. v. United States*, 449 U.S. 383, 389-90 (1981)
- *In re Grand Jury Subpoena*, 697 F.2d 277, 279 (10th Cir. 1983)
- *In re Foster*, 188 F.3d 1259, 1264 (10th Cir. 1999)
- *Trammel v. United States*, 445 U.S. 40, 50 (1980)
- *In re Grand Jury Subpoena Duces Tecum Issued on June 9, 1982*, 697 F.2d 277, 278 (10th Cir. 1983)
- *Fisher v. United States*, 425 U.S. 391, 403 (1976)
- *In re Grand Jury Proceedings*, 616 F.3d 1172, 1182 (10th Cir. 2010)
- *Sandra T.E. v. South Berwyn School District 100*, 600 F.3d 612, 620 (7th Cir. 2010)
- *U.S. Fire Insurance Co. v. Bunge North America, Inc.*, 247 F.R.D. 656, 657 (D. Kan. 2007)
- *Kannaday v. Ball*, 292 F.R.D. 640, 649 (D. Kan. 2013)
- *Leonen v. Johns-Manville*, 135 F.R.D. 94, 97 (D.N.J. 1990)
- *Marten v. Yellow Freight System, Inc.*, 1998 WL 13244, at \*10 (D. Kan. Jan. 6, 1998)