1. A ruling from the U.S. District Court for the Southern District of California denying the Defendants' motion to compel Plaintiff to disclose information about the sources, methodology, and search terms used to collect ESI from one of its custodians.

In *ImprimisRx, LLC v. OSRX, Inc.*, No. 21-cv-1305-BAS-DDL, 2022 WL 17824006 (S.D. Cal. Dec. 19, 2022), U.S. Magistrate Judge David D. Leshner addressed the Defendants' motion to compel Plaintiff to disclose the sources, methodology, and search terms used to collect ESI from Plaintiff's president.

Magistrate Judge Leshner first stated that "[i]n cases involving voluminous amounts of ESI and/or numerous custodians, parties frequently agree, at the outset, to exchange ESI search terms." *Id.* at *1 (quoting *Terpin v. AT&T Inc.*, No. CV 18-6975-ODW (KSx), 2022 WL 3013153, at *5 (C.D. Cal. June 13, 2022)). He noted that the court's ESI Checklist for the Rule 26(f) Conference, which was designed to promote collaborative dialogue between the parties and facilitate the efficient collection and production of ESI discovery and avoid disputes, specifically directs the parties to meet and confer at the outset of the case regarding, among other things, "[t]he search method(s), including specific words or phrases or other methodology, that will be used to identify discoverable ESI and filter out ESI that is not subject to discovery."

Magistrate Judge Leshner explained that counsel for both parties had affirmed they did not meet and confer regarding the search terms that Plaintiff would use to locate responsive documents, including emails, in its repository of approximately two million documents, which "likely resulted in otherwise avoidable litigation." However, Plaintiff's counsel confirmed that the repository was searchable, and he ordered the parties to meet and confer regarding search terms for documents responsive to Defendants' requests for production, noting that he "expect[ed] the parties' good faith efforts to agree on appropriate search terms that will narrow (if not eliminate) their disputes and will eliminate the perceived need for another motion such as this one." *Id.* at *2.

Magistrate Judge Leshner next addressed Defendants' request to compel Plaintiff to disclose the sources, methodology, and search terms used to collect emails and other documents from Plaintiff's president, John Saharek. Magistrate Judge Leshner stated that "[d]iscovery into another party's discovery process is disfavored" and "requests for such 'meta-discovery' should be closely scrutinized in light of the danger of extending the already costly and time-consuming discovery process ad infinitum." He noted that courts generally will permit such discovery only "where there is some indication that a party's discovery has been insufficient or deficient."

Magistrate Judge Leshner explained that the considerations relevant to a request to compel disclosure of search terms used by an opposing party to identify responsive documents include (1) whether the request is made prior to the collection and production of responsive documents and (2) if the request for search terms is made after production, whether the party seeking disclosure has identified some deficiency or insufficiency of the responding party's production. But he further explained that "[t]he analysis changes where a party seeks post-production disclosure of search terms used by the opposing party to identify responsive documents." He stated that "there is no fundamental discovery requirement that a party provide its ESI search terms in litigation," and postproduction "discovery on discovery" of search terms generally is warranted only on a showing that a party's production has been "insufficient or deficient."

Magistrate Judge Leshner found that Defendants failed to show a deficiency in Plaintiff's collection, review, and production of documents in Saharek's possession. Defendants pointed to Saharek's deposition testimony, where he testified that he was not aware his emails were collected. But Plaintiff provided a declaration by its information technology director that he directly supervised and had knowledge of actions taken by the company's former network security supervisor to collect Saharek's emails, which were discussed with Plaintiff's in-house counsel and subsequently transferred to Plaintiff's counsel. In light of this, Magistrate Judge Leshner found that Defendants had not contradicted Plaintiff's assertion that it collected Saharek's emails and produced responsive, nonprivileged emails.

Because Defendants had not shown that Plaintiff's collection and production of Saharek's emails was "insufficient or deficient," Magistrate Judge Leshner declined to compel Plaintiff to produce the search terms it used to locate Saharek's emails that were responsive to Defendants' requests for production. *Id.* at *3.