3. A decision from the U.S. District Court for the Southern District of New York denying as overbroad the Defendant's request to require the Plaintiff to search the files of all its employees for relevant documents and addressing certain disputes as to search terms.

In *The Raine Group LLC v. Reign Capital, LLC*, 2022 WL 538336 (S.D.N.Y. Feb. 22, 2022), U.S. Magistrate Judge Katharine H. Parker denied the Defendant's request to mandate search parameters on the Plaintiff as part of the parties' electronically stored information (ESI) protocol governing discovery in the case and addressed certain disputes as to search terms.

Magistrate Judge Parker first surveyed the relevant Federal Rules of Civil Procedure, including Rules 26 and 34, that require parties to conduct a reasonable search for documents that are relevant to the claims and defenses. She noted that parties have an affirmative obligation to search for documents they may use to support their claims or defenses unless the use would be solely for impeachment. *Id*. at *1 (citing Fed. R. Civ. P. 26(a)(1)). She further noted that "[t]he duty to make a 'reasonable inquiry' is satisfied if the investigation undertaken by the attorney and the conclusions drawn therefrom are reasonable under the circumstances. It is an objective standard similar to the one imposed by Rule 11." *Id*. (quoting Fed. R. Civ. P. 26 advisory committee's note to 1983 amendment). Finally, she noted that Rule 26(g) requires that responses to document requests be signed, certifying that the disclosures made are complete and correct as of the time of the disclosure after a reasonable search.

Magistrate Judge Parker next addressed the interplay between a party's affirmative duty to search for documents and a party's obligation to respond to discovery requests from the opposing party. She noted a party may choose to conduct a fulsome ESI search for both categories of documents after an agreement on search terms, but, if so, "the producing party must include and utilize search terms it believes are needed to fulfill its obligations under Rule 26 in addition to considering additional search terms requested by the requesting party." In other words, the producing party must search custodians and locations it identifies on its own as sources for relevant information as part of its obligations under Rules 26 and 34. But the party should also cooperate with the requesting party to the extent the requesting party believes that other search terms, custodians, or locations may have relevant information when fashioning an ESI protocol, subject to Rule 26(b)'s limitations. *Id*. (citing Fed. R. Civ. P. 26(b)(1)).

Magistrate Judge Parker explained that "an ESI protocol and search terms work in tandem with the parties' obligations under the Federal Rules and do not replace a party's independent obligation to produce electronic (or paper) documents that are reasonably accessible, relevant, and responsive within the meaning of Rule 34."

Among the disputes between the parties was Defendant's request that certain language regarding the parties' search obligations be included in the parties' ESI protocol, in particular a provision requiring Plaintiff to have all its employees search for responsive documents, because (in Defendant's view) both parties have an independent obligation to search all files from all employees that could reasonably contain responsive documents to the parties' document requests. *Id*. at *2. Defendant did not agree that Plaintiff could limit its search to certain custodians and sought inclusion in the ESI protocol of language affirming the parties' obligations to search all files for responsive documents.

Magistrate Judge Parker found that the language proposed by Defendants was unnecessary given applicable discovery rules and overbroad as proposed. As noted above, each party must sign its disclosures and certify that it has conducted a reasonable search, and she found this rule sufficient to address Defendant's concerns about Plaintiff complying with its discovery obligations. In particular, Magistrate Judge Parker noted that Defendant's language suggesting that the parties must search "all company files" or "all files from all employees" was overbroad. She explained that it is up to the parties to determine the contours of a reasonable search, which may mean "eliminating custodians or locations with redundant information, eliminating sources that are inaccessible, or culling electronic information by date." She further explained that the relative size of the parties may affect the inquiry, noting that Plaintiff was a merchant bank with over 100 employees that sued a two-person real estate development and management firm.

As to the custodians, Magistrate Judge Parker held that Plaintiff would not be required to search all files of all its employees because that would be overbroad. She noted that Plaintiff identified six employees as custodians whose emails and personal files likely contain relevant information, and Defendant had not identified any additional custodians likely to have relevant emails nor explained why other employees of a bank would have relevant email or personal files. However, Magistrate Judge Parker advised Plaintiff that there may be other sources of data such as shared drives that are not particular to a specific custodian that should be searched as part of Plaintiff's obligations under Rule 26, and she expected Plaintiff to conduct a reasonable search of such noncustodial sources likely to have relevant information.

With respect to search terms, the parties sought to have the court order the use of certain terms and modifiers. Magistrate Judge Parker explained that the court's "broad discretion to manage the discovery process includes determinations regarding which search terms a party should apply." *Id*. (internal quotations omitted). She noted that search terms, while helpful, must be carefully crafted. Poorly crafted terms may return thousands of irrelevant documents and increase, rather than minimize, the burden of locating relevant and responsive ESI. Search terms also can miss documents containing

a word that has the same meaning or that is misspelled. Magistrate Judge Parker noted that broad, general search terms such as the ones the parties proposed in this case typically are not sufficiently targeted to find relevant documents, and modifiers are often needed to hone in on truly relevant documents. However, what modifiers are appropriate is often best left to specialists who can interpret "hit" reports and suggest refinements — not to the court.

In this case, Magistrate Judge Parker found that it was appropriate for her to adjudicate the search term dispute because the parties could not agree on search terms. She found that certain terms, such as "real estate," were overbroad and that Plaintiff would not be required to use them, even with the modifiers. *Id*. at *4. With respect to other terms, such as "sophisticated" and "trademark," Magistrate Judge Parker found that Defendant's proposed modifiers made sense, as they appeared to be more focused on the issues relevant to this case.