

3. A decision from the U.S. District Court for the Western District of New York denying a request to compel Defendants to re-produce their entire document production in text-searchable format with a production log, finding that the Plaintiff had not specified a different format for production in its requests and that the Defendants’ production was “reasonably usable.”

In *Mills v. Steuben Foods, Inc.*, No. 19-CV-1178WMS(F), 2023 WL 179579 (W.D.N.Y. Jan. 13, 2023), U.S. Magistrate Judge Leslie G. Foschio addressed a motion to compel a production log identifying the documents in an alleged document “dump” and to re-produce the documents in a text-searchable format.

In this employment discrimination case, Plaintiff issued a document request to Defendants, including his former employer, for “all documents in Defendants’ possession or control relating or pertaining to plaintiff.” *Id.* at *5. Defendants responded to this request by providing Plaintiff with 5,295 documents consisting of 111,896 pages. *Id.* at *6. Plaintiff subsequently brought a motion to compel the re-production of that “document dump” in a format that was text-searchable and a production log “detailing by Bates Nos. which documents are responsive to which of Plaintiff’s Requests.”

Magistrate Judge Foschio denied these requests. He explained that Federal Rule of Civil Procedure Rule 34(b)(2)(E)(ii) requires that “[i]f a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.” He noted that “the record does not indicate that Plaintiff ever requested that ESI discovery” at issue “be produced in a particular format.” He therefore concluded that Defendants were not obliged by the Federal Rules to produce documents in the formats Plaintiff requested unless those documents were not “originally maintained” that way and were not “reasonably usable.”

Magistrate Judge Foschio rejected Plaintiff’s argument that Defendants’ “dumping” of the extensive number of documents on Plaintiff was improper for lack of a log sorted by Bates number. He stated that Plaintiff never argued that the documents provided were not in the form in which they were “originally maintained.” He also stated that Defendants previously provided a production log that set forth Bates ranges for ranges of categories provided, thereby rendering the production “reasonably usable.” Magistrate Judge Foschio declined to find that Defendants’ production was “incomplete, vague and inaccurate” and “disordered, irrelevant and unresponsive” because Plaintiff failed “to provide any reasonable particularization or examples of such deficiencies.”

Magistrate Judge Foschio then addressed the text-searchability of the documents provided to Plaintiff. *Id.* at *7. Defendants claimed that the documents, provided in PDF format, were text-searchable using the “Ctrl-F” function and were also “suitable for uploading to ‘the most commonly used document reviewing platforms, . . . to enable sorting and searching functions.” Plaintiff, on the other hand, claimed that the documents were not text-searchable. But Magistrate Judge Foschio held that text-searchability itself was not required by the federal rules. Rather, it was only important that the documents be provided in a “reasonably usable” format. Thus, rather than making a finding about text-searchability itself, the court ordered the parties “to meet and confer with the assistance of IT professionals in good faith effort to resolve any technical issues.”

In denying the motion to compel, Magistrate Judge Foschio stressed that Plaintiff’s request was “to produce ‘all’ records pertaining to Plaintiff.” He then noted that Defendants’ existing production log noting ranges of Bates numbers was sufficient for Defendants’ large production. He noted that other courts “have held similar aides to the use of large quantities of e-mail ESI to be sufficient responses to a party’s

discovery requests.”