

2. A decision from the U.S. District Court for the Eastern District of North Carolina denying a motion to compel the defendant to produce additional metadata because the defendant's production was text searchable and therefore produced in a reasonably usable format.

In *Bah v. Sampson Bladen Oil Company, Inc.*, No. 23-CV-00330, 2024 WL 3678337 (E.D.N.C. Aug. 5, 2024), U.S. Magistrate Judge Robert T. Numbers II addressed a party's obligations with respect to the production of metadata and producing documents in a "reasonably usable" format.

Plaintiff in this action sued her former employer for race-based employment discrimination. *Id.* at *1. At the outset of discovery, the parties submitted a joint Rule 26(f) report in which they agreed that most ESI should be produced in TIFF format but that some types of ESI, such as Excel spreadsheets, PowerPoint files, and audiovisual files, should be produced in native format. The joint Rule 26(f) report provided that when a party produced ESI in TIFF format, the production "would also include metadata and searchable, extracted text," but the report did not specify which metadata should be produced. The Court had adopted these provisions from the joint Rule 26(f) report.

When discovery commenced, Plaintiff served requests for production that did not specify the metadata that should accompany production, and Defendant eventually produced about 2,100 documents consisting of 13,000 pages in TIFF format and a "handful of documents in native format." Defendant provided a load file with the production containing searchable, extracted text and 13 metadata fields.

After receiving the production, Plaintiff complained that it was "completely unusable" because she could not "filter the documents by date and would instead need to search each specific date as text within the TIFF file," which would be "extremely cumbersome and time-consuming" and would increase the chance that she overlooks relevant documents. *Id.* at *2. She also complained that the production lacked "Bates numbers" and "parent/child relationship fields." Plaintiff requested that Defendant provide additional metadata, but Defendant disagreed with Plaintiff's contentions and refused to do so.

Plaintiff then filed a motion to compel additional metadata, arguing that Defendant violated the Federal Rules of Civil Procedure when it did not produce ESI in its native format and that both the Federal Rules and the parties' joint Rule 26(f) report required Defendant to provide all metadata fields available. Magistrate Judge Numbers addressed these arguments in turn.

With respect to Plaintiff's argument that Defendant should have produced responsive ESI in native format, Magistrate Judge Numbers noted that this disregarded the parties' agreement that "most ESI should be produced in TIFF format." *Id.* at *3. He therefore rejected this argument.

Magistrate Judge Numbers similarly rejected Plaintiff's argument that Defendant violated the joint Rule 26(f) report and Rule 34 by producing only some of the available metadata. He noted that the parties agreed in the joint Rule 26(f) report that ESI produced in TIFF format would "include metadata and searchable, extracted text." He found that the report was ambiguous as to whether the reference to metadata meant "all available metadata" or something less. *Id.* at *4.

To resolve this ambiguity, Magistrate Judge Numbers looked to Rule 34, under which a requesting party may request that the responding party produce ESI in a particular form and the responding party may object to the requested form if it “state[s] the form or forms it intends to use.” Id. (quoting Rule 34(b)(2)(D)). He explained that Rule 34 “encourages the parties to be explicit about issues related to the form of production for ESI,” whereby the requesting party “should explicitly state its desired form of production and the responding party should explicitly state the form in which it is willing to produce ESI.” Magistrate Judge Numbers also noted that these requirements “are designed to avoid the very problems confronting the Court and the parties here” by facilitating “the orderly, efficient, and costeffective discovery of electronically stored information.” Id. (quoting the Advisory Committee Note to the 2006 Amendments to Rule 34).

Magistrate Judge Numbers also surveyed prior case law on the issue of metadata requests, summarizing these decisions as requiring “parties to address those issues explicitly and promptly.” In particular, “if a party wants metadata, it should ask for it. Up front. Otherwise, if the party asks too late or has already received the document in another form, it may be out of luck.” Id. (quoting *Aguilar v. ICE*, 255 F.R.D. 350, 357 (S.D.N.Y. 2008) (internal quotations omitted)).

Applying these standards, Magistrate Judge Numbers concluded that the parties’ use of the term “metadata” in their joint Rule 26(f) report, without more, entitled neither party to “all available metadata.” He explained that “a party who wants ESI produced in non-native format to be accompanied by all available metadata must say so.”

With respect to “how much metadata the parties must produce,” Magistrate Judge Numbers again looked to Rule 34, where in the absence for a request for a specific production form, the responding party “must produce ESI in a form or forms in which it is ordinarily maintained” or in a “reasonably usable form.” Id. (quoting Rule 34(b)(2)(e)(ii)). He concluded that because the parties’ joint Rule 26(f) report provided for production of most ESI in non-native format, those documents were required to “be produced in a reasonably usable form.” As a result, Magistrate Judge Numbers held that “unless a request for production contains more specific instructions, any ESI produced in non-native format must include enough metadata to be reasonably usable to the requesting party.”

Magistrate Judge Numbers then addressed whether Defendant had complied with its obligation to “produce ESI in a reasonably usable form.” Id. at *5. He explained that Rule 34 does not allow a party to produce ESI in “a different form that makes it more difficult or burdensome for the requesting party to use the information efficiently in the litigation.” Id. (quoting the Advisory Committee Note to the 2006 Amendment to Rule 34). Rather, “if the responding party ordinarily maintains the information it is producing in a way that makes it searchable by electronic means, the information should not be produced in a form that removes or significantly degrades this feature.” Id. Magistrate Judge Numbers stated that Plaintiff, as the requesting party, had the burden to show that ESI has not been produced in a reasonably usable format.

Addressing Plaintiff's arguments in support of her claim that Defendant's production was not "reasonably usable," Magistrate Judge Numbers found that Plaintiff was able to access, review, and text-search the ESI produced. He concluded that these facts undermined Plaintiff's request for additional metadata.

Magistrate Judge Numbers next rejected Plaintiff's argument that the lack of Bates numbers and parent/child metadata rendered the productions unusable. He noted that the parties' ESI vendors appeared to agree that Defendant's production included fields for "Production Beg Bates and End Bates along with Production Beg Attach and End Attach," meaning that Defendant's production included Bates numbers. Magistrate Judge Numbers also noted that Plaintiff did not dispute Defendant's argument that "the production bates attach and production bates end metadata allows for the identification of documents that are attachments to others."

Magistrate Judge Numbers next addressed whether the lack of metadata allowing Plaintiff to filter documents by date and to categorize documents by file type rendered Defendant's production unusable. *Id.* at *6. He cited to several decisions supporting the proposition that in most cases, courts find that "a production is reasonably usable if it is text searchable." *Id.* (surveying cases). He added that Rule 34's Advisory Committee Notes support the position that whether a production is searchable aligns with the commentary: "If the responding party ordinarily maintains the information it is producing in a way that makes it searchable by electronic means, the information should not be produced in a form that removes or significantly degrades this feature." *Id.* (quoting the Advisory Committee Note to the 2006 Amendment to Rule 34) (emphasis added by Court).

Magistrate Judge Numbers concluded that Defendant's production met the requirement that ESI be produced in a reasonably usable format because it was text searchable, and there was nothing in the record establishing that the production was less searchable for Plaintiff than it would be for Defendant. In this regard, he noted that Plaintiff was able to view the documents using her ESI vendor's eDiscovery platform and search them for "specific dates and specific individuals." He also noted that Plaintiff had failed to provide specific information about how her review would be impeded by the lack of the additional metadata, how much more onerous reviewing the production would be, or how additional metadata would streamline Plaintiff's review of the documents. *Id.* at *7.

Ultimately, Magistrate Judge Numbers found that while Defendant's production was not reviewable and searchable with the ease and sophistication that Plaintiff preferred, this was not required. Rather, Rule 34 requires only that when ESI is produced in a non-native format, the chosen form must be reasonably usable by the requesting party and does "not require that ESI be produced in the form the requesting party prefers or the one that is the most easily usable by the requesting party." He concluded that Defendant complied with its obligations because Plaintiff did not request specific metadata fields in her requests for production and Defendant's production was reasonably usable. Therefore, Magistrate Judge Numbers denied Plaintiff's motion to compel additional metadata.