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Discovery Deficiencies Lead to Search Term Disclosure

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Introduction

As electronic discovery continues to evolve, courts increasingly are called on to referee disputes over not just what documents must be produced, but also how parties go about finding them. Litigants now routinely challenge the adequacy of their opponents' search efforts, raising questions about transparency, proportionality, and the boundaries of permissible inquiry.

At the heart of these disputes lies a tension between the autonomy of responding parties to manage their own discovery processes and the appropriate remediation when those processes appear flawed. While collaborative approaches to search methodology can streamline litigation, courts generally resist intrusive oversight absent a showing of deficiency.

A recent ruling from the Southern District of New York in *Lively v. Wayfarer Studios LLC*, 2025 WL 2463633 (S.D.N.Y. Aug. 27, 2025), helps shed light on how courts are navigating such terrain. In this



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decision, the district judge carefully addressed whether a party could be compelled to disclose its search terms and extend the temporal scope of its production, providing helpful guidance on an increasingly thorny topic.

Disclosure of Search Terms

In *Lively v. Wayfarer*, the plaintiff—a well-known actor—alleged sexual harassment by the defendants along with a subsequent effort to damage her reputation. As discovery progressed, disputes arose over the adequacy of the defendants' productions. The plaintiff moved to compel the defendants, *inter alia*, "to disclose the search terms and parameters used to perform their document collection and review" and to produce

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responsive materials “postdating Dec. 20, 2024,” the date she had filed her California Civil Rights Division complaint.

In its analysis of the motion to compel discovery, the court first addressed the plaintiff’s request for the defendants’ search terms. It noted that mere suspicions of missing documents ordinarily do not support entry of such discovery orders against a party.

However, when the requesting party “identifies specific evidence to call into question the responding party’s contention that no further responsive documents exist,... courts have the discretion to order the responding party to explain specifically what efforts were undertaken to find relevant documents.”

The plaintiff identified such specific evidence here, principally that third parties produced documents that the defendants “apparently should have disclosed but did not.” These included emails and text messages with defendant representatives that contained terms central to the plaintiff’s claims such as “HR complaint,” “harassment protocols,” and the name of the film related to the plaintiff’s allegations.

“A reasonably diligent search,” stated the court, “would have captured these responsive messages, and the Wayfarer Parties’ failure to produce these materials casts doubt on the completeness of their searches.”

Moreover, the defendants neglected to produce documents “presumably within their possession, custody, or control” that they “annexed to and referenced in their own complaint.” The court noted that this failure “to produce materials cited in their own legal filings provides additional reason to believe that their other discovery obligations may have gone unfulfilled.”

With these demonstrated deficiencies in the defendants’ productions, the court determined that “Lively is entitled to verify the processes by which the Wayfarer Parties have searched their databases for responsive documents” and ordered the defendants to produce their search terms.

Notably, the defendants additionally argued, without citing authority, “that they should not be required to produce their search terms unless Lively is as well.” The court rejected this suggestion, stating that it “orders disclosure of collateral information such as search terms not as a matter of course, but because Lively has proffered specific evidence regarding deficiencies in the Wayfarer Parties’ productions. These deficiencies give rise to the inference that additional responsive materials exist but have not yet been disclosed. The Wayfarer Parties have not attempted to offer an analogous showing regarding Lively’s discovery productions, so their request for a reciprocal disclosure is unwarranted.”

Temporal Scope of Discovery

The court additionally reviewed the plaintiff’s request for “discovery through the present” from the defendants, covering approximately nine months after she filed her California Civil Rights Division complaint. The defendants objected, having aligned their discovery cutoff with the date of that complaint, Dec. 20, 2024.

They argued “that a request for documents to present would be overbroad and burdensome, that the obligation is disproportionate to that on Lively—who produced documents only through Dec. 31, 2024—and that a more reasonable cutoff would be Feb. 18, 2025, the date of the filing of Lively’s Amended Complaint.”

After first determining which post-complaint materials were discoverable, the court then addressed the appropriate end date for post-complaint discovery. Here, the court declined to compel discovery of all relevant materials since Dec. 20, 2024 as the plaintiff had requested. Rather, considering “relevance, overbreadth, and proportionality,” the court selected the defendants’ date of Feb. 18, 2025.

The court explained that while post-complaint materials may be relevant, “their relevance diminishes over time with greater distance from the underlying allegations in the complaint.” More-

over, while acknowledging that the plaintiff's "allegations of ongoing harm justify certain extensions of the discovery window," the court emphasized that "without more, they cannot justify perpetual discovery—especially given the potential that her allegations regarding a smear campaign overlap with advocacy related to the underlying suit."

The plaintiff had additionally requested that the defendants "produce a privilege log for documents withheld on the basis of privilege after the filing of her original complaint." The defendants objected to this on the grounds that such materials were presumptively privileged. The court disagreed and ordered the defendants "to produce a categorical privilege log" for post-complaint documents, consistent with Local Civil Rule 26.2(c).

Analysis

Demands for details on the process by which an opposing party conducts discovery, often called "discovery on discovery," seem to have become more common in litigation. Indeed, some parties will go even further than asking for details, and may insist on control of their opposing party's discovery process before it begins.

While collaborative discovery efforts can be useful as part of streamlining and facilitating the litigation process, the general rule, most clearly set forth in *Principle 6* from The Sedona Conference, is that "Responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information." Courts will generally only allow such discovery on discovery when presented with concrete evidence of a deficiency in the responding party's discovery process.

The *Lively* decision is more than a resolution of discovery disputes in a high-profile matter—

it is a thoughtful articulation of how a court can balance reasonableness, proportionality, and evidentiary rigor in modern e-discovery. Here, United States District Judge Lewis Liman carefully applied such standards to each request, weighing the plaintiff's demands for discovery on discovery and expanded temporal scope against the defendants' objections.

Liman's analysis underscores several principles that are shaping modern discovery practice. First, the court reaffirmed that mere suspicion or conjecture regarding missing documents is insufficient to justify intrusive discovery into a party's search methodologies.

However, when the requesting party presents concrete evidence—such as third-party productions revealing gaps or omissions in the responding party's disclosures—courts may order disclosure of search terms and processes.

Such an approach helps maintain the integrity of the discovery process while avoiding unnecessary fishing expeditions that could burden litigants and the court system. Second, the decision illustrates the balancing act required when determining the temporal scope of discovery.

While post-complaint materials may have relevance, their probative value diminishes as they become increasingly distant from the events underlying the claims. The court's selection of a reasonable cutoff date, rather than granting open-ended discovery, highlights the importance of proportionality and a tailored approach—especially where claims of ongoing harm are asserted.

Finally, reciprocal discovery is not automatically granted, and requests for such measures must be supported by evidence of comparable deficiencies under the applicable rules. Courts require independent factual justification before ordering reciprocity.