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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA

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6 NEWMARK REALTY CAPITAL, INC.,

7 Plaintiff,

8 v.

9 BGC PARTNERS, INC., et al.,

10 Defendants.

Case No. 16-cv-01702-BLF (SVK)

**ORDER ON JOINT STATEMENT ON  
PLAINTIFF'S MOTION TO COMPEL  
DEFENDANTS TO PRODUCE ESI AND  
MEET AND CONFER  
REQUIREMENTS**

Re: Dkt. No. 347

11 **1. Order on Plaintiff's Motion to Compel ESI**

12 Before the Court is the parties' Joint Statement on Plaintiff's Motion to Compel  
13 Defendants to Produce ESI. ECF 347. Plaintiff moves to compel Defendant to produce ESI in  
14 response to six disputed search terms. Defendants oppose the motion, arguing that the terms are  
15 overly broad and that the searches would impose undue burden and expense on Defendants.

16 As a preliminary matter, the Court finds Defendants' argument that responding to the  
17 disputed search terms would pose undue burdens and expenditures unpersuasive in the context of  
18 this case. The ESI Order in this case requires the parties to use "reasonable efforts" to perform  
19 proximity searching. ECF 168 at ¶ 10. According to Defendants, they are not able to perform  
20 proximity searching in-house and must incur substantial costs to have an outside vendor perform  
21 this task. However, requiring Defendants to perform, or to have performed, searches using  
22 proximity limitations is in no way unreasonable. Indeed, given both sides' references to the high  
23 stakes nature of this litigation and their scorched earth approach to discovery, proximity searching  
24 is not only reasonable but essential.

25 Notwithstanding the Court's rejection of the foregoing argument, however, the Court finds  
26 Plaintiff's disputed search terms to be overly broad, ambiguous, and without adequate limitations

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1 to bring them within the proportional needs of this case, and therefore **Plaintiff's motion is**  
2 **DENIED.**

3 **2. Order on Meet and Confer Requirements**

4 Although not the basis of the Court's ruling on Plaintiff's motion to compel, the Court  
5 remains concerned about the quality of both parties' meet and confer efforts in this case. The  
6 Court notes that the parties' joint statement indicates that they "met and conferred on February 21,  
7 2018 and April 3, 2018" on the issues raised in this motion, which was filed over a month later.  
8 Since April 3, 2018, this Court has issued numerous discovery orders, including several on ESI  
9 issues, which the Court believes could have informed further negotiations between the parties.  
10 **The Court orders a reset.** Each side is to identify for the Court by **5 p.m. on May 10, 2018**, the  
11 member of their team responsible for leading the meet and confer efforts with the other side. The  
12 meet and confer leader must personally participate in all meet and confer efforts with full authority  
13 to negotiate and adjust discovery demands or responses, join any hearings on discovery matters  
14 and, regardless of whether there is a hearing, be available to respond to any further inquiries of the  
15 Court.

16 **SO ORDERED.**

17 Dated: May 9, 2018

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20 SUSAN VAN KEULEN  
21 United States Magistrate Judge  
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