

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
24CV018718-590

DAPPER DEVELOPMENT, L.L.C.;  
TANTALUM HOLDINGS, LLC;  
BRENDAN GELSON; KYLE  
TUDOR; and MASON HARRIS,

Plaintiffs,

v.

ANDREW CORDELL,

Defendant.

**ORDER ON PLAINTIFFS' AND  
DEFENDANT'S 9 SEPTEMBER 2024  
PROPOSALS FOR A PROTOCOL  
GOVERNING THE PRODUCTION OF  
ELECTRONICALLY STORED  
INFORMATION**

1. **THIS MATTER** is before the Court to consider and resolve the parties' disagreement regarding a protocol for the production of Electronically Stored Information ("ESI").

2. In its Case Management Order (the "CMO") entered on 28 August 2024,<sup>1</sup> the Court ordered the parties to submit a protocol to govern the production of electronically stored information (the "ESI Protocol") no later than 9 September 2024. The CMO provided that "[i]n the event the parties are not able to reach agreement as to all terms of an ESI protocol, the parties will so advise the Court and reflect the areas of disagreement in the ESI protocol."<sup>2</sup>

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<sup>1</sup> (Case Mgmt. Order, ECF No. 25.)

<sup>2</sup> (Case Mgmt. Order ¶ 20.)

3. Pursuant to the provisions of the CMO, the parties filed separate proposed ESI protocols on 9 September 2024, reflecting their areas of disagreement.<sup>3</sup> Plaintiffs contend that the Court should enter an ESI protocol containing an express limitation at Section I(c) that any metadata request be “reasonable.”<sup>4</sup> Defendant rejects Plaintiffs’ proposal, contending that he has already agreed that the production of metadata will only be upon request and that no further restriction is appropriate since the production of metadata is the “default rule” under the North Carolina Rules of Civil Procedure (the “Rule(s)").<sup>5</sup>

4. The Court finds that the parties’ dispute has little practical significance. Rule 26(b)(1) expressly permits the discovery of electronically stored information, which the Rule defines as “includ[ing] *reasonably accessible metadata* that will enable the discovering party to have the ability to access such information as the date sent, date received, author and recipients.” N.C. R. Civ. P. 26(b)(1) (emphasis added). Moreover, under Rule 26(c), any party may move for a protective order to protect against undue burden or expense, and under Rule 34(b), “[i]n addition to other bases for objection, [a party’s response to a document request] may state an objection to production of electronically stored information from sources that the party identifies

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<sup>3</sup> (Notice Filing Def.’s Proposal Produc. Electronically Stored Info., ECF No. 26 [hereinafter “Def.’s ESI Proposal”]; Notice Filing Pls.’ Proposal Produc. Electronically Stored Info., ECF No. 27 [hereinafter “Pls.’ ESI Proposal”].)

<sup>4</sup> (Pls.’ ESI Proposal ¶¶ 5, 7.)

<sup>5</sup> (Def.’s ESI Proposal ¶ 3; Pls.’ ESI Proposal Ex. A (Defendant’s counsel’s email to Plaintiffs’ counsel referencing “the default rule is that documents are to be produced with metadata”).)

as not reasonably accessible because of undue burden or cost.” N.C. R. Civ. P. 26(c), 34(b).

5. In light of these provisions, it matters not whether the ESI Protocol specifically limits a metadata request to one that is “reasonable”—under Rules 26 and 34, any request for metadata must be reasonable as a matter of law. Given that the parties could not bridge the gap on this issue, however, the Court concludes that to avoid future confusion and dispute, it is appropriate to specifically require at Section I(c) in the ESI Protocol that any request for metadata be “reasonable.”

6. Accordingly, Section I(c) of the ESI Protocol shall provide as follows:

c. Default Provisions to Limit Costs. The parties acknowledge that it may be financially and practically more efficient to exchange documents without metadata, and in PDF or other format acceptable to the Requesting Party. Unless otherwise agreed to by the parties, documents shall be produced as kept in the ordinary course of business. However, upon reasonable request the documents shall be produced with metadata as required by the other terms of this ESI Protocol.

7. The Court will enter the ESI Protocol containing this provision contemporaneously with this Order.

8. The Court notes that, with the parties’ agreement and consent, the CMO gave the parties twelve days after the entry of the CMO to submit an ESI protocol. However, the parties did not attempt to discuss the terms of an ESI protocol until the business day before the ESI protocol was due. Given their decision to delay discussion of a protocol until late in the compliance period, it is not surprising that the parties failed to reach agreement on all terms. It should go without saying that compliance with case management deadlines that mandate party collaboration require the

parties to give themselves a reasonable time to reach agreement. The Court expects the parties to make timely efforts to collaborate hereafter.

**SO ORDERED**, this the 13th day of September, 2024.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge