



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
December 27, 2024

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No. 23-10423-mkn
)	
CASH CLOUD, INC.,)	Chapter 11
dba COIN CLOUD,)	
)	
Debtor.)	
)	
CASH CLOUD, INC., dba COIN CLOUD,)	Adv. Proc. No. 23-01015-mkn
)	
Plaintiff,)	
)	Date: November 13, 2024
vs.)	Time: 9:30 a.m.
)	
LUX VENDING, LLC, d/b/a/ BITCOIN)	
DEPOT,)	
)	
Defendant.)	
)	

**ORDER ON PLAINTIFF CASH CLOUD INC.'S MOTION TO COMPEL DEFENDANT
LUX VENDING, LLC D/B/A BITCOIN DEPOT'S PRODUCTION OF DOCUMENTS
RESPONSIVE TO CASH CLOUD'S FIRST SET OF REQUESTS FOR PRODUCTION¹**

¹ In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the Clerk of the Court. All references to "AECF No." are to the documents filed in the above-captioned adversary proceeding. All references to "Section" are to provisions of the Bankruptcy Code, 11 U.S.C. § 101, et seq. All references to "Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure. All references to "Civil Rule" are to the Federal Rules of Civil

On November 13, 2024, the court heard Plaintiff Cash Cloud Inc.’s Motion to Compel Defendant Lux Vending, LLC d/b/a Bitcoin Depot’s Production of Documents Responsive to Cash Cloud’s First Set of Requests for Production brought in the above-captioned adversary proceeding. The appearances of counsel were noted on the record. After the hearing, the matter was taken under submission.

BACKGROUND²

On February 7, 2023, Cash Cloud, Inc. dba Coin Cloud (“Debtor”) filed a voluntary “skeleton” Chapter 11 petition (“Petition”). (ECF No. 1). The Petition is signed by Chris McAlary (“McAlary”) as the Debtor’s President. An “ACTION BY WRITTEN CONSENT OF THE DIRECTORS” also is attached to the Petition and signed by McAlary as Director. The document also includes a provision retaining Daniel Ayala (“Ayala”) as an “independent director” of the Debtor. No schedules of assets and liabilities (“Schedules”) or statement of financial affairs (“SOFA”) are attached to the Petition. Notice of the Chapter 11 bankruptcy was filed and served, setting a meeting of creditors under Section 341(a) for March 16, 2023 (“341 Meeting”). (ECF No. 2).

On March 9, 2023, Debtor filed its Schedules and SOFA signed by McAlary. (ECF No. 239).

On March 10, 2023, the Debtor as plaintiff Cash Cloud, Inc., dba Coin Cloud (“Cash Cloud”) commenced the above-captioned adversary proceeding (“Adversary Proceeding”) against defendant Lux Vending, LLC dba Bitcoin Depot (“Lux”). (ECF No. 257). Cash Cloud’s complaint (“Adversary Complaint”) is styled as nine separate claims for relief: (1) temporary restraining order and preliminary injunctive relief; (2) violation of automatic stay under Section

Procedure. All references to “FRE” are to the Federal Rules of Evidence. All references to “Local Rule” are to the Local Rules of Bankruptcy Practice for the District of Nevada.

² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the above-captioned adversary proceeding and the above-captioned Bankruptcy Case. See Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this case, the underlying bankruptcy case and public records.”).

362(a)(3); (3) violation of Lanham Act under Section 1125; (4) consumer fraud/deceptive trade practices; (5) tortious interference with Contract – Host Agreements; (6) tortious interference with Contract – 2020 Purchase Agreement; (7) intentional tortious interference with prospective business relations; (8) injurious falsehoods; and (9) defamation. (AECF No. 1). Attached to the Adversary Complaint are copies of four exhibits consisting of (1) a Master Purchase Agreement dated September 4, 2015, (2) another Master Purchase Agreement dated January 23, 2020,³ (3) a Form 8-K dated August 24, 2022, filed with the U.S. Securities and Exchange Commission, and (4) a letter dated August 31, 2022, addressed to the Honourable Jaye Hooper regarding Cash Cloud Inv. v. BitAccess Inc., Court File No. CV-22-89877.

On March 16, 2023, the 341 Meeting was concluded.

On March 21, 2023, Cash Cloud filed a Motion for Temporary Restraining Order (“TRO Motion”) as well as a Motion for Preliminary Injunction (“Injunction Motion”), along with a request to have both motions heard on shortened time. Attached to both motions were duplicate documents marked as exhibits 1 through 7.⁴ (AECF Nos. 5 and 6).

On March 31, 2023, an order was entered allowing the TRO Motion and Injunction Motion to be heard on April 20, 2023. (AECF No. 13).

On April 12, 2023, Lux filed opposition to both the TRO Motion and the Injunction Motion, along with the Omnibus Declaration of Scott Buchanan as well as a Request for Judicial

³ This is the “2020 Purchase Agreement” mentioned throughout the Adversary Complaint and which is the subject of the Sixth Claim for Relief.

⁴ The same seven exhibits consisted of: (1) a Kiosk Site Location Agreement with Lux dated 3-9-21; (2) a letter from Fasken to the Honorable Jaye Hooper dated August 31, 2022; (3) an email exchange between Frank Schilling and Landon Thomas dated February 8, 2023; (4) a forwarded email from MT to Chris McAlary regarding an email sent from Todd Umstott to MT dated February 22, 2023; (5) a forwarded email from Raymond Taddeo to Michael Tomlinson dated March 10, 2023, involving an email exchange between Frank Schilling and Landon Thomas, regarding “Bitcoin ATM Industry Shake-up - CoinCloud Bankruptcy”; (6) a forwarded email from MT to Chris McAlary dated March 10, 2023, involving an email exchange between Norm Neike and MT, regarding an email exchange between Mark Smith and Sarah Wessel, regarding “Bit Coin Depot at Cub”; and (7) a Declaration of Christopher McAlary in Support of Plaintiff’s Motion for Temporary Restraining Order (“McAlary TRO Declaration”).

1 Notice (“RJN”). (AECF Nos. 27-30). Attached to the RJN as Exhibit A is a copy of a decision
 2 entered on October 4, 2022, by the Superior Court of Justice, Ontario Province, Canada
 3 (“Ontario Court”), in Cash Cloud Inc. v. BitAccess Inc., assigned Case File No. CV-22-89887.

4 On April 13, 2023, Lux filed a motion to dismiss the Adversary Complaint (“Lux Motion
 5 to Dismiss”), which was noticed to be heard on May 17, 2023. (AECF Nos. 31 and 32).

6 On April 17, 2023, Cash Cloud filed replies in support of its TRO Motion and its
 7 Injunction Motion. (AECF Nos. 38 and 39).

8 On April 20, 2023, both the TRO Motion and the Injunction Motion were heard and
 9 taken under submission.

10 On May 8, 2023, Debtor filed a proposed Chapter 11 Plan of Reorganization dated May
 11 8, 2023, along with an accompanying Disclosure Statement. (ECF Nos. 528 and 529). The
 12 initial Chapter 11 plan “toggled” between two alternatives: first if the Debtor obtained a sale of
 13 substantially all of its assets, and second if the sale did not occur. If the first alternative
 14 occurred, the Debtor’s operations would cease and any remaining assets would be administered
 15 through a separate creditor trust. If the second alternative occurred, a reorganized debtor would
 16 emerge to continue operations.

17 On June 8, 2023, McAlary resigned as president and chief executive officer of the
 18 Debtor.⁵

19 On June 16, 2023, Debtor filed a Motion for Order: (A) Confirming Auction Results; (B)

21 ⁵ On June 23, 2023, the Official Committee of Unsecured Creditors (“UCC”) formed in
 22 the Debtor’s reorganization proceeding, filed a “Statement and Reservation of Rights”
 23 concerning the Debtor’s proposed sale of substantially all of its operating assets. (ECF No. 758).
 24 Among other things, the UCC reported as follows: “The Debtor informed the Committee that
 25 Chris McAlary, the Debtor’s CEO and director, resigned from the company on or about June 9,
 26 2023. Mr. McAlary’s resignation and his postpetition conduct, which the Committee intends to
 27 investigate, raise questions about his intent to acquit his fiduciary duties to all of the Debtor’s
 28 creditors during the course of this case....Moreover, since Mr. McAlary’s resignation, a host of
 other company issues are coming to light that shed serious doubt on the propriety of Mr.
 McAlary’s postpetition conduct. The Committee has requested a litigation hold with respect to
 all business and personal documents and communications within Mr. McAlary’s possession,
 custody, or control, which is pertinent to the Committee’s ongoing investigation into the
 Debtor’s financial position and pre- and postpetition conduct, but has not received any response
 from Mr. McAlary.” Statement and Reservation of Rights at 3:10-28.

1 Approving the Sale of Certain of Debtor's Assets to Heller Capital Group, LLC, and Genesis
 2 Coin, Inc., Free and Clear of Liens claims, Encumbrances, and Other Interests; (C) Authorizing
 3 the Assumption and Assignment of Certain of the Debtor's Executory Contracts and Unexpired
 4 Leases Related Thereto; and (D) Granting Related Relief ("Sale Motion"). (ECF No. 714). On
 5 the same date, Ayala, as the Debtor's remaining independent director, filed declaration in support
 6 of the Sale Motion. (ECF No. 715).⁶

7 On June 30, 2023, an order was entered granting the Sale Motion. (ECF No. 795).

8 On August 1, 2023, Debtor's First Amended Chapter 11 Plan of Reorganization Dated
 9 August 1, 2023, was filed. (ECF No. 996)

10 On August 24, 2023, an Order on Objection to Debtor's First Amended Chapter 11 Plan
 11 of Reorganization Dated August 1, 2023, was entered. (ECF No. 1120).

12 On August 25, 2023, the court entered an Order: (A) Approving Debtor's Disclosure
 13 Statement [ECF No. 529] on a Final Basis; and (B) Confirming Debtor's First Amended Chapter
 14 11 Plan of Reorganization Dated August 1, 2013 [ECF No. 996]. (ECF No. 1126).

15 On November 17, 2023, an order was entered in the instant Adversary Proceeding
 16 denying both the TRO Motion and the Injunction Motion ("Order on TRO Motion").⁷ (AECF
 17

18 ⁶ At that time, McAlary already had resigned and Ayala apparently was the Debtor's only
 19 remaining director. In addition to Ayala's declaration, additional declarations were filed by
 20 individuals representing the Debtor's financial adviser, and the purchasers of the assets. (ECF
 21 Nos. 716, 717, and 718). On September 1, 2023, the UCC commenced Adversary Proceeding
 22 No. 23-01125 against McAlary ("UCC-McAlary Adversary"). The complaint filed in that
 23 separate adversary proceeding seeks the avoidance and recovery from McAlary of various
 prebankruptcy transfers. It also seeks damages and equitable relief under various claims brought
 under Nevada law as well various forms of legal and equitable relief under various provisions of
 the Bankruptcy Code.

24 ⁷ In denying the TRO Motion, the court concluded that "[T]he McAlary Declaration is
 25 substantially, if not fatally, flawed." Order on TRO Motion at 6:28. The multiple evidentiary
 26 deficiencies in the McAlary Declaration were discussed, including his lack of personal
 27 knowledge of many assertions of both fact and law. *Id.* at 7:1-15 & n.7. In seeking interim
 28 injunctive relief, it was the Debtor's burden of demonstrating a probability of success on the
 merits in this Adversary Proceeding. Debtor's apparent reliance on McAlary as its only
 percipient witness, however, was fraught at best. After McAlary's resignation and subsequent
 pursuit by the UCC, it is unclear whether further reliance on testimony from the same witness
 can be expected.

1 No. 53).

2 On November 17, 2023, an order was entered granting in part and denying in part the Lux
3 Motion to Dismiss (“Dismissal Order”). (AECF No. 54). The Motion to Dismiss was granted
4 without prejudice as to the First and Second Claims for Relief, and denied as the remaining
5 claims.

6 On December 1, 2023, Lux filed an answer to the Adversary Complaint. (AECF No. 59).

7 On December 12, 2023, the parties filed a stipulated amended discovery plan under
8 which all fact discovery would close by January 31, 2025, expert discovery would close by April
9 30, 2025, and dispositive motions would be filed by May 30, 2025. (AECF No. 62).

10 On February 9, 2024, an order was entered scheduling a settlement conference in this
11 Adversary Proceeding to be held on April 12, 2024. (AECF No. 64).

12 On April 12, 2024, an order was entered continuing the settlement conference to April
13 25, 2024. (AECF No. 72).

14 On April 19, 2024, Lux filed a Motion to Compel Complete and Non-Evasive Answers to
15 First Set of Interrogatories (“Lux Motion to Compel”), accompanied by the declaration of Adam
16 P. Schwartz, Esq. (“Schwartz Declaration”), and noticed it to be heard on May 22, 2024. (AECF
17 Nos. 75, 76, and 77). In its motion, Lux sought to compel Cash Cloud to provide further
18 responses to specific items in its first set of interrogatories. Interrogatory 6 asked the Debtor to
19 “Identify the number of times and the corresponding dates that the screenshot of the Google Ad
20 appeared as a result of the search terms used by Plaintiff to generate the screenshot of the Google
21 advertisement on page 16 of the Complaint.” Interrogatory 7 asked the Debtor to “Identify the
22 specific provisions, paragraphs, or terms of the 2020 Purchase Agreement that BitAccess, Inc.,
23 breached, as alleged in paragraph 126 of the Complaint, including the date(s) of the alleged
24 breach and how each provision, paragraph, or term was breached.” Interrogatory 8 asked the
25 Debtor to “Identify the kiosk host(s) that breached host contract(s), as alleged in paragraph 126
26 of the Complaint, and identify Plaintiff’s point of contact for each of these kiosk hosts.
27 Interrogatory 9 asked the Debtor to Identify Plaintiff’s contracts, and the specific provisions,
28 paragraphs, or terms of the contract(s), with kiosk host(s) that the kiosk host(s) breached, as

alleged in paragraph 126 of the Complaint, including the date(s) of the alleged breach and how each provision, paragraph, or term was breached.” Interrogatory 10 asked the Debtor to “Describe Plaintiff’s alleged relationship with the kiosk host(s) that breached host contract(s), as alleged in paragraph 126 of the Complaint, including but not limited to: (a) When Plaintiff first met or communicated with each kiosk host; (b) When Plaintiff and each kiosk host established their contractual relationship; (c) How Plaintiff and each kiosk host established the alleged relationship; [and] (d) The terms and conditions of the alleged relationship between Plaintiff and each kiosk host.” Interrogatory 11 asked the Debtor to “Identify the new customer agreements, and the specific provisions, paragraphs, or terms of the agreements, that Defendant purportedly disrupted, as alleged in paragraphs 138-142 of the Complaint, including but not limited to: (a) How Plaintiff and prospective customers execute the new customer agreements; [and] (b) The terms and conditions of the new customer agreements.” Interrogatory 13 asked the Debtor to “Identify all keywords used by Plaintiff as part of any marketing efforts, including sponsored advertising, search engine optimization, Google Ads, social media, print advertisements, or any other marketing materials.”

On April 25, 2024, Cash Cloud filed a notice that the parties were unable to reach a settlement of the Adversary Proceeding. (AECF No. 79).

On May 8, 2024, Debtor filed its opposition to the Lux Motion to Compel. (AECF No. 80).

On May 15, 2024, Lux filed its reply in support of its motion. (AECF No. 82).

On September 10, 2024, an order was entered granting the Lux Motion to Compel (“Lux Compel Order”). (AECF No. 94). That order required Cash Cloud to supplement its responses to certain interrogatories propounded by Lux, and to provide a timeline and detailed description of steps being undertaken to obtain the information requested in the subject interrogatories.

On September 13, 2024, however, an order was entered approving the parties’ stipulation to dismiss with prejudice the Third, Fourth, Fifth, Seventh, Eighth, and Ninth Claims for Relief asserted in the Adversary Complaint (“Dismissal Stipulation”). (AECF No. 98). Because the First and Second Claims for Relief were dismissed in the prior Dismissal Order, only the Sixth

1 Claim for Relief remains in this Adversary Proceeding for tortious interference in connection
2 with the 2020 Purchase Agreement.

3 On October 8, 2024, Cash Cloud filed the instant Motion to Compel Defendant Lux
4 Vending, LLC d/b/a Bitcoin Depot's Production of Documents Responsive to Cash Cloud's First
5 Set of Requests for Production ("Cash Cloud Motion to Compel"), accompanied by a
6 Declaration of James M. Jimmerson, Esq. ("First Jimmerson Declaration").⁸ (AECF No. 99).
7 The Motion to Compel was noticed to be heard on November 13, 2024. (AECF No. 105).

8 On October 8, 2024, Cash Cloud also filed a "Status Report" in the above-referenced
9 Adversary Proceeding. (AECF Nos. 100 and 101).⁹

10 On October 30, 2024, Lux filed its response ("Lux Response") to the Cash Cloud Motion
11 to Compel, along with a Declaration of Adam P. Schwartz, Esq. ("Schwartz Declaration")¹⁰ in

12 ⁸ The First Jimmerson Declaration authenticates four separate exhibits attached to the
13 instant motion ("Cash Cloud Exhibits"). Exhibit 1 is a copy of Lux's response to Cash Cloud's
14 first set of document requests under Civil Rule 34. That first set of document requests was
15 propounded by Cash Cloud on or about November 17, 2023. Exhibit 2 is a copy of emails
16 exchanged between counsel on October 4, 2024. Exhibit 3 is a copy of the initial disclosures
17 under Civil Rule 26(a)(1) that were made by Lux in this Adversary Proceeding on May 5, 2023.
18 Exhibit 4 is a copy of a response by Cash Cloud's counsel dated March 7, 2024, to a proposal
19 from Lux's counsel for implementation of an ESI (electronically stored information) protocol
20 ("ESI Protocol").

21 ⁹ In its Status Report, Cash Cloud asserted that in light of the Dismissal Stipulation, only
22 Lux Interrogatory No. 7 is relevant to the remaining Sixth Claim for Relief. As previously
23 mentioned, that claim is based on an alleged tortious interference with the 2020 Purchase
24 Agreement. As previously mentioned, Lux Interrogatory No. 7 requests Cash Cloud to "identify
25 the specific provisions, paragraphs, or terms of the 2020 Purchase Agreement that BitAccess,
26 Inc., breached, as alleged in paragraph 126 of the Complaint, including the date(s) of the alleged
27 breach and how each provision, paragraph, or term was breached." It appears, however, that
28 paragraph 126 of the Complaint is an element of Cash Cloud's Fifth Claim for Relief that alleged
Tortious Interference with Contract – Host Agreements. The Fifth Claim for Relief focused
primarily on the contracts between Cash Cloud and its retail hosts, rather than the obligations
arising under the 2020 Purchase Agreement. As the parties stipulated to dismiss the Fifth Claim
for Relief with prejudice, the position taken by Cash Cloud in the Status Report appears to be
somewhat inconsistent with the position it takes in connection with its present motion.

¹⁰ Attached as Exhibit "A" to the Schwartz Declaration is a copy of a letter dated March
25, 2024, sent by counsel for Lux to counsel for Cash Cloud discussing the proposed ESI
Protocol. The letter also objects to the participation of the UCC in the settlement conference that
had been scheduled to take place on April 12, 2024.

1 support thereof. (AECF Nos. 112 and 113).

2 On November 6, 2024, Cash Cloud filed its reply in support of the instant Motion to
3 Compel, accompanied by another Declaration of James M. Jimmerson, Esq. (“Second
4 Jimmerson Declaration”).¹¹ (AECF No. 114).

5 On November 11, 2024, Lux filed a “Status Report” regarding the “Order on Defendant
6 Lux Vending, LLC d/b/a Bitcoin Depot’s Motion to Compel Complete and Non-Evasive
7 Answers to First Set of Interrogatories.” (AECF No. 115).¹²

8 **APPLICABLE LEGAL STANDARDS**¹³

9 Pursuant to Civil Rule 37 and in relation to Civil Rule 34, Cash Cloud filed the instant
10 motion compelling production of various documents. This motion and its related discovery
11 requests are made applicable through this proceeding by Bankruptcy Rules 7037 and 7034, and
12 Local Rule 7037. Under Civil Rule 37(a)(3)(B)(iii) and (iv), a party who has served
13 interrogatories or a document request may move to compel answers and production. A
14 prevailing party can recover costs, including attorney fees, unless the motion or opposition was
15 substantially justified or other circumstances make an expense award unjust. If the court grants

16
17 ¹¹ Attached to the Second Jimmerson Declaration are two additional exhibits. Exhibit 5 is
18 a copy of a statement of claim filed on October 25, 2024, before the Ontario Court by
19 Mohammed Adham against BitAccess, Inc. Exhibit 6 is a copy of a first set of document
requests under Civil Rule 34 propounded by Lux to Cash Cloud in this Adversary Proceeding, on
or about January 26, 2024.

20 ¹² Attached to the Status Report submitted by Lux is a copy of a stipulation entered in the
21 UCC-McAlary Adversary on November 8, 2024, to extend various deadlines, including
22 discovery. Among other things, the stipulation references the Debtor’s need for additional time
23 to produce “voluminous” ESI materials, the bulk of which would be provided the following
24 week. The docket in the UCC-McAlary Adversary reflects that an order approving that
25 stipulation was entered on November 12, 2024. Nothing in the Status Report nor the stipulation
26 mentions whether an ESI protocol between the UCC and McAlary was at issue nor whether any
concerns were raised as to the format in which electronic files would be produced. Whether the
Debtor now is able to provide ESI materials to McAlary as either or both pdf or tiff files,
compare First Jimmerson Declaration at ¶ 6, is unknown.

27 ¹³ The same standards were applied in the Lux Compel Order albeit in connection with
28 responses to interrogatories rather than a request for production of documents. Because the
parties have significantly narrowed the litigation to one and only one claim for relief, however,
the scope of discovery correspondingly should be tailored to the remaining claim.

the motion but the responding party does not comply with the order, Civil Rule 37(b) permits sanctions for failure to comply with the order. See In re 2377 NW Kearney LLC, 2023 WL 4571947, at *1 (Bankr. D. Ore. July 17, 2023).

A motion to compel must include a threshold showing that the requested information falls within the scope of discovery under Civil Rule 26. “The party opposing discovery has the burden of showing that the discovery is, among other things, irrelevant, overly broad, or unduly burdensome.” See Caballero v. Bodega Latina Corp., 2017 WL 3174931, at *3 (D. Nev. July 25, 2017); see also Culkin v. Pitney Bowes, Inc., 225 F.R.D. 69, 71 (D. Conn. 2004) (“The defendant, as the objecting party, bears the burden of showing why discovery should be denied.”). To meet this burden, the objecting party must detail the reasons why each request is objectionable. See Caballero, 2017 WL 3174931, at *3. Civil Rule 26(b)(1) states the following:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

See FED. R. CIV. P. 26(b)(1). To be discoverable under Civil Rule 26(b)(1), information must be (1) relevant to any party's claim or defense and (2) proportional to the needs of the case. See Caballero, 2017 WL 3174931, at *1.¹⁴

“In deciding whether to restrict discovery under Fed. R. Civ. P. 26(b)(2)(C), the Court should consider the totality of the circumstances, weighing the value of the material sought against the burden of providing it, and taking into account society’s interest in furthering the truth-seeking function in the particular case before the court.” See Caballero, 2017 WL 3174931, at *3. Active involvement by courts is encouraged and necessary in discovery matters. Id. Furthermore, Civil Rule 26 gives courts “broad discretion to tailor discovery narrowly and to

¹⁴ Discovery generally is relevant and permissible if the discovery might lead to admissible evidence. See FED.R.CIV.P. 26(b)(1). In other words, the requesting party need not establish that the requested information would be admissible at trial.

dictate the sequence of discovery.” See Caballero, 2017 WL 3174931, at *3; see also Culkin, 225 F.R.D. at 71 (“Moreover, the court is afforded broad discretion in deciding discovery issues.”).

DISCUSSION

There is no dispute that this Adversary Proceeding was commenced on March 10, 2023. Civil Rule 26(a)(1) required the parties to make initial disclosures of individuals likely to have discoverable information as well as copies or a description by categories and location of, *inter alia*, “all electronically stored information” that may be used to support its claims or defenses.

There is no dispute that both Cash Cloud and Lux provided their initial disclosures on or about May 5, 2023. See Cash Cloud Exhibit 3. With respect to a broad description of “contract(s), communications, correspondence, and related documents regarding kiosks and kiosk software between Plaintiff and BitAccess,” Lux described the location of such items as “Plaintiff/BitAccess.”

There is no dispute that Cash Cloud served its first set of 23 document requests on or about November 17, 2023, and that Lux submitted its response on or about December 18, 2023. See Cash Cloud Exhibit 1. There is no dispute that in responding to Request Nos. 1, 2, 3, 4, 5, 6., 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, and 20, Lux includes the following prefatory language in the final paragraph of its particular response: “Subject to the foregoing objections, without waiving the same, and subject to entry of a Confidentiality Order and ESI protocol, Bitcoin Depot will produce relevant, nonprivileged, responsive documents...” In each response to these specific Requests, Lux raises a variety of objections to the document requests, including responses such as vagueness, overbreadth, proportionality, duplication, attorney-client privilege, and work product. In responding to Request Nos. 18, 21, 22 and 23, Lux raises similar objections, and also includes similar language delaying any production of documents until after “entry of a Confidentiality Order and ESI protocol.”

Although the subject document requests were made nearly a year ago, the instant Cash Cloud Motion to Compel was not filed until after the scope of the Adversary Proceeding was significantly reduced from nine separate claims for relief to only one claim for tortious

1 interference with the 2020 Purchase Agreement. In response to the Cash Cloud Motion to
 2 Compel, Lux primarily observes that Cash Cloud’s document request made in November 2023
 3 should have been amended to address the only remaining claim at issue. See Lux Response at
 4 2:13 to 3:21 and 6:5-9; Schwartz Declaration at ¶ 14. Having reviewed and compared the Cash
 5 Cloud document requests to the allegations of its Sixth Claim for Relief, the court agrees with
 6 that observation.

7 While initial formal discovery generally is permissible if it might lead to admissible
 8 evidence, see note 14, supra, there is no reason to assume the same initial discovery requests at
 9 the outset of litigation are unaffected by a dramatic reduction in the contested claims. As
 10 previously discussed at note 9, supra, it is not clear whether Cash Cloud conflates the allegations
 11 of the Sixth Claim for Relief with the focus of the Fifth Claim for Relief that was dismissed with
 12 prejudice after the subject document request was propounded. Under these circumstances, an
 13 order compelling Lux to provide documents in response to Cash Cloud’s first set of requests for
 14 production is unwarranted. Denial of the instant motion without prejudice is appropriate. Cash
 15 Cloud will be permitted to amend its first set of document requests as necessary to pursue the
 16 Sixth Claim for Relief.¹⁵ Lux, of course, may respond to an amended request as appropriate.

17 As to the proposed ESI Protocol, it apparently was intended to encompass documents
 18 provided by both parties, but they reached an impasse on the format in which documents would
 19 be produced electronically.¹⁶ Lux apparently insisted that Cash Cloud provide documents in
 20 “tagged image file” format (“tiff”), while Cash Cloud insisted that it provide documents in
 21 “portable document” format (“pdf”). See First Jimmerson Declaration at ¶¶ 5, 6 and 10; Second
 22 Jimmerson Declaration at ¶ 3. Cash Cloud maintains that its documents are electronically stored
 23 as pdf files and that the cost of converting to them to tiff would be excessive. See First
 24 Jimmerson Declaration at ¶¶ 5 and 6. Because Lux apparently has not produced any electronic

25 ¹⁵ With an appropriately narrowed and amended request for production, objections, if
 26 any, concerning vagueness, relevance, and proportionality should be minimal.

27 ¹⁶ Counsel apparently exchanged drafts of the ESI Protocol originally suggested by Lux.
 28 Oddly, neither Cash Cloud nor Lux provided the court with a copy of the proposed ESI protocol
 even though it is one of the prime sources of the current dispute.

documents in any file format, see First Jimmerson Declaration at ¶¶ 2, 3, 8, and 10; Second Jimmerson Declaration at ¶ 3, it is not entirely clear whether Lux would bear any additional costs whatsoever in producing the electronically stored information responsive to Cash Cloud's requests under Civil Rule 34.

Cash Cloud apparently does not insist that Lux provide electronic information in any particular format but Cash Cloud may have to convert any materials received from Lux to pdf files. If Lux maintains its information only in tiff, it may have to convert pdf files received from Cash Cloud to tiff. As long as both sides receive the requested information, it will be their responsibility to convert the materials to a usable format.¹⁷ Whether either party has a preferred format, the cost of converting the otherwise usable information must be borne by the recipient. Because each party has the burden of providing admissible evidence at trial, each party also bears the responsibility of offering evidence in a format acceptable to the trier of fact. In other words, the court will not require that ESI files be produced by either party in pdf or tiff. As this appears to be the basis for the impasse in producing ESI materials, it should no longer be an impediment for doing so.

IT IS THEREFORE ORDERED that Plaintiff Cash Cloud Inc.'s Motion to Compel Defendant Lux Vending, LLC d/b/a Bitcoin Depot's Production of Documents Responsive to Cash Cloud's First Set of Requests for Production, Adversary Docket No. 99, be, and the same hereby is, **DENIED WITHOUT PREJUDICE AS PROVIDED IN THIS ORDER.**

IT IS FURTHER ORDERED that a further hearing will be conducted telephonically on Thursday, **January 9, 2025, at 10:00 a.m.** to discuss the status of this Adversary Proceeding as well as the completion of discovery.

Copies sent via CM/ECF ELECTRONIC FILING

Copies sent via BNC to:

¹⁷ Oddly, neither Cash Cloud nor Lux offers any estimate of the cost involved in converting to different file formats while both seem to suggest that it is either excessive or de minimis.

1 JOHN J. LAMOUREUX
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2 CARLTON FIELDS, P.A.
4221 W. BOY SCOUT BLVD., STE. 1000
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