

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
3

4 WOODWAY USA, INC., .
5 Plaintiff, . Docket
6 v. . No. 22-cv-0492-JO-BLM
7 LIFECORE FITNESS, INC., .
8 Defendant. . December 13, 2023
9 . 9:30 a.m.
10 . San Diego, California
11

12 TRANSCRIPT OF MOTION HEARING
13 BEFORE THE HONORABLE JINSOOK OHTA
14 UNITED STATES DISTRICT JUDGE

15 A-P-P-E-A-R-A-N-C-E-S

16 For the Plaintiff: Foley & Lardner LLP
17 555 South Flower Street, Suite 3300
18 Los Angeles, California 90071-2418
19 By: ASHLEY M. KOLEY, ESQ.
20 - and -
21 Foley & Lardner LLP
22 777 East Wisconsin Avenue
23 Milwaukee, Wisconsin 53202
24 By: KADIE M. JELENCHICK, ESQ.
25 For the Defendant: Brooks Kushman P.C.
150 West Second Street, Suite 400n
Royal Oak, Michigan 48067-3846
By: JOHN M. HALAN, ESQ.
REBECCA J. CANTOR, ESQ.
SEYED REZA ROGHANI ESFAHANI, ESQ.
Court Reporter: Chari Bowery, RPR, CRR
USDC Clerk's Office
333 West Broadway, Suite 420
San Diego, California 92101
chari_bowery@casd.uscourts.gov
Reported by Stenotype, Transcribed by Computer

1 SAN DIEGO, CALIFORNIA; DECEMBER 13, 2023; 9:30 A.M.

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3 THE CLERK: Matter 2 on calendar, 22-cr-0492, Woodway
4 U.S.A., Inc., v. LifeCORE Fitness, Inc.

5 MS. JELENCHICK: Good morning. Kadie Jelenchick, of
6 Foley & Lardner, LLP. With me, by way of video, is my
7 colleague, Ashley Koley, here on behalf of plaintiff, Woodway
8 U.S.A., Inc.

9 THE COURT: Good morning.

10 Defendants?

11 MR. HALAN: Good morning, Your Honor. John Halan, on
12 behalf of LifeCORE Fitness, accompanied by Rebecca Cantor and
13 Reza Esfahani.

14 THE COURT: Good morning. We are here on a motion to
15 stay. I understand defendants are asking to stay the case
16 pending IPR review at this point.

17 I had a few questions for defendant. So, I know there was
18 an initial proceeding that was taken up by the PTAB, and that
19 was for the first three patents, and now you have just
20 initiated proceedings for the fourth of the patents. For the
21 first three, if I have done my math correctly, you should be
22 getting an answer from them around October 2024; is that right?

23 MR. HALAN: That is correct, Your Honor. Not just an
24 answer; there will be a final decision by that point.

25 THE COURT: And I understand that, while the fourth

1 one is still in process, that all four of the patents are
2 fairly closely related; so, by this October 23rd, 2024 date, we
3 should have some fairly good indication of whether the outcome
4 of this IPR process is something that is going to result in
5 efficiencies for the Court in making its decision; is that
6 right, Counsel?

7 MR. HALAN: That's correct, Your Honor.

8 THE COURT: Just so everyone knows what I am thinking
9 at this point, I am not inclined to grant the stay pending the
10 entirety of the IPR process. I don't think the three
11 factors -- especially dilatory tactics, prejudice to the
12 plaintiff -- warrants a stay of that nature; however, I am open
13 to being convinced that a stay up to October 2024 may be, given
14 the three factors that this Court needs to look at for a stay,
15 may be what makes sense and is a good balance of being able to
16 get an answer that will avoid unnecessary litigation, judicial
17 resources, on the part of the bench and of the parties. If we
18 stuck with our current schedule, we would be doing dispositive
19 motions and ramping up for trial right around that October 23,
20 2024 time frame. So I am open to being convinced that a stay,
21 at least on dispositive motions and trial preparation, would be
22 appropriate.

23 Plaintiff's Counsel, so, what is your sense of the -- what
24 is your sense of the balance of the factors and what the Court
25 should be looking at in terms of a stay? I know that you are

1 opposing a blanket stay. Are there ways in which you would
2 also be opposed to the more limited stay that the Court is
3 thinking about right now?

4 MS. JELENCHICK: No, Your Honor, respectfully not,
5 and here is why, for multiple reasons.

6 The threshold issue is Assault, a San Diego-based company,
7 is a competitor of Woodway's, and every day they continue in
8 the market and every day that Woodway is delayed in enforcing
9 its patent rights is harm to Woodway.

10 And I know we saw in Assault's reply an identification
11 that there are other players in this particular treadmill
12 market. Those other players are either licensees of my client
13 or they are infringers and they are on notice of their
14 infringement. So it can't be the case that they say, "We are
15 infringing, but others are infringing, too, so let's delay, at
16 least until October of 2024."

17 And October 2024 is the likely suspected date that the
18 PTAB would issue final written decision on the first three
19 proceedings. That deadline may be extended for up to an
20 additional six months. And then, of course, any adverse ruling
21 may be appealed to the federal circuit.

22 And while the three patents that are subject to the
23 instituted proceedings are from the same family as the fourth
24 patent, there is various claim scope; the scope of these claims
25 is different, and it is not the case that any decision in

1 October of 2024 will have any bearing on the substantive merits
2 on the speculative nature of this fourth proceeding. And we
3 won't know until May of 2024 -- Assault indicated in their
4 papers that -- they kept citing May of 2023; I presume that's a
5 typo, but it's May of 2024 -- whether the proceeding on the
6 fourth patent is even going to be instituted.

7 So, then, it is again at least another year, possibly
8 extended by an additional six months, to evaluate the
9 particular arguments that they have raised regarding the same
10 art, art that they have been aware of for well over a year, and
11 applied to different claim scope.

12 So it is not the case that a favorable decision for
13 Assault in one proceeding is necessarily going to dictate
14 cancellation of subsequent claims, either in that particular
15 patent or in related patents from the same family.

16 THE COURT: So, the nature of possible invalidation,
17 here, if I understand it correctly, was based on prior art, is
18 that right, for the first three patents?

19 MS. JELENCHICK: Yes.

20 THE COURT: For the fourth one -- I looked at all of
21 these for the claims construction. It is not that I am a
22 stranger to them. And they appear, at least to me, to be very
23 closely related. How would it be that you would have three
24 patents -- if they are invalidated for prior art reasons, how
25 would it be that the fourth one wouldn't be?

1 MS. JELENCHICK: Well, whether a particular claim is
2 patentable is evaluated on a claim-by-claim basis, applying
3 either a single patent or printed publication under an
4 anticipation theory, or under multiple patents or printed
5 publications predicated on an obviousness theory. And each of
6 the claims -- while similar in nature, they are directed to a
7 particular novel configuration of manual treadmills and certain
8 components therein. It's conceivable, hypothetically, that the
9 board at the patent office may identify that a particular
10 patent or printed publication discloses some particular general
11 aspect disclosed, but the more narrow --

12 THE COURT: Conceivable, certainly, Counsel,
13 conceivable; but is it likely? I have looked at them. All
14 four of them were very similar in many ways, and the claims
15 construction treated them as synonymous across the four claims
16 in terms of the constructions that were being disputed.

17 What would be the difference in the fourth one such that
18 if the first three were invalidated because of obviousness or
19 prior art that the fourth one would be treated differently?

20 MS. JELENCHICK: I think it would be evaluated under
21 the same standards and similar art, because Assault is relying
22 on similar art but the scope of the claims is different. So,
23 again, a reference may disclose something --

24 THE COURT: We are talking very vague here. How is
25 the fourth patent different from the first three such that, on

1 obviousness grounds, it might have a different outcome?

2 MS. JELENCHICK: There are certain novel claims
3 directed to the particular type of safety device.

4 THE COURT: What claims? You keep talking in
5 generalities, and I am pushing you to tell me what is different
6 about number four such that I will accept that there's the
7 possibility of a different outcome with regard to number four
8 as opposed to the first three.

9 MS. JELENCHICK: I think, even stepping back from the
10 substance of the fourth IPR, there's no guarantee that the --

11 THE COURT: Counsel, answer my question. How is it
12 different?

13 MS. JELENCHICK: Well, it's different because no
14 proceeding has been entered against it as of yet.

15 THE COURT: In terms of -- I think either you are
16 struggling with my question or you don't have an answer for me,
17 and if it is the later, it would save everyone's time if you
18 would just state that. And I don't think you have an answer
19 for me in terms of the question that I am asking, so I am going
20 to move on to a different question.

21 What are you doing right now? Is everyone conducting
22 discovery at this point?

23 MS. JELENCHICK: I do have an answer for you. I was
24 just pulling up the specific claim language of the patent so we
25 could talk specifically about potential differences.

1 But I am happy to address what the parties are doing right
2 now if that's your preference.

3 THE COURT: So, if you can, tell me concretely what
4 is different about number four such that it might have a
5 different outcome on an obviousness analysis. And this would
6 be something really specific about the structure of what is
7 described in the patents and why that is less covered by prior
8 art than the first three.

9 I will give you more time.

10 Tell me what is going on right now in discovery and what,
11 in your view, would be held up if we stayed this until
12 October 2024. What is going on in discovery right now?

13 MS. JELENCHICK: Mr. Bates, the CEO of Assault, has
14 been ordered to appear for deposition next week, and that's
15 something that's scheduled for next week.

16 We also have scheduled depositions of two other employees
17 of Assault Fitness for sometime at the end of January,
18 January 25th, 26th.

19 We have a third-party subpoena out to a now-dissolved
20 third-party entity that's been identified by Assault Fitness as
21 the entity that designed and developed the accused infringing
22 product.

23 I would expect that, given the numerous other witnesses
24 that Assault has identified, including certain attorneys, we
25 may attempt to take their depositions, too, if they disclose

1 that they intend to rely on an opinion of counsel to negate our
2 willfulness finding.

3 From our perspective, document production is substantially
4 complete. We have had written discovery exchanges, including
5 interrogatories and multiple rounds of document production.
6 Woodway has produced nearly 50,000 documents.

7 THE COURT: So, when is the discovery cutoff, both
8 fact and expert?

9 MS. JELENCHICK: Fact discovery closes on March 1st.
10 And expert discovery close May 24th.

11 THE COURT: After that, it would be the taking up of
12 dispositive motions; is that correct?

13 MS. JELENCHICK: That's correct.

14 THE COURT: Are you planning -- at this point, are
15 you envisioning bringing any summary judgment motions, or is
16 this one where there would be issues of fact and we would be
17 pretty much going straight to trial?

18 MS. JELENCHICK: We anticipate bringing a motion for
19 summary judgment of infringement.

20 THE COURT: Okay. And how many experts do you have?

21 MS. JELENCHICK: We have two experts. We have a
22 damages expert and a technical expert.

23 THE COURT: Okay. Damages and technical.

24 And the other side, to the extent that you know?

25 MS. JELENCHICK: The other side previously --

1 actually, recently disclosed their consulting expert on
2 damages-related issues.

3 THE COURT: Okay. And damages for them.

4 MS. JELENCHICK: I would expect that the technical
5 expert that they are relying on in the IPRs, Dr. Giachetti, I
6 would expect they would attempt to try to use him in this
7 proceeding as well.

8 THE COURT: Defense counsel, same question to you
9 about is the ruling we are going to get from the PTAB on
10 October 2024, of course that would not be the ruling on the
11 fourth patent, but what is your sense of how much that ruling
12 will be able to predict what happens to the fourth patent as
13 well, given the relatedness of the patents and the grounds for
14 the invalidation; and then, secondly, I am going to ask you --
15 because I understand you have asked for a stay except for
16 discovery that benefits you -- what you think of a proposal
17 where the parties go ahead with discovery but we stay the
18 dispositive motions, like a summary judgment on infringement,
19 when that would be being teed up right around the same time as
20 we may be getting a ruling from the PTAB invalidating three out
21 of the four closely related patents.

22 MR. HALAN: Your Honor, I will answer the first
23 question because the fourth patent is analogous and has
24 basically the same claim elements, we believe that a finding as
25 to the first three will be determinative as to the fourth. It

1 is as simple as that.

2 As to discovery, our carve-out issue we no longer need
3 because --

4 THE COURT: Let me interrupt you.

5 I am going to push you with the same question that I have
6 been trying to get plaintiff's counsel to answer, which is are
7 there ways in which that fourth patent is different such that
8 it would be less obvious or less covered by prior art than the
9 first three?

10 MR. HALAN: If I can recall, the only limitation in
11 the fourth patent that's not in the other patents is it
12 requires -- no?

13 (Counsel confer.)

14 I guess there are no differences. There are no
15 differences.

16 Is it all right if Rebecca Cantor speaks, Your Honor?

17 THE COURT: Go ahead, Ms. Cantor.

18 MS. CANTOR: Thank you, Your Honor.

19 Generally speaking, the claims of the '005 patent have the
20 same requirements as the other claims; namely, the front shaft
21 and the back shaft.

22 THE COURT: I have gotten all the similarities. Just
23 tell me if there's anything different where, "Oh, well, this
24 part is not obvious," or, "This part is not covered by prior
25 art in the way that the first three are."

1 MS. CANTOR: Thank you, Your Honor. We don't see
2 those types of differences here.

3 THE COURT: Thank you. And that is a question that
4 plaintiff's counsel would be better able to and better
5 motivated to answer, if we could get an answer from that party,
6 and we will circle back to that.

7 So, what is your position, defendant, on -- so, you have
8 asked for a partial discovery to remain open, and I am not
9 inclined to do anything that would implement a stay that just
10 favors one side over another, so what would you think about
11 just letting both sides go ahead with discovery so that Woodway
12 is not too prejudiced by a delay in receiving possible
13 vindication of its rights, when every day, from their point of
14 view, their market share is being eaten into by competitors who
15 are infringing on their patents, and so let the parties go
16 ahead with discovery but hold up the dispositive motions?
17 Because it would seem potentially very wasteful to reach an
18 infringement decision and do a whole MSJ on infringement in the
19 same time frame when we might be getting a ruling from the PTAB
20 that the three patents are invalidated, three patents and
21 likely the fourth one, depending on the substance of the PTAB
22 ruling, that the fourth one is also likely to be invalidated.

23 What do you think about going forward with discovery
24 during that time period?

25 MR. HALAN: Your Honor, our preference would be to

1 have no discovery going forward.

2 THE COURT: I understand your preference. That's
3 clear from where you are on the caption. But tell me a good
4 reason why I shouldn't.

5 MR. HALAN: Because discovery is addressing issues
6 involving claims that might be later found invalid, it would
7 basically be wasting resources of the parties, which is, in the
8 case we have given to you --

9 THE COURT: Sorry.

10 So you have asked for -- but you do want discovery to go
11 forward that might touch on invalidation. Is there a line you
12 can draw that is -- is there, let's say, maybe a line you can
13 draw where the parties can go ahead on infringement/invalidity
14 discovery but save damages discovery to save costs on both
15 sides in case the patents come back invalid?

16 I am trying to find a reasoned way to balance because, on
17 your end, yes, you are spending money when these patents might
18 come back invalid. But that's true any time parties try to
19 seek IPR review of patents and on the other side, as
20 plaintiff's counsel started out by explaining, you know, the
21 baseline situation is that we have live market players, and
22 every day, the other client is losing money and losing market
23 share and losing whatever else they lose when you have people
24 infringing their patent and continuing to sell their products
25 and build loyalty and other goodwill around those products as

1 well, through their market activity.

2 Is there some other type of line that you think might be
3 reasoned to draw with regard to discovery that is not just, "We
4 would like the discovery that helps us, but to stay everything
5 else"?

6 MR. HALAN: Your Honor, if I could address the
7 competitor argument first, can I share my screen with you?

8 THE COURT: The what argument?

9 MR. HALAN: I want to address the competitor
10 argument, and also market share. And if I could share my
11 screen with you, I would like to.

12 THE COURT: And is this going toward how there isn't
13 an active competition situation right now? What are you about
14 to tell me, before you share your screen?

15 MR. HALAN: I am about to show you that -- yeah,
16 there is no market share loss. It is not a valid argument to
17 make at all in this case.

18 THE COURT: So, defense counsel, is Woodway currently
19 selling these treadmills on the market?

20 MR. HALAN: Yes, as well as numerous other parties,
21 numerous parties. I mean --

22 THE COURT: Okay. Then, that's all --

23 MR. HALAN: A lot.

24 THE COURT: That's all I need to know. I would like
25 you to answer my question about discovery and whether that

1 should be -- whether you can come up with a more reasoned line
2 as to is there a way to decide which discovery goes forward and
3 not goes forward? And is there a reasoned line that you can
4 suggest that's just different from, "We want our discovery but
5 we want to freeze everything else"?

6 MS. CANTOR: Your Honor, if I could answer. As an
7 initial matter, we no longer want to continue with any
8 discovery, so we are not trying to make that distinction any
9 longer that we only want defendant's discovery and we don't
10 want anything else to go forward.

11 Our biggest concern about trying to draw any sort of line
12 has to do with depositions and not wanting our witnesses to be
13 deposed more than once or to have to take the other side's
14 witnesses more than once.

15 During these IPRs, there is a chance that the claims could
16 be amended, and if the claims are amended, there seems to be a
17 reasonable -- if they survive and are amended, there is a
18 reasonable likelihood that any witnesses who testify on
19 validity or infringement would have to be deposed.

20 In terms of trying to, you know, maybe push off financial
21 fact discovery, again, I think that's difficult just because of
22 some of the overlap with witnesses.

23 So, that's really just our big concern is having our
24 witnesses have to be deposed twice and to have to bear the
25 expenses of taking depositions twice.

1 THE COURT: Circling back to plaintiff's counsel, is
2 there a way that the fourth patent is substantively different
3 such that you might expect a different outcome in terms of
4 obviousness or prior art?

5 MS. JELENCHICK: Yes. And I think an example can be
6 seen in Claim 10 of the '005 patent. That particular dependent
7 claim talks about a very specific type of safety device, a very
8 specific type of one-way bearing used in combination with some
9 of the other claimed limitation. So it is not the case that a
10 determination --

11 THE COURT: So, tell me, what about that safety
12 device? You are just using general words here, "There's a
13 specific type of safety device." Tell me what about that
14 safety device is different from patents one, two, and three.

15 MS. JELENCHICK: So, for example, the particular
16 claim language of Claim 10 requires a treadmill where one of
17 the first and second elements is freely rotatable relative to
18 the frame.

19 THE COURT: And that's not the case with the other
20 three patents?

21 MS. JELENCHICK: Certain of those claims are broad
22 enough to capture that narrow embodiment, but obviousness, if
23 you invalidate a broad patent, that doesn't mean the narrow
24 patent is equally obvious. A separate analysis and evaluation
25 needs to be done on a claim-by-claim basis because of the

1 varied scope of the particular claims.

2 So Your Honor is correct in that substantively we are
3 talking about the general subject matter across these four
4 related patents. That's why they are entitled to claim the
5 same priority date. But that doesn't mean that a determination
6 of unpatentability as to one particular claim means that the
7 other claims are going to fall like dominoes. There is no
8 sense -- there is no test that collapses in on itself. The
9 PTAB has to do on a claim-by-claim basis, which is why Assault
10 filed four separate IPR petitions using various permutations
11 and combinations of the art.

12 THE COURT: Thank you, Counsel.

13 So the Court is ready to issue its ruling right now.

14 Looking at the three factors that the Court has to
15 consider, one of them is undue prejudice or tactical advantage.
16 And with regard to that prong, the Court does note that
17 defendants have initiated the IPR review process.

18 First, for the first three patents on the last day
19 available to them, and for the last of the patents, after that
20 had been added to the claims by plaintiff on the last day
21 available to them for that patent. So while they are within
22 the statute of limitations, the Court does find that there's
23 unnecessary delay there, and that unnecessary delay would
24 prejudice plaintiff because we have a live market situation.

25 This isn't a company that just holds patents and tries to

1 take litigation advantage or profit from the ownership of the
2 patents. This is a business that is actually selling
3 treadmills in the marketplace with a defendant that is also
4 selling similar products in the marketplace and in a vibrant
5 marketplace, where there are a lot of other players as well.

6 So the Court does see the prejudice to the plaintiff as
7 well as the timing of the institution of the IPR reviews again
8 for the first batch of three and for the last one, which does
9 indicate some level of -- whether it's dilatory motives or not,
10 the Court is not going to rule on that, but certainly a
11 dilatory effect in terms of the practical, real-world effect
12 that this would have on the plaintiff if the Court were to
13 grant the kind of stay requested by the defendant.

14 Looking at the second factor, which is the potential
15 simplification of issues and the capturing of judicial
16 economies, any time you have an institution of IPR review,
17 there is that potential that the patents will come back
18 invalid, therefore obviating the need for discovery around it,
19 but that is a baseline situation every time that it happens.

20 Looking at this particular situation, we have a specific
21 situation where the Court has already invested significant
22 judicial resources into these proceedings. The Court has done
23 an extensive claims construction process on terms that span all
24 four of the patents, and certainly this request for a stay and
25 other -- that could have been done in a different time frame.

1 It wasn't.

2 And so, looking at how much the Court has already expended
3 and balancing that against future expenditure of judicial
4 resources and also looking at the parties' expenditure of
5 judicial resources and balancing that against the prejudices
6 and the dilatory effect of granting a stay like this, the Court
7 concludes that the best balance of that is going to be to stay
8 the substantive motions, the infringement motion and the
9 preparations for trial, up until October 2024.

10 It will set a status conference at the end of that month
11 so that the parties can report back to the Court as to what the
12 PTAB has done and the implications of that ruling and how those
13 rulings might simplify matters going forward; but to also
14 balance, like the Court said, the prejudice to the plaintiff,
15 and the dilatory effect, it is going to allow the discovery to
16 proceed in the meantime.

17 So, what is going to be stayed is the -- what is going to
18 be stayed is the substantive motions, like the motion for
19 summary judgment on infringement, that plaintiff's counsel
20 envisions, and any substantive motions on defense side as well.
21 That will also apply to any *Daubert* motions and any -- looking
22 this up, I think we also had a pretrial conference also coming
23 up shortly after that, so any pretrial proceedings, ramp-ups to
24 that will also be stayed. But discovery will go forward, and
25 we will just simply set a status conference for the end of the

1 month, to set deadlines for what should follow given the ruling
2 at that point from the PTAB and the various balances of
3 likelihoods. And I am sure counsel on both sides will want to
4 reevaluate their strategies at that point as well.

5 As part of the Court's findings, it did give the plaintiff
6 an opportunity to explain to the Court why that October 2024
7 date is not necessarily one in which we will have significant
8 answers by explaining to the Court concretely how that fourth
9 patent is different, such that any prior art or any obviousness
10 analysis that led the PTAB to take up the IPR review in the
11 first place may not apply, or that the fourth patent could have
12 a different outcome.

13 But aside from very clearly explaining to me just
14 generalities about how the processes are different, the claims
15 are different, the analyses are different, I wasn't -- at least
16 this Court doesn't hear any particular concrete specifics about
17 "This patent has these elements, and the prior art covers that
18 for the first three but doesn't cover that for the fourth." So
19 that discussion does not change this Court's analysis in terms
20 of the value of that October 2024 date and its possible
21 fruitfulness in terms of providing a lot of answers that will
22 change and streamline and avoid needless work until we get that
23 answer.

24 So, Mr. Deputy, a Wednesday towards the end of the month.

25 Also, Counsel, let me know if you think that it would be

1 safer just to set it for first week of November because you are
2 not quite sure when an answer might come out from PTAB.

3 THE CLERK: Your Honor, the last Wednesday in
4 October 2024 is October 30th, at 9:30.

5 THE COURT: How does that date work?

6 Or does anyone think that the first week of November just
7 makes more sense given how this might play out?

8 Plaintiff's counsel?

9 MS. JELENCHICK: As of right now, I have a trial
10 setting in front of Chief Judge Sara Lioi, of the District of
11 Ohio, beginning October 28. I have no reason to think that is
12 not going to go forward at this point. So if you are going to
13 require an in-person appearance, that may prove difficult.

14 THE COURT: Defense counsel?

15 MR. HALAN: We are fine with that date, Your Honor.

16 THE COURT: Excuse me?

17 MR. HALAN: We are fine with any date. We are fine
18 with any date, Your Honor.

19 THE COURT: Okay. So we will go ahead and set that
20 for the first week of November, to accommodate plaintiff's
21 counsel. Do we have a 9:30 slot for that, Mr. Deputy?

22 THE CLERK: Yes, Your Honor. That would be
23 Wednesday, November 6, at 9:30.

24 THE COURT: So the motion for a stay is granted in
25 part and denied in part. You will get a very short written

1 order from me stating, for the reasons stated on the record,
2 what the Court's ruling is.

3 That concludes this matter. And we will see everyone --

4 MR. HALAN: Your Honor?

5 THE COURT: Yes, defense counsel.

6 MR. HALAN: Your Honor, I am sorry. Just for
7 clarification. So we are going to go ahead with fact
8 discovery, and we are also going ahead with expert reports and
9 discovery? Because expert reports --

10 THE COURT: You are going to go ahead with all
11 discovery. Hold on. Let me answer your question. You are
12 going to go ahead with all discovery. Thank you.

13 MR. HALAN: I am asking about experts. Expert
14 reports. Expert reports.

15 THE COURT: All discovery.

16 MR. HALAN: Because expert reports --

17 THE COURT: Hold on, Counsel. We are speaking over
18 one another, and I understand that has a lot to do with the
19 Zoom platform. It probably creates little delays where you are
20 not as sure when the Court is done speaking, so let me just
21 fully answer your question without interruption, and I think
22 that's going to obviate the need for any further follow-up
23 questions.

24 When the Court said "All discovery," that's fact discovery
25 and expert discovery, and expert discovery obviously includes

1 the exchange of expert reports. So all discovery is going
2 forward. Anything else?

3 MR. HALAN: Yes, Your Honor. If we are going to go
4 ahead with discovery and expert discovery, since everything
5 else will be stayed, I would ask if we could have at least a
6 two-month extension of the discovery calendar and expert
7 discovery calendar because right now we are only have two and a
8 half months to finish, and both sides have to take numerous
9 depositions, and we are still trying to get --

10 THE COURT: Counsel, that's something you will want
11 to take up with the magistrate judge if you find that you have
12 reasonable grounds to do so. They handle the discovery
13 calendar and any requests regarding discovery. So we are going
14 to go ahead and adjourn this matter and call the next matter at
15 this time.

16 MS. JELENCHICK: Thank you, Your Honor.

17 MR. HALAN: Thank you, Your Honor.

18 (End of proceedings at 10:09 a.m.)

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20 C-E-R-T-I-F-I-C-A-T-I-O-N

21 I certify that the foregoing is a correct
22 transcript from the record of proceedings in the above-entitled
matter. Dated: January 5, 2024.

23 /s/ Chari Bowery

24 Chari Bowery, CSR No. 9944, RPR, CRR

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