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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK (BROOKLYN)

IN RE: EXACTECH POLYETHYLENE
ORTHOPEDIC PRODUCTS LIABILITY
LITIGATION, et al,

Case No. 1:22-md-03044-NGG-MMH

Brooklyn, New York
October 12, 2023
2:22 p.m.

via video

TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE MARCIA M. HENRY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Call to order at 2:22 p.m.)

2 THE CLERK: Civil cause for video status conference
3 in this multi district litigation case, 22-MD-3044, In Re:
4 Exactech Polyethylene Orthopedic Products Litigation.

5 As a reminder, pursuant to Local Civil Rule 1.8, the
6 parties may not independently record any court proceedings. A
7 transcript of this proceeding may be ordered from the Clerk's
8 Office.

9 That being said, counsels for Plaintiff, please
10 unmute and state your appearances for the record?

11 MR. POPE: Kirk Pope for counsel for Plaintiffs.

12 MS. RELKIN: Good afternoon, Your Honor, Ellen Relkin
13 for Plaintiffs.

14 MS. KESSLER: Good afternoon, Your Honor, Rayna
15 Kessler, MDL liaison counsel for Plaintiffs.

16 MS. WALL: Good afternoon, Your Honor, Cara Wall for
17 Plaintiffs.

18 THE COURT: All right, good afternoon to each of you.
19 Okay.

20 MR. KANUTE: And Your Honor, for Exactech, this is
21 Mike Kanute.

22 MS. SHARKO: For Exactech, Susan Sharko, Faegre
23 Drinker Biddle & Reath.

24 MR. GONZALEZ: And for Exactech, Ruben Gonzalez.

25 THE COURT: All right, good afternoon to each of you.

1 If anyone is not going to be speaking during the conference,
2 please turn off your camera.

3 Okay, so we are here for a status conference. Our
4 last status conference was on August 22nd. And we covered a
5 good deal of information at that time.

6 Subsequently, I issued an order at Document 399 on
7 August 22nd granting Plaintiffs' Motion to Compel at Document
8 371.

9 I also issued an amended discovery case management
10 order also on August 22nd at Document 400.

11 There have been additional filings since that time
12 and I will just go through them for the record. On August 31st
13 at Document 413, case management order number 5 was entered and
14 that was approving the amended Plaintiffs' leadership counsel
15 membership.

16 At -- on September 5th at Document 414, the parties
17 filed a revised bellwether plan and we'll come back to the
18 bellwether plan in a moment.

19 Of course, I'm only going to over the relevant
20 filings. There have been many other things filed on the MDL
21 docket, but I'm just getting through the substantive filings.

22 Then on September 27th, at Document 434, was a letter
23 indicated a discovery dispute. And it sounds like it's a
24 motion to compel.

25 I need to remind counsel again that if you're seeking

1 relief from the Court, please don't file it as a letter. You
2 have to use the motion function on ECF in order for it to be
3 flagged as a motion for the Court, not just an explanatory
4 letter because that's not what it is.

5 And then, on October 4th at Document 446, Exactech
6 filed a letter responding if the original motion had been filed
7 as a motion, then Exactech would have filed it -- their letter
8 as the response to the motion. So we just need to try to keep
9 this docket as active as it is as clear as possible for the
10 documents that we really need to get to.

11 And then, finally, the parties filed their Joint
12 Status Report on October 5th at Document 447. While there are
13 some areas of agreement within that status report, there are
14 many areas that are not.

15 So I will start with the standard question of how
16 many cases do we have in the litigation so far? And then, I'm
17 going to be moving around in the status report because there
18 are a lot of different things to cover.

19 Mr. Kanute, looks like you're going to apprise me on
20 the number of cases.

21 MR. KANUTE: Yes, Your Honor. Good afternoon. And
22 on page 1 of the Joint Status Report, we did provide those
23 numbers.

24 This is -- so this is as of October 5th. And I know
25 there have been a few additional filings both in the MDL and

1 Florida. And I don't have that very latest number for you,
2 Judge, but at the time we filed this, there were 984 total
3 cases in the MDL, broken down with 811 of them involving knee
4 components, 164 involving hips, and 9 ankle cases.

5 And then, in addition to that in Florida, in the
6 coordinated proceeding before Judge Keim, there were 327 cases
7 pending, of which 233 involved knees, 90 involved hips, and 1
8 ankle.

9 The docket in Cook County, Illinois, I think that
10 number is accurate. It's 17. There may be one additional case
11 that's not accounted for there. That's the only other docket
12 -- only other jurisdiction that has more than a couple filings
13 I think.

14 And then, there's a total of 23 cases pending in
15 state courts. And that list was appended to the Joint Status
16 Report.

17 THE COURT: All right, that's fine. Thank you, Mr.
18 Kanute.

19 So I just wanted to note that going back the
20 information included in the Joint Status Report, there appears
21 to be a lot of different disputes being raised.

22 And while I certainly understand that the parties
23 want to flag areas where they believe that the Court may need
24 to intervene, if the dispute is to the point where you're
25 providing briefing and legal authority and proposals, then just

1 file it separately from the status report as was filed with the
2 motion to compel.

3 I don't think that anyone in this case is worried
4 about the number of filings on this docket anymore. And these
5 are substantive requests for the Court to make a decision.
6 It's difficult to do that when it's buried in a lengthy status
7 report.

8 Similarly, with respect to the bellwether plan,
9 there's one paragraph in here about a hearing that you had
10 before Judge Keim in Florida last month and a line that says,
11 well, it looks like she granted the plan, so could you please
12 also grant our plan.

13 If that's something that you're seeking from the
14 Court, then you need to separately file a letter or a motion as
15 you did the first time seeking to have your plan approved.

16 And to the extent that there is an order from Judge
17 Keim, which your status report alluded to, include a copy of
18 that order.

19 Any questions about that?

20 MR. KANUTE: No, Your Honor, this Mike Kanute. We
21 will do that, Judge. I think the parties are in agreement on
22 that.

23 And I will just advise you that the order that was
24 drafted following Judge Keim's hearing was actually submitted
25 to her yesterday. So we should have a final signed order from

1 her very soon, which we can then provide to you.

2 THE COURT: Okay, thank you. That's a helpful
3 clarification. It was unclear as to whether or not she'd
4 actually entered an order. It sounds like she has not yet.
5 And that's fine.

6 Once that order is entered, then yes, please do file
7 it along with the version of the plan that you want Judge
8 Garaufis and I to consider. And that's the plan that will be
9 considered.

10 All right, okay, now I'm actually going to skip over
11 this discussion around coordination for a moment. I actually
12 want to skip to the part of the report where you all appear to
13 agree, which is way back on page 20 of Document 447.

14 And that is where you discuss your joint positions.
15 And I just had a couple of clarifying questions on that.

16 First, you talk about propounded discovery. And I
17 realize there's a pending motion to compel and other pending
18 discovery disputes, but you both agree that they're -- that
19 you're going to try to work through it. So that's helpful.

20 With respect to the second item, the ongoing fact
21 sheets, so as I understand it, you are no longer producing fact
22 sheets for nonbellwether eligible cases. Is that accurate?

23 MS. RELKIN: Not entirely until we get permission
24 from the Court. People are still working on them, but the goal
25 is that, you know, with the Court's approval, we have this

1 moratorium so to speak on the cases that would not be eligible
2 for the bellwether plan, assuming the Court accepts the parties
3 joint bellwether plan.

4 THE COURT: Understood. All right, so this is
5 something -- this sort of request would be part and parcel of
6 your letter regarding the order as to the bellwether plan that
7 Judge Keim issues attaching your proposed plan and then
8 indicating that this moratorium is something that you'd like to
9 have.

10 MS. RELKIN: Right, so I think we're drafting jointly
11 a proposed order, which we submit with that --

12 THE COURT: Okay.

13 MS. RELKIN: -- and could include it right there.

14 THE COURT: Got it. Okay. No problem.

15 MS. RELKIN: Thank you.

16 THE COURT: Third item you appear to agree on, so
17 this has to do with the case management order relating to the
18 pathology and medical device preservation protocol. That order
19 is at ECF Number 268.

20 And it says here that you intended to have an amended
21 order available. Are you still working on that order?

22 MS. RELKIN: Yes, we are. I was waiting to hear back
23 from the pathology department at hospital for special surgery.
24 I just heard from them this week. And it's -- I think it's
25 really a one word edit to a footnote, but we'll get it to the

1 Court shortly.

2 THE COURT: Yes, I actually wanted to understand what
3 part of the order was causing the concern on the part of some
4 of the counsel?

5 MS. RELKIN: Yeah, I-- let me see if I have that -- I
6 don't know if I have that in front of me. It was the footnote
7 that -- the order -- I guess HHS has its own method, which is
8 very, very similar to the protocol, but not entirely.

9 The -- there's language saying if there's
10 substantially similar, you can proceed that way with regard --
11 and it said with respect to the device preservation. It didn't
12 say with regard to pathology.

13 So some people literally thought, oh, well, I would
14 not be complying with this order as to pathology. So I have to
15 have an outside vendor contact HHS and arrange for shipping and
16 storage.

17 And so, it's just to make sure that the exception for
18 substantially similar is not just the device, but the
19 pathology.

20 And what we heard from the HHS pathology department
21 is, you know, they were just getting inundated with requests.
22 And they're preserving it, you know, in a very appropriate
23 manner as well so.

24 And I believe if that's acceptable to Defendants, we
25 just were very busy with some of these other issues and didn't

1 get the -- get it inked.

2 THE COURT: Okay, that's fine.

3 Is that -- is Ms. Relkin's assessment accurate, Mr.
4 Kanute?

5 MR. KANUTE: It is, Your Honor. We actually spoke
6 about it when we were last together in person. And I expect
7 that there's not going to be an issue here and we'd be able to
8 effect this amendment and get it to you very soon.

9 THE COURT: Okay, as per usual, I will set some
10 deadlines at the end of the conference, so that we can keep
11 track of all of these various filings. Excuse me.

12 Okay, all right, and then, the exemplars, any issues
13 there?

14 MR. KANUTE: No issues, Judge. We've been discussing
15 this issue with some of the leadership on the Plaintiffs' side.
16 And it's just a question of I think clearly there's a smaller
17 number of hip exemplars. That's the smaller issue.

18 We just need to settle on the number of knee
19 exemplars to be preserved since there are quite a few of them
20 and it wouldn't make sense to put all of them in a freezer
21 somewhere, so.

22 THE COURT: Understood. All right. Thank you very
23 much.

24 Okay, so let's get to all the things that you appear
25 to not agree on, which is the bulk of the remainder of this

1 report.

2 First, I want to talk about the motion to compel.
3 And I would like to hear from you all on some of these issues.

4 And Mr. Pope or Ms. Relkin, Ms. Kessler, or Ms. Wall,
5 first, so there are three requests that are -- three areas with
6 which you're taking issue in your motion to compel. And this
7 is at Document 434.

8 I want to direct to the third one relating to due
9 diligence documents relating to the Exactech. Tell me a little
10 bit more about your argument as to why you would like those
11 documents?

12 MR. POPE: Sure, Your Honor, Kirk Pope. As a part of
13 the merger with TPG, it is our understanding that there is due
14 diligence with regards to these products and the contingent
15 liabilities associated with them, meaning that what defects,
16 are -- you know, what defects have been identified, what the
17 risks are associated with it.

18 So it goes kind to the notice and causation issues
19 here with regards to what Exactech knew in 2017 about, you
20 know, these particular products that are at issue in this MDL.

21 And so, we are seeking that information that was
22 provided to TPG at the time if -- which would show that there
23 was, you know, there were certain issues that had already been
24 identified by Exactech associated with these defects.

25 THE COURT: Okay, and who on the Defense would like

1 to advise as to their position?

2 MR. KANUTE: I can address that, Your Honor.

3 THE COURT: What your specific objection is?

4 MR. KANUTE: Yes, Your Honor, I can address that.

5 And so if it please the Court, what Mr. Pope just relayed is
6 not what the requests actually call for.

7 And I think the best way to start here is to actually
8 look at Request 29 and 32 in the Plaintiffs' production request
9 because they are very broad requests that seek documents well
10 beyond what was just articulated by Mr. Pope.

11 Request 29 asks for all due diligence documents
12 related to the merger, all documents. And Request 32 asks for
13 all documents regarding valuation analyses and opinions,
14 disclosures, correspondence, historical and projected financial
15 information related to the merger, et cetera.

16 The requests are not at all tied to the products
17 involved in this case. They're not at all tied to the actual
18 issues in this litigation.

19 So this is not a case about the valuation of Exactech
20 in 2017 at the time of the merger. And this appears to us to
21 amount to purely a fishing expedition to see if there's
22 anything along the lines of what Mr. Pope thinks might be in
23 there are actually in these documents.

24 And the -- so our objection is that the requests are
25 overbroad, unduly burdensome, and not proportional to what's at

1 issue in this litigation.

2 I will say, Your Honor, that there have been meet and
3 confer conferences on this in which we invited the Plaintiffs'
4 counsel to tell us how these documents are relevant and what
5 they're looking for and narrow the request and that just has
6 not been done.

7 So, our position is that, generally speaking, these
8 communications between two businesses relating to a business
9 transaction without any further specificity, any further
10 narrowing or clarification is neither relevant nor proportional
11 to an action involving these personal injury claims in this
12 case.

13 THE COURT: What about Interrogatory Number 16, which
14 is on -- that would be Document 434-3 on page 23?

15 MR. KANUTE: Yes.

16 THE COURT: What's the objection here?

17 MR. KANUTE: So I think our objection there is again
18 it is overly broad, but I do believe that -- let's see. Yes,
19 it would be the same objections, Your Honor.

20 I mean, this again is asking for information related
21 to the merger that we believe just goes well beyond the
22 products involved in this case.

23 THE COURT: Well, isn't what you disclosed to TPG
24 about issues associated with polyethylene wear squarely on
25 point to the products involved in this case?

1 MR. KANUTE: Well, clearly, issues of polyethylene
2 wear are involved in this case, Your Honor, but in terms of,
3 you know, what happened during the due diligence period without
4 tying this to any particular individual or any further
5 specificity, we feel like this is again overbroad and again
6 just calls for information beyond what's at issue here.

7 THE COURT: All right, anything else on these points?
8 I am going to issue a written order on this motion to compel
9 shortly after this conference, but I just wanted to hear
10 counsel on this particular issue.

11 Mr. Pope, anything else on the motion to compel that
12 you wanted to raise with the Court?

13 MR. POPE: Again, Your Honor, we've had meet and
14 confers on this issue. And the idea here is to identify those
15 communications between Exactech and TPG with regards to due
16 diligence that identifies issues associated with polyethylene
17 in the hips and the knees. And that's the focus of these
18 requests.

19 With regards to just putting it in context, the
20 timing, in 2017 when this merger was taking place, shortly
21 thereafter --

22 THE COURT: I think Mr. Pope is frozen.

23 MS. RELKIN: Oh, dear. Should we have him call in?

24 THE COURT: Yeah, Mr. Castro, is his line still
25 connected?

1 THE CLERK: It's frozen. He's there.

2 THE COURT: He's still there.

3 THE CLERK: He's still there, but it's frozen.

4 THE COURT: All right, well, there's a first time for
5 everything. We've been on a roll with these Zoom calls, so
6 this is a bit of a challenge.

7 THE CLERK: He might have dropped off the call.

8 THE COURT: Okay, I think --

9 THE CLERK: I'll let him in.

10 THE COURT: Yeah, just let him back in and pin him
11 back to the top. I'll wait for Mr. Pope to come back for my
12 next question.

13 (Pause)

14 THE COURT: No, the other Plaintiffs' counsel heard
15 from Mr. Pope?

16 MS. RELKIN: Well, I texted him.

17 THE CLERK: Mr. Pope, is that you who just joined by
18 telephone?

19 MR. POPE: It is. My apologies. I'm not sure what
20 happened, but it kicked me out.

21 THE COURT: Okay, not a problem. I think your line
22 froze -- your video froze and we could no longer hear you and
23 it literally cut you off midsentence. So why don't you
24 continue with where you left off?

25 MR. POPE: Well, I'm simply trying to say, Your

1 Honor, that you know, it's our contention that to the extent
2 that there are communications associated between TPG and
3 Exactech with regards to these products, we believe that
4 they're relevant and we would simply ask that they be produced
5 here in this MDL.

6 THE COURT: All right, as mentioned, I'm taking the
7 motion to compel under advisement, but I'll be issuing a
8 written order about all of it. And we'll also cover the TAR
9 protocol, which I'd like to turn to next.

10 So, in the first instance, I need to understand the
11 scope of the dispute because you each provided your proposed
12 TAR protocols as attachments to the status report.

13 I believe that the Plaintiffs was attachment or is
14 rather Attachment C or Exhibit C. That's Document 447-3.

15 And then, the Defense is Exhibit D at 447-4. So, is
16 it still only this one narrow subparagraph of paragraph 4 that
17 are at issue? And I'll start with whomever on the Plaintiffs'
18 side is going to be addressing this.

19 MR. POPE: This is Kirk Pope, Your Honor.
20 I'll -- there are two issues, in fact, Your Honor, with regard
21 to the TAR protocols.

22 The first issue has to deal with the participation of
23 Plaintiffs with regards to estimation sample. I believe that
24 it is Plaintiffs' position that we be allowed to participate in
25 review of a small sampling on the front end with regards to

1 those documents that have been identified by the Defendants as
2 being non or irrelevant or not responsive.

3 Our position with regards to that is that in order to
4 build this such that going forward, the TAR protocol and the
5 TAR process would be identifying those relevant documents,
6 what's at stake here is the definition of what's relevant.

7 And we believe that we need to be a part of that.
8 And we need to review those estimation samples or that
9 estimation sample in order to help build what is relevant in
10 the MDL.

11 The second issue has to deal with some language
12 concerning those documents that are being withheld based upon
13 some assertion of confidentiality due to trade secrets and the
14 like as it applies to irrelevant or nonresponsive documents.

15 What we seek is language in there that simply says
16 that we'll agree to -- we'll agree to you asserting such
17 confidentiality with regard to those irrelevant doc -- or
18 nonresponsive documents, however, we ask for a log of such
19 documents and that such interpretation would not be applied to
20 the responsive documents, meaning that the responsive documents
21 would not be held for some trade secret or other confidential
22 related issue that is covered by the Court's protective order.

23 THE COURT: Okay. Who on the Defense is dealing with
24 this?

25 MR. KANUTE: Your Honor, Mr. Gonzalez will address

1 this, but I will point out, Judge, that I think this is the
2 type of issue that probably should be teed up in a separate
3 motion since there was legal authority cited and extensive
4 argument here in the Joint Status Report, but with that being
5 said, Mr. Gonzalez is the expert on our side on these issues.

6 MR. GONZALEZ: Good afternoon, Judge. And perhaps I
7 can try and simplify the -- what I would characterize as the
8 one and a half issues that are left with the TAR 2.0 protocol
9 after extensive and I mean very extensive meet and confers,
10 Your Honor, late at night into the early morning trying to get
11 this done.

12 But the bulk of the dispute really comes down to in
13 the validate -- in the estimation sample, at the beginning of
14 the review, as part of the TAR 2.0 protocol process, there's a
15 prevalence rate that's detected based on a random sample of the
16 document universe.

17 What Plaintiffs have asked for is to be a part of
18 that review. And we object to that because it's a highly
19 unusual request, whether you're doing that as part of a TAR 2.0
20 process or in a standard linear review.

21 So, for example, and as Your Honor knows, we're
22 currently engaged in a linear review of documents for
23 responsiveness for privilege and for other issues.

24 Plaintiffs are essentially asking to review
25 unproduced documents as -- at the beginning of the review as a

1 part of the protocol. It's just highly unusual either in the
2 TAR 2.0 process or in a linear review process.

3 The way this works generally is that there are
4 requests to produce that are propounded. We respond. And
5 then, we look to the documents to make production judgments, to
6 make responsive judgments. So that is the -- that is a part of
7 the dispute.

8 What we did as sort of as a compromise is offer at
9 the end of the review an opportunity to review what's called
10 the discard pile.

11 So these are the documents at the very end of the
12 review, Your Honor, after much validation, substantial
13 validation, to confirm that there isn't an issue with those
14 documents.

15 And we've offered that as sort of -- as part of the
16 negotiation. But what we've said is that to the extent there
17 are documents in that discard pile, that would be, for example,
18 related to a completely different device and would otherwise be
19 protected that we would want to, you know, we would want to
20 withhold those from the discard pile review.

21 So it's sort of a -- almost like a two-step process,
22 but that's the bulk of the dispute, Your Honor. I'm happy to
23 answer any questions about that.

24 THE COURT: Well, look, I do agree that this is a
25 motion within a status report. And it would have been helpful

1 if this were filed separately and the Defense could have
2 responded with some sort of attempt at legal authority to match
3 that of the Plaintiffs.

4 So I would like you to file a two-page letter in that
5 regard because I would like to have -- if you have authority to
6 support your position, I would like to see it.

7 That is not intended to prolong the proceedings,
8 because again, I would like to issue an order that covers both
9 the Plaintiffs' motion to compel, as well as the Defense
10 position on the TAR protocol in one written order.

11 So, this one, again, will be -- I want to get to the
12 deadlines at the end of this conference, but I'll put a pin in
13 that.

14 MR. GONZALEZ: One other item, Your Honor, if may?

15 THE COURT: Yes, yes.

16 MR. GONZALEZ: So.

17 THE COURT: Related to the TAR protocol?

18 MR. GONZALEZ: Yes, yes.

19 THE COURT: Okay.

20 MR. GONZALEZ: So, and Your Honor may remember from
21 the last hearing that the TAR 2.0 protocol will be a -- well,
22 essentially be applied to the second set of custodians. So
23 just to sort of make that as you're thinking about deadlines
24 here.

25 THE COURT: Oh, yes, that's why I would like to get

1 this done quickly. And that's why you're probably going to be
2 filing a letter about this in the next day or two.

3 So just to give you a heads up because I would like
4 to get this taken care of, so that you all can continue
5 producing documents.

6 Speaking of producing documents, let's get to another
7 point of contention that was raised, which is whether or not
8 there's been substantial compliance with the order on
9 Plaintiffs' last motion to compel that we discussed at the last
10 status conference.

11 This would be the order at Document 399 relating to
12 the 123,321 documents. I will tell you my understanding from
13 the status report and let me just go to where we are there.

14 So, I'm at page -- I'm at Document 447 at page 7,
15 where Plaintiffs have indicated that they've received between
16 the production on September 22nd and the production on October
17 2nd approximately 55,689 documents. And that's me aggregating
18 the subtotals provided by Plaintiffs.

19 And I don't know, Mr. Pope, Ms. Relkin, I'm not sure
20 who's going to address this point. What is the concern
21 regarding the lack of substantial compliance?

22 MR. POPE: Sure, Your Honor, this is Kirk Pope. My
23 understanding from the last hearing that we had that you had
24 entered an order ordering the production of the 123,321
25 individual documents that had been responsive to the search

1 term result. And that those were to be produced barring the --
2 barring those that are being held back for privilege reasons.

3 And so, when we got to September 22nd, received
4 17,000 documents, we just -- we were to understand that that
5 was not in compliance with your Court's -- with the Court's
6 order.

7 THE COURT: Okay, so it was my understanding when I
8 issued that order that the 123,321 documents were all in fact
9 responsive and the purpose of the review was to withhold
10 privilege documents only.

11 The Defense appears to be taking a different position
12 on this. So I'd like someone to explain -- from the Defense
13 side to explain?

14 MR. KANUTE: Yes, Your Honor, this is Mike Kanute and
15 I can address that for you. So let me just put this into
16 context, Judge.

17 Remember, the search terms that were used to come up
18 with this initial set of documents were search terms that the
19 Plaintiffs wanted. In our view, they were very broad and
20 actually they moved to compel use of these search terms and
21 Your Honor granted that.

22 And then, we searched the initial 12 group of
23 custodians to get documents responsive to those search terms.

24 We came up with 466,000, of which -- so I'll refer to
25 that as the universe. That's the universe of everything that

1 turned up with the use of these search terms.

2 But then, we identified 123,321 documents that were
3 unique hits. And that was the subject of the discussion at the
4 last hearing before Your Honor.

5 THE COURT: Uh-huh.

6 MR. KANUTE: But I think what we tried to make clear
7 to you, Judge, is that those 123,000 documents, although they
8 had been identified through use of the search terms, had not
9 been manually reviewed as of that date for either
10 responsiveness or privilege.

11 And we included a -- I won't read it to you because
12 it's in the Joint Status Report, Your Honor, we included an
13 excerpt of the transcript where Mr. Gonzalez made that clear
14 because, and this is important, Judge, because the search terms
15 that the Plaintiffs wanted to use, they did not want them to be
16 tied to any particular product or to be used with connectors.

17 So when you search a term like "hip" or term like
18 "wear", you will inevitably sweep up a whole bunch of documents
19 in those collections that relate to products not at issue in
20 this litigation, other aspects of hip devices that are not at
21 issue here, wear of products.

22 Every orthopedic product wears. So there were a
23 whole bunch of materials that are simply not responsive to any
24 of the requests here.

25 So that was the purpose of when we said to Your

1 Honor, we tried to be clear in saying that they'd not been
2 reviewed and they need to be reviewed for both responsiveness
3 and privilege.

4 So that's what we did. And narrowed that down to
5 55,000 documents.

6 And just to be very clear, Your Honor, the review
7 continues because over and above the 123,000 now, the linear
8 review, the manual review is ongoing for the remainder of those
9 466,000 documents that were swept up in that initial search.

10 So to the extent there are responsive documents in
11 that set, we will be producing those as well. And I would
12 characterize those as being part of the complete production of
13 the 12 agreed-upon custodial files, which is due November 20th,
14 but we anticipate it to have that review done well in advance
15 of November 20th and have an additional production date. So
16 that --

17 THE COURT: One second.

18 MR. KANUTE: Yes.

19 THE COURT: Approximately how many of these documents
20 of the 123,321 were withheld first on the basis of privilege?
21 Let's start with that.

22 MR. KANUTE: There were -- there was a -- I would
23 characterize it as a relatively small number. And there are
24 actually three buckets of I'll call it documents that were
25 withheld for various reasons, Judge. There's a small number of

1 privilege documents. I don't know that exact number, perhaps
2 Mr. Gonzalez does, but then, there were also a few foreign
3 language documents that were in, you know, nontranslated in a
4 different language. And then, there also some documents that
5 were withheld because they need to be redacted.

6 There are actually some regulatory documents from
7 foreign agencies in that production. And because of the GDPR
8 or the European confidentiality regulations, we need to redact
9 personal Plaintiff -- personal patient information because if
10 we don't do so, the penalties are severe.

11 So, those are the only documents that I would say
12 were withheld. Then, there were a larger number that simply
13 related to things not at all at issue in this litigation.

14 THE COURT: One step at a time. I want to get to
15 documents that were privileged.

16 MR. KANUTE: Yes.

17 THE COURT: What is the number of documents withheld
18 as privileged?

19 MR. KANUTE: Mr. Gonzalez, I don't -- I will say,
20 Judge, we do intend to provide a log. We haven't done that in
21 a piecemeal fashion. We'll log them, but perhaps Mr. Gonzalez
22 can give us a number there.

23 MR. GONZALEZ: Your Honor, it would take me a minute
24 to get that number, but I can try and find it here.

25 THE COURT: Uh-huh. Because I'm trying to understand

1 how many documents have been withheld as privileged versus
2 documents that you deem nonresponsive.

3 It's also unclear whether or not you're deeming the
4 foreign language documents to be privileged or nonresponsive or
5 is it just that no one knows what the documents say because
6 they're in a foreign language?

7 MR. KANUTE: It would be the latter there, Judge.
8 They're not translated at this point. And there's costs that
9 goes along with that, so.

10 THE COURT: Uh-huh. Okay.

11 MR. GONZALEZ: Yeah, so --

12 THE COURT: And a ballpark figure is fine, Mr.
13 Gonzalez.

14 MR. GONZALEZ: -- yeah, so part of this, Your Honor,
15 is that as the review has been ongoing, that number of
16 privileged documents gets up.

17 So I'm going back to from the last production we
18 made, that number was approximately 15,000 documents that were
19 completely privileged. Yeah, roughly 15,000.

20 THE COURT: Okay, so 15,000. All right, so you've
21 produced around 55,000 and change. You've withheld at least
22 15,000 on the basis of privilege. And you'll be producing the
23 privilege log relating to same?

24 MR. KANUTE: Yes.

25 THE COURT: Okay. Well, that still leaves a fair

1 amount of documents. I don't know how many of these foreign
2 language documents there are. Are you including that in the
3 privilege or is that --

4 MR. GONZALEZ: No, yeah. Well, so I could give you a
5 few other statistics here, Your Honor. So it's roughly 15,000
6 that are privileged. Again, that's an estimate just because
7 like I said, the review's been ongoing.

8 At the time that that number was approximately 15,000
9 for the privilege, for GDPR redactions, Your Honor, it was
10 approximately 10,000 documents.

11 THE COURT: And the GDPR redactions, is it that once
12 you apply the redactions, those documents will be produced?

13 MR. GONZALEZ: Yeah, so long as there isn't, you
14 know, some other reason to withhold it like privilege.

15 THE COURT: Privilege, right, okay. So I've got
16 around 25,000 either privileged or GDPR. And then, the foreign
17 documents?

18 MR. GONZALEZ: Let's see. Foreign language at about
19 the time on the 3rd looks like it was about 6,000 documents,
20 and then, about 200 documents which just had technical issues.
21 So, you know, maybe something's wrong with the document. But
22 for foreign language, looks like approximately 6,000.

23 THE COURT: So we're talking around about 31,000
24 documents or so?

25 MR. GONZALEZ: I would have to do the math, Your

1 Honor. I think that's --

2 THE COURT: 15 plus 6 plus 10.

3 MR. KANUTE: Yes, that's correct, Your Honor.

4 THE COURT: Okay. All right. And so, that leaves
5 another 35,000 documents or so that you believe fall into the
6 category of they're just not responsive?

7 MR. KANUTE: Correct.

8 THE COURT: Okay. Anyone from Plaintiffs' side? Who
9 on Plaintiffs' side is going to address this?

10 MR. POPE: This Kirk Pope again, Your Honor. I guess
11 what I'm hearing is that we're re-hashing, from Defense we're
12 re-hashing the arguments we made the last time we were in front
13 of you.

14 If you recall, I believe your order came out as a
15 result of six months of negotiation with regards to these
16 search terms.

17 It's not as if we were not trying to negotiate based
18 upon data to limit our search terms. It just -- they were not
19 providing any of the matrix according to what was required as
20 part of the ESI order and protocol.

21 And so, what ultimately ended up with was we were
22 kind of in a jam in the sense that we were not getting any of
23 the documents to move forward discovery. And then, Exactech
24 wanted to shift gears to TAR.

25 We agreed on the TAR issue going forward, but we

1 demanded that we get the matrix data, so that we can negotiate
2 the search terms. And ultimately, what happened was that broke
3 down and you entered your order.

4 So that's kind of the history as we see it. And it's
5 not, you know, now after you had entered your order on -- to
6 compel the production, we're hearing again that, you know, it's
7 our search terms were overbroad, but the problem was that was a
8 part of the process that Defendants just did not engage in.

9 THE COURT: Yeah.

10 MR. KANUTE: May I respond to that, Your Honor?

11 THE COURT: You can, but this all sounds very
12 familiar. And then, I issued an order directing production of
13 the documents, but you're welcome to make your argument.

14 MR. KANUTE: Sure, Your Honor. Just a couple of
15 quick points.

16 So, number one, the -- we had been during the
17 negotiations of search terms telling the Plaintiffs all along
18 that these -- that it is so broad we're going to get a whole
19 bunch of documents that are simply not responsive nor relevant
20 here.

21 And secondly, with regard to the review, if -- this
22 is the result of a long road of meet and confers and various
23 issues here, but when -- regardless of when we do a production
24 using search terms, there will always be a manual review on the
25 other end of the collection of documents using search terms. I

1 mean, that's part of any document production at any litigation.
2 That's simply what we did here.

3 And Your Honor, we were -- we're honoring your order
4 in that, you know, the order says responsive and nonprivileged.
5 So -- and I think as I already said in regard to what was said
6 before you last time, you know, Mr. Gonzalez tried to make
7 clear to review and produce. That's correct, Your Honor.

8 And you said -- and you have that, fine. So
9 that's -- we're not trying to cut any corners here, Your Honor.
10 We're just trying to do the right thing and make sure that what
11 we're producing is actually responsive, because of the fact
12 that these broad search terms were used and a whole bunch of
13 things were swept in that are just outside of the issues in
14 this litigation.

15 THE COURT: Well, I think that the concept of
16 responsiveness has to do with Plaintiff provided search terms.
17 The search terms generated a group of documents.

18 You were reviewing them to confirm that they were not
19 privileged because that is a valid basis to withhold them. And
20 then, barring some other sort of privilege reason, those were
21 the documents that were going to be turned over.

22 I mean, I think you would agree with me, Mr. Kanute,
23 that if the Plaintiffs provided the search terms and their
24 search terms are what generated the documents, that any
25 document produced pursuant to the search terms is a response to

1 those search terms, right? Would you agree with me on that?

2 MR. KANUTE: I would agree with you on that, Your
3 Honor, but I would also say that when you use the term like
4 "wear", you would get an email that says, hey, what are you
5 going to wear to work tomorrow? And that's --

6 THE COURT: I get that. I completely understand
7 that, but these are the terms that Plaintiffs provided. These
8 are the terms that I said that they could provide and that you
9 needed to provide responsive documents for.

10 So doing an extra layer of review and then deciding
11 that, well, you don't think it's relevant, I mean, if they get
12 the document and it has their search terms and it doesn't
13 address what they're looking for, it is what it is, right?
14 It's the Plaintiffs' search terms.

15 I think adding in another layer of review is just
16 prolonging this process. So I think that to the extent that
17 you're withholding these documents on privilege, that's the
18 group of 15. Fair and fine.

19 I don't know if Plaintiffs want to have foreign
20 language documents that may or may not address their needs or
21 if they're going to expend the time and energy to get them
22 translated, but there must be some English in the foreign
23 language documents otherwise the search terms would not have
24 turned up in them, correct?

25 MR. KANUTE: Well, that's a good point, Your Honor.

1 I don't know the answer to that. We could look at those.

2 And I would just suggest that if the Plaintiffs want
3 documents that in a foreign language that we do need to have
4 those translated, so we can determine if there's privileged
5 communications in there or, you know, GDPR-type issues that
6 need to be redacted, that's absolutely essential.

7 There's a cost to that. And we should not have to
8 bear that cost to translate 6,000 documents then, many of which
9 probably won't have anything to do with anything in this case.

10 THE COURT: All right, so on the issue of the cost of
11 translating the foreign language documents, counsel for
12 Plaintiffs?

13 MR. POPE: Again, Your Honor, this is a
14 proportionality argument that they claim that they weren't
15 raising when they were before you last time.

16 Additionally, these are bold assertions that there
17 were no affidavits. There's nothing there to support these
18 assertions.

19 We would take the position that, you know, for
20 purposes of proportionality, if that is their objection, that
21 they've waived that and they haven't brought it to this Court's
22 attention until just now.

23 THE COURT: All right, well, again, it seems as
24 though the documents were generated without actually looking at
25 the documents.

1 And it was unclear -- it's unclear to me whether or
2 not you knew at the time, Mr. Kanute, of our last conference
3 that there were all of these documents in a foreign language.

4 But I'm going to move on to the other group, which is
5 the GDPR redactions. And you've just told me that those are
6 going to be produced.

7 And I thought that we already had a deadline for
8 production. So what is this additional time that you're taking
9 for the redactions?

10 MR. KANUTE: Well, Your Honor, there's -- it simply
11 takes time to make sure that we get all of this personal
12 patient information redacted.

13 And we are doing that as quickly as we can, so that
14 we can be in a position to complete them. I think that the
15 priority was to get the documents out, the documents that did
16 not have these issues, which is what we tried to do.

17 So there is this smaller group of documents that will
18 need to be redacted to comply with the GDPR requirements and,
19 you know, we will do that as quickly as we can, Your Honor.

20 THE COURT: Well, I asked you how much time you
21 needed. And you gave me -- I -- you gave me a time and said
22 that that would be sufficient.

23 So I don't understand now why there's essentially
24 additional time being sought during this conference because at
25 no time before was there a request for additional time?

1 MR. KANUTE: Well, I will say, Your Honor, that at
2 the time of the last conference, we didn't know these GDPR
3 documents were in there, because there had been no manual
4 review. We simply had a group of documents that were collected
5 via using search terms.

6 So that was part of the necessity of doing the manual
7 review, not only to identify privilege. But you know, Your
8 Honor, if we produce documents that have that information that
9 needs to be redacted, it's not a good thing for the company.
10 So we're trying to be careful in that regard.

11 So, I apologize that we didn't know that at the time
12 and that that's taking additional time, but you know, we'll
13 continue to move as quickly as we can to get that addressed and
14 get the redacted documents produced.

15 THE COURT: All right, so if I understand these
16 buckets, let me just talk about what's going to happen with
17 them.

18 To the extent that you're asserting privilege over
19 these 15,000 documents, I think, Mr. Pope, you would agree that
20 assuming that these documents are being designated as
21 privileged and are going to be noted on a privilege log, that
22 these are not included in the documents that I compelled to be
23 produced. Is that -- would you agree with that, Mr. Pope?

24 MR. POPE: Yes, Your Honor.

25 THE COURT: Okay. With respect to the approximately

1 I think it's 35 or so thousand documents, that's the fourth
2 bucket that has been not really discussed is the documents that
3 you need -- you the Defense deem to be nonresponsive, those
4 need to be turned over, because that was part of the 123,321.
5 It didn't require an additional review on your part to
6 determine responsiveness.

7 Have those been reviewed as for privilege or other
8 reasons -- well, no, really the only reason for you to withhold
9 them is privilege. So have those been reviewed?

10 MR. KANUTE: Yes, Your Honor, the -- so that's the
11 balance of the 123. The privilege documents have already been
12 removed. So the 35,000 are essentially the ones moved aside as
13 not being responsive to anything here. So that is the fourth
14 bucket, Your Honor. And we understand your ruling.

15 THE COURT: Yeah, that needs to be produced. So
16 we'll set a deadline for that.

17 And in terms of the GDPR redacted documents, those
18 also need to be produced. And is that review close to being
19 completed?

20 MR. KANUTE: That, I think we're going to need a
21 little bit time on, Your Honor. I think there's still -- once
22 we identify that there's information in there, the document is
23 put aside.

24 So we need to finish reviewing the complete documents
25 and then go through the redaction process. So that one will

1 take just a bit more time to get through. There's the added
2 steps of the redaction.

3 THE COURT: To actually apply the redactions to them?

4 MR. KANUTE: Yes, correct, Your Honor.

5 THE COURT: Uh-huh.

6 MR. KANUTE: And that -- so we do need to -- so I
7 mean, the document review team that we have is doing a great
8 job, but we need to make sure, you know, to have an extra layer
9 of review so we're -- we get all of those personal patient
10 information items redacted appropriately.

11 THE COURT: Okay, with respect to the foreign
12 language documents, Mr. Pope, I do take your argument about
13 potentially having waived it, but essentially, if there was no
14 knowledge that the documents existed at the time, then it would
15 be difficult to raise the sort of objections that are being
16 raised now.

17 I also think that relative to the amount of documents
18 in this group, that's the smallest group of documents.
19 Plaintiffs are clearly getting the bulk of these documents.

20 I'm not saying that you don't ever have to produce
21 them, but to the extent that Plaintiffs want to have them
22 produced, I do think that some level of cost sharing might be
23 necessary for those -- only this very small group of foreign
24 language documents.

25 I suspect that this was going to come up any way in

1 the course of this litigation. And so, has -- have you all
2 previously discussed what would happen if any of the search
3 terms or if any of the responsive documents were not in
4 English?

5 MR. KANUTE: I don't --

6 MR. POPE: Your Honor, for Plaintiffs, I would
7 suggest that we have a provision in the protective order that
8 that would allow for a clawback in the case if there is
9 anything that's produced to Plaintiffs that's ultimately
10 determined to be protected.

11 All of these documents are held as confidential
12 according to the protection -- protective order. And to the
13 extent that any one that had been produced to Plaintiff was
14 ultimately deemed to be, you know, protected by privilege, that
15 the clawback provision would then protective order to safeguard
16 against that.

17 So, you know, it was -- I don't know that we
18 specifically discussed foreign language documents. However,
19 the protective order actually provides for provision, you know,
20 to safeguard the privileged information that may be produced
21 accidentally or otherwise.

22 MS. WALL: Your Honor, if I may? This is Cara Wall,
23 ESI liaison for Plaintiffs. To add a little more detail here,
24 most document databases will do a rough translation of foreign
25 language documents. It's not going to be a complete

1 translation, but it typically tends to be enough to get an idea
2 of whether or not the documents likely contain privileged
3 information.

4 So, to the extent we have discussions regarding cost
5 sharing, there may be some built-in capabilities on the
6 technology side for the platforms already being utilized by the
7 parties.

8 THE COURT: All right, does that mean that if you
9 went back to this group of foreign language documents, that
10 they could be reviewed as is by the document review team to
11 determine roughly if there's anything privileged in them?

12 MS. WALL: Your Honor, I would turn it over to Mr.
13 Gonzalez's -- the Defendants --

14 THE COURT: That was directed to Mr. Gonzalez.

15 MS. WALL: I'm sorry, Your Honor. I'll let him take
16 it.

17 THE COURT: It's okay.

18 MR. GONZALEZ: Yeah, I appreciate that, Your Honor.
19 I am not aware of our database's ability to translate
20 documents. So I -- and that would be -- I would be a little
21 worried about relying on, you know, essentially Google
22 Translate for these documents.

23 THE COURT: Well, the purpose is to determine what
24 the document is. So if it's a notice to foreign regulator,
25 which is a subject of a motion to compel anyway, that's

1 certainly not something that is privileged. You may not need
2 to know every single word, however, to note it.

3 It's clearly a communication made by the Defendant to
4 a regulator. And therefore, it is responsive because the
5 search terms that Plaintiffs provided is what generated this
6 document. So --

7 MR. GONZALEZ: Sure, and I think to answer to your
8 question, Your Honor, I am not aware of those capabilities in
9 our e-discovery platform. It's not something I have seen
10 before. So I would be hesitant to commit to that at the moment
11 as an option or as the way to go I guess.

12 THE COURT: Okay.

13 MR. KANUTE: Your Honor if I -- can I just add one
14 more thing? I am very concerned about relying on technology
15 like that when we're talking about -- when we're reviewing
16 documents for privilege and again for the GDPR confidentiality.

17 These documents, many of them if they're in foreign
18 languages, they probably came from Europe or other countries
19 that might be governed by those confidentiality requirements
20 and we need to be very careful with them.

21 And I would suggest that the clawback that Mr. Pope
22 suggested, that's for -- that's used for inadvertent
23 productions, not to you know to err on the side of we'll give
24 you everything and then we'll just take back what might or
25 might not be privileged. That's not the way to go about this

1 in my view.

2 THE COURT: Well, Mr. Kanute, respectfully, on the
3 one hand, you're concerned about the cost of translating the
4 documents into English, so that we all know what they say.

5 And on the other hand, you're concerned about
6 wholesale turning them over, which would obviate the need for
7 any cost analysis. So, I -- you know, I --

8 MR. KANUTE: I admit Your Honor, I am concerned on
9 both fronts. I don't have a good answer to that, but it
10 is -- there is no question, costs involved with translating
11 these documents.

12 And so, we have to address that. But then, I would
13 suggest even more importantly, though, is protecting the
14 confidential information and protecting the potential
15 privilege. I don't think even Plaintiffs want us to turn over
16 information like that and put ourselves in that type of a
17 position.

18 THE COURT: All right, besides relying on the
19 technology, and let me just turn to either Ms. Wall or Mr. Pope
20 on this question.

21 Given that we are clearly -- the bulk of the
22 documents have been ordered to be turned over pursuant to this
23 conversation.

24 How far down the road do you want to get with this
25 much smaller group of documents? Because there are other

1 things that I would like to turn to. I think this is a bit of
2 an ongoing conversation. And it's unclear to me whether or not
3 you all had previously discussed this. So what if -- how much
4 further down the road do you want to get on these foreign
5 language documents?

6 MR. POPE: This is Kirk Pope. Your Honor, we're more
7 than happy to take this up, you know, offline and have a
8 discussion with the Defendants to see if there's a solution.

9 So, I don't think that we need to spend any more time
10 -- any more of your time with regards to this at this point.
11 So I think there's probably a solution here. And we probably
12 just need to take it up between the parties.

13 THE COURT: All right, fine.

14 As to the other -- the 35,000 quote, unquote
15 nonresponsive documents and the 10,000 documents that have the
16 GDPR redactions, those will be produced and we'll get to the
17 deadlines for that at the end.

18 You all will discuss the foreign language documents.
19 And we know that the privilege documents will be withheld.
20 Let's -- let us move on.

21 All right, we covered bellwether plans. We covered
22 the TAR protocol. The 30(b)(6) depositions, have you gotten
23 agreement? This is at the status report at page 447, excuse
24 me, Document 447, page 13.

25 Has there been further conversation or agreement

1 regarding separate notices?

2 MS. RELKIN: This is Ellen Relkin. It has not
3 advanced. Defendants asked for the names of the different --
4 with the different categories. And we are working on that.
5 So, no, we haven't gotten it much further than what was noted
6 there.

7 We -- it was in part I guess we're not supposed to
8 ask for an advisory opinion, but there seems to be a split
9 where some courts say that, you know, separate 30(b)(6) notices
10 are fine. And some say it should all be in one.

11 So, obviously, if we reach agreement, that's great.
12 But you know, we were curious to see whether the Court had a
13 strong opinion one way or the other absent agreement.

14 THE COURT: I don't, because again, I think that this
15 is something that you all should either attempt to come to an
16 agreement on and it sounds like you're still in the process of
17 that. I don't want to insert myself into that process. And,
18 no, I can't give you an advisory opinion.

19 If you want to come back later and you each state
20 your positions as to whether or not it should be omnibus versus
21 piecemeal, that I can address, but I don't hear a dispute yet.

22 MS. RELKIN: That's correct. We are trying to get
23 there and we just need to flesh it out further. Thank you,
24 Your Honor.

25 THE COURT: Okay. Now hang on. I believe there's

1 more things to cover. And then, I want to get to the discovery
2 plan, because at various points in different documents, there's
3 typically a line thrown in that says this is going to do
4 violence to the discovery plan. And of course, I'm
5 paraphrasing on that.

6 But I want to make sure that we are still on track,
7 particularly given that you all have indicated that your
8 proposed bellwether plan has been accepted in the Florida
9 actions.

10 So, all right, yeah, I think that that's almost
11 everything. Except this question of coordination, which was at
12 the very beginning of your status report and which you all
13 appear to have different opinions on.

14 Does anyone want to be heard on that?

15 MR. KANUTE: Well, Your Honor, I could just speak for
16 a moment on that. This is Mike Kanute. I will just say, Your
17 Honor, in every Joint Status Report that we submit to Your
18 Honor, we have a statement in there that says the parties
19 continue to believe that discovery across federal and state
20 court actions should be coordinated to the extent feasible and
21 will continue to seek the assistance of the Court in
22 accomplishing that goal.

23 I won't belabor this point, because we put it in our
24 Joint Status Report, but we -- Mr. Pope's Collum-Bradford case
25 out in California continues to take up a lot of time and

1 bandwidth.

2 And even more importantly, I think, discovery is
3 being sought in that California state court case, which is in
4 some instances duplicative of what is being sought in this MDL.
5 And even a motion to compel was filed seeking some of the same
6 documents that are at issue in this letter motion that Your
7 Honor is addressing today.

8 And that is disturbing to us and we believe that that
9 essentially, I'll just be blunt, that essentially amounts to
10 discovery forum shopping. And we continue to be frustrated by
11 it and it continues I think to frustrate some of our efforts
12 here in this litigation.

13 So, we're not asking Your Honor at this point to do
14 anything. We're not ask for any kind of relief, but I do
15 believe that since this is a status hearing and it's a status
16 report, we did want to provide Your Honor with a status on
17 that.

18 We believe that coordination in all of the state
19 court cases to the extent that it is possible is very important
20 and we have managed to achieve that for the most part in
21 virtually every case except the Collum-Bradford case out in
22 California, which doesn't even have a trial date until 2025.

23 So, it previously had an earlier trial date. So
24 there was some urgency to discovery there, but in our view,
25 that urgency has now passed. So that's all I'll say about

1 that, Your Honor.

2 THE COURT: All right. Does anyone Plaintiff --

3 MR. POPE: Your Honor.

4 THE COURT: -- respond?

5 MR. POPE: Yes. Your Honor, if I may respond. This
6 is Kirk Pope. This has been an ongoing issue. And I don't
7 know how if I was to address it with the Court other than the
8 fact that there are issues in the Collum-Bradford case with
9 regards to allegations of defect that the Defense has taken a
10 position is not relevant here in the MDL.

11 And there's significant issues. And it has to do
12 with the fin tray. And that device is in the Collum-Bradford
13 case, a fin tray.

14 Defendants take the position that it's not relevant
15 here. But yet, they want me to dismiss the case in California
16 in order to then bring it here if they're detrimental to my
17 client. And I cannot do that.

18 To the extent of forum shopping, that case was filed
19 in 2019. The discovery that was served was served before this
20 MDL was even started. And so, how that can be forum shopping,
21 I just -- I can't get my head around it.

22 Now to the extent that there's been a ruling, there
23 has by the Special Master. We've had several hearings. We've
24 had lots of, you know, briefing as we do.

25 And the ruling has been entered by the Special

1 Master, but the court hasn't adopted that ruling as yet. And
2 so we'll get there, but this use of my name in filings 12 times
3 and, you know, castigating me as, you know, with regards to
4 doing something improper or alleging that is beyond the pale.

5 And so, we simply will continue to push the Collum-
6 Bradford case in California until such time as there will be an
7 issue with regards to, you know, a detriment to the client. If
8 that ever occurs, then we'll have a discussion about bringing
9 that case into the MDL.

10 But until such time as that happens, I can't abandon
11 my client. So that's my response.

12 THE COURT: All right, I think in a footnote here,
13 you all indicated that you could provide a copy of the
14 discovery master's report in the Collum-Bradford case. I would
15 like you to file that. That'll part of the follow up items
16 here.

17 MR. POPE: We will do that, Your Honor.

18 MR. KANUTE: On that note, Judge, I'll just say for
19 the record, we are today filing our objection to that
20 recommended ruling by the discovery referee in the Collum-
21 Bradford case. So we can provide you with a copy of that as
22 well if you would like.

23 THE COURT: Yes, I knew that you were filing your
24 objections. Thank you for confirming that that will be today.
25 And, yes, why won't you all file as one filing the order and

1 attach the objections, okay?

2 MR. KANUTE: We will do that, Your Honor. Thank you.

3 THE COURT: Okay, I am looking through my notes. I
4 think that that is everything from the status report that I
5 wanted to address with you all before getting to the actual
6 discovery order.

7 With respect to that order, I know that there has not
8 been an agreed upon TAR 2.0 protocol by September 22nd because
9 I have competing proposals in front of me. And I'm looking at
10 Document 400, by the way, at page 6. That the TAR 2.0 protocol
11 was in paragraph 11(a).

12 The final list of Exactech custodians in paragraph
13 12, I don't think that you commented on it yet, but has this
14 been agreed upon?

15 MR. KANUTE: I can tell Your Honor that so in
16 addition to the 12 custodians who have already had their ESI
17 pulled, there's an additional 4 that have been agreed upon and
18 we are continuing to try to get this list final.

19 I think the last meet and confer on this issue was
20 August 31st, which was initiated by Mr. Gonzalez. And so, I
21 think we're hopefully nearing the finalization of the list of
22 custodians, but we're not quite there yet.

23 THE COURT: All right.

24 MR. POPE: Your Honor, this is Mr. Pope.

25 THE COURT: Yes.

1 MR. POPE: I just want to bring to the Court's
2 attention. The reason why we had a timeline that was dictated
3 in the discovery order with regards to finalizing the
4 custodians was to give us an opportunity to review the
5 production of documents. We had to adjust that the last time
6 simply because that production had not been made.

7 We would urge the Court at this point in time that we
8 again extend that deadline with regards to finalizing the
9 custodians from the date in which they actually comply with
10 your previous order, Your Honor, with regards to the production
11 of documents.

12 THE COURT: Okay. So you haven't agreed on your
13 final list because that was contingent upon the document
14 production, which has happened in part, but not entirely?

15 MR. POPE: That is correct, Your Honor.

16 THE COURT: All right, well, again, moving these
17 internal deadlines is not really an issue. It's when you start
18 asking to move the ultimate deadlines that we run into
19 problems.

20 So, you know, I understand that there may have been
21 some confusion, though I'm not sure why, but at this point, you
22 all are -- you all, the Defense, are starting to back
23 yourselves into a corner because the final deadlines can't
24 move. And you still have to produce the information with
25 enough time for Plaintiffs to make use of it.

1 So I will come back to the date at paragraph 12. It
2 appears as though you are now up to 16 custodians. And by the
3 way, are those -- is that the -- that is the Appendix B to the
4 Defense TAR protocol? I think you have a list of four
5 additional custodians there. Are those the four agreed upon?

6 MS. WALL: Your Honor, this is --

7 THE COURT: It's Appendix B to both of your proposals
8 actually, not just that, excuse me.

9 MS. WALL: Your Honor, that's correct. Those are the
10 four additional that have been agreed upon.

11 THE COURT: Okay. All right. I'll ask this again.
12 Any sense of as to the total number of custodians? How many
13 more do you think there are going to be?

14 MR. GONZALEZ: Well, the last time we conferred, Your
15 Honor, was back on August 31st. And there was a number floated
16 of 25. We would obviously like to get that a little bit lower
17 unless it's necessary, but that's the number we discussed.

18 THE COURT: Okay. All right, that's an additional 9.
19 And then, the October 3rd deadline in paragraph 13 related to
20 substantial completion of noncustodial document production,
21 that has not been met either.

22 MR. KANUTE: Well, as to that, Your Honor, I would
23 say that Exactech has produced I believe in excess of 60,000
24 documents. And many of these -- so noncustodial, I mean, many
25 of these documents are encompassed within the custodial review

1 as well.

2 And then, some of the categories that are sought in
3 the production request actually will come into play further
4 down the road with the fact sheets when we have bellwether,
5 such as device history records, which are the specific
6 manufacturing records for the components at issue in any
7 particular case and as well as communications with distributors
8 and sales representatives in a particular case.

9 So there has been completion of a large amount of
10 that noncustodial document production. You know, I would take
11 the position that it's substantial. It's not complete, but we
12 are making progress in that regard.

13 THE COURT: Anyone from Plaintiffs' side would like
14 to respond to that?

15 MR. POPE: Well, Your Honor, again, Kirk Pope. Seems
16 to be a moving target and, well, the reason why we put this in
17 here was simply because it seemed like the position had
18 changed.

19 And I'm not trying to put words in Defense's mouth,
20 but it seemed as if they were representing that that had been
21 completed through the production that they did in Florida,
22 which was ultimately provided to us.

23 And so, I just want to get a clear understanding of
24 the position because for purposes of noncustodial with regards
25 to regulatory files, with regard to the design history files,

1 we need to be able to get this in a position as to whether or
2 not we have what they're going to produce or whether or not we
3 expect production in the future so that, you know, all of these
4 things are extremely important for us in moving forward, you
5 know, with depositions.

6 So if there is an issue, we can bring to the Court
7 with regards to, you know, whether something is incomplete on
8 the regulatory or the design history or the like. And so, we
9 just needed to get their position so that we can understand
10 where we go from here.

11 MR. KANUTE: And Your Honor, we can close the loop on
12 that. I mean, I will say I do believe that all the design
13 history files for the products at issue, they have been
14 produced.

15 I need to check on that to -- and make sure I don't
16 want to speak out of turn here, but we did a while ago in
17 Florida produce what I understood what the design history files
18 as well as the regulatory files although I will be happy to
19 find that out and we can talk to Mr. Pope and Ms. Relkin about
20 that and close the loop on that.

21 THE COURT: Mr. Pope and Ms. Relkin, is that
22 sufficient?

23 MR. POPE: I think from my position I think that is
24 sufficient, Your Honor. We just need to be able to know where
25 we ultimately stand, so we know next steps.

1 THE COURT: Yes, it seems very difficult for me to
2 get a yes or no answer as to whether or not deadlines have been
3 met.

4 And so, I'm -- I -- understanding that counsel need
5 to confer about it. It seems like a fairly simple question,
6 particularly where these were the interim deadlines that were
7 in some instances extended after our last conference.

8 We haven't yet hit the deadline in paragraph 14 of
9 November 20th to complete production of the agreed upon
10 custodial files, but of course, I haven't heard anything that
11 requires that deadline to be changed, so it's not going to be.

12 And then, I haven't heard anything to change any
13 other deadlines with the exception of the proposed bellwether
14 trial, because really all you're doing is just re-filing your
15 plan with Judge Keim's order and asking us to approve. Fine.

16 So, I do not have anything else other than setting
17 deadlines for all of the things that need to be addressed or
18 that have been addressed during today's conference.

19 Is there anything else for the Defense before I turn
20 it over to Ms. Kessler to make any announcements?

21 MR. KANUTE: I don't believe so, Your Honor. I think
22 we've covered everything. Thank you.

23 THE COURT: Okay, and actually, Ms. Kessler, before
24 you make your announcements, are there any other issues that
25 need to be raised by Plaintiffs?

1 MR. POPE: This is Kirk. Nothing else, nothing
2 further, Your Honor.

3 THE COURT: Ms. Kessler?

4 MS. KESSLER: Thank you, Your Honor. Rayna Kessler
5 on behalf of the Plaintiff, MDL liaison counsel. I will be
6 very brief.

7 We will be sending out liaison counsel communications
8 to Plaintiffs depending on the bellwether proposal and once
9 that is before Your Honor and if there's an approval of that.
10 So, we'll have separate communications on that.

11 And then, just very quick reminder that if anyone has
12 questions for liaison counsel, I'm happy to assist. And those
13 can all be emailed to ExactechMDLliaison@robinskaplan.com.
14 Thank you, Judge.

15 THE COURT: All right thank you. Okay.

16 MS. RELKIN: If I could just clarify one item? It
17 was stated that 25 was the number of custodians that was the
18 maximum. I do not believe we agreed to a final number and that
19 was --

20 THE COURT: No, no, I did not understand it to be 25
21 as agreed. My question was ballpark how many do you think the
22 number will eventually be? Not that there was agreement on a
23 final number.

24 MS. RELKIN: Okay. Fine, Fine. And one other issue,
25 and maybe Mr. Pope didn't raise it, because we've had a lot of

1 issues you've covered comprehensively, Your Honor, was the
2 production missing the attachments.

3 And that may be something Ms. Wall could address, but
4 there were many emails which, you know, referenced an
5 attachment, but the attachments weren't there. Or maybe I'm
6 missing something that's been resolved.

7 MS. WALL: Your Honor, this is Ms. Wall for
8 Plaintiffs. I'm happy to speak up. We actually are continuing
9 to confer with the Defense counsel on this. We spoke this
10 morning on the attachments issue and will continue to discuss
11 and work out with them in identifying if there is an issue or
12 if there's any clean up that needs to happen. So that's
13 continuing in effort.

14 THE COURT: Okay, great, okay. That -- thank you for
15 raising it, Ms. Relkin.

16 Thank you for clarifying the status, Ms. Wall.

17 And it sounds like this is still an ongoing
18 conversation, which I have no doubt that you will bring to the
19 Court's attention if some sort of order needs to be entered
20 regarding same, okay.

21 So now to our deadlines. So I think we started off
22 with your proposed order relating to the moratorium on the
23 production of the fact sheets.

24 And you're right, I think, Ms. Relkin, I think you
25 indicated that other items had taken priority over that. How

1 long do you need to provide a proposed order?

2 MS. RELKIN: Ms. Sharko and I spoke earlier and she
3 has a draft. Basically, you know, the bellwether order, which
4 would encompass if that's okay with you, within the order the
5 moratorium or we could have it as a separate order, but --

6 THE COURT: Right, understood. This is all part of
7 the bellwether. All right, so.

8 MS. RELKIN: I think it could get done. I am
9 literally leaving tonight to go to Ireland for a week. So, but
10 I do have email. So if it needs to be done before then, it
11 can. If it can wait a week, that will be great, too.

12 THE COURT: Well, my thought on that is that really
13 you all are submitting your requests to so order your
14 bellwether plan after Judge Keim issues her order on your plan,
15 right, her rulings on your plan in Florida.

16 So what I was going to do is peg the deadline to the
17 date that Judge Keim's order is issued. So if she -- whatever
18 date her order is issued, then you would be submitting your
19 bellwether plan issuing this proposed order that includes the
20 moratorium within two weeks of that.

21 MS. RELKIN: Okay, that's fine.

22 THE COURT: By you, I mean this is a joint request
23 clearly from all parties --

24 MS. RELKIN: We're working -- yeah, we're working
25 together. I don't anticipate any problem on having joint order

1 on that.

2 I guess with regard to the moratorium on the fact
3 sheets, and you did ask me is it in effect now. And I said we
4 were waiting for, you know, court approval. We didn't want to
5 just do it.

6 But since it may be a few weeks because we don't know
7 whether Judge Keim's going to sign an order tomorrow or, you
8 know, what her schedule is, whether we can have a informal
9 agreed-upon moratorium while people still -- well, right now,
10 the goal is to get all of the cases and there's, you know,
11 several hundred that are eligible (indiscernible), to make sure
12 everybody focuses on those and not spend time on cases that go
13 beyond the July 1st filing. So it would be an informal order
14 to speak, that the parties agree relate --

15 THE COURT: Interesting concept. That's --

16 MS. RELKIN: It's a stipulation so to speak.

17 THE COURT: Uh-huh. Okay, Ms. Sharko, were you going
18 to chime in on that?

19 MS. SHARKO: That's fine with us, Judge.

20 THE COURT: Okay. Put it this way, because there's
21 too many moving parts to this case. I think a formal order is
22 necessary. And if you can submit it within a week, that's
23 fine. Now if Judge Keim were to issue her order tomorrow, then
24 just include it in (indiscernible).

25 MS. RELKIN: Yeah, I guess I'm just thinking out

1 loud. I guess it could be an independent standalone order --

2 THE COURT: Yeah.

3 MS. RELKIN: -- that says because there's going to be
4 a bellwether order. Presumably, the Court's going to accept
5 the parties' agreement as to what the universe of timing of
6 cases is. So if we can have that as a standalone order, maybe
7 that's clearer.

8 THE COURT: I think it would be clearer. And I think
9 if you submitted that proposed order by the 23rd, then that's
10 something that we can take care of --

11 MS. RELKIN: Terrific.

12 THE COURT: -- independent on any ruling on the
13 bellwether.

14 The second proposed order is an order that amends the
15 preservation protocol order. I think it's Document 268. And
16 so, how much time do you need for that?

17 MS. RELKIN: I think October 23rd. Is that a Monday?

18 THE COURT: Yes.

19 MS. RELKIN: Yeah. How about October 24th?

20 THE COURT: Sure.

21 MS. RELKIN: That'd be great.

22 THE COURT: Okay. Next, I have a Defense letter
23 providing some authority for their position with respect to the
24 TAR protocol. And this is a short letter. I think that you
25 need to get this in by tomorrow, because you clearly have a

1 view on this.

2 MR. KANUTE: Your Honor, may I respectfully request
3 until Monday to get that filed?

4 THE COURT: You can, but -- and I guess if necessary,
5 because I want to rule on the motion to compel, I was going to
6 include the TAR protocol in the same order, but I may just need
7 to rule on the motion to compel in its own order and do a
8 separate one for the TAR protocol. So, yeah, you can have
9 until Monday, the 16th.

10 MR. KANUTE: Thank you, Your Honor. So that's
11 Monday, October 16th. Thank you.

12 THE COURT: Uh-huh. Okay, now we have the two
13 buckets of documents that were withheld or not produced of the
14 123,321 group of documents.

15 So that would be the 35,000 quote, unquote
16 nonresponsive documents, and then, the 10,000 documents that
17 are being redacted for GDPR purposes.

18 So, certainly the 35,000 documents can be produced by
19 Monday because you've indicated to me that those are set aside,
20 ready to go.

21 MR. KANUTE: I will defer to Mr. Gonzalez if there's
22 any sort of a technical barrier to getting that done.

23 MR. GONZALEZ: Yeah, Your Honor, the documents have
24 been reviewed, but the documents still go through a QC process
25 before they're produced. And Monday would be awfully quick to

1 produce that size of documents, so --

2 THE COURT: Well, they should have been produced
3 before, so what's your proposal to me at this?

4 MR. KANUTE: Well, again, I think, Your Honor, if I
5 could -- can we have till the end of next week till Friday the
6 20th to get that done?

7 THE COURT: How's Thursday, the 19th, because that's
8 a week from today?

9 MR. KANUTE: Okay, we will do that, Your Honor.

10 THE COURT: Has the review of the redacted documents
11 been completed?

12 MR. GONZALEZ: No, Your Honor, that's ongoing.
13 You're speaking about the GDPR documents?

14 THE COURT: Yes, so by ongoing, I don't know what
15 that means. Does that mean that --

16 MR. GONZALEZ: So --

17 THE COURT: -- you've reviewed for redaction half of
18 those documents, three-quarters of those documents, all of the
19 documents, and the only step left is to slap the redactions on
20 them and send them out the door?

21 MR. GONZALEZ: No, so initially, Your Honor, we were
22 redacting as we went along. We put those -- we decided to set
23 those documents aside instead because when we redact the
24 documents for GDPR, we have to redact -- we have to look for
25 the name, redact the name, look for the email address, redact

1 the email address and any other identifiable information. It's
2 a very manual process, Your Honor.

3 So, it would be -- I would say less than 1 percent of
4 those documents have been redacted. We've set them aside and,
5 you know, we'll re-visit that.

6 THE COURT: So fewer than a thousand of these 10,000
7 documents -- actually no. How many is that?

8 MR. GONZALEZ: I think the number I gave you was
9 roughly 7,000, Your Honor. One moment.

10 THE COURT: You said about 10,000.

11 MR. GONZALEZ: Are you asking how many have been
12 reviewed or, I'm sorry, how many have been redacted?

13 THE COURT: How many have been redacted already
14 because you indicated that there was redaction as you went
15 along.

16 MR. GONZALEZ: Yes.

17 THE COURT: And then, at some point you stopped doing
18 that. So tell me the portion that has already been redacted?

19 MR. GONZALEZ: It would probably be less than 100
20 documents, Your Honor.

21 THE COURT: 100 documents, I see.

22 MR. GONZALEZ: Yeah.

23 THE COURT: All right, so presumably, those 100
24 documents are redacted and ready to be produced?

25 MR. GONZALEZ: Yeah, we would want to do a QC on

1 them, but we could prepare those for production.

2 THE COURT: By next Thursday, the 19th?

3 MR. GONZALEZ: The ones that have already been
4 produced.

5 THE COURT: Right.

6 MR. GONZALEZ: I'm sorry, the ones that have already
7 been redacted, you're asking if whether we could have those
8 ready to go by Thursday next week?

9 THE COURT: Uh-huh.

10 MR. GONZALEZ: Yeah, as long as they're not
11 privileged, we could include those.

12 THE COURT: Well, you told me before that these are
13 GDPR redactions. Presumably if they're privileged, why are you
14 bothering redacting them? You're not producing them.

15 MR. GONZALEZ: Every document goes through a
16 privilege review, Your Honor, even nonresponsive documents. So
17 but I tell you what, Your Honor, I was personally applying the
18 redactions to the GDPR documents. I don't believe any of those
19 were privileged of the ones that I've applied redactions to.
20 And it's a small number. So if there was an issue there, we
21 could flag that pretty quickly.

22 THE COURT: So you're going to produce those by next
23 Thursday, the 19th?

24 MR. GONZALEZ: Yes.

25 THE COURT: The portion of the documents that of the

1 GDPR redaction documents, that have already had redactions
2 applied to them?

3 MR. GONZALEZ: Yes.

4 THE COURT: So, that means of the let's say roughly
5 9,900 other documents, those are still in the process of being
6 reviewed, redacted, quality controlled, and potentially
7 withheld for privilege, thereby putting them in the privilege
8 document bucket?

9 MR. GONZALEZ: Yes, I mean, we generally, if the
10 document is in English, we can flag it for privilege, you know,
11 pretty quickly, Your Honor.

12 But as I mentioned because we set them aside, I
13 haven't looked at the documents that we set aside for privilege
14 to see if there are GDPR issues there.

15 THE COURT: All right. That's a substantial group of
16 documents --

17 MR. GONZALEZ: Yes.

18 THE COURT: -- that are not ready to go. And all of
19 this was supposed to have been done already. I'm allowing you
20 additional time because we've clarified any confusion that you
21 had about what was supposed to be produced.

22 You're telling me that the process is still ongoing.
23 You are not getting another 30 days to produce these GDPR
24 documents. So why don't you provide me what you believe to be
25 a reasonable date?

1 MR. GONZALEZ: How about 21 days, Your Honor?

2 THE COURT: That is not reasonable.

3 MR. GONZALEZ: Your Honor, 14 days? I mean, this is
4 thousands of documents. And the GDPR redaction application,
5 it's a tedious process, so.

6 THE COURT: I know, which is why when I asked you
7 about it in August, I asked for your time frame and you gave me
8 one.

9 And then, you created a whole different
10 interpretation of what I told you to produce. I can't help
11 that. What I have to do now is set new deadlines because you
12 didn't meet the old ones.

13 MR. GONZALEZ: Would 14 days work, Your Honor?

14 THE COURT: Yes.

15 MR. GONZALEZ: Okay, 14 days.

16 THE COURT: Is there any strong objection from
17 Plaintiffs on this? You are getting the bulk of your documents
18 before that.

19 MR. POPE: No, Your Honor.

20 THE COURT: Okay. Ms. Relkin, I think you said it's
21 fine.

22 MS. RELKIN: Yes.

23 THE COURT: Okay.

24 MS. RELKIN: Yes.

25 THE COURT: Fine. The 26th, Mr. Gonzalez, the 26th.

1 That would be the remainder of the GDPR redacted documents.
2 You are providing the first group of 100 we'll call them that
3 are already redacted and already much closer to finished.
4 That's being provided by the 19th. The rest of those GDPR
5 documents are being provided by the 26th.

6 Okay, what's left? I believe the last thing is the
7 discovery master's order in the Collum-Bradford case, along
8 with a copy of the Defense objections.

9 That you can produce by Monday, because I think you
10 said your objections are happening today. Fine. That's just a
11 joint filing. It's just a letter attaching them.

12 MR. KANUTE: Yes, Your Honor.

13 THE COURT: Okay. Any other deadlines that anyone
14 would like to have for anything?

15 MR. POPE: Your Honor, Kirk Pope. I think we still
16 have to address the deadline for purposes of agreed upon
17 custodian?

18 THE COURT: Yes.

19 MR. POPE: We had an October 6th deadline. I'm not
20 sure how we address that at this point.

21 THE COURT: Yeah, any proposals?

22 MR. POPE: Well, I would suggest that we -- I think
23 the Court now has issued the time frame in which -- well, I
24 would run 14 days. I would propose that we run 14 days to the
25 date of the production of the redacted documents.

1 So that would give us ample time then to review those
2 as a part of our overall review to help us identify and/or
3 eliminate proposed custodians.

4 THE COURT: So we're talking about changing the date
5 on paragraph 12 of Document 400 from October 6th to November
6 9th?

7 MR. POPE: I believe that's correct, Your Honor.

8 THE COURT: For the Defense?

9 MR. GONZALEZ: No objection.

10 THE COURT: All right, we're running out of room
11 here, folks, running out of room. We are. Okay, anything else
12 from anyone else before we set a date for the next conference?
13 All right, hearing nothing, we have this November deadline that
14 is approaching. And then, after that is a bit of runway.

15 You all had asked for a relatively quick conference
16 from August given all of the deadlines between August and
17 today.

18 I also note that if Judge Garaufis were to
19 independently set a status conference to discuss the bellwether
20 plan, that would be an independent conversation.

21 So the status conference that I am setting for now is
22 for the purposes of keeping track with discovery. Hang on.
23 Let me just get the Court calendar.

24 I think at this point, a date in December would be
25 sufficient. That would give you all time to confer on what you

1 need to confer on and the like and for at least one of these
2 major deadlines to pass, which is the production of the 12
3 agreed-upon custodial files.

4 Hmm, that's pretty late in December. I wouldn't want
5 to go that late in December. Monday, December 4th at 2 p.m.?
6 The alternative date to that is Wednesday, December 20th at 2
7 p.m.

8 MS. RELKIN: Is this going to be via Zoom or in
9 person?

10 THE COURT: For now, it will be a Zoom.

11 MR. SHARKO: I can't do December 4 in the afternoon,
12 Judge, but I don't want to hold up the conference. This is
13 Susan Sharko. I'm sorry.

14 THE COURT: Sure, that's why I'm offering two dates.

15 MR. KANUTE: December 20th works, Judge.

16 THE COURT: Anyone else?

17 MS. RELKIN: I would just say that if it's December
18 20th, it certainly should be a Zoom because that would be very
19 hard for people to travel that week.

20 THE COURT: That is correct. That is why a December
21 conference is a Zoom conference. It's just not a good travel
22 month and it's cold here.

23 All right, I haven't heard anyone say December 20th
24 does not work. All right, then we'll go with December 20th at
25 2 p.m. by Zoom.

1 Status report due 10 days before. Motions to the
2 extent that they're being filed. File them separately. Also,
3 no later than 10 days before. Or agree on everything and don't
4 file them.

5 MR. KANUTE: Understood, Your Honor.

6 THE COURT: There are alternatives available. With
7 that, thank you all again for a productive conversation. I
8 will be issuing a mid-entry that includes all of the deadlines
9 discussed.

10 And at minimum, I will be issuing an order on the
11 motion to compel shortly after this conference. I will look
12 for the letter on the TAR protocols, so that I can issue an
13 order on that in relatively short order as well, but I would
14 like to keep -- make sure that we keep this moving along,
15 especially as we get into -- closer into bellwether planning
16 territory, all right?

17 Thanks again. Everyone, have a good rest of your
18 day.

19 MR. KANUTE: Thank you, Your Honor.

20 MR. POPE: Thank you, Your Honor you do so the same.

21 MS. WALL: Thank you, Your Honor.

22 (Proceedings concluded at 4:19 p.m.)

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CERTIFICATE

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I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

CH

October 16, 2023

Chris Hwang

Date

Court Reporter