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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Joseph C. Spero, Magistrate Judge

OSINEK,)
)
Plaintiff,)
)
vs.) No. C 13-03891-EMC
)
KAISER PERMANENTE, et al.,)
)
Defendants.)
_____)

San Francisco, California
Thursday, August 1, 2024

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
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1 Thursday, August 1, 2024 10:03 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: We are calling case number 13CV03891,
5 Osinek, et al., versus Kaiser Permanente.

6 Counsel, please raise your hands.

7 (Pause.)

8 THE COURT: All right, go ahead.

9 THE CLERK: All right. Appearances, please, first
10 starting with the Plaintiff and then the Defendant.

11 MR. THROPE (via Zoom): Good morning, this is
12 Jonathan Thrope for the United States.

13 MR. BLALACK (via Zoom): Good morning, your Honor.
14 Lee Blalack, I'm lead counsel for Defendants and I'm with my
15 partner Caitlin Bair, who will be presenting our argument
16 today.

17 THE CLERK: Ms. Oberembt, can you unmute yourself?
18 Can you hear us?

19 THE COURT: Who is that person?

20 THE CLERK: She's also counsel for the Government.

21 THE COURT: Okay. So, Mr. Thrope, are you going
22 to present argument for the Government?

23 MR. THROPE: Yes, so we're good to go.

24 THE COURT: Okay. All right. So, here's -- I
25 have a couple of thoughts to start the hearing discussion.

1 First thought is, how dare you. This goes to both sides.
2 You know, this is -- this is a preposterous disagreement.
3 The -- there's no question in my mind that the central issue
4 is identifying the original encounter notes. Having both
5 sides agree that those are the original encounter notes.
6 The thing that the United States raised about a printout of
7 the original encounter is nonsense. But, the core -- the --
8 our issue, which I think is a fair one raised by the United
9 States, is identifying and agreeing on, what are the
10 original encounter notes for each of the patients.

11 So, I'm not going to spend any time on the argument
12 that you're entitled to some printout of something, because
13 it's a separate document or anything like that. That's just
14 -- it's very 20th century. And, being part of the
15 Government we often live in the 20th century still, but
16 these are electronic records. There is a record and it has
17 various amendments that have been made to it along the way,
18 but neither for practical reasons, nor based on the idea
19 that there are separate documents, would I ever consider
20 that a reasonable argument. So, we're going to pass by that
21 right away, but we're going to go right to the issue of how
22 to agree on what's the first encounter note and deal with
23 that.

24 It seems that the United States has clearly pointed
25 out, and I think that there's no dispute that there are some

1 documents in which you can't identify from the what's been
2 produced, of what's the original encounter. And the
3 question is how to reach agreement on what is, nobody has
4 any particularly good ideas on that in their letter, so I
5 have an idea. So I'll just kick it out there and then we
6 can start the discussion. Feel free to say, no, that's
7 stupid, Judge, for the following reasons. I know so much
8 less about this than you do. I will undoubtedly use the
9 wrong words to describe each of the things that we're
10 talking about. Please feel free to correct me.

11 So my idea is that, in very short order, not 180 days,
12 but in very short order, the following be accomplished.
13 That the Defendants produce all of the original version of
14 all patient encounter records where any additional
15 amendments, or changes to the original encounter note,
16 cannot be identified on the document already produced.

17 It sounds like, with variations, you had agreed to do
18 that. One of them, you just put a version index, but I
19 don't want to have different ones for different parts of the
20 different entities that are represented by the defense side.
21 I want a uniform way of doing this. So that would be part
22 one.

23 Part two would be, with respect to the remainder, two
24 things would happen. One is the Plaintiff will do the work,
25 go through the records, and -- for every other patient

1 encounter -- and identify what it believes on those records
2 are the original patient encounter record. Show that to the
3 defense and the defense will agree. And for any one the
4 defense does not agree, they will produce the original
5 encounter record.

6 And then, lastly, I think -- well, that's -- that's
7 what I'm -- that's what I'm thinking about now as a -- as a
8 process to get through this. The -- but my idea is to do
9 this rather quickly. I know that the United States has a
10 deadline in April of identifying specifically which -- all
11 statements they intend to prove up, and I don't intend to
12 get anywhere near that deadline, because I suspect this
13 process will have its own -- that I'm setting forth, or
14 whatever we agree on -- will have its own hitches and
15 glitches and delays, et cetera, et cetera. So, I wanted to
16 get this all done by the end of the year.

17 So, let me hear what you think about this or what you
18 think about anything else you want to talk about. I'm not
19 really intending to completely cutoff discussion or your
20 view. I've got a pretty good idea of where I'm going to be
21 irritated if you bring it up too much, but let me hear from
22 the United States first.

23 MR. THROPE: Thank you, your Honor. I think I
24 understand your proposal. My main concern is that we're
25 going to have a hard time agreeing on which records are

1 clear and which records require the original record. As you
2 know, it's our position that we always need it, because it's
3 never easy. It's --

4 THE COURT: No, no. I don't care if it's easy.
5 Make sure you understand that. I don't actually care
6 whether it's easy or hard. If it can be done from the face
7 of the record that you've been produced, you have to do it
8 in the first instance, and they have to agree. Et cetera,
9 et cetera. But you're saying -- I'm not sure I understand
10 what your concern is.

11 MR. THROPE: I think I'm concerned about the
12 second step in your proposal, where we're going to identify
13 the records where we believe we need an original record, and
14 then Defendant has got say, we disagree. And then we're
15 going to have a lot of --

16 THE COURT: That's not the second step.

17 MR. THROPE: Okay. So maybe I misunderstood.

18 THE COURT: Yes, you did. You're going to
19 identify -- you're going to take -- the first step is,
20 they're going to produce for you the original records of all
21 of those records that -- on which they think they cannot --
22 you can't identify from the record, which is the original
23 encounter. They're going to produce the original encounter
24 for those. The second step is you. You're -- is with
25 respect to the remaining records on which, I guess it's

1 their position that you can tell, you'll go through them all
2 and you'll say, on each of those, which part is the original
3 encounter note.

4 Now, of course, there will be a third category, which
5 will come out of your review, which is, oh by the way, you
6 missed these 51 documents that we can't tell anything about,
7 so produce those. And there will be a discussion. But your
8 part is to go through, line by line, all 2000 that are
9 leftover or 1500, or whatever it is, and say -- and
10 highlight, or however you're going to do it, and say, this
11 is what we understand to be the original encounter, do you
12 agree? And if they disagree, they have to produce the
13 original encounter.

14 So it's -- it's designed to be equally annoying for
15 both sides, but does that clarify at all for you what
16 you're --

17 MR. THROPE: Yes, no, I do. It's a unique
18 solution to this problem. I think -- we think the simplest
19 solution is to give us the original every time, but I
20 understand you're trying to come up with an equally annoying
21 solution, as you say.

22 THE COURT: Yeah, I mean -- I mean, I just -- the
23 reason I don't like your solution is because there's no
24 reason why you -- they should have the burden rather than
25 you doing the identification. There's no reason. There's

1 no reason whatsoever for that. That's just trying to shift
2 lawyer time to them and I won't stand for that. The
3 Government has records from which it can discern -- and the
4 idea that there is some separate original document, is a
5 bizarre idea in the age of electronic records. So I'm just
6 not -- not going down that road.

7 So, don't -- you want to get through this hearing.
8 You're doing very fine. Don't mention the idea of them
9 producing all of the original records. Thank you. I
10 appreciate it.

11 MR. THROPE: Okay.

12 THE COURT: So, with that -- with that
13 clarification, do you see -- is it workable?

14 (Pause.)

15 MR. THROPE: I'd say, I -- I'm not going to
16 mention the original records again, because I think that's
17 the most workable solution. I'm concerned, given the
18 history of our disputes --

19 THE COURT: It's wonderful how you mentioned it --

20 MR. THROPE: Sorry. Sorry.

21 THE COURT: It sounds like a Saturday Night Live
22 special.

23 MR. THROPE: I'm concerned about our history, just
24 being problematic, but if it is, we can come back to you and
25 -- let me just hear what Defendants have to say and I'll

1 think some more, because --

2 THE COURT: Well, I don't know if it's -- it's
3 hard to know what the dispute would be, because you're going
4 to identify what you think the original records -- if they
5 think they're wrong, they have to produce, which is your
6 solution, what they think is the original record.

7 Now, the reason why -- one of the reasons why your
8 solution makes no sense, is because that's when you'll
9 actually engage, because they'll produce what they think is
10 the original record. You're going to go back through and
11 check every single one of those, or some sampling of them,
12 to see whether you disagree. Whether we do it this way or
13 they produce what you say is the original record, it doesn't
14 avoid the fight. What I'm trying to do is maximize the
15 burden on everyone so that they will -- everyone will have
16 an incentive to avoid the fight.

17 So, in any event --

18 MR. THROPE: Yes.

19 THE COURT: They're going to produce --

20 MR. THROPE: Sorry.

21 THE COURT: Go ahead.

22 MR. THROPE: I think there's just going to be a
23 decent category where the answer is, we don't know. And I
24 just want to make that clear. We won't know exactly what
25 was in the original and what wasn't, because it's sometimes

1 -- it's impossible, because of how the records were changed.
2 And so that just -- some of these, maybe why you're
3 proposing is doable, and some of them it's literally going
4 to be guesswork, because in some instances, just the way
5 these medical records work, it's different by region and
6 it's different by doctor. Sometimes it's impossible to tell
7 what was added and what was not.

8 THE COURT: Well, no, and they agree with that.
9 They agree. The question is identifying which of those
10 there are. That's the problem and no -- you haven't done
11 enough effort between the two sides to figure out what that
12 universe is. That's what I want to do.

13 So as part of step two -- step one will get us part of
14 the way there, and then step two will get us the rest of the
15 way there. You're going to go through the rest and you're
16 going to say, as to -- as to these, we can't -- we still
17 can't tell what's the original record. You know, and I
18 guess we should have a discussion about what happens at that
19 point as to those, because there will be some -- I think
20 you're right, Mr. Thrope, that are -- that they think --
21 they have not included in the ones that they think you can
22 not tell from, and you will find them and you will say, but
23 what about these, and there will be a discussion.

24 MR. THROPE: Yeah, I think it's just important
25 that that is still on the table that we can do our part to

1 attempt to identify what was the original and what was not,
2 as part of this process. But I think just keeping open the
3 idea that it's not always possible. And hopefully in step
4 one, they'll produce all of those documents and we'll be
5 good, but we've had -- these records are just sometimes hard
6 to decode and I can see an instance where there's an
7 additional ones.

8 THE COURT: Well, here's what I want you to do. I
9 want you to do your best to decode them. In other words,
10 they're hard to decode. That's not a sufficient reason for
11 not decoding. You figure out what you think about all of
12 the rest of them. Some of them will have no clues on them,
13 right? They will be like your Exhibit 7, where there is
14 just something put in there that is -- and there isn't a
15 note that it's an addendum or addition, whatever it is.
16 That's fine. As to those, I understand what you're talking
17 about. But if there are clues, come up with your own --
18 come up and say, this is what we understand to be the
19 original record and we're going to prove up, we agree to put
20 in front of the jury as the original record, and get them to
21 disagree. And if they disagree, they have to produce for
22 you what the original record is.

23 So the lynchpin of this is for you to maximize the
24 number of original records you identify. Not to sort of
25 throw up your hands and say, we can't identify, because that

1 will make this process impossible. Again, it will just be
2 back to -- I mean you'll have to meet and confer and you're
3 going to -- I promise you, you are going to go through line
4 by line together to figure this out, but you maximize the
5 pressure on them the more you identify. The more you
6 identify -- you may take a clue and they may disagree with
7 it, but if they do, they have to produce the original
8 record. So the only circumstances that are with this order
9 after your review forces them to then produce the original
10 record, is if you've actually identified what you think is
11 the original record and they think you're wrong.

12 So --

13 MR. THROPE: Two points of clarification, and then
14 I think I'll be done. I think, one, it sounded like the one
15 additional area where they should produce the original is
16 where they did this revision history thing. For those, on
17 the front end, you agree they should produce the original?

18 THE COURT: Well, I'm not -- I'm rejecting
19 everybody's proposed whatever they got in their thing -- in
20 the letter. I'm ignoring all -- Defendants -- for any
21 document -- they've obviously done some work and come up
22 with, or started to come up with, I assume there's more work
23 to do, you know, for the complete list of the documents that
24 they think it's not clear on the face of the document what's
25 the original encounter note. And, as to those, they will

1 produce the original encounter note, regardless of entity.

2 MR. THROPE: Okay, and then my second point, and
3 hopefully I'll stop talking is, for the ones we agree where
4 we say, this line is the original note and they say, we
5 agree, I think it's just important -- a big concern at
6 evidentiary disputes in the future and having fights about
7 what's in the original or whatnot, so I just want to make it
8 clear, for the ones we agree, they just say, we agree, and
9 we should have something to sort of avoid fights in the
10 future of what may or may not be in the --

11 THE COURT: You should do a stipulation. Yeah.
12 You should do a stipulation as to those records, because
13 then you can put in front of the jury about a dispute as to
14 which version that's -- well let me -- let me hear from Mr.
15 Blalack, because I want to hear what the defense has to say,
16 as well.

17 MR. BLALACK: Thank you, your Honor. I think we
18 are generally -- I think this proposal makes sense, but I'm
19 going to ask my partner, Ms. Bair to take --

20 THE COURT: Oh, I'm -- I apologize.

21 MR. BLALACK: She's closer to the actual records
22 than I am and will be more facile in answering your discreet
23 questions, but conceptually I think we agree. This process
24 will help us get to a solution.

25 THE COURT: Yes. Ms. Bair?

1 MR. BAIR (via Zoom): That's right. Thank you,
2 your Honor. Yes, I think that the three steps make sense to
3 us. The good new is that since the letter was filed, we
4 have pushed forward with additional productions and, you
5 know, we have produced original progress notes where it was
6 necessary. So I think we're very close to completing step
7 one and then we can move quickly to step two and have the --
8 you know, have the Plaintiff identify the original progress
9 notes and then move on to step three.

10 And, I think one point of clarification for step three,
11 if Defendant -- I mean, if Plaintiff cannot identify the
12 original progress note, and let's say we've already produced
13 it, I think part of that process would be to point them to
14 where we think it exists, rather than to reproduce the note.

15 THE COURT: Well, that's fine, but you will have
16 to be prepared to enter into an evidentiary stipulation --

17 MS. BAIR: Understood.

18 THE COURT: -- if they agree that that's the
19 original --

20 MS. BAIR: Understood.

21 THE COURT: -- progress note. Because the end of
22 this should be a stipulation -- be attached to the original
23 progress notes. Right? The highlighted portions of the
24 original -- however you're going to do that stipulation so
25 that we can save --

1 MS. BAIR: Sure.

2 THE COURT: -- five days jury time authenticating
3 that and save Judge Chen from a heart attack.

4 Well, let me just -- let me just take a note with what
5 was just said. One moment, please.

6 Okay. I'm sorry, I interrupted you, Ms. Bair, but
7 anything further?

8 MS. BAIR: Oh, no. I was finished. I was saying,
9 I think we can agree to the three steps that you proposed.

10 THE COURT: All right. Well, I've got my law
11 clerk on the line and she and I will work on refining the
12 language a little bit so that it's clear what we're talking
13 about.

14 The -- let's talk a little bit about timing for step
15 one, step two and step three.

16 So, step one, when can you get it done?

17 MS. BAIR: I think -- you know, I think in a --
18 let's see. The August 12th deadline for production is
19 coming up, but I believe that in a couple of weeks we could
20 send -- we could confirm for Plaintiff that we will -- we'll
21 either have produced all original progress notes, so I think
22 we could do that in a couple of weeks.

23 THE COURT: That's fine with me. And then, how
24 long for -- I mean, you should start going through it
25 already, you probably have, Mr. Thrope -- but for the

1 Government to do step two?

2 MR. THROPE: For this set of medical records,
3 maybe a few months. I think it's -- I just want to make
4 clear that this discussion we've been having about the
5 August 12th deadline, that's for the fourth RFPs, which are
6 focused on sort of a subset of medical records. We have,
7 and are likely to have, other medical records at issue.
8 We're fine doing the same process as what you've been
9 describing. So I think this time line we're talking about
10 should just be sort of fourth RFPs, and then the other ones
11 hopefully we could just work it out with Kaiser and figure
12 it out, but I just wanted to make it clear.

13 THE COURT: So -- so, let's agree on what that
14 means. So the scope of this is for all -- the scope is for
15 all of the medical -- describe for me what the scope is.

16 MR. THROPE: We have -- we have a general
17 disagreement about what to do when we request medical
18 records. That's why this came to you. The third RFPs
19 request medical records for some specific providers. The
20 fourth RFPs request medical records for just a small set of
21 medical records -- a small set of visits. There may be some
22 additional ones, but there are likely to be additional ones
23 in the future to gather information. This August 12th
24 deadline in the declarations are focused on the fourth RFPs.
25 Those are the medical records that we needed to get quickly,

1 because they're part of our sample. And so that's what the
2 August 12th deadline is all about, and where it's really
3 important, I think, to set a schedule in place.

4 MS. BAIR: And that's for 2322 separate patient
5 encounters, your Honor.

6 THE COURT: So the scope is all medical records.
7 It's the medical records sought by the fourth RFP for 2000
8 -- how many?

9 MS. BAIR: Three hundred and twenty two patient
10 encounters.

11 THE COURT: Two thousand three hundred and twenty
12 two patient -- I mean, obviously it sets a standard in the
13 process more for the future, but -- okay. So it's -- and
14 I'm going to call it original patient encounter notes.

15 MS. BAIR: Original progress note.

16 THE COURT: Original progress note. Let's see.
17 Original -- original progress notes. Okay. Other -- okay.

18 So, step one, the scope -- the scope is -- is the
19 medical records sought by the fourth -- or request for
20 production by the Plaintiff for 2322 patient encounters.
21 I'll set a process for the future. Step one within two
22 weeks.

23 Step two -- well, the reason I want to do this as fast
24 as possible is because I envision a -- a step three and a
25 step four. Four will be meeting and conferring about the

1 failures of step two and three. So I want to do that so
2 that -- so I don't want to have -- so September, October,
3 November -- November is a little too late. I would say 90
4 days is probably too much, just because I want to build in
5 time for step three and building and disputes and resolution
6 before the end of the year.

7 MR. THROPE: I think two months from whenever
8 theirs is due is enough. And, to the extent we could get it
9 done before then, we'll give it to them.

10 THE COURT: Sixty days from the confirmation by
11 the Defendants that step one (indiscernible).

12 And then step three -- step three. Timing, step three.
13 So it's August what? we're basically October 15th by the of
14 step -- or earlier for the end of step two. What's your
15 view about timing on once that's done, producing -- or
16 identifying where you produced the ones that you disagree
17 with, and I guess -- well, there's still going to be some
18 categories that they say they can't identify the original
19 encounter notes, since you're disagreeing with
20 (indiscernible) -- so we have to build into step three
21 something to be identified.

22 MS. BAIR: Right. I think -- your Honor, I think
23 the tricky part about that timing, we could certainly
24 identify where the original progress note is in what we
25 previously produced, but to the extent there is a larger

1 volume that we'd have to go collect and produce, which we
2 don't think there will be, because we think we're going to
3 have produced them all, that could take some time. But I
4 think identifying for them where they -- where the original
5 progress notes are in what we previously produced, which I
6 believe is the first part of step three, I think -- you
7 know, I think if we had -- I'm thinking a month, that would
8 be sufficient time to do that.

9 THE COURT: So I'm not going to go with anything
10 resembling (indiscernible). I'm rejecting entirely the way
11 your declaration set forth the time line this has to be done
12 -- the idea that you have to do this for 2300 records, of
13 course I think is absurd to me, but by this time we're down
14 to a couple (indiscernible).

15 So, what I want you to do is complete step three within
16 30 days, and that means --

17 MS. BAIR: Step three within 30 days?

18 THE COURT: Yeah.

19 MS. BAIR: Okay.

20 THE COURT: Thirty days will be the Plaintiff
21 (indiscernible) step two.

22 Now that -- I'm still left a little gap here, because
23 you haven't answered the question -- as part of step three,
24 what do you do if they say, we can't tell from these notes,
25 even though you say you've produced all of the ones -- from

1 which you can't tell we've got these additional ones from
2 which we cannot tell? We need to have a short discussion
3 about what to do with those documents. Those --

4 MR. BLALACK: Your Honor, can I -- may I interject
5 on that point? Because I think we can help move things
6 along.

7 THE COURT: Yeah.

8 MR. BLALACK: We're glad, once we've identified
9 the population where we think we have a disagreement, we
10 don't need to do formal discovery on that. We can sit down
11 with them and show them why we think they are -- the
12 original encounter note is clearly evident and accessible,
13 and we'll talk that through. My hope would be, you know,
14 that would resolve any ambiguities or uncertainties they
15 have. Maybe -- you know, maybe I'm too optimistic that it
16 will resolve it completely, but it would certainly get us
17 down to a narrow population if there's any, you know, true
18 dispute. But, you know, that kind of form of process is
19 fine for us.

20 THE COURT: I'm prepared to do that so long as we
21 have a time line for that. So, why don't we say that within
22 two weeks of completing step two the parties will meet and
23 confer on any documents on which the Plaintiffs say they
24 can't identify the original encounter.

25 MR. BLALACK: That should be fine, your Honor.

1 THE COURT: Now, so this is -- this is where it's
2 in Plaintiff's interest to identify as many of the original
3 encounter notes as you possibly can, because you don't want
4 to dump into that category some giant number and give the
5 Defendants an opportunity to not produce things for awhile
6 thereafter. But you meet and confer and come to me with any
7 disputes. That makes sense, Mr. Thrope?

8 MR. THROPE: Yeah, no, we'll be reasonable, and
9 our hope is if we identify some number of medical records
10 where we really don't think we can identify it, they'll
11 produce it. But the expectation is there won't be 2200
12 medical records. We'll be careful and identify the ones at
13 issue.

14 THE COURT: Right. Okay. Great. See this was
15 easy. That only took you, what, eight months to get to the
16 point of where you could put it in a form that the Judge
17 could say, oh, this is easy. Okay.

18 No, I don't -- I'm a little bit arrogant about this
19 stuff, but I do appreciate the huge amount of work that goes
20 into it. So don't get me wrong. I'd much rather have my
21 job than yours.

22 Okay. So, we'll try to get out, today or tomorrow, an
23 order which sets this up.

24 Now, problem two was filed yesterday. Today, I was
25 wondering when that one would come. Here's what I propose

1 to do about it. I think -- I don't decide those kinds of
2 privilege-related issues without full brief. I think it's
3 unfair to both sides. So I want to kick it back to you to
4 set a briefing schedule.

5 MR. THROPE: Okay.

6 THE COURT: I don't want the -- I want the hearing
7 to be no earlier than November. So figure out what --
8 sometime in November that works for you all. And when -- I
9 mean, I assume that this is going to take the form of a
10 motion to compel. When the Defendants file their motion to
11 compel, the United States has identified sort of four
12 categories of -- and I don't know if they're right or wrong
13 on the categories or on the documents, but yet -- but, it
14 seemed to me it might be useful to use those categories,
15 because I'd like when you file a motion like this, to see
16 some or all of the documents. So my idea is -- we'll just
17 test it out. Actually, my brilliant law clerk's idea -- is
18 that, for each of the four categories, when you file the
19 motion, you file with us also under seal, 10 samples -- 10
20 documents from each of the four categories. I assume you
21 will pick the ones that are strongest that you think the
22 Government is least justified -- which is good, that's fine.
23 I want to start with the ones that you think are the most
24 easy to challenge. And, what we do is we write an order
25 that sets forth our sort of overall view in how we approach

1 the subject and rules on those documents. The hope is that,
2 once we've done that, you know, you can see the handwriting
3 on the wall for most of the other documents that were at
4 issue and meet and confer and come back if you still --
5 we've done this -- I did this in at least one other major
6 case with the United States and it worked out pretty well.

7 MR. THROPE: I just want to clarify the sequence
8 of events. So, the United States -- there are documents,
9 only we've seen them, you know, Kaiser hasn't seen them. So
10 who exactly is -- who's identifying them? I just want to
11 make sure we get it.

12 THE COURT: Oh, well, they're identifying. I
13 think the Defendants have to pick the documents that they
14 want to challenge most, the 10 from each category, and I
15 guess that the United States has to lodge with the Court
16 those 40 documents.

17 MR. THROPE: Got it. That makes sense.

18 THE COURT: Okay. Okay. I didn't understand --
19 of course I didn't think it through. The United States
20 still has the documents.

21 MR. BLALACK: I understood the suggestion, your
22 Honor, and that's fine. We'll -- with the information we
23 have, which as you know from our filing is limited, but with
24 that we'll select what we think are the 10 illustrations in
25 each category and include those with our -- and identify to

1 our counterparts and they can --

2 THE COURT: Lodge it with us. That would be
3 great.

4 And then -- so, put all of this in your stipulated
5 briefing order, along with --

6 MR. BLALACK: Okay.

7 THE COURT: -- your other date about what goes
8 when and then we'll get that done. And it's -- you know,
9 there's not a -- I think I -- if I'm right about this, we'll
10 get rid of most of the issues through first round, but not
11 all of them. So I want -- that's why I want to have it
12 fully briefed and have a hearing in November so I can get
13 the first round of decision by the end of the year so that
14 you've got a discovery cutoff date next spring or something,
15 early summer, get everything done before then.

16 MR. BLALACK: That works for us, your Honor. We
17 understand.

18 THE COURT: Okay. Great.

19 Anything further?

20 MR. THROPE: Nothing from us.

21 MR. BLALACK: Nothing from the Defendants, your
22 Honor.

23 THE COURT: Thank you, all.

24 MR. THROPE: Thank you.

25 MS. BAIR: Thank you.

1 MR. BLALACK: Thank you, your Honor.

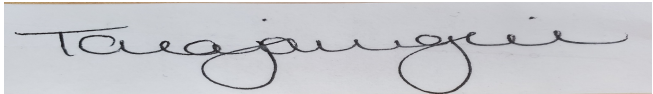
2 THE CLERK: Thank you. The Court stands in
3 recess.

4 (Proceedings adjourned at 10:42 a.m.)
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1 CERTIFICATE OF TRANSCRIBER

2
3 I certify that the foregoing is a true and correct
4 transcript, to the best of my ability, of the above pages of
5 the official electronic sound recording provided to me by
6 the U.S. District Court, Northern District of California, of
7 the proceedings taken on the date and time previously stated
8 in the above matter.

9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties to the action
11 in which this hearing was taken; and, further, that I am not
12 financially nor otherwise interested in the outcome of the
13 action.

14 

15
16 Echo Reporting, Inc., Transcriber

17 Tuesday, August 5, 2024
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