UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-CV-2142-NYW

CRUSOE ENERGY SYSTEMS, LLC,

Plaintiff,

v.

ALKANE MIDSTREAM, LLC,

Defendant.

REPORTER'S TRANSCRIPT
(Status Conference)

Proceedings before the HONORABLE NINA Y. WANG, Judge, United States District Court, for the District of Colorado, commencing at 10:05 a.m. on the 31st day of August, 2022, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

FOR THE PLAINTIFF:
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AUGUST 31, 2022

(Proceedings commence at 10:05 a.m.)

THE COURT: Good morning. We are on the record in 22-cv-2142-NYW, Crusoe Energy Systems, LLC, v. Alkane Midstream, LLC.

Could I have appearances of counsel.

MR. GOVETT: Yes, good morning, Your Honor. This is Brett Govett. And with me this morning on the line is Stephanie DeBrow, Taylor Shields, and Daniel Shuminer. We are from the Norton Rose Fulbright law firm. And we also have two of our clients on the line, Jamie Seeley is our general counsel, and Kyle Zeller, he is our in-house counsel. Thank you for hearing us.

THE COURT: Good morning, counsel.

MR. SUGDEN: Good morning, Your Honor, Ryan Sugden and John Schroeder, of Stinson, LLP.

THE COURT: Good morning, counsel.

All right. We are here for telephonic status conference with respect to this case. This is a patent infringement case in which the plaintiff, Crusoe Energy Systems, seeks a temporary restraining order, as well as a preliminary injunction in this case.

Given the exigent circumstances that the plaintiff raises, this Court entered an order on August 29, 2022, which is Docket Entry No. 20, asking the parties to meet

and confer with respect to a number of issues.

Those issues that the Court directed the parties to be prepared to discuss at this conference was, one, the date of anticipated deployment of the accused product and/or services. Two, a briefing and hearing schedule for the Motion for Temporary Restraining Order and Preliminary Injunction. Three, whether the parties anticipate any need for claim construction in conjunction with such preliminary proceedings. And, four, when the parties were available for a non-adversarial technology tutorial in advance of any hearing on the Motion for Temporary Restraining Order and Preliminary Injunction.

So this morning I believe we received a submission, which is Docket Entry No. 22; a notice of the parties' proposals concerning a briefing schedule and hearing schedule for Crusoe's Motion for Temporary Restraining Order and Preliminary Injunction.

So let me begin by saying thank you for submitting that. I appreciate that, and I appreciate that you have met and conferred. There are some is disputes with respect to the timing that you all have asked for, but let me ask a preliminary question. You all have agreed that Alkane's Response to Crusoe's Motion for Temporary Restraining Order would be September 7, 2022, so we will enter that date.

It is not clear to me, however, that the parties are seeking a separate hearing or determination on the Temporary Restraining Order or whether or not that will come in conjunction with the adjudication of the Motion for Preliminary Injunction.

So if plaintiff's counsel could first address that, and then defense counsel, I would appreciate that.

MR. GOVETT: Yes, Your Honor. This is Brett Govett for Crusoe. We were willing to do whatever the Court had in mind. If the Court wanted to decide the issues on the papers, then, you know, obviously that would be fine with us. If the Court wanted to have a hearing, either telephonically, by video conference, or in person, that would be fine with us. We thought this would be an opportunity to take that up with the Court.

THE COURT: All right. So you are looking for a separate determination on the TRO versus the preliminary injunction, am I hearing that correct?

MR. GOVETT: Yes, Your Honor. Yes.

THE COURT: Okay.

MR. SUGDEN: And, Your Honor, this is Ryan Sugden for Alkane. Our understanding was also that plaintiff was seeking a separate determination on the TRO. We had not discussed with plaintiff's counsel whether there would be a separate hearing for that, so we haven't had a chance

yet to take a position on that.

THE COURT: Okay. So, that being said, the agreed-upon deadline is September 7. And then any replies would ordinarily be due no later than September 21st. Given the fact that it is a TRO, we should consider expediting that. And so let's see --

MR. GOVETT: We can have our Reply done much earlier than that, Your Honor, say the 14th.

THE COURT: All right. So why don't we have any Reply with respect to the TRO due no later than September 14th. I would be inclined, counsel, then, to take a look at the briefing as it comes in. I've obviously read the TRO and looked at some of the underlying exhibits.

I can't say that I am completely up to speed, but let me take a look at the briefing and then make a determination as to whether or not oral argument on the Temporary Restraining Order would be helpful for the Court. If that is the case, then I will issue an order setting you all for oral argument. And then if I find that the oral argument would not materially assist the Court's resolution of the TRO, then I can simply decide on the papers.

But that raises a second issue that I raised in our minute order, which is a technology tutorial. So, looking at the claims of the two patents, the 307 patent and the

309 patent, it is not clear to me whether or not you all believe that there will be particular claim construction issues.

If there aren't claim construction issues that you currently anticipate, then I am not sure that this Court needs a tutorial prior to determining a TRO or preliminary injunction given the way that these claims are written. But I also wanted to raise that issue with respect to, again, a non-adversarial technology tutorial and whether or not you all would be prepared for such tutorial and/or believe it might be helpful for the Court.

MR. GOVETT: I am happy to speak to that, Your Honor, this is Brett Govett.

THE COURT: Go ahead, Mr. Govett.

MR. GOVETT: So we discussed that, Your Honor. At this point, we dropped a footnote in our papers, which you probably saw, where we do not believe any claim construction is required. I will let opposing counsel address their position on that, but my understanding is at least not for the TRO.

With respect to the tutorial, the technology tutorial, of course it is up to Your Honor, but I believe those are always helpful, and there is a number of different ways, perhaps, that we could go about it. Of course we could do it in person. But one way that we have

done in other cases is we just submitted a voiced-over PowerPoint. So in the PowerPoint we go through some slides and we have a little bit voice-over that is tied to the slides, and we found that to be helpful for the court or the technical advisory or what have you that is working on the *Markman* proceedings.

And then, of course, we are always happy to come in person. But we had a question about in person. Were you just thinking -- I have done it just with counsel, I have done it with, we bring our expert, put the expert on the witness stand, we ask some questions of the expert, then open it up to the Court to ask questions. That is another alternative. So it was just dependent on what the Court had in mind for a tutorial.

THE COURT: All right. Well, let me hear from defense counsel, and then I can give you my thoughts.

MR. GOVETT: Thank you.

MR. SCHROEDER: Hello, Your Honor, this is John Schroeder on behalf of defense counsel. And our thought right now is that we are not planning on raising claim construction issues, at least in the TRO. The Preliminary Injunction is a little bit further down the road, in terms of briefing. And so we're kind of undecided at this exact moment as to whether or not we would raise any claim construction at that point. Obviously we would have a

little more time to develop claim construction positions and defenses that we have. So that is part of why we are just not completely sure of what we are wanting to do on the preliminary injunction response yet.

As far as the technology tutorial, I think our position is that these claims are a fairly high level, and I am not really too sure how much a tutorial would actually assist, but we would, of course, comply with whatever the Court's desire would be regarding that.

THE COURT: Okay. So my inclination is that the claim construction hearing -- or, I am sorry, the technology tutorial is not so necessary if you all are not making claim construction arguments in conjunction with the TRO.

To the extent that there may be claim construction issues raised at the Preliminary Injunction hearing, then I might go back and indicate that a technology tutorial might be helpful. But in my preliminary analysis of both the claim chart that was attached as Exhibit C to the Declaration of Dr. Hilbert, as well as reading the claims, it doesn't seem like the technology tutorial is as pertinent or helpful as it might be in other cases.

So I am always inclined to minimize costs for you all and maximize efficiency, unless I am going to get some sort of positive output for your efforts. So at this

point, what I am inclined to do is just set aside the technology tutorial.

If you all want to meet and confer about whether or not a voice-over PowerPoint might be helpful to orient the Court, you are certainly welcome to do so. I like my technology tutorials to be as non-adversarial as possible. I do not want those to be another opportunity for the parties to argue either infringement and/or invalidity of the claims.

And so why don't we wait on the technology tutorial now. I will see some of these papers as they come in, and then I might re-evaluate to see whether or not a technology tutorial would be helpful. How does that sound to everybody.

MR. GOVETT: This is Brett Govett. That sounds great, Your Honor, thank you.

MR. SCHROEDER: And this is John Schroeder. We would be agreeable to that.

THE COURT: All right. So then there is a dispute over the deadline for Alkane's Response to the Complaint. Obviously under the Federal Rules of Civil Procedure, the presumptive deadline for filing a response to any complaint is 21 days after service. This was served on August 22nd, and then that would generally mean that the Response -- well, I am sorry. You all may not have served

it on the 22nd.

MS. DEBROW: Your Honor, this is Stephanie DeBrow. I believe the date of service is August the 25th.

THE COURT: Okay. So that would mean that the presumptive deadline is the deadline proposed by Crusoe, which is September 15. Alkane seeks an extension to October 5th, which Crusoe says that it does not oppose, so long as the extension does not delay facts discovery.

So that raises the Plaintiff's Motion for Expedited Discovery. Helpfully, the plaintiff has also attached as Docket Entry No. 12, proposed discovery. And it seems to me that we could proceed to considering whether or not expedited discovery is appropriate without having to have the Response to the Complaint first.

Now, Mr. Schroeder or Mr. Sugden, let me hear from you all, since you all are proposing a Response that is not in line with the Federal Rules of Civil Procedures' presumptive limit.

MR. SUGDEN: Your Honor, this is Ryan Sugden. So you would like us to address the Response date to the Complaint?

THE COURT: Yes.

MR. SUGDEN: So the date that we proposed is the 21-day extension of the typical deadline to answer, which is within the local rules' typical allowance for a

stipulated extension by the parties. We don't believe that by filing the Complaint -- I am sorry, a Response to the Complaint on October 5th, that would delay fact discovery.

We do have issues with the schedule of the expedited discovery that has been requested, but we are not taking the position that it must wait until after we would answer or file a Motion in Response to the Complaint.

THE COURT: All right. So, hearing that, Mr. Govett, any objection to entering that October 5th deadline for the Response of the Complaint, knowing that these issues with the Motion for Expedited Facts Discovery are going to need to be adjudicated by this Court at least in conjunction with some preliminary discovery?

MR. GOVETT: There is no objection. No objection, Your Honor. Thank you.

THE COURT: So we will set that deadline for October 5, 2022, for the Response to an Answer or Motion in Response to the Complaint.

Now let's turn to the Motion for Expedited Discovery, because my sense is that that is going to influence the deadlines with respect to the completion of fact discovery, any supplemental briefing with respect to the Motion for Preliminary Injunction, the opposition to

the Preliminary Injunction, and the Motion for Preliminary Injunction.

I will tell you that given the Court's schedule, getting you all in for a preliminary injunction hearing in November or early December is going to be challenging. As you all probably know, I was just recently confirmed, and as part of that process, received a number of cases from my colleagues, which are set for jury trial on my calendar now all throughout November and early December.

So I am a little bit concerned with respect to slating you in for a preliminary injunction hearing, but that will also depend on a couple of things, and one is I would like Mr. Sugden and Mr. Schroeder to address the date of the anticipated deployment of the accused products and/or services, because based on my reading of the Complaint, it wasn't entirely clear to me when these things were going to get deployed which, again, in turn may influence the Court's timing with respect to a number of these issues.

And then, two, how long you all anticipate a preliminary injunction hearing lasting; whether you think that it could be completed in one day or you think it will take multiple days for the Court's consideration.

MR. SUGDEN: Thank you, Your Honor, this is Ryan Sugden, and that sounds like a very nice welcoming gift

from your colleagues to get a number of jury trials.

But with respect to the date of deployment, the understanding that we have from our client is that Alkane will deploy non-bitcoin mining equipment to the site in approximately three weeks. So that is non-bitcoin mining equipment.

Alkane, itself, will not be conducting any bitcoin mining activities, itself. Third parties may take the electricity that Alkane generates and use it for bitcoin mining, and the equipment for that by the third parties, our understanding, is scheduled to be delivered to the site around November 1st.

THE COURT: Okay. So we are really talking about three weeks for the first deployment, because at least the way I read these patent claims right now, and I am sure you all will have some different opinions on this, I am not sure that these claims are narrow enough to limit the use of these flare mitigation systems to just bitcoin mining, despite the fact that that may have been the plaintiff's anticipated use.

So, Mr. Govett, do you want to address that first, and then, of course, I will hear from defense counsel, as well.

MR. GOVETT: Yes, Your Honor, the claims are targeted towards distributed computing, so you are right

on point with that. Obviously it can be any sort of intensive computing, as you saw on the specification for the patent. So we agree they are not limited to bitcoin mining.

And I would just add that the remarks from defense counsel make me all the more motivated to seek some expedited discovery to find out actually what is going on. And congratulations on your commission date, I think that was July 22nd, and it was also the date, as you saw in our Complaint, that we had the meeting that led to the filing of the Complaint that is outlined in our papers. So we would want to go forward as quickly as possible, of course.

And then you raised a point about the length of the preliminary injunction hearing. We believe a full day should suffice, Your Honor. I am not sure whether that is 6-and-a-half hours or 5-and-a-half hours or what you typically do in court. But if we could get, you know, somewhere about 6 to -- 6 or so hours divided between the sides, we should be, barring something unforeseen, we should be fine with that, in terms of the length of time for a preliminary injunction hearing, particularly given how up to speed you are.

THE COURT: All right. Mr. Sugden or Mr. Schroeder, do you want to address the timing for the

preliminary injunction hearing?

MR. SCHROEDER: Your Honor, this is John Schroeder. I want to clarify one point that Ryan made. And then I will actually hand over the answer to the question you just asked back to Ryan, actually.

But the equipment that is being delivered on site on November 3rd, it is not only not related to bitcoin mining, it is not related to computing. It is my understanding it is related to actually using the -- creating natural gas products. So it is not actually related to the claims in any way, at least in our opinion.

THE COURT: Okay. Well, that obviously goes back to the discovery issue. So in three weeks there is equipment going to be delivered. Is it also going to be deploying?

MR. SCHROEDER: I believe that the equipment that is being delivered may start being deployed. But, as I said, that equipment in three weeks is actually processing the gas into salable products, not into power for operating computer equipment. That would potentially be what gets delivered, though, on November 1st, is my understanding, is potentially computer operating type equipment.

THE COURT: Okay. All right. So that is helpful.

Mr. Sugden, what did you want to tell me about the

length of time for any preliminary injunction hearing?

MR. SUGDEN: We had discussed this internally prior to this call, Your Honor. Again, this is Ryan Sugden. We thought that a two-day hearing would be appropriate and give the parties adequate time for the Court to consider the claims.

THE COURT: All right. So there is a -- I won't call it a dispute, but a disagreement with respect to whether or not we want one or two days. So it sounds to me like it is probably the safest that I find a two-day block, lest we have any issues.

I will tell you that unless the numbers with respect to COVID-19 go up or somehow change, my inclination is to have you in person for a preliminary injunction hearing. I just find that is a little bit easier to understand and be engaged, for both the Court and the parties, to be here in the courtroom.

You all are welcome, however, if there is any discomfort, to seek leave for one or more people to appear remotely. I also, depending on the numbers, may request that all people wear masks, except the testifying witness, so that I can understand the witness.

It is also not entirely clear to me, other than expert witnesses, who you might anticipate testifying at that time. So we can deal with all of those issues

depending on what the COVID-19 protocols might be from our Chief Judge, and then also what the numbers might be leading up to any such hearing.

MR. GOVETT: Understood, Your Honor. Thank you.

THE COURT: So the next thing that I think would be helpful for us to decide, not to sort of kick the can down the road, but it is always helpful for me to understand what the disputes are and to resolve those disputes with respect to the discovery that is being sought.

So let me ask Mr. Sugden and Mr. Schroeder, you have indicated that you believe that the breadth of the topics may be too broad. Are there any topics or written discovery that you all agree upon? So my second question was whether or not there are areas or written discovery requests, as they stand now, that the parties do not dispute?

MR. SUGDEN: Your Honor, this is Ryan Sugden. We have not specifically conferred with Mr. Govett or his team on specific discovery requests, and we would be happy for do so. Frankly, the objection to the breadth is in conjunction with the schedule. So, just to provide some context for our objection, plaintiff is seeking to use every discovery tool in the book; interrogatories, requests for production, requests for inspection, requests for admission, three depositions, as well as requesting

early Rule 26 disclosures, and they are looking for all of that to happen in a matter of days. Seven days' response time is requested for the written discovery, and then a very short period of time to complete fact discovery and depositions, as well as the request for inspection. So it's the compressed nature of the request.

The objection to breadth is primarily on the number of depositions sought. Plaintiff seeks thee depositions; two fact and one corporate representative. We think that should be limited to just one corporate representative.

The topics are fairly wide ranging, and the Rule 30(b)(6) notice that we received, including our client's creation and development of an entire flare gas technology, pretty broad stuff. I think it would be appropriate for us to confer with plaintiff's counsel on any objections to specific requests before we take up the Court's time. But our objection is to the number of depositions sought, as well as the early Rule 26 disclosures. Given the amount of written discovery that is already being sought, we don't think it is necessary or appropriate.

We have objections on the timeline and the schedule. Your Honor hasn't requested for us to speak to or discuss that yet, but I am happy to go into it. As the schedules -- the competing schedules demonstrate, we are

seeking slightly more time; another month to complete fact discovery, in part given the amount that has been already propounded. In part, because it is a Motion to Restrict, we have not yet shared any discovery with our client yet. And, in part, because the schedule that plaintiff's counsel has proposed does not appear to allow any time for -- does not allow adequate time, I should say, for defendants to conduct its own discovery.

THE COURT: All right. So a couple of things. For better or for worse, you have a presiding judge who was both a patent litigator and a magistrate judge. So that means that I would be inclined not to refer this to a colleague for discovery disputes, but to resolve them myself.

So what do you all think about a hearing on September 8th? We can do it telephonically so that it is easier for you all. But on the 8th, we will have the Response to the Motion for Temporary Restraining Order, and then also we will have an opportunity to talk about specific objections or specific areas that the defendant is willing to provide expedited discovery on. And then I think I would be in a better place to have an opportunity to actually think thoughtfully about what the discovery deadlines for those might be.

MR. GOVETT: This is Brett Govett, Your Honor.

That would be great. And if they want to send some discovery over to us, we can take it all up at once, just to move things along.

THE COURT: Okay.

MR. GOVETT: If we could just avoid the lunch hour, it would be very much appreciated, but we will make ourselves available whenever the Court would like.

THE COURT: All right. Mr. Schroeder or Mr. Sugden, September 8th?

MR. SUGDEN: We are available on September 8th. I have an existing obligation in the morning, but it is not something that would get in the way of this Court's schedule.

THE COURT: Okay. So what about 1 o'clock Mountain Time?

MR. GOVETT: That is perfect, Your Honor. This is Brett Govett.

MR. SUGDEN: This is Ryan Sugden, that works for me.

THE COURT: And then we will do it telephonically. So what I would like you all to do is meet and confer about the written discovery requests that were made by the plaintiff, which are Docket Entry No. 12.

And then if you could take a look at my practice standards, which I believe are up right now, there should

be some instructions with respect to discovery disputes that are remnants from my days as a magistrate judge. And I am going to pull that up, because we this been in the process of putting up practice standards.

So Instruction 3 of my practice standards, you will see Discovery Dispute Procedures. And so if you all can take a look at that and provide a chart to me no later than 9:00 a.m. on September 7th. I am trying to give you all a little extra time so I don't completely ruin your Labor Day holidays, but I do need some time to at least have an opportunity to review them before I start working with you on the 8th.

MR. GOVETT: That is great, Your Honor. We are familiar with this.

THE COURT: You can submit those directly to chambers, that chart. And then if I need to, then I can docket it in conjunction with the hearing. But oftentimes as a magistrate judge we did this somewhat informally. It is a little bit different here because there is that Motion for Expedited Discovery.

I will leave it up to defendant if they also want to file a written Response to that Motion for Expedited Discovery in addition to the chart. If you do want to file a Response to that Motion for Expedited Discovery, that Response would be due no later, again, at 9 o'clock

Mountain Time on September 7th.

MR. GOVETT: Your Honor, Brett Govett. With respect to the chart, do we send it to Emily? I am trying to find the proper email address.

THE COURT: You can send it to my chambers, which is wang_chambers@cod.uscourts.gov.

MR. GOVETT: Okay. Thank you.

THE COURT: So then once we have that hearing on discovery and I can understand what the breadth of the discovery might be, then we can also work on what the proposals are with respect to the deadlines. And I would hope that if we have enough time on Wednesday, we would move from resolving discovery disputes to going toward setting those deadlines.

Let me be very clear, however, I am very focused on the discovery being what is necessary with respect to what the elements of the preliminary injunction to be. And that means, for better or for worse, right now I'm mostly concerned with respect to alleged infringement as opposed to alleged invalidity. That is because the relief that is being sought is primary based on infringement, although I know that you can't infringe an invalid claim.

But that is what I'm really thinking about primarily, in terms of trying to get you all a resolution to the TRO and/or the preliminary injunction. Does that

make sense to everybody?

MR. GOVETT: Yes, Your Honor.

MR. SUGDEN: Yes, it does.

THE COURT: All right. So then let's move to the Motion to Restrict, because it sounds like there may be some issues with respect to the Motion to Restrict that defendant might want to raise in terms of trying to adequately confer with their own client with respect to the allegations and the procedures here.

MR. SUGDEN: Yes, thank you, Your Honor, this is Ryan Sugden. The concerns that we have with the Motion to Restrict is that the plaintiff sought a Level 1 Restriction, which as the Court is well aware, under Rule 7.2(b) of the Local Rules, limits access to the parties and Court, but plaintiff's motion sought to limit access to outside counsel only.

We have respected that motion and have not yet shared any restricted documents with our client; that includes the declarations, that includes the contract at issue, and that also includes the discovery requests. And so we don't believe that there is any support in the Local Rules for a restriction to outside counsel only, nor in the contract provision that plaintiff has indicated require them to file these as "restricted."

So the second issue that we also have in addition

to the AEO request is that we don't think that full restriction of the documents is appropriate. We think a more limited approach, like redaction, is appropriate. I will let Mr. Govett speak for himself. I don't believe that plaintiff has any issue with redactions, at least when we conferred they did not appear to.

So our proposal would be that the parties, including client representatives and inside counsel, have access to all Level 1 documents, and that plaintiff make targeted redactions to clients or customer names and well or pad sites, and that the remainder of the documents be made public.

THE COURT: All right. Mr. Govett?

MR. GOVETT: Yes, Your Honor. They need to -- we are in agreement that they need to get the information to their clients. They are in a competitive situation to us, so we would ask that the pricing information not go to their clients or to the public.

As you saw, we have a very strict confidentiality provision. We just don't want a counterparty to say that we were in breach of that confidentiality provision. And that was our reasoning for filing things and requesting that they maintain outside counsel, as only I am sure everyone on the call can understand.

So if the Court would -- you know, is inclined to

enter some relief or some order with respect to that so that we won't be found to be in violation of that provision, that would be great. We don't want anybody saying that we did anything other than what we were supposed to do. But, at the same time, we can't let that get in the way of handling this case, and we realize the practicalities of that.

THE COURT: Sure. So this is what I am inclined to do. First of all, I think of "restriction" and "AEO" status as two very different things. So with respect to the Motion to Restrict, what I am focused on in any Motion to Restrict under our Local Rule is what we are restricting from public access. And that means that even if something is limited to the parties and the Court under Level 1, that doesn't necessarily mean that it is attorneys' eyes only.

And usually what happens with respect to attorneys' eyes only, is there is a different standard and it is implemented through a protective order. The protective order may protect disclosure of certain documents, even if they are, in fact, never filed with the Court. So I just want to make sure that you all are thinking about those two concepts separately, because this Court does think of those two concepts separately.

The second thing is that I take seriously the

object of our judiciary to be as open as possible. I think that the people, not only the parties, but the general public, deserve to understand why our courts are making decisions and upon what facts and information they are making those decisions.

That means that I am -- I wouldn't say hostile to restricting the record, but I will say that I do look critically at any motions to restrict, and you all should know moving forward that even if you all were to agree to restrict information off the public record, the Court might not agree. Again, going back to that fundamental principle of an open judiciary for the parties and the public.

So what I would like you all to do is take that information, meet and confer over the next day or so and, again, no later than 9:00 a.m. this Friday, I would like to understand, through a Response to the Motion to Restrict, and then see if you all can figure out what kind of protective order you are or are not willing to enter to protect certain information.

That being said, I am putting the onus back on you all to look at these documents and talk about what necessary redactions there might be. And then to the extent that there is still a dispute once you all have an opportunity to meet and confer, to raise that dispute to

this Court, either through the Response to the Motion to Restrict, if you all cannot agree to what will be on the public record, and then what will be also docketed as redacted for the public to see.

And then, two, if that is somehow different than what can be shared with clients, then we can take that up on a motion for protective order, as well.

Typically, in these kinds of cases, the parties enter a stipulated protective order that allows for the designation of certain documents to be confidential and then a second tier to be confidential, attorneys' eyes only. Again, this District has standards with respect to what kind of information can be identified as "attorneys' eyes only."

You all have touched on one of the factors, which is whether or not there is a competitive nature between the parties. But I know that I have experienced counsel on both sides, so I am going to leave that up to you all in the first instance. How does that sound?

MR. GOVETT: Your Honor, this Brett Govett for Crusoe. It sounds great. I just have one clarification. We just want to make sure that the counterparties on our agreement, there is no room for them to complain. We hear you loud and clear, and we are completely in agreement that the public needs the proper access and, of course,

our opponent needs proper access. We just don't want them to complain and say, well, you know, you agreed or didn't oppose it or something like that when, in fact, that is what the rules require.

THE COURT: And I am sensitive to that. The Court can always enter an order. And what I am anticipating to do is entering some sort of order with respect to disclosure. What I want you all to meet and confer about is what is really necessary for that disclosure. If I need to enter an order directing you all to produce that so that the defendant can adequately prepare for the response to the TRO and/or the preliminary injunction, I am happy to do so.

That is why I am having you do it this week, so that we can get that in place, and hopefully start the production process by Friday, so that, again, going into the weekend, that you all have the opportunity to share what needs to be shared. You all can also do that through a letter agreement, if you want to start that process sooner, rather than later. But, again, what I am trying to do is to do this in the most expedited and efficient manner that I can.

MR. GOVETT: Appreciate that. We will get right on it, Your Honor. I think we are, if not in total agreement, we are very close to agreement on these issues.

THE COURT: All right. So that is what is on my list right now. I am going to defer setting these further deadlines until we talk again on September 8th.

Anything else, counsel, on your parts that would be helpful to discuss today?

MR. GOVETT: This is Brett Govett for the plaintiff. Ms. DeBrow, is there anything else? She always keeps everything straight.

MS. DEBROW: I think we have picked through all of the issues. And, Your Honor, we appreciate your guidance in how to approach these and getting us on the calendar to discuss discovery more next week.

MR. GOVETT: Yes, thank you, Your Honor.

THE COURT: Anything on behalf of defendants?

MR. SUGDEN: This is Ryan Sugden. I don't think that we do. Thank you very much for your time, Your Honor.

THE COURT: All right. So if it is helpful and you need a transcript of this proceeding, just make sure that you are getting in touch with my courtroom court reporter and/or courtroom deputy. They work closely together. Otherwise, I will look forward to your submissions next week and hearing from you next week.

Thank you, we will be in recess.

(Proceedings conclude at 10:49 a.m.)

REPORTER'S CERTIFICATE

I, Darlene M. Martinez, Official Certified Shorthand Reporter for the United States District Court, District of Colorado, do hereby certify that the foregoing is a true and accurate transcript of the proceedings had as taken stenographically by me at the time and place aforementioned.

Dated this 7th day of September, 2022.

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s/Darlene M. Martinez

RMR, CRR