

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: WHOLESALE GROCERY) Court File No.
PRODUCTS ANTITRUST LITIGATION) 09-MD-2090 (ADM/AJB)
)
) Courtroom 13 West
) Tuesday, February 8, 2011
) Minneapolis, Minnesota

**HEARING ON
PLAINTIFFS' MOTION TO AMEND COMPLAINT**

[DOCKET NO. 87]

BEFORE THE HONORABLE ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE

TIMOTHY J. WILLETTE, RDR, CRR, CBC, CCP
Official Court Reporter - United States District Court
1005 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415
612.664.5108

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1 (8:50 a.m.)

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

3 I N O P E N C O U R T

4 THE COURT: Good morning. Please be seated.

5 THE CLERK: The matter before the Court this
6 morning is In re: Wholesale Grocery Products Antitrust
7 Litigation.

8 THE COURT: All right. Let's begin at the
9 plaintiffs' table with you, Mr. Bruckner, on noting
10 appearances.

11 MR. BRUCKNER: Good morning, your Honor.

12 MR. DRUBEL: Hello?

13 MR. BRUCKNER: Joseph Bruckner here for the
14 Lockridge Grindal Nauen firm on behalf of Plaintiffs. With
15 me is my associate Elizabeth Odette and my colleague Kevin
16 Magnuson from the Kelley, Wolter & Scott firm.

17 THE COURT: I've heard of that firm before.

18 MR. BRUCKNER: Yes, ma'am. And on the phone we
19 have Mr. Richard Drubel, our co-lead counsel --

20 MR. DRUBEL: Hello?

21 THE COURT: Good morning, Mr. Drubel. We're
22 noting appearances for the record.

23 All right. And at the defense table?

24 MR. SAFRANSKI: Good morning, your Honor. Stephen
25 Safranski for Robins, Kaplan, Miller & Ciresi for the

1 defendant SuperValu.

2 THE COURT: All right.

3 Ms. Moen?

4 MS. MOEN: Good morning, your Honor. Nicole Moen,
5 Fredrikson & Byron, for the defendant C&S Wholesale Grocers.

6 THE COURT: Mr. Wildfang?

7 MR. WILDFANG: Craig Wildfang from Robins, Kaplan,
8 Miller & Ciresi for defendant SuperValu.

9 MR. RIEHL: Good morning, your Honor. Damien
10 Riehl from Robins, Kaplan, Miller & Ciresi, also for
11 SuperValu.

12 THE COURT: All right. Let's see. Do we
13 have -- Mr. Drubel, are you able to hear us via the
14 telephone connection?

15 (No response)

16 THE COURT: Perhaps not, but I don't think that's
17 crucial somehow. I think we will proceed without it. I did
18 have a friendly wager with my law clerk on how many
19 attorneys does it take to argue a motion to amend, but I was
20 the winner.

21 Right, Forrest?

22 THE CLERK: That's correct.

23 (Laughter)

24 THE COURT: And I will hear you first of all,
25 Mr. Bruckner, in support of the motion to amend.

1 MR. BRUCKNER: And was the answer, your Honor,
2 more than you would think?

3 THE COURT: Yeah.

4 (Laughter)

5 MR. BRUCKNER: Anyway, thank you, your Honor, and
6 good morning. Joseph Bruckner for the plaintiffs.

7 Your Honor, we're here on Plaintiffs' motion to
8 amend the complaint. Rule 15 sets the standard, and that is
9 that the court should freely give leave to amend when
10 justice so requires. In this case, our amended complaint
11 deleted references to dismissed plaintiffs, it adds new
12 plaintiffs, and it revises the previous class definition in
13 claims to reflect the new plaintiffs. By no means have the
14 defendants shown futility of amendment. The new complaint,
15 the amended complaint, does not advance any claim that is
16 legally insufficient on its face or which is clearly
17 frivolous, and therefore the motion ought to be granted.

18 As a threshold matter, your Honor, let me address
19 the timeliness issue the defendants have raised.
20 January 17th, the deadline for joining additional parties
21 and amending the pleadings, was Martin Luther King, Jr. Day.
22 Our office was closed, as was the court.

23 THE COURT: However, the CM/ECF system functions
24 all of the time --

25 MR. BRUCKNER: Absolutely right, your Honor.

1 THE COURT: -- 24 hours a day.

2 MR. BRUCKNER: I understand, your Honor. We
3 believe our reading of the schedule was in good faith in the
4 circumstances and we believe that our motion filed the next
5 business day was timely. We also believe that in the
6 circumstances there is no prejudice whatsoever. The
7 defendants received this motion precisely the next day and
8 our proposed amendments are meritorious, unlike in the sole
9 case that the defendants cite, the Best Buy vs. Developers
10 Diversified case, where the real basis for the denial of the
11 motion to amend was the lack of merit of the proposed
12 amendments, not the timeliness of the motion. However, if
13 the Court desires, the plaintiffs will move under Rule 16 to
14 amend -- for an appropriate modification of the Court's
15 pretrial schedule, but in the circumstances, your Honor,
16 we'd ask that the Court accept our motion and deem it
17 timely.

18 THE COURT: Well, I do feel -- you know, one of
19 the beauties of CM/ECF is to do away with all of this, and
20 whether the courthouse is open or not is really irrelevant
21 to the filing deadlines now. It isn't a case where we have
22 to worry about legal holidays or Saturdays or Sundays, and
23 it was a clear, set date and it wasn't like a ten-day
24 period, so consider yourself spanked, modestly.

25 MR. BRUCKNER: I understand, your Honor, and going

1 forward we'll certainly abide by that practice.

2 THE COURT: All right.

3 MR. BRUCKNER: Thank you. Let me address the
4 defendants' challenges.

5 Our motion to amend is a nondispositive motion.
6 It's so designated by the court's local rules, 7.1(a), and
7 rightly so. It was filed as such, it was briefed as such,
8 it was contemplated by the parties as such, and it was
9 memorialized in the parties' revised joint Rule 26(f) report
10 as such. That's why we filed the motion in the manner that
11 we did. The defendants, we believe, are now trying to
12 shoehorn a dispositive motion challenge into an opposition
13 to a nondispositive motion where the local rules, of course,
14 don't provide us a chance for a reply.

15 I think Counsel's suggestion in his letter that we
16 should have anticipated all of their possible dispositive
17 challenges ahead of time, addressed them in an opening brief
18 and then foregone the right to any reply simply doesn't make
19 any sense. It's inefficient and it's contrary to the
20 structure of the rules. For dispositive motions under
21 Rule 7.1(b), that rule does provide a structure for opening
22 brief, opposition brief and reply brief as is appropriate in
23 the case of dispositive challenges. That's not the case
24 here.

25 In any event, your Honor, the issues that the

1 defendants raise aren't properly addressed in a motion to
2 amend. They've raised complex issues under the Federal
3 Arbitration Act, under matters of contract construction and
4 waiver, and most courts in these circumstances have held
5 that they're not properly addressed in opposition to a
6 motion to amend the complaint.

7 Their approach here to shoehorn in a dispositive
8 challenge to a nondispositive motion also runs afoul of the
9 clear guidelines, or requirements, I should say, under the
10 Federal Arbitration Act. For all the defendants talk about
11 protecting their rights under arbitration, they've taken no
12 action to initiate it.

13 The FAA lays out clear and simple requirements to
14 compel arbitration, including petitioning the appropriate
15 court and giving the appropriate notice to the appropriate
16 parties, and those aren't just technical requirements. As
17 the late Judge Mason held in the All Saint's Brands case --
18 this is 57 F.Supp.2d at 825, 828 -- and that's District of
19 Minnesota (1999) -- Judge Mason said that the FAA's
20 statutory procedure "insures that there is a genuine dispute
21 as to whether to arbitrate If formal notice is served,
22 the Court may [then] analyze whether the arbitration demand
23 satisfactorily addresses the matter about which arbitration
24 is sought, and whether the agreement to arbitrate embraces
25 the subject matter."

1 Now, if the defendants want to seek dismissal of
2 the plaintiffs' claims because they believe they're subject
3 to arbitration, they ought to properly initiate arbitration
4 and they ought to file an appropriate motion after the
5 amended complaint is filed when it can be properly briefed
6 and amended, but prematurely seeking dismissal now under the
7 guise of opposing a motion to amend the complaint is
8 inappropriate.

9 In addition, your Honor, by no means have the
10 defendants demonstrated futility of amendment. By no means
11 is it clear as the defendants suggest that a plaintiff or a
12 class member who has an arbitration agreement with one
13 defendant cannot litigate its claims in court against the
14 other defendant. A guiding principle of the Supreme Court's
15 **Stolt-Nielsen** decision last year is that arbitration is a
16 matter of contract and that no party should be forced to
17 arbitrate with any other party with whom it does not have an
18 arbitration agreement, yet that's precisely contrary to the
19 position the defendants are taking -- prematurely, we'd add
20 -- that they're taking on this motion. These are the sorts
21 of issues that will be addressed when and if the defendants
22 properly initiate arbitration. At that time, we can address
23 and we can resolve the proper scope of what is and what's
24 not arbitrable and against whom, but at the moment there are
25 a lot of presumptions and assumptions underlying the

1 defendants' position that today are by no means certain.

2 Once the defendants have properly initiated arbitration and
3 they've properly presented the issues and if they prevail on
4 those claims, then we'd submit a stay of court proceedings,
5 not dismissal, is the appropriate course, but we're not
6 there yet. We're getting way ahead of ourselves.

7 But in summary, your Honor, we think, as the rule
8 provides, leave to amend should be freely granted when
9 justice so requires. We think that's appropriate here and
10 that our motion to amend ought to be granted.

11 THE COURT: All right. Thank you.

12 I have been handed a note that says someone from
13 Mr. Drubel's office called and he only heard, "Please rise"
14 and then apparently not able to hear and wanting to know if
15 I want to take a break so we can reconnect again. It
16 doesn't seem to me that it's substantive enough today.

17 MR. BRUCKNER: We'll fill him in.

18 THE COURT: All right. Thank you.

19 Mr. Safranski, you seem to be poised and ready to
20 proceed on behalf of the defense.

21 MR. SAFRANSKI: Well, I hope I am, your Honor.
22 Thank you.

23 Your Honor, the defendants' opposition was really
24 straightforward. The defendants oppose Plaintiffs' attempt
25 at this stage of the litigation to add plaintiffs and claims

1 that are subject to mandatory arbitration and we oppose
2 their apparent attempt to revive their fraudulent
3 concealment claim in a proposed amended complaint.

4 As to the untimeliness issue, I'm not really going
5 to spend a lot of time on that, but it is clear that this
6 motion was late, and if they wanted to be --

7 THE COURT: Clear it was late, but I think also
8 similarly clear that there's no real prejudice, is there?

9 MR. SAFRANSKI: That's true, your Honor, but under
10 Rule 16(b), one cannot modify the deadlines of a pretrial
11 scheduling order without making a showing of good cause.
12 The Eighth Circuit held in Sherman vs. Winco Fireworks,
13 Inc., 532 F.3d 709, that the good cause standard is not
14 optional, and it says while prejudice is a relevant factor,
15 the court, the Eighth Circuit, said: "[W]e will not
16 consider prejudice if the movant has not been diligent in
17 meeting the scheduling order's deadlines." Suffice to say,
18 I did not hear one word from Mr. Bruckner suggesting that
19 they could not have filed this amended complaint earlier in
20 the exercise of due diligence.

21 With respect to the futility challenge, your
22 Honor, it's clear that under Rule 15(a) a motion to amend
23 can be denied as futile when it would not survive a
24 dispositive motion, such as a motion to dismiss.

25 I'm going to refer to a chart just so we

1 understand what exactly the plaintiffs are attempting to do.
2 Can your Honor see this okay?

3 THE COURT: I can.

4 MR. SAFRANSKI: Okay.

5 Now, your Honor, what the plaintiffs are trying to
6 do is add four new plaintiffs to this litigation and they're
7 trying to characterize at least some of those plaintiffs
8 under the so-called arbitration subclasses where they are
9 trying to have plaintiffs with arbitration agreements
10 proceeding against one defendant but not the other.

11 THE COURT: But it is clear at least with regard
12 to D&G, or Gary's Foods, that there is no arbitration
13 agreement. I mean, this would apply to some, but not
14 others.

15 MR. SAFRANSKI: That's right. So you have
16 existing -- I mean, we can go through this chart.

17 So at the bottom of each block on the left there's
18 D&G -- that's an existing plaintiff -- has no arbitration
19 agreement with SuperValu or C&S, has claims against both
20 SuperValu and C&S.

21 DeLuca's, no arbitration agreement, has claims
22 against both defendants.

23 Now look at the other proposed plaintiffs.
24 Millennium Operations, you'll see that they have an
25 arbitration agreement with SuperValu and they're purporting

1 to make a claim only against C&S.

2 King Cole Foods, they have an arbitration
3 agreement with SuperValu, but for some reason they're making
4 claims against both SuperValu and C&S, and the complaint
5 states that there is no arbitration agreement with SuperValu
6 and we've demonstrated with an exhibit to our opposition
7 that that's simply not true.

8 Blue Goose Supermarket, that's an existing
9 plaintiff. They have an arbitration agreement with
10 SuperValu. They purport to make claims against both
11 SuperValu and C&S.

12 MFJ Market and JFM Market, these are the only
13 named plaintiffs who are purporting to represent a
14 New England arbitration subclass. The complaint says they
15 have arbitration agreements with C&S and that they're only
16 suing SuperValu, but we have attached arbitration agreements
17 between these plaintiffs and SuperValu.

18 Now, the weight of authority on this issue is that
19 in fact a motion to amend can be denied as futile when it
20 seeks to add claims that are subject to mandatory
21 arbitration, and it's very consistent with the standard
22 that's applied in this court. If it wouldn't withstand a
23 motion to dismiss, then it's futile. It doesn't have to be
24 clearly frivolous. If it doesn't withstand a 12(b)(6)
25 motion, it's going to be futile.

1 THE COURT: If I were to want to consider that
2 argument, get there, though, I mean, fairness certainly
3 dictates that I hear from the plaintiffs by way of briefing
4 on this, and on a motion to amend it seems to me that, you
5 know, they procedurally aren't entitled to a rebuttal brief.

6 MR. SAFRANSKI: Well, your Honor, I mean, they did
7 have an opportunity to address these issues in their --

8 THE COURT: When before you raised them, though?

9 MR. SAFRANSKI: Well in fairness, their
10 complaint -- the only substantive change in their complaint
11 was to add four plaintiffs who have arbitration agreements
12 with the defendants. It stands to reason that if they were
13 going to give the Court -- that they should have given the
14 Court at least some guidance on why that would be
15 appropriate to do that. But, you know, I guess I would
16 defer to the Court. If the Court feels it needs more
17 briefing, you know, that's fine.

18 So the weight of authority here -- and we've cited
19 a number of cases, including the Detroit Edison case that
20 says, quote: "where the new or revised claims that a party
21 seeks to add by amendment are subject to a binding
22 arbitration agreement, the proposed amendment is futile."

23 So here, at least, if you look at this chart, we
24 have the claims by King Cole Foods and the New England
25 plaintiffs, MFJ and JFM. The claims by them against

1 SuperValu, at the very minimum, without considering issues
2 of equity, are futile because they're subject to a binding
3 arbitration agreement. That arbitration agreement is very
4 clear. It applies to any controversy, claim or dispute of
5 whatever nature. It applies to a claim that existed prior
6 to or arises on or after the execution date. It doesn't
7 provide for class arbitration. It simply requires mediation
8 and then binding arbitration.

9 Now, with respect to their attempt to get around
10 this, at least with some plaintiffs they've tried to split
11 their claims. So if -- take Millennium Operations, for
12 example. They have a claim against C&S only and they
13 recognize they have an arbitration agreement with SuperValu,
14 so they're trying to get around this.

15 Now, I recognize Mr. Bruckner's citation to
16 **Stolt-Nielsen**, but it still remains the law in the Eighth
17 Circuit, which was confirmed last year in a 2010 case, **PRM**
18 **Energy Systems vs. Primenergy**, that there are equitable
19 grounds which would allow a nonsignatory to gain the
20 protection of an arbitration agreement between a signatory
21 and another signatory defendant. And the Eighth Circuit
22 said that equitable estoppel will apply when the plaintiff
23 alleges "substantially interdependent and concerted
24 misconduct by both the nonsignatory and one or more
25 signatories," and the concerted misconduct is "intimately

1 founded in and intertwined with the agreement at issue."

2 And the facts of PRM Energy Systems I think are
3 pretty instructive, because there, there was an arbitration
4 clause in a 1999 agreement between the plaintiff and
5 Primenergy, which licensed certain technology to Primenergy,
6 the defendant. The plaintiff then turned around and brought
7 various tort and unfair competition claims against the
8 signatory and another defendant, Kobe Steel, alleging that
9 Kobe Steel and Primenergy had entered into a conspiracy that
10 had the effect of undermining the plaintiff's rights in the
11 agreement that contained the arbitration clause. The Eighth
12 Circuit last year held that equitable estoppel required
13 arbitration against Kobe Steel, the nonsignatory, because
14 the complaint alleged concerted misconduct between the two
15 defendants and that concerted misconduct was directed at the
16 agreement contained in the arbitration provision. Kobe
17 Steel was not a signatory to the arbitration agreement.
18 Kobe Steel was not in a corporate affiliation with a
19 defendant that was a signatory to the arbitration agreement.
20 Kobe Steel was not mentioned in the arbitration agreement.
21 Nevertheless, the court did not want the plaintiff to be
22 able to have its cake and eat it too by basically trying to
23 get around its own agreement to arbitrate the dispute by
24 suing another defendant on a conspiracy theory, and here,
25 that's exactly what we have.

1 The gravamen of the plaintiffs' complaint in this
2 case is that they were overcharged under supply and retail
3 agreements with either SuperValu or C&S. They claim that
4 that was the principal objective of the conspiracy.

5 Now, those supply agreements are the very
6 agreements that incorporate the separate agreement to
7 arbitrate, and that's basically -- that's exactly why the
8 plaintiffs shouldn't be allowed to have their cake and eat
9 it too by splitting their claims and trying to sue half of
10 the defendants and not the other half just to get around the
11 arbitration agreement.

12 The Eighth Circuit also recognized a second ground
13 for allowing a nonsignatory to invoke an arbitration
14 agreement, and that's when the nonsignatory has a close
15 relationship with a signatory and the failure to do so would
16 eviscerate the arbitration agreement.

17 Now, the test would at least be met with respect
18 to the MFJ and JFM Market, the Village Market plaintiffs,
19 because those are plaintiffs that had an arbitration
20 agreement with SuperValu and then their contracts were
21 assigned to C&S in the very asset exchange transaction that
22 the plaintiffs are trying to challenge. I mean, basically,
23 C&S -- or SuperValu is C&S's predecessor-in-interest under
24 those arbitration agreements and it doesn't make any sense,
25 it would eviscerate the arbitration clauses, to allow the

1 plaintiffs to basically just sue SuperValu and not sue C&S
2 on that claim.

3 Your Honor, I realize I don't have a lot of time
4 to address the rest of the issues, but I would just say that
5 the plaintiffs also assert a fraudulent concealment claim in
6 their proposed amended complaint. That claim has been
7 rejected by the Court in its July 7th order. I'm not sure
8 what their intent is by trying to revive that claim. It
9 would be one thing if they wanted to have a statement
10 somewhere that they are preserving their grounds for appeal,
11 but as far as we understand, that claim should be out of
12 this case.

13 THE COURT: All right.

14 MR. SAFRANSKI: Thank you, your Honor.

15 THE COURT: Thank you, Mr. Safranski.

16 Mr. Bruckner, I'm going to limit your rebuttal to
17 just the issue of the fraudulent concealment and what that's
18 doing in --

19 MR. BRUCKNER: Absolutely, your Honor. And
20 Mr. Safranski is right. The reason it is in there is to
21 preserve it for appeal. We have no intention of
22 relitigating that issue before your Honor.

23 THE COURT: All right. Well, here's what I'm
24 going to do.

25 I think the issues today are fairly

1 straightforward. The motion to amend is granted. It is
2 late. Ordinarily -- and I don't think the sanction should
3 be denial of the motion. The sanction at this point is
4 admonishment to file on time. CM/ECF allows it and I don't
5 want to hear any more about legal holidays or weekends or
6 anything in the future. Please file it within the
7 scheduling order and that's why I list specific dates.

8 I find that there is no prejudice shown to the
9 defendant by the late filing by a matter of hours and that
10 the complaint should be appropriately filed.

11 I do think the arguments raised with regard to the
12 arbitration issues, as I'll broadly and in sort of an
13 overarching manner call them, are interesting and it is
14 something I want to examine further. And I didn't cut you
15 off despite the fact I'm not going to rule on those today,
16 because I regard it as a good preview of a coming attraction
17 and I did want to see and do find your exhibit helpful on
18 that. But I do find that those arguments are substantive
19 and really are better addressed in a dispositive motion
20 format, so I take it I will see those again and at that time
21 I will hear more clearly from the plaintiffs as to how that
22 applies. And I have no problem with you adopting from this
23 brief liberally and transferring it to a dispositive motion
24 brief, but I would much rather hear those in a context where
25 they're fully briefed. I don't think that the complaint is

1 legally facially deficient and I'd much rather treat those
2 fully briefed and in the dispositive motion context as it
3 relates to that.

4 I think the fraudulent concealment, I'm assured to
5 hear that it's there for preservation for appellate
6 purposes. I guess I shouldn't feel so comfortable about
7 that, but understanding it's there and won't resurface as a
8 basis for litigation in this case I think takes a lot of the
9 wind out of that argument.

10 So, we'll issue a very short summary ruling
11 granting the motion to amend and any prejudice that the
12 defendants might have had by raising that argument, it's not
13 rejected by any means at this point and the arguments with
14 regard to the arbitration issues will be addressed again and
15 this order will not address those in substance.

16 Now, I want to know where we are. We have no
17 current scheduling order, as I understand it, in place. It
18 kind of expires now and then we were going to regroup, true?

19 MR. BRUCKNER: Well, we have a scheduling order
20 that starts or commences with the filing of our motion for
21 class certification --

22 THE COURT: Okay.

23 MR. BRUCKNER: -- but if the Court has a moment, I
24 do want to at least preview an issue there.

25 THE COURT: All right.

1 MR. BRUCKNER: We have been working with the
2 defendants primarily to obtain data from them that we need
3 for our class certification motion. The defendants tell us
4 -- and we have no doubt -- that they have been dutifully
5 working to obtain that data. It deals with how they price
6 their products and services. It deals with margin data and
7 transaction data. But we don't have it yet. Yesterday we
8 asked them if they can give us a realistic deadline as to
9 when we could expect it, and we also asked them to meet and
10 confer with us to talk about an extension of that deadline.
11 We're not asking the Court today for that extension, but I
12 do want to give the Court a preview that I suspect at least
13 we the plaintiffs are going to be seeking that kind of an
14 extension sometime in the pretty near future. We don't know
15 to what date yet because we haven't yet met with the
16 defendants to determine when we can realistically expect to
17 get these data.

18 THE COURT: All right. But things have been
19 happening since I last saw you, I hope. I mean, I take it
20 there's --

21 MR. BRUCKNER: Without a doubt, your Honor. I
22 think everybody would confirm that we've been plenty busy.

23 THE COURT: All right. And the fact I haven't
24 heard from you is probably a good sign rather than a bad
25 sign.

1 Mr. Safranski, do you want to address the where we
2 are question?

3 MR. SAFRANSKI: Just briefly, yes.

4 At the last time we saw you, we did get a
5 scheduling order that schedules this case out through
6 discovery and -- fact discovery and class certification.

7 THE COURT: All right.

8 MR. SAFRANSKI: With respect to the data, we're
9 talking about data -- they've requested data over a
10 nine-year period for every purchase of groceries by item, by
11 date, for a nine-year period, and that's --

12 THE COURT: It's a lot of data.

13 MR. SAFRANSKI: It looks like it's billions of
14 lines of data, into the terabytes. We've been negotiating
15 with them on what is the geographic scope of the data
16 request. We suggested that it should be limited to the
17 Midwest and New England states that are discussed in their
18 complaint and they've asked for something that's broader
19 than that and we're working with them. And the importance
20 of that is that we need to work that out so that we can
21 extract this data only once. It's a lot of work to extract
22 that quantity of data and then give it to the plaintiffs,
23 but we're working diligently on it.

24 THE COURT: All right. Well, let me just tell you
25 for future help.

1 On some of these things, on extension of the
2 deadlines and stuff, I'd really rather do those in a phone
3 conference or a quick status conference rather than have you
4 fully brief all of those, and I will be available as I was
5 as a magistrate to deal with some of these things on a
6 quicker basis so that we keep this moving along. So let me
7 know if there's points where you get stuck and need some
8 particular help or quick ruling on those and I'll do what I
9 can to accommodate you and shoehorn you into the schedule
10 here, all right?

11 MR. BRUCKNER: Thank you, your Honor.

12 MR. SAFRANSKI: Thank you.

13 THE COURT: All right. Thank you.

14 (Proceedings concluded at 9:26 a.m.)

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C E R T I F I C A T E

I, **TIMOTHY J. WILLETTE**, Official Court Reporter for the United States District Court, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes, taken in the aforementioned matter, to the best of my skill and ability.

/s/ Timothy J. Willette

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