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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Gerald E. Helget,	)	
Plaintiff,	)	
	)	
	)	
vs.	)	Case No. 21-mc-91150-FDS
	)	
	)	
Fitbit, Inc.,	)	
Defendant.	)	

BEFORE: The Honorable Magistrate Judge Jennifer C. Boal

Videoconferenced Motion Hearing

April 21, 2021

Marianne Kusa-Ryll, RDR, CRR  
Official Court Reporter  
United States District Court  
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Mechanical Steno - Transcript by Computer

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On behalf of the Defendant

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P R O C E E D I N G S

THE CLERK: Today is April 21, 2021. We're on the record in the matter of Gerald Helget v. Fitbit, Inc.

The case number is 21-mc-91150.

Will counsel please identify themselves for the record.

MR. THOMPSON: Good morning, your Honor. I am Eley Thompson on behalf of Mr. Helget. I'm also counsel for Philips in the underlying action.

With me is Ruben Rodrigues and Michelle Moran. We are all Foley -- from the law firm of Foley & Lardner. And it's a pleasure to be here before you.

MR. MATTY: And good morning, your Honor. It's Brian Matty on behalf of Fitbit; and with me is Karim Oussayef and Elizabeth DiMarco also on behalf of Fitbit. And I believe we have one or two of our client representatives listening in on the public line.

THE COURT: Good morning, everyone.

So I'll hear from Mr. Helget's attorneys first. They have filed the motion to quash. I do have questions -- two questions for each side to comment on.

It has -- the briefing started with respect to this motion in February, I believe, and ended on March 4th, and I would be interested to know if from your perspective if there

1 what -- what they brought forth.

2 As far as timing, I would direct the court's attention  
3 to the docket order 54 in this case, which is the scheduling  
4 order, and if the -- in the -- in the scenario where they would  
5 have pled inequitable conduct and they maybe sought to expand  
6 it, the order provides that except for good cause no motion  
7 seeking leave to amend the pleadings to assert new claims or  
8 defenses may be filed after March 24, 2020. That's not recent.  
9 That's a whole year ago.

10 THE COURT: I know, but the problem is that they  
11 haven't even filed their answer yet. So it's a motion to amend  
12 the pleadings so...

13 The whole posture here is a little bit unusual.

14 MR. THOMPSON: I would agree. That -- that -- that is  
15 right, but I think that the judge will look to that and address  
16 when they do try to assert this, which I have specifically  
17 tried not to have it reviewed by the judge, by the District  
18 Court judge, that where that will be an important factor  
19 because if you look at when discovery -- even if you look at  
20 when discovery began, which began on January 10, 2020, and of  
21 course it closed March 23, 2021. There were 14 months of fact  
22 discovery.

23 In month 13, they noticed a subpoena of Mr. Helget,  
24 and they had never previously mentioned inequitable conduct.  
25 Then with less than 6 weeks of discovery left, Fitbit for the

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