

**REDACTED - PUBLIC VERSION**

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, INC.,  
d/b/a ASSAULT FITNESS,  
Petitioner,

v.

WOODWAY USA, INC.  
Patent Owner.

U.S. Patent Nos. 9,039,580 to Bayerlein et al., 10,561,884  
to Bayerlein et al., and 10,799,745 to Bayerlein et al.

Case Nos. IPR2023-00836, IPR2023-00843, and IPR2023-00849

CONFIDENTIAL DEPOSITION OF ERIC A. WEBER

taken by Petitioner on Tuesday, March 19, 2024, at

1:00 p.m. via Zoom

APPEARANCES VIA ZOOM:

For Petitioner:

REBECCA J. CANTOR  
Brooks Kushman PC  
150 W 2nd St Ste 400N  
Royal Oak, MI 48067-3846  
(248) 226-2747

For Patent Owner:

KADIE M. JELENCHICK  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 319-7324

ALSO PRESENT:

Joshua Minyard, Exhibit Assistant

REPORTED BY:

Melinda I. Dexter, CRR, RMR, CSR-4629  
(517) 604-1732  
officialcourtreporting@gmail.com

Fortz Legal Support

[www.FortzLegal.com](http://www.FortzLegal.com)

844.730.4066

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LIFECORE Ex. 1037

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Confidential, Job 29231  
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**LIFECORE Ex. 1037**

<p align="right">Page 6</p> <p>1 Q. What do you mean by difference?</p> <p>2 <b>A. Well, when I --</b></p> <p>3 MS. JELENCHICK: This is Kadie Jelenchick,</p> <p>4 counsel for Woodway USA, Inc., and the witness.</p> <p>5 BY MS. CANTOR:</p> <p>6 Q. So I guess let me ask it a different way. If I ask you a</p> <p>7 question about your -- about your declaration, will your</p> <p>8 answer -- well, actually, strike that.</p> <p>9 Have you compared the text of your three</p> <p>10 declarations?</p> <p>11 <b>A. I have compared the text, yes.</b></p> <p>12 Q. Is it the same?</p> <p>13 <b>A. It is the same.</b></p> <p>14 Q. So can we agree that if I ask you a question about one</p> <p>15 declaration, that your answer would apply equally to the</p> <p>16 other two?</p> <p>17 <b>A. Yes. I would agree with that.</b></p> <p>18 MS. CANTOR: Okay. All right.</p> <p>19 So, Josh, can you please bring up</p> <p>20 Document 13, which has been marked as Exhibit 2020.</p> <p>21 MR. MINYARD: Yep. Just a minute. So</p> <p>22 there are three Exhibit 2020s.</p> <p>23 MS. CANTOR: Sorry. Document 13, if you</p> <p>24 have the document IDs.</p> <p>25 MR. MINYARD: Sorry. Hang on a second.</p>	<p align="right">Page 8</p> <p>1 is on page 3 --</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. -- you state, "...it is also my responsibility to assist</p> <p>4 with the development of new products to meet market need</p> <p>5 as well as help identify feature sets demanded by</p> <p>6 customers and the various industries Woodway serves,</p> <p>7 including commercial fitness, sports performance, medical,</p> <p>8 and rehabilitation, among others."</p> <p>9 Do you see that?</p> <p>10 <b>A. I do see that.</b></p> <p>11 Q. How do you identify feature sets demanded by customers?</p> <p>12 MS. JELENCHICK: Objection. Form.</p> <p>13 <b>THE WITNESS: Could you be more specific</b></p> <p>14 <b>with that? I'm not sure what you mean by how do I</b></p> <p>15 <b>identify.</b></p> <p>16 BY MS. CANTOR:</p> <p>17 Q. You say --</p> <p>18 <b>A. There is a number -- there is a number of different market</b></p> <p>19 <b>segments, that type of thing, in this question. Are you</b></p> <p>20 <b>talking about one specific area or --</b></p> <p>21 Q. All right. Well, why don't we go through all of them.</p> <p>22 How do you help identify feature sets demanded by</p> <p>23 customers in the commercial fitness market?</p> <p>24 <b>A. We attend trade shows. I look at trade magazines. I talk</b></p> <p>25 <b>to customers. I try other products. I look at trends,</b></p>
<p align="right">Page 7</p> <p>1 Yeah. 113?</p> <p>2 MS. CANTOR: Yes.</p> <p>3 MR. MINYARD: Okay. Cool.</p> <p>4 BY MS. CANTOR:</p> <p>5 Q. All right. Mr. Weber, just so you know, this is how the</p> <p>6 exhibits will be.</p> <p>7 <b>A. I don't see anything on the screen.</b></p> <p>8 Q. Oh, you don't see anything yet?</p> <p>9 <b>A. I see you, but I don't see any documents.</b></p> <p>10 Q. I can see it. So I'm not sure what's going on. What</p> <p>11 is --</p> <p>12 MS. JELENCHICK: We do have a laptop here.</p> <p>13 We can maybe pull up exhibits via that laptop.</p> <p>14 MS. CANTOR: Sure. It's -- so it's just</p> <p>15 the -- his declaration from -- I mean, it's just his</p> <p>16 declaration. The one that we are looking at is from the</p> <p>17 '843 IPR.</p> <p>18 MS. JELENCHICK: I'll represent to you</p> <p>19 that he has a copy of his declaration in front of him.</p> <p>20 MS. CANTOR: Perfect. All right. Well,</p> <p>21 this isn't --</p> <p>22 Josh, you can stop sharing if they can't</p> <p>23 see it.</p> <p>24 BY MS. CANTOR:</p> <p>25 Q. So if you look at paragraph 5 of your declaration, which</p>	<p align="right">Page 9</p> <p>1 <b>look at our own products, and I'm sure there are other</b></p> <p>2 <b>things related to those items, but I spend time with the</b></p> <p>3 <b>customers, assessing what they're doing, talking about</b></p> <p>4 <b>what they're doing, and as well as our sales team and then</b></p> <p>5 <b>analyzing what our products do or what they could do to</b></p> <p>6 <b>help with those training requirements.</b></p> <p>7 Q. What about in the sport performance segment?</p> <p>8 <b>A. Similar type of review as well as looking at the type of</b></p> <p>9 <b>sport and the type of training that's being done and</b></p> <p>10 <b>analyzing what -- what demands -- physical demands that we</b></p> <p>11 <b>can help with.</b></p> <p>12 Q. Are there any sports that Woodway focuses on in</p> <p>13 particular?</p> <p>14 <b>A. We -- we work with all sports, team sports, endurance</b></p> <p>15 <b>sports, individual sports. So we -- we do a lot of work</b></p> <p>16 <b>in just about every sport there is that requires any type</b></p> <p>17 <b>of physical endurance or strength.</b></p> <p>18 Q. What about the medical segment?</p> <p>19 <b>A. The medical segment, we -- we -- again, it depends on</b></p> <p>20 <b>which area of medical you're talking about, from</b></p> <p>21 <b>neurological rehab and going to trade shows and specific</b></p> <p>22 <b>events tailored to whether it's sports performance,</b></p> <p>23 <b>orthopedics, physical therapy, neurological,</b></p> <p>24 <b>rehabilitation, spinal cord rehabilitation, traumatic</b></p> <p>25 <b>brain injury.</b></p>

<p align="right">Page 10</p> <p>1           <b>So, again, depends on the type of -- type</b>  2   <b>of area of expertise, but we attend trade shows in many of</b>  3   <b>those areas. We work with researchers and practitioners</b>  4   <b>on ways to treat those -- those areas.</b>  5 Q. And what about the rehabilitation segment?  6 A. <b>That falls a little bit into the medical components.</b>  7   <b>Obviously there is also rehabilitation within that sport</b>  8   <b>and within the recovery side of general fitness as well.</b>  9           <b>But, again, we go to trade shows, we talk</b>  10   <b>to customers, we work with our existing customers,</b>  11   <b>potential customers, watch the trends, and put that all</b>  12   <b>together.</b>  13 Q. Did Woodway target its products towards individual buyers,  14   individual --  15           MS. JELENCHICK: Objection to form.  16           <b>THE WITNESS: Which products are you</b>  17   <b>talking about?</b>  18   BY MS. CANTOR:  19 Q. Let's talk about the Curve treadmills.  20 A. <b>Okay. We do sell -- we do sell that product to</b>  21   <b>individuals, as well as commercial facilities and</b>  22   <b>everything in between. So it's used for all applications,</b>  23   <b>like, depending on the person's goals.</b>  24 Q. What percentage of Woodway's Curve treadmills are sold to  25   individual consumers?</p>	<p align="right">Page 12</p> <p>1   <b>our attention. So it has changed.</b>  2 Q. Do you have an e-commerce site where individual consumers  3   can go and buy your Curve treadmills?  4 A. <b>At the moment, we do, yes. In the past, we did not.</b>  5 Q. Okay. And what is that website?  6 A. <b>You are able to -- you are able to buy it via our Woodway</b>  7   <b>site with our regular website, and then we also had a</b>  8   <b>Shopify site. We are in the middle of uploading a new</b>  9   <b>website right now. So I don't know if all of those</b>  10   <b>features are functional at this exact moment. That</b>  11   <b>started a week ago, and they're bulking it up in segments.</b>  12 Q. Can you estimate in 2020 what percentage of Woodway's sale  13   of Curve treadmills was to individual consumers?  14 A. <b>I don't believe that I would have that broke out in that</b>  15   <b>format.</b>  16 Q. Yeah. In that same paragraph 5 in your declaration, you  17   state that you work closely with Woodway engineers to  18   bring to fruition sales and customer requirements.  19           Do you see that?  20 A. <b>Yes. I do see that.</b>  21 Q. Do you have training in engineering?  22 A. <b>I'm not a trained engineer. I work with them on the -- on</b>  23   <b>the feel and the experience, and my portion of working</b>  24   <b>with them is telling them what the expectations are, not</b>  25   <b>telling them how to build and design the product. I'm</b></p>
<p align="right">Page 11</p> <p>1           MS. JELENCHICK: Objection. Form.  2           <b>THE WITNESS: At what point? I mean,</b>  3   <b>obviously we've been doing this for a really long time.</b>  4   <b>You know, it's going to vary depending on what -- what</b>  5   <b>the year is and those types of things.</b>  6   BY MS. CANTOR:  7 Q. Currently.  8 A. <b>Currently, it is, I would say, less than 5 percent of our</b>  9   <b>total sales. Probably less than -- less than 20 percent</b>  10   <b>of our Curve sales.</b>  11 Q. Less -- sorry. Is it less than 5 percent or less than  12   20 percent?  13 A. <b>20 percent of our Curve sales. I don't have an exact</b>  14   <b>breakout of that segment compared to others.</b>  15 Q. How would an individual consumer go about buying one of  16   your Curve treadmills?  17           MS. JELENCHICK: Objection. Form.  18           <b>THE WITNESS: Again, at what -- at what</b>  19   <b>time period are you talking about?</b>  20   BY MS. CANTOR:  21 Q. Has the process changed?  22 A. <b>Well, it -- yeah. Technology has changed from 2009</b>  23   <b>through 2024, as far as the advent of social media, the</b>  24   <b>advent of e-commerce, the advent of different trade shows</b>  25   <b>that we've attended over the years and where we focused</b></p>	<p align="right">Page 13</p> <p>1   <b>focused on the outcome and the experience.</b>  2 Q. Okay. Do you -- I apologize. Do you have anyone at  3   Woodway who reports to you?  4 A. <b>Yes.</b>  5 Q. How many people?  6 A. <b>Approximately, 20.</b>  7 Q. And generally what do those people do?  8 A. <b>Sales, marketing, and customer service.</b>  9 Q. All right. Mr. Weber, could you please turn to  10   paragraph 8 of your declaration, which is bottom of page 4  11   and page 5.  12 A. <b>Yes. Found it.</b>  13 Q. All right. So if you look at kind of starting the third  14   line down on page 5, you identify different model names:  15   The Curve 3.0, Curve Trainer, Curve XL, Curve LTG, Curve  16   FTG, and EcoMill.  17 A. <b>Yes.</b>  18 Q. Are those all of the Curve models that Woodway has sold?  19           MS. JELENCHICK: Objection. Form.  20           <b>THE WITNESS: No. I mean, we've changed</b>  21   <b>names over the course of the last 15 years, and so there</b>  22   <b>are products that have used -- that were not available at</b>  23   <b>one point that are available now, and there are products</b>  24   <b>on here that may have been called something else at some</b>  25   <b>point, depending on the year. So at the moment, this is</b></p>

<p style="text-align: right;">Page 14</p> <p>1 <b>our current -- our current line of products.</b></p> <p>2 BY MS. CANTOR:</p> <p>3 Q. All right. Could you please look at Exhibit 2032.</p> <p>4 MR. MINYARD: Ms. Cantor, do you want me</p> <p>5 to work to see if we can figure out how to get the</p> <p>6 exhibits up on their screen, or how do you want to</p> <p>7 proceed?</p> <p>8 MS. CANTOR: I'd like to see if we can get</p> <p>9 it to work, and the document that I am having him look at</p> <p>10 right now is Doc. No. 1.</p> <p>11 MR. MINYARD: So it's the Sealed</p> <p>12 Exhibit 2032?</p> <p>13 MS. CANTOR: Yes.</p> <p>14 MR. MINYARD: Okay.</p> <p>15 MS. JELENCHICK: We still don't see</p> <p>16 anything.</p> <p>17 <b>THE WITNESS: The screen is there, but</b></p> <p>18 <b>nothing came up.</b></p> <p>19 MS. CANTOR: Okay. Yeah. I don't really</p> <p>20 know. I mean, right now it's not a problem, because you</p> <p>21 have everything, but maybe during a break we can try to</p> <p>22 figure this out.</p> <p>23 MS. JELENCHICK: Whatever you'd like to</p> <p>24 do.</p> <p>25 MS. CANTOR: I'm fine with him just</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. What is the standard cost? How is that determined?</p> <p>2 MS. JELENCHICK: Objection. Form. Scope.</p> <p>3 <b>THE WITNESS: The costs are -- I provide</b></p> <p>4 <b>the sales numbers and the orders to our team. How they</b></p> <p>5 <b>roll out those back-end costs, that's more of a supply</b></p> <p>6 <b>chain. I don't know specifically how they collect that</b></p> <p>7 <b>data.</b></p> <p>8 BY MS. CANTOR:</p> <p>9 Q. Do you know whether it includes anything other than the</p> <p>10 cost of goods sold?</p> <p>11 <b>A. I do not know the answer to that.</b></p> <p>12 Q. If you look at the very bottom of this spreadsheet</p> <p>13 underneath the kind of blue box, there appear to be some</p> <p>14 numbers, two rows of numbers. Do you see that?</p> <p>15 <b>A. I do.</b></p> <p>16 Q. What are those numbers?</p> <p>17 MS. JELENCHICK: Objection. Form.</p> <p>18 <b>THE WITNESS: They appear to be -- if I'm</b></p> <p>19 <b>looking at the bottom column, it looks like the</b></p> <p>20 <b>differential between the -- the sum total of the sale and</b></p> <p>21 <b>the cost.</b></p> <p>22 BY MS. CANTOR:</p> <p>23 Q. So let's look at fiscal year 2010.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. So if we look at that year, it appears that the only model</p>
<p style="text-align: right;">Page 15</p> <p>1 looking at the paper right now.</p> <p>2 So, Josh, you can go ahead and take that</p> <p>3 down.</p> <p>4 BY MS. CANTOR:</p> <p>5 Q. All right. Mr. Weber, do you recognize Exhibit 2032?</p> <p>6 <b>A. Yes, I do.</b></p> <p>7 Q. What is it?</p> <p>8 <b>A. It is a breakdown of the Curve sales from 2010 through</b></p> <p>9 <b>2024.</b></p> <p>10 Q. All right. And this has a number of models on the left;</p> <p>11 correct?</p> <p>12 <b>A. Yes, it does.</b></p> <p>13 Q. Other than the Speedboard, is this all of the models that</p> <p>14 Woodway has sold of its Curve treadmill?</p> <p>15 <b>A. Yes. This would be -- this would be the complete list of</b></p> <p>16 <b>curved -- of our Curve family of treadmills, yes.</b></p> <p>17 Q. All right. So the -- do you see the language "sum of</p> <p>18 total std cost"?</p> <p>19 <b>A. Yes --</b></p> <p>20 Q. Does "std" --</p> <p>21 <b>A. -- towards the bottom?</b></p> <p>22 Q. I actually believe it's in all of them.</p> <p>23 <b>A. Yep. Yes, I see it.</b></p> <p>24 Q. Okay. Does "std" stand for standard?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 17</p> <p>1 sold was the Curve Legacy. Is that correct?</p> <p>2 <b>A. That is correct.</b></p> <p>3 Q. And [REDACTED] of them were sold?</p> <p>4 <b>A. [REDACTED] of them were shipped; yes.</b></p> <p>5 Q. Is there a distinction between shipped and sold?</p> <p>6 <b>A. If we shipped units for demonstration and trial and trade</b></p> <p>7 <b>shows, things like that, they would -- they likely would</b></p> <p>8 <b>be included in that number.</b></p> <p>9 Q. All right. So then it looks like the total, the sum of</p> <p>10 total sale was [REDACTED] right?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And the sum of total standard cost was [REDACTED]</p> <p>13 <b>A. Yes, I see that.</b></p> <p>14 Q. All right. And then if you look at the bottom, it looks</p> <p>15 like that led to a profit of [REDACTED]</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. All right.</p> <p>18 <b>A. I see that.</b></p> <p>19 Q. Let's look all the way over to the right at the grand</p> <p>20 total column.</p> <p>21 <b>A. Okay.</b></p> <p>22 Q. Does this grand total column add up all of the years?</p> <p>23 <b>A. I would assume it does.</b></p> <p>24 Q. All right. So would you agree with me, then, that between</p> <p>25 2010 and 2024, the grand total of sales was [REDACTED] -- I'm</p>

<p style="text-align: right;">Page 18</p> <p>1     sorry, [REDACTED]</p> <p>2             MS. JELENCHICK: Objection. Form.</p> <p>3             <b>THE WITNESS: Can you repeat that</b></p> <p>4     <b>question, please?</b></p> <p>5     BY MS. CANTOR:</p> <p>6     Q. Would you agree with me that if you look at the bottom,</p> <p>7         that the grand total of all of the sales is</p> <p>8     [REDACTED]</p> <p>9             MS. JELENCHICK: Objection. Form.</p> <p>10            <b>THE WITNESS: I -- I would -- I believe</b></p> <p>11    <b>that that's the total that calculation off of this page</b></p> <p>12    <b>for the Curve -- Curve family of treadmills.</b></p> <p>13    Q. Do you have any reason to doubt that that's correct?</p> <p>14    A. <b>I don't have a reason to doubt that.</b></p> <p>15    Q. And if we look at the very bottom, it looks like the</p> <p>16         profit associated with that was [REDACTED]; is that</p> <p>17         right?</p> <p>18    A. <b>Based on this calculation, yes.</b></p> <p>19    Q. Do you have any reason to doubt that?</p> <p>20    A. <b>I don't -- I don't know. Like I said, I don't know what's</b></p> <p>21    <b>included in that standard cost, but, yes, based on what's</b></p> <p>22    <b>on there, that looks to be accurate.</b></p> <p>23    Q. Do you know how big the fitness market is in general?</p> <p>24             MS. JELENCHICK: Objection. Form.</p> <p>25            <b>THE WITNESS: I guess that really depends</b></p>	<p style="text-align: right;">Page 20</p> <p>1     Q. I'm defining it as all treadmills: Commercial, personal,</p> <p>2         home manual, electric; every kind of treadmill.</p> <p>3     A. <b>I do not.</b></p> <p>4     Q. Do you know how many commercial treadmills are sold every</p> <p>5         year?</p> <p>6     A. <b>I have -- no. Again, globally I don't know what that</b></p> <p>7         <b>number is.</b></p> <p>8     Q. How about in the U.S.?</p> <p>9     A. <b>I don't think there is a consensus on what that exact</b></p> <p>10        <b>number is.</b></p> <p>11    Q. Have you ever researched that issue?</p> <p>12    A. <b>I've looked -- I've participated in some market analysis,</b></p> <p>13    <b>but that's never a complete snapshot of the total market</b></p> <p>14    <b>segment. So I've participated in understanding the trends</b></p> <p>15    <b>related to it, but not the complete segment.</b></p> <p>16    Q. What did you find out through that market analysis?</p> <p>17    A. <b>What do you mean by what did I find out about it?</b></p> <p>18    Q. Well, you said you did some market analysis. Did you come</p> <p>19         to any sort of conclusions?</p> <p>20    A. <b>Treadmills as a broad category are still -- are the most</b></p> <p>21    <b>popular piece of equipment in the cardio category, but</b></p> <p>22    <b>that includes flat traditional motorized treadmills. They</b></p> <p>23    <b>don't break out the granularity of nonmotorized</b></p> <p>24    <b>treadmills.</b></p> <p>25    Q. Do you know how many nonmotorized treadmills are sold in</p>
<p style="text-align: right;">Page 19</p> <p>1     <b>on how you define the fitness market. It's a pretty</b></p> <p>2     <b>broad term.</b></p> <p>3     BY MS. CANTOR:</p> <p>4     Q. How do you define the fitness market?</p> <p>5     A. <b>It depends on who I'm talking about and what we're talking</b></p> <p>6     <b>about. Are we talking commercial fitness clubs? Are we</b></p> <p>7     <b>talking about fitness as a category, including consumers?</b></p> <p>8     <b>Are you talking about that with home equipment? Are you</b></p> <p>9     <b>talking about that -- like, there are so many variations.</b></p> <p>10        <b>Are you talking about youth sports? Are</b></p> <p>11        <b>you talking about -- I don't know. It's very large -- are</b></p> <p>12        <b>basketballs, you know, part of that? Are baseballs part</b></p> <p>13        <b>of that?</b></p> <p>14    Q. Well --</p> <p>15    A. <b>Could you -- could you be more -- either more -- I don't</b></p> <p>16        <b>know, what -- like, I don't know how you're defining</b></p> <p>17        <b>fitness, and so I can't really estimate that.</b></p> <p>18    Q. Well, I'm not defining it. I'm asking how you define it,</p> <p>19         but it sounds like there are different definitions</p> <p>20         depending on who you're talking about.</p> <p>21    A. <b>That is correct.</b></p> <p>22    Q. Do you know how many treadmills are sold in the U.S. each</p> <p>23         year?</p> <p>24    A. <b>Are you talking about home units? commercial units? Like,</b></p> <p>25         <b>what are you -- how do you define that?</b></p>	<p style="text-align: right;">Page 21</p> <p>1     the U.S. each year?</p> <p>2     A. <b>I do not.</b></p> <p>3     Q. Does Woodway sell nonmotorized manual treadmills? I'm</p> <p>4         sorry, strike that.</p> <p>5             Does Woodway sell non-curved manual</p> <p>6         treadmills?</p> <p>7     A. <b>We do have treadmills that are -- can work in a</b></p> <p>8         <b>nonmotorized format, and we do have treadmills that are</b></p> <p>9         <b>nonmotorized that are flat, yes.</b></p> <p>10    Q. Which -- what are the models that are nonmotorized flat</p> <p>11         treadmills?</p> <p>12    A. <b>Currently, the Force family is nonmotorized. The -- a</b></p> <p>13    <b>number of our other treadmills can be switched into a</b></p> <p>14    <b>nonmotorized mode even though they are a motorized</b></p> <p>15    <b>treadmill. So most of our treadmills can go into that</b></p> <p>16    <b>mode.</b></p> <p>17    Q. Do you know in 2023 the total number of treadmills Woodway</p> <p>18         sold across all models?</p> <p>19             MS. JELENCHICK: Objection. Form. Scope.</p> <p>20            <b>THE WITNESS: Can you help me within my</b></p> <p>21    <b>declaration to understand where that is from?</b></p> <p>22    BY MS. CANTOR:</p> <p>23    Q. It's not in your declaration. I'm asking you a question</p> <p>24         outside to try to put what you say about the Curve into</p> <p>25         context.</p>

<p>Page 22</p> <p>1 <b>A. I do not know that number off the top of my head.</b></p> <p>2 Q. And you're the director of sales and marketing; correct?</p> <p>3 <b>A. That is correct.</b></p> <p>4 Q. Can you please turn to paragraph 10 of your declaration,</p> <p>5 which is on page 6.</p> <p>6 <b>A. Yes. I found it.</b></p> <p>7 Q. All right. Can you just read that paragraph to yourself</p> <p>8 and let me know when you're done, please.</p> <p>9 <b>A. Yep. I've read it.</b></p> <p>10 Q. All right. In the first sentence you say, "It is my</p> <p>11 understanding that Woodway's Curve line practices various</p> <p>12 aspects of certain Woodway patents."</p> <p>13 Where did that understanding come from?</p> <p>14 <b>A. Our engineering team explained it to us.</b></p> <p>15 Q. Which aspects of the Woodway patent does the Curve line</p> <p>16 practice?</p> <p>17 MS. JELENCHICK: Objection. Form.</p> <p>18 <b>THE WITNESS: Can you repeat that? I</b></p> <p>19 <b>don't necessarily understand what you're asking.</b></p> <p>20 BY MS. CANTOR:</p> <p>21 Q. All right. So you say -- let me try to rephrase it. You</p> <p>22 say in here that you understand that Woodway's Curve line</p> <p>23 practices various aspects of certain Woodway patents, and</p> <p>24 you go on to list the patents.</p> <p>25 <b>A. Yes.</b></p>	<p>Page 24</p> <p>1 Q. Does the Curve LTG treadmill come with any accessories?</p> <p>2 <b>A. What do you mean by "accessories"?</b></p> <p>3 Q. How would you define accessories as related to the Curve</p> <p>4 treadmills?</p> <p>5 <b>A. I don't know. We don't necessarily talk about accessories</b></p> <p>6 <b>in great depth on our standard products. Maybe a heart</b></p> <p>7 <b>rate strap; something like that would be an accessory.</b></p> <p>8 Q. All right. Does the Curve LTG treadmill have a display?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Do you think, based on your experience, that a treadmill's</p> <p>11 display is important to users of the treadmill?</p> <p>12 MS. JELENCHICK: Objection. Form.</p> <p>13 <b>THE WITNESS: I'm not sure that we would</b></p> <p>14 <b>expect it to be important. I think it's an expected</b></p> <p>15 <b>piece of the treadmill, and it's a standard -- standard</b></p> <p>16 <b>feature that I would say almost every commercial and even</b></p> <p>17 <b>consumer treadmill has. So I wouldn't look at it as</b></p> <p>18 <b>necessarily an accessory as much as just part of the</b></p> <p>19 <b>product.</b></p> <p>20 BY MS. CANTOR:</p> <p>21 Q. Sorry. I wasn't asking about accessories, just to be</p> <p>22 clear.</p> <p>23 <b>A. Okay.</b></p> <p>24 Q. Just more generally speaking.</p> <p>25 <b>A. Okay.</b></p>
<p>Page 23</p> <p>1 Q. My question is, what are those various aspects of certain</p> <p>2 Woodway patents?</p> <p>3 MS. JELENCHICK: Objection. Form.</p> <p>4 <b>THE WITNESS: Well, I'm not an engineer,</b></p> <p>5 <b>so I can talk about the outcomes of them, but I don't</b></p> <p>6 <b>know that I can necessarily answer the details of that.</b></p> <p>7 <b>We have patents that encumber the way that the frame is</b></p> <p>8 <b>put together and the bearings are put together and the</b></p> <p>9 <b>way that the unit is protected from running in a single</b></p> <p>10 <b>direction from a safety standpoint. Those are the</b></p> <p>11 <b>aspects of the patents that I find important.</b></p> <p>12 BY MS. CANTOR:</p> <p>13 Q. Why do you believe those aspects of the patents to be</p> <p>14 important?</p> <p>15 <b>A. If you don't make a safe product, it's not commercially</b></p> <p>16 <b>viable, and the aspects of our patent address the safety</b></p> <p>17 <b>concerns related to this type of design and allow it to be</b></p> <p>18 <b>a product that works well and is safe.</b></p> <p>19 Q. All right. Can you please turn to paragraph 11 of your</p> <p>20 declaration and just read that to yourself and let me know</p> <p>21 when you're done, please.</p> <p>22 <b>A. Okay. I completed it.</b></p> <p>23 Q. All right. So in here you say that the Curve LTG</p> <p>24 treadmill has a list price that begins at \$3,995; correct?</p> <p>25 <b>A. Yes; that is correct.</b></p>	<p>Page 25</p> <p>1 Q. In your experience, do users of treadmills place</p> <p>2 importance on the display?</p> <p>3 MS. JELENCHICK: Objection. Form. Scope.</p> <p>4 <b>THE WITNESS: I think there are lots of</b></p> <p>5 <b>different types of displays, and they're going to be</b></p> <p>6 <b>important to some -- some users differently than other</b></p> <p>7 <b>users. I think there is an expectation that some sort of</b></p> <p>8 <b>display is available.</b></p> <p>9 BY MS. CANTOR:</p> <p>10 Q. Would it be more difficult for you to sell a treadmill</p> <p>11 without a display than a treadmill with a display?</p> <p>12 MS. JELENCHICK: Objection. Form. Scope.</p> <p>13 <b>THE WITNESS: I don't believe in</b></p> <p>14 <b>100 percent of the cases that to be true, but I think in</b></p> <p>15 <b>most cases people like to have a display. As I said,</b></p> <p>16 <b>it's an expectation.</b></p> <p>17 BY MS. CANTOR:</p> <p>18 Q. All right. Moving on, you say that the Curve Trainer</p> <p>19 lists for \$4,995. Do you see that?</p> <p>20 <b>A. Yes, I see that.</b></p> <p>21 Q. Why is the Curve Trainer more expensive than the Curve</p> <p>22 LTG?</p> <p>23 <b>A. The components that it uses are more durable. It has a</b></p> <p>24 <b>greater warranty. One form of the unit is a little bit</b></p> <p>25 <b>different in the fact that it uses, again, some different</b></p>



<p>Page 26</p> <p>1 components that are heavier duty.</p> <p>2 Q. Which components are better between the Curve Trainer and</p> <p>3 the Curve LTG?</p> <p>4 MS. JELENCHICK: Objection. Form. Scope.</p> <p>5 THE WITNESS: I guess, again, it depends</p> <p>6 on the user. So it -- it's -- it depends on what they're</p> <p>7 trying to do and what they're trying to accomplish. Our</p> <p>8 treadmills are designed for specific applications, and we</p> <p>9 try to optimize those goals based on them.</p> <p>10 And for the Curve Trainer, you know, the</p> <p>11 surface, the slat that is used on that, which is the</p> <p>12 running surface, is different than the slat on the Curve</p> <p>13 LTG, and that could have an impact. The side covers are</p> <p>14 different.</p> <p>15 BY MS. CANTOR:</p> <p>16 Q. What is the difference between the slats?</p> <p>17 A. The material they are made out of; the cushion on that</p> <p>18 material. So the Curve Trainer provides more cushion and</p> <p>19 more support for the user.</p> <p>20 Q. And what is the difference in the side covers?</p> <p>21 A. The Curve Trainer uses metal side covers, and the Curve</p> <p>22 LTG uses plastic side covers.</p> <p>23 Q. Is the display different between the Curve LTG and the</p> <p>24 Curve Trainer?</p> <p>25 A. The Curve displays are different. They show similar</p>	<p>Page 28</p> <p>1 accessories that Woodway sells with the Curve?</p> <p>2 A. We have options for other software that can be combined</p> <p>3 with the unit as an example of an accessory. Not just</p> <p>4 this one, but others.</p> <p>5 Q. Anything else?</p> <p>6 A. We offer a touch screen with Internet experience for the</p> <p>7 Curve and Curve Trainer as an upgraded display on those</p> <p>8 units. We also have attachments that we can put on the</p> <p>9 back of our Curve FTG to add a sled mode to that --</p> <p>10 Q. Like --</p> <p>11 A. -- as an accessory.</p> <p>12 Q. -- a sled, like, football players use?</p> <p>13 A. Somewhat in reverse. Almost like you tether off to it as</p> <p>14 a parachute is probably the best way to describe it.</p> <p>15 Q. Oh, okay.</p> <p>16 A. But that -- that gets added onto the back of that</p> <p>17 treadmill when it has a braking system to add a resistance</p> <p>18 capability to it. So I guess that would be another</p> <p>19 accessory that could be added to some of the products.</p> <p>20 Q. If you recall, we were previously talking about the fact</p> <p>21 that Woodway operates in different segments of the fitness</p> <p>22 market. Do you recall that?</p> <p>23 A. We operate in different segments of the entire industry,</p> <p>24 not just fitness space, but, yes.</p> <p>25 Q. Do you consider any of the Curve treadmills to be</p>
<p>Page 27</p> <p>1 information, though.</p> <p>2 Q. Do you know how they're different?</p> <p>3 A. They're just -- I mean, they show similar information,</p> <p>4 just different formatting. At some point we'll probably</p> <p>5 use the display across the standard -- simple display</p> <p>6 across the entire platform; just a different way of</p> <p>7 showing the same data.</p> <p>8 Q. All right. So next you say that the Curve lists for</p> <p>9 \$5,950 and can range in prices up to \$24,950. Do you see</p> <p>10 that?</p> <p>11 A. Yes, I do see that.</p> <p>12 Q. Why is there such a large price range for the Curve?</p> <p>13 A. We are able to add sophisticated load cells, data</p> <p>14 acquisition boards, and software in a partnership with a</p> <p>15 group out of Australia that has done significant research</p> <p>16 in the sports science space.</p> <p>17 Q. What are load cells?</p> <p>18 A. They are devices that go underneath the running surface</p> <p>19 that measure the impact at foot strike.</p> <p>20 Q. So are these load cells and -- actually, strike that.</p> <p>21 So is this software what you are referring</p> <p>22 to when you say "sophisticated training tools and</p> <p>23 accessories" in paragraph 11?</p> <p>24 A. That is correct.</p> <p>25 Q. Are there any other sophisticated training tools and</p>	<p>Page 29</p> <p>1 specialized for these segments?</p> <p>2 MS. JELENCHICK: Objection. Form.</p> <p>3 THE WITNESS: I don't believe that I would</p> <p>4 say specialized, but some of these treadmills have</p> <p>5 designs that are more optimal for certain types of</p> <p>6 training, which may or may not lend themselves to a</p> <p>7 specific segment.</p> <p>8 BY MS. CANTOR:</p> <p>9 Q. Can you give me some examples?</p> <p>10 A. Our Curve XL is designed to handle people 6 foot 5 and</p> <p>11 above. So that is specifically designed for certain</p> <p>12 market segments where they cater to larger people would be</p> <p>13 an example of that.</p> <p>14 Q. Are any of the Curve treadmills particularly suitable for</p> <p>15 the medical segment?</p> <p>16 A. Again, that would depend widely on the application within</p> <p>17 the medical segment. A neurological requirement would be</p> <p>18 much different than a sports rehab or sports orthopedics.</p> <p>19 So, again, it depends on the application.</p> <p>20 We make the treadmills to be versatile, but</p> <p>21 some treadmills are better suited for primary types of</p> <p>22 training versus other types of training. So we -- it's</p> <p>23 less about what the -- what they say they are versus what</p> <p>24 they do with their -- with their clients or users.</p> <p>25 Q. Do you know what percentage of the Curve treadmills are</p>

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1 sold with the software from the Australian company?

2 MS. JELENCHICK: Objection. Form. Scope.

3 **THE WITNESS: I think that has varied over**

4 **the years and is not a significant percentage, but if you**

5 **look at article -- er, Exhibit 2032, that's the Curve**

6 **3.0, and so it's on there. So Legacy 3.0 and 3.0. I**

7 **don't know if it is Legacy 3.0 or not, but Curve 3 and**

8 **Curve 3.0 are what they are.**

9 BY MS. CANTOR:

10 Q. So it looks like, going back to Exhibit 2032, in 2019,

11 there -- [REDACTED]

12 **A. That is correct.**

13 Q. Yet, the sum of total sales was [REDACTED] dollars.

14 **A. Those may have gone for research or for demos.**

15 Q. Demo, meaning demonstration?

16 **A. Yep.**

17 Q. What type of research might they have gone to?

18 **A. Sport science related. [REDACTED], they might**

19 **have went back to the Australian partner for them to do**

20 **continuing education and validation on it.**

21 Q. So we talked before about how there were options for other

22 software for the Curve. Where would that -- where would

23 those treadmills with the other software appear in

24 Exhibit 2032?

25 **A. They would just be inside. You know, they would be**

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1 **options within -- the Curve or the Curve Trainer would**

2 **probably the two or the Curve Force.**

3 Q. What is the Curve Force?

4 **A. It is a Curve that -- a nonmotorized Curve that we**

5 **actually add a braking mechanism to so you can change the**

6 **levels of resistance to add a power element for some**

7 **training and control for rehab and related items. So it's**

8 **-- it's a Curve, but it also has a brake on it; hence, the**

9 **Force application.**

10 Q. Do you know how that brake works?

11 **A. It's electromagnetic.**

12 Q. Do you know where in the treadmill the brake is located?

13 **A. I do not.**

14 Q. You're familiar with the term "safety device;" correct?

15 **A. As it relates to this, yes.**

16 Q. Does the Curve Force have a safety device in addition to

17 the brake?

18 **A. Yes. They're different.**

19 Q. What is the Curve Legacy?

20 **A. That -- that's the Curve units that we changed, like, the**

21 **cosmetic design of the unit from a gray to black, changed**

22 **the handrail a little bit at -- in 2000 something. And so**

23 **the way we delineated the gray Curve from the new black**

24 **Curves are Curve Legacy versus Curve.**

25 Q. And there was a period of time where Woodway was selling

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1 both the Curve Legacy and the Curve; correct?

2 **A. Yeah, of course. We were depleting the remaining**

3 **inventory, yes.**

4 Q. So it took [REDACTED] to deplete the remaining inventory;

5 correct?

6 MS. JELENCHICK: Objection. Form.

7 **THE WITNESS: I'll look. It would be a**

8 **combination of depleting inventory and customers who**

9 **added units that wanted them to match the other units in**

10 **their field. So we made the availability as long as we**

11 **could, practically, for those customers.**

12 BY MS. CANTOR:

13 Q. What is the EcoMill?

14 **A. The EcoMill is a nonmotorized treadmill that used a**

15 **different type of braking system to limit the top speed of**

16 **the treadmill.**

17 Q. Do you know what type of braking system?

18 **A. I don't know specifically how that worked. It was -- it**

19 **was -- do not -- it did not use the electromagnetic brake**

20 **to do that. It used some other form.**

21 Q. And what was the EcoMill Legacy?

22 **A. Same. The same concept as we talked about with the**

23 **Curves, is that we did a transition in the design from an**

24 **esthetic standpoint and color and things like that. So**

25 **that's the way we've delineated between those two.**

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1 Q. And Woodway doesn't make any version of the EcoMill

2 anymore; correct?

3 **A. No. We discontinued it. It wasn't a very popular**

4 **product, and I didn't really like the way it worked. The**

5 **Curve Force does a much better job of accomplishing**

6 **similar type of requirements.**

7 Q. Why did you not like the way it worked?

8 **A. Because I didn't like the way it felt. It just wasn't as**

9 **smooth, and it wasn't as consistent an experience that I**

10 **would like out of a product.**

11 Q. Do you know whether the EcoMill had a safety device?

12 **A. Oh, for sure. All the Curves have to have a safety**

13 **device. Otherwise, they're not commercially viable.**

14 Q. All right. Moving on to paragraph 13 of your declaration.

15 So it says -- you can read the whole paragraph, if you

16 want, but I'm specifically going to ask you about the

17 sentence starting on the last line, which states, "Woodway

18 is able to command a pricing premium because of its

19 durable, commercial-grade parts, reputation, service,

20 history, and quality.

21 **A. Yes.**

22 Q. Just to be clear, is durable, commercial-grade parts one

23 thing there, or are they meant to be separated?

24 **A. They're meant to be separated.**

25 Q. Okay. So what do you mean by durable?

<p style="text-align: right;">Page 34</p> <p>1 <b>A. It is designed to handle the abuse and use that our</b>  2 <b>customer profile puts on a piece of product.</b>  3 Q. How is that different from reputation?  4 <b>A. Reputation is a total company-wide experience. How they</b>  5 <b>-- how customers are treated. How we interact with the</b>  6 <b>customers. How we design and listen to customer's needs.</b>  7 <b>Provide them with solutions. That is a wide-ranging</b>  8 <b>aspect of our entire brand. Durable is talking</b>  9 <b>specifically about the -- about the product and how it</b>  10 <b>wears.</b>  11 Q. What do you mean by "service"?  12 <b>A. They're a mechanical device that requires occasional</b>  13 <b>preventative maintenance, service, etcetera. And it's not</b>  14 <b>like an automobile where you can drive it over to the</b>  15 <b>local service center. You have to have a trained network</b>  16 <b>of providers throughout the -- the entire reach of our</b>  17 <b>sales network in order to properly address and maintain</b>  18 <b>those products.</b>  19 Q. Can you please turn to paragraph 16 of your declaration  20 and read that to yourself, please, and let me know when  21 you're done.  22 <b>A. I've read it.</b>  23 Q. Woodway still sells motorized flat treadmills; correct?  24 <b>A. Yes, of course.</b>  25 Q. And Woodway also still sells motorized -- nonmotorized</p>	<p style="text-align: right;">Page 36</p> <p>1 MS. JELENCHICK: Objection. Form. Scope.  2 <b>THE WITNESS: I would not necessarily</b>  3 <b>agree with that.</b>  4 BY MS. CANTOR:  5 Q. Have you reviewed any -- actually, strike that.  6 Are you familiar with the term "prior art"?  7 <b>A. Yes.</b>  8 Q. Have you reviewed any of the prior art that LifeCORE is  9 asserting in these IPRs?  10 MS. JELENCHICK: Objection. Scope.  11 <b>THE WITNESS: I'm not sure if I have or</b>  12 <b>not.</b>  13 BY MS. CANTOR:  14 Q. Have you ever done any investigation to the history of  15 curved treadmills?  16 <b>A. I can't say that I have specifically, no.</b>  17 MS. JELENCHICK: We've been going for  18 about an hour. Do you mind if we take a quick break?  19 MS. CANTOR: Absolutely not. I don't  20 mind, I should say. That may have come out wrong.  21 <b>THE WITNESS: Thank you.</b>  22 MS. CANTOR: Kadie, how long do you want?  23 MS. JELENCHICK: I don't know. The  24 bathroom is right out here. So a couple minutes.  25 <b>THE WITNESS: Okay. One to five minutes;</b></p>
<p style="text-align: right;">Page 35</p> <p>1 flat treadmills; correct?  2 <b>A. That is correct.</b>  3 Q. Is it your position that Woodway invented curved  4 treadmills?  5 MS. JELENCHICK: Objection. Form. Scope.  6 <b>THE WITNESS: It would be my</b>  7 <b>representative that we've come to market with the -- a</b>  8 <b>curved nonmotorized product that worked well and was safe</b>  9 <b>and making it commercially viable.</b>  10 BY MS. CANTOR:  11 Q. Did curved treadmills exist before Woodway marketed its  12 Curve?  13 MS. JELENCHICK: Objection. Scope. Form.  14 MS. CANTOR: Actually, I'm going to strike  15 that.  16 BY MS. CANTOR:  17 Q. The first curved treadmill that Woodway motor -- strike  18 that. The first nonmotorized curved treadmill that  19 Woodway marketed was the Speedboard; correct?  20 <b>A. It would -- actually, under our terminology, it would have</b>  21 <b>been the Speedboard 2, which is now categorized as Curve</b>  22 <b>Legacy, but it was a Woodway product, yes.</b>  23 Q. Would you agree with me that prior to the introduction of  24 the Speedboard 2, there existed nonmotorized curved  25 treadmills?</p>	<p style="text-align: right;">Page 37</p> <p>1 <b>does that work?</b>  2 MS. JELENCHICK: Let's do five.  3 MS. CANTOR: Yeah. Five is good.  4 (At 2:01 p.m., recessed;  5 reconvened at 2:07 p.m.)  6 MS. CANTOR: Are you ready to start again?  7 MS. JELENCHICK: We're ready to go.  8 <b>THE WITNESS: Yes. Thank you.</b>  9 BY MS. CANTOR:  10 Q. All right. Mr. Weber, could you turn to paragraph 2 of  11 your declaration, please.  12 <b>A. Yes.</b>  13 Q. You state that Woodway is the largest specialized  14 treadmill manufacturer in the world.  15 <b>A. Yes.</b>  16 Q. What is your basis for saying that?  17 <b>A. We make approximately 30 different types of treadmills,</b>  18 <b>specializing in customizing them for various market</b>  19 <b>segments, and we are not aware of anybody else doing</b>  20 <b>anything remotely close to that in terms of variety of</b>  21 <b>products.</b>  22 Q. All right. You previously said -- actually, strike that.  23 How does Woodway market its curved  24 treadmills?  25 MS. JELENCHICK: Objection. Form.</p>

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1           **THE WITNESS:** Can you be more specific

2    within that? I mean, at what point? Like, now versus

3    when we started? Like, certain market segments?

4    BY MS. CANTOR:

5    Q. How did you market -- er, I should say how did Woodway

6    market its treadmills when you first started across all

7    market segments, and you can tell me how it was different

8    for the market segments, if necessary.

9    A. Okay. We introduced it at trade shows and targeting

10   commercial fitness, sports performance, medical, and then

11   the various market -- the trade shows that we do.

12   Starting with first in 2009, we demoed it in key customer

13   and high profile locations that we had relationships with.

14   We promoted it via press releases and industry

15   publications.

16           We -- you know, I have -- I've -- I've

17   talked with not only just the trade publications. I've

18   talked with Wall Street Journal, Mens Health, Runners

19   World; those types of health and wellness related markets.

20   And so we talked to them about it.

21           We -- it was given an innovation award at

22   FIBO, which is a very large global trade show in Germany.

23   So we have plenty of -- we've leveraged press, and we have

24   leveraged our relationships in all of the markets that we

25   have to promote the product.

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1           From a mainstream standpoint, we were on

2    The Biggest Loser for many years as a key part of their

3    challenge from brand awareness and product design in an

4    application. I think those were the ways we initially --

5           We partnered with some key coaches to work

6    on programming and develop education around how the

7    treadmills work and why there -- how they should be used

8    and how that could help within various segments, whether

9    that's CrossFit, whether that's the trend towards

10   functional fitness or high intensity training, and, you

11   know, promoted within those segments related to that type

12   of training and really had to educate the first few years

13   to the general market on how this product could be used

14   within those trends.

15   Q. Do you recall what Woodway's marketing budget was, when

16   you first started, for the Curve treadmills?

17   [REDACTED]

18   [REDACTED]

19   [REDACTED]

20   Q. Has that been true since the beginning through now; that

21   [REDACTED]

22   A. We've got -- [REDACTED]

23   [REDACTED]

24   [REDACTED]

25   [REDACTED]

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1    [REDACTED]

2    [REDACTED]

3    [REDACTED]

4    Q. Do you -- strike that.

5           Does Woodway spend more advertising the

6    Curve than it does its other treadmills?

7           MS. JELENCHICK: Objection. Form.

8           **THE WITNESS:** [REDACTED]

9    [REDACTED]

10   [REDACTED]

11   [REDACTED]

12   [REDACTED]

13           I think we -- we promote our products and

14   applications as appropriate in the markets that are

15   appropriate with -- with what's going on in society or in

16   -- for events. Like, for instance, the NFL Combine was

17   just recently, and we spent a lot of time focusing on the

18   Curve within that segment because it's a critical part of

19   the training for that event. And so there is -- a

20   disproportionate amount of focus and time has been spent

21   on it during that period.

22   BY MS. CANTOR:

23   [REDACTED]

24   [REDACTED]

25   [REDACTED]

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1    Q. You just mentioned the NFL Combine.

2    A. Yes.

3    Q. Were -- did the athletes at the NFL Combine use Curve

4    treadmills?

5    A. Many of the athlete did, yes. I can't say 100 percent. I

6    wasn't there for the whole time.

7    Q. Did the NFL purchase those treadmills from you?

8    A. They did not. They were part of our partners that own our

9    treadmills and do training with those athletes. They set

10   up rooms at the Combine to train to prepare their

11   athletes, and they either bring their treadmill, their

12   Curves from their locations, or since the proximity of

13   that event is fairly close to our factory, we -- we will

14   let them use our treadmills in their room temporarily

15   versus them bringing --

16           For instance, we have a customer who lives

17   -- who is based in Arizona. We provide treadmills in

18   their space for that week of training, and then -- so they

19   train on the same things that they have back at the home

20   base.

21   Q. Has Woodway ever paid for product placement with respect

22   to its Curve treadmills?

23           MS. JELENCHICK: Objection. Form.

24           **THE WITNESS:** I don't think that we've

25   ever paid for product placement specifically. We've --

<p style="text-align: right;">Page 42</p> <p>1 we've done -- we've let customers use our product, but</p> <p>2 we've not charged them for that. We're not paid -- we've</p> <p>3 not paid for that right.</p> <p>4 BY MS. CANTOR:</p> <p>5 Q. Have you given away the Curve treadmills for free for</p> <p>6 product placement?</p> <p>7 MS. JELENCHICK: Objection. Form.</p> <p>8 THE WITNESS: We have loaned treadmills to</p> <p>9 people, but we've -- for a temporary period of time and</p> <p>10 then taken them back, yes.</p> <p>11 BY MS. CANTOR:</p> <p>12 Q. Has Woodway ever given away Curve treadmills for free?</p> <p>13 A. We have demo units, and we have test units out there that</p> <p>14 have not been charged. So I don't -- it wouldn't be a</p> <p>15 common practice, but I can't say that we haven't left a</p> <p>16 unit with someone who has done some testing and qualifying</p> <p>17 for us, and in exchange for that training or that -- that</p> <p>18 information, we've let them keep the treadmill.</p> <p>19 Q. What kind of testing?</p> <p>20 A. If we've asked them to do -- help us develop programming,</p> <p>21 like workouts, and that type of thing, and instead of</p> <p>22 paying them for the development of that, we may let them</p> <p>23 keep the treadmill.</p> <p>24 Q. What are demo units?</p> <p>25 A. We will put units into facilities for them to test and see</p>	<p style="text-align: right;">Page 44</p> <p>1 how Woodway marketed its curved treadmills when you</p> <p>2 started; correct?</p> <p>3 A. Correct.</p> <p>4 Q. How has that changed in the last 15 years?</p> <p>5 A. You know, we spent the first five or six years creating a</p> <p>6 demand helping people understand what the product could do</p> <p>7 and how it was valuable to the various applications and</p> <p>8 types of usages that are out there. So, in the beginning,</p> <p>9 much of it was establishing that this was, indeed, a</p> <p>10 product that was interesting to the club -- er, to the</p> <p>11 market segment as a whole and specifically by application.</p> <p>12 And now that we've established there -- the</p> <p>13 -- that this type of training and this type of product are</p> <p>14 valuable assets within that transition is now comparing to</p> <p>15 the other knockoffs that are out there and those who have</p> <p>16 copied us and why there is a difference. So it went from</p> <p>17 educating to now trying to compare the alternatives that</p> <p>18 have come on the marketplace.</p> <p>19 Q. Is it your opinion that every curved -- every nonmotorized</p> <p>20 curved treadmill that is not made by Woodway is a copy of</p> <p>21 the Woodway Curve?</p> <p>22 MS. JELENCHICK: Objection. Form. Scope.</p> <p>23 THE WITNESS: It is my opinion if they are</p> <p>24 using a device to prevent the movement in the -- in</p> <p>25 reverse and they are a curved manual treadmill, yes, they</p>
<p style="text-align: right;">Page 43</p> <p>1 if they are -- if they fit within their -- their training</p> <p>2 and their culture or their -- their equipment mix, and so</p> <p>3 we'll -- we put it potentially dem -- put a demonstration</p> <p>4 unit into the health club and see if their members like</p> <p>5 it, and typically we would pull that out or they would buy</p> <p>6 that unit, and then they would roll that out to more of</p> <p>7 their clubs or more units depending on the situation.</p> <p>8 Q. So if you look at paragraph 17 of your declaration, you</p> <p>9 say that in 20 -- in fiscal year 2009, Woodway provided</p> <p>10 demonstration units and sold units.</p> <p>11 A. Yes.</p> <p>12 Q. Would those demonstration units ultimately have been</p> <p>13 sold?</p> <p>14 A. I -- I believe many of them have. I can't say for certain</p> <p>15 100 percent of them were. We may have pulled them out and</p> <p>16 moved them to a different location and eventually been</p> <p>17 sold, but the initial locations that we placed them, I</p> <p>18 can't guarantee that they were all sold to those</p> <p>19 locations, but especially in the beginning the product</p> <p>20 didn't exist before we introduced it. So we relied</p> <p>21 heavily on demonstration units to help people understand</p> <p>22 what we were -- what we were promoting and the education</p> <p>23 side of that.</p> <p>24 Q. How -- actually, strike that.</p> <p>25 So you were talking about, if you recall,</p>	<p style="text-align: right;">Page 45</p> <p>1 are a copy of our product.</p> <p>2 BY MS. CANTOR:</p> <p>3 Q. And I think you used the word "a knockoff" of your</p> <p>4 product.</p> <p>5 A. Yeah. An imitation of what -- we were the original. We</p> <p>6 developed it. People have since come and copied that</p> <p>7 concept.</p> <p>8 Q. Does Woodway currently place any advertisements for its</p> <p>9 Curve treadmills?</p> <p>10 A. We use social media as our primary marketing outside of</p> <p>11 trade show and the initiative related to trade show</p> <p>12 activity, which is where we would have the Curve as well.</p> <p>13 So those are our two formats.</p> <p>14 Q. How many of your social media posts mention the safety</p> <p>15 device?</p> <p>16 MS. JELENCHICK: Objection. Form.</p> <p>17 THE WITNESS: Our customers are interested</p> <p>18 in the applications, and I don't -- the safety device is</p> <p>19 an assumed component of the product. They wouldn't buy</p> <p>20 the product if it didn't have that, but it's not -- it's</p> <p>21 not something they are using to train.</p> <p>22 So when we're marketing our product, we</p> <p>23 are marketing it around the training applications. The</p> <p>24 assumption that they're safe and commercially viable is</p> <p>25 an assumed aspect of this, and so there is no reason for</p>

<p align="right">Page 46</p> <p>1 <b>us to do that, just like a car manufacturer doesn't --</b></p> <p>2 <b>doesn't advertise its seatbelts; that's an assumed piece</b></p> <p>3 <b>of the product.</b></p> <p>4 BY MS. CANTOR:</p> <p>5 Q. So the answer is none?</p> <p>6 MS. JELENCHICK: Objection. Form.</p> <p>7 <b>THE WITNESS: I am not aware of us</b></p> <p>8 <b>specifically advertising that. It's listed on our</b></p> <p>9 <b>specification sheet. So I guess if people looked at that</b></p> <p>10 <b>aspect of it, it would be marketed in that format, but it</b></p> <p>11 <b>is not part of a social media post where we're showing</b></p> <p>12 <b>how someone is sprinting on the treadmill, no.</b></p> <p>13 BY MS. CANTOR:</p> <p>14 Q. How many of your social media posts have mentioned the</p> <p>15 bearing rails in the Curve treadmill?</p> <p>16 <b>A. Well --</b></p> <p>17 MS. JELENCHICK: Objection. Form.</p> <p>18 <b>THE WITNESS: We talk about our</b></p> <p>19 <b>transportation system quite a bit within our -- our --</b></p> <p>20 <b>our websites and our social media, and transportation</b></p> <p>21 <b>system includes the bearing rails. It's how -- it's how</b></p> <p>22 <b>the surface moves across -- across the product, and so it</b></p> <p>23 <b>is part of the conversation. We talk about it from a</b></p> <p>24 <b>durability standpoint. We talk about it from smooth,</b></p> <p>25 <b>quiet, responsive. Those are all related to that.</b></p>	<p align="right">Page 48</p> <p>1 experience in the market, it is my opinion that Woodway's</p> <p>2 line of curved manual treadmills is commercially</p> <p>3 successful."</p> <p>4 Do you see that?</p> <p>5 <b>A. I do see that.</b></p> <p>6 Q. What do you mean by "commercially successful"?</p> <p>7 <b>A. There is a demand for the curved manual treadmills and</b></p> <p>8 <b>we've created it from zero to a significant volume of</b></p> <p>9 <b>requests.</b></p> <p>10 Q. You also mention your experience in the market. And just</p> <p>11 to clarify, that's your experience working at Woodway;</p> <p>12 correct?</p> <p>13 <b>A. That is correct.</b></p> <p>14 Q. Can you please turn to Exhibit 2045.</p> <p>15 <b>A. I'm there.</b></p> <p>16 Q. All right. And I believe you discussed this exhibit in</p> <p>17 paragraph 44 of your declaration. Is that correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. All right. If you -- you can look through the entire</p> <p>20 exhibit, but I believe the portion you discussed is on</p> <p>21 page 5. Is that right?</p> <p>22 <b>A. Yes. Yes.</b></p> <p>23 Q. Does this discussion of the Speedboard treadmill mention</p> <p>24 the safety device?</p> <p>25 MS. JELENCHICK: Objection to form.</p>
<p align="right">Page 47</p> <p>1 BY MS. CANTOR:</p> <p>2 Q. How many of Woodway's social media posts contain the word</p> <p>3 "bearing rails"?</p> <p>4 MS. JELENCHICK: Objection. Form.</p> <p>5 <b>THE WITNESS: I wouldn't know.</b></p> <p>6 BY MS. CANTOR:</p> <p>7 Q. Are you aware of any?</p> <p>8 <b>A. I don't know. I assume that some have. I mean, it's part</b></p> <p>9 <b>of -- again, it's on our website. We talk about the</b></p> <p>10 <b>bearing rails.</b></p> <p>11 Q. Do you advertise over e-mail?</p> <p>12 <b>A. We do do e-mail campaigns, yes.</b></p> <p>13 Q. Who do you target in those e-mail campaigns?</p> <p>14 MS. JELENCHICK: Objection. Form.</p> <p>15 <b>THE WITNESS: Potential customers and</b></p> <p>16 <b>customers.</b></p> <p>17 BY MS. CANTOR:</p> <p>18 Q. How do you identify potential customers?</p> <p>19 <b>A. There is a myriad of ways that we do that, including leads</b></p> <p>20 <b>that we get at trade shows. Our existing database is from</b></p> <p>21 <b>past events, shows, cold calls. Interactions all are</b></p> <p>22 <b>compiled and categorized by market segment; things like</b></p> <p>23 <b>that.</b></p> <p>24 Q. Can you please turn to paragraph 30 of your declaration.</p> <p>25 It's on page 14. In this paragraph, you say, "Based on my</p>	<p align="right">Page 49</p> <p>1 <b>THE WITNESS: It does not mention that,</b></p> <p>2 <b>but it wouldn't. The treadmill would not even be</b></p> <p>3 <b>available commercially for this particular review if it</b></p> <p>4 <b>didn't have that feature.</b></p> <p>5 BY MS. CANTOR:</p> <p>6 Q. Does it mention the bearing rail?</p> <p>7 <b>A. It does not mention the bearing rail. It mentions the</b></p> <p>8 <b>outcome from that bearing rail, which is the ability to</b></p> <p>9 <b>allow the users to accelerate and to decelerate at their</b></p> <p>10 <b>own pace. That is a direct correlation to the bearing</b></p> <p>11 <b>rail and how that bearing rail manifests itself to the</b></p> <p>12 <b>user. So...</b></p> <p>13 Q. Isn't it true that a user can accelerate and decelerate at</p> <p>14 their own pace on all manual treadmills?</p> <p>15 MS. JELENCHICK: Objection. Form. Scope.</p> <p>16 <b>THE WITNESS: At the time of this article,</b></p> <p>17 <b>we were the only curved manual treadmill, and today they</b></p> <p>18 <b>do accelerate at their own pace, but there are</b></p> <p>19 <b>limitations based on the design of the units and how well</b></p> <p>20 <b>they accelerate and decelerate.</b></p> <p>21 BY MS. CANTOR:</p> <p>22 Q. To be clear, my question was not limited to curved</p> <p>23 treadmills.</p> <p>24 <b>A. So -- so, then, can you repeat your question?</b></p> <p>25 Q. Sure. Isn't it true that a user can accelerate and</p>

<p align="right">Page 50</p> <p>1 decelerate at their own pace on any manual treadmill?</p> <p>2 MS. JELENCHICK: Objection. Form.</p> <p>3 <b>THE WITNESS: I would not say that that's</b></p> <p>4 <b>the case.</b></p> <p>5 BY MS. CANTOR:</p> <p>6 Q. Why not?</p> <p>7 A. Because they would run -- if you ran on a flat treadmill,</p> <p>8 you would run into the display before the treadmill would</p> <p>9 accelerate quickly enough. If you are on another manual</p> <p>10 treadmill that didn't have that capability, like, wouldn't</p> <p>11 --</p> <p>12 Yeah. I mean, in general, if there is --</p> <p>13 if there -- if there is too much friction, the person will</p> <p>14 accelerate and they'll move faster than the belt and,</p> <p>15 thus, run into the front of the display. So, no, I don't</p> <p>16 think that that's possible.</p> <p>17 Q. How much experience have you had on flat manual treadmills</p> <p>18 using them?</p> <p>19 A. I've tried many of them, including the ones that we make.</p> <p>20 So...</p> <p>21 Q. Do you have --</p> <p>22 A. So I would say -- I would say the majority of commercial</p> <p>23 manual treadmills that are out there, I've tried.</p> <p>24 Q. Do you happen to know what the circulation of Health and</p> <p>25 Fitness Sports Magazine was in 2010?</p>	<p align="right">Page 52</p> <p>1 <b>pace, and that is specifically tied to that bearing rail</b></p> <p>2 <b>system.</b></p> <p>3 Q. Do you believe that a safety device is the only way to</p> <p>4 make a curved treadmill safe?</p> <p>5 MS. JELENCHICK: Objection. Form. Scope.</p> <p>6 <b>THE WITNESS: I believe that the safety</b></p> <p>7 <b>device is the only way that currently is being shown to</b></p> <p>8 <b>be a way to control that movement. I'm not aware of</b></p> <p>9 <b>another curved manufacturer coming up with some other way</b></p> <p>10 <b>to do that, but is it possible? I would say in theory,</b></p> <p>11 <b>but in practice nobody else has demonstrated a way to do</b></p> <p>12 <b>that.</b></p> <p>13 BY MS. CANTOR:</p> <p>14 Q. What does the term "safety device" mean to you?</p> <p>15 A. As it relates to this, I'm controlling the entry and exit</p> <p>16 of a user on this treadmill so that the belt doesn't move</p> <p>17 in an unexpected direction causing instability or a risk</p> <p>18 of falling.</p> <p>19 Q. So you -- strike that.</p> <p>20 Do you have any understanding of how the</p> <p>21 safety device works?</p> <p>22 MS. JELENCHICK: Objection to form and</p> <p>23 scope.</p> <p>24 <b>THE WITNESS: I understand that it holds</b></p> <p>25 <b>the belt from rotating the opposite direction in a quick</b></p>
<p align="right">Page 51</p> <p>1 A. I do not. It's a trade publication. So it would be</p> <p>2 within our trade industry and was delivered to most people</p> <p>3 who had some association with the industry.</p> <p>4 Q. All right. Can you please turn to Exhibit 2046.</p> <p>5 A. I'm there.</p> <p>6 Q. Can you confirm that this is the exhibit referred to in</p> <p>7 paragraph 45 of your declaration.</p> <p>8 A. Yes.</p> <p>9 Q. And I believe the portion of this exhibit you're referring</p> <p>10 to in paragraph 45 is on page 5. Is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. All right. Does this discussion of the Speedboard mention</p> <p>13 the safety device?</p> <p>14 MS. JELENCHICK: Objection. Form.</p> <p>15 <b>THE WITNESS: Again, this wouldn't be in</b></p> <p>16 <b>this magazine if it didn't have a safety device because</b></p> <p>17 <b>it wouldn't be commercially viable, because we wouldn't</b></p> <p>18 <b>be able to have it out in the public because it wouldn't</b></p> <p>19 <b>be safe.</b></p> <p>20 BY MS. CANTOR:</p> <p>21 Q. Does this discussion of the Speedboard reference the</p> <p>22 bearing rails?</p> <p>23 A. Once again, it talks about the performance characteristics</p> <p>24 that are created by those bearing rails. So it talks</p> <p>25 about the ability to accelerate and decelerate at your own</p>	<p align="right">Page 53</p> <p>1 <b>or abrupt manner that would cause someone to lose their</b></p> <p>2 <b>balance and fall. Mechanically how that's done, I don't</b></p> <p>3 <b>necessarily worry about. I just worry that it, from a</b></p> <p>4 <b>user experience, it's safe.</b></p> <p>5 BY MS. CANTOR:</p> <p>6 Q. You understand that in these IPR's, LifeCORE is</p> <p>7 challenging the validity of three Woodway patents that use</p> <p>8 the term "safety device"; correct?</p> <p>9 A. I do understand that to be the case.</p> <p>10 Q. Have you reviewed the patents to see how the term "safety</p> <p>11 device" is used within those patents?</p> <p>12 A. I have met with legal counsel and with our engineers at</p> <p>13 various times over the years.</p> <p>14 Q. Okay. I really don't want to know anything -- sorry. I</p> <p>15 just want to be clear here. I really don't want to know</p> <p>16 anything that you discussed with your counsel.</p> <p>17 A. Fair. All right. Well, I've talked with our engineers</p> <p>18 about the implication of it.</p> <p>19 Q. The implication, meaning the end result?</p> <p>20 A. Like, what the patent does and what it means. Again, I'm</p> <p>21 not an engineer. I frankly don't really care how it's</p> <p>22 done. I just make sure that the product and the outcome</p> <p>23 is safe.</p> <p>24 Q. All right. Can you please turn to Exhibit 2047.</p> <p>25 A. Yes.</p>

<p>Page 54</p> <p>1 Q. Can you confirm that this is the exhibit you are 2 discussing in paragraph 46 of your declaration. 3 <b>A. Yes.</b> 4 Q. And this is a press release from Woodway; correct? 5 <b>A. That's correct.</b> 6 Q. Let me just ask that again so that the record is a little 7 bit better. Exhibit 2047 is a press release from Woodway; 8 correct? 9 <b>A. Yes.</b> 10 Q. And do you discuss the safety device in this press 11 release? 12 MS. JELENCHICK: Objection. Form. 13 <b>THE WITNESS: It's -- I mean, it's</b> 14 <b>referenced in our unique curved design and Woodway's</b> 15 <b>patented running surface. Now --</b> 16 BY MS. CANTOR: 17 Q. Do you see at the beginning -- 18 Oh, sorry. 19 <b>A. Just that -- go ahead.</b> 20 Q. Do you see at the beginning of, I want to say, the second 21 paragraph, it says "The Curve treadmill burns up to 30 22 percent more calories than conventional motorized 23 treadmills"? 24 <b>A. Yes.</b> 25 Q. Has Woodway done research to support that?</p>	<p>Page 56</p> <p>1 <b>does actually show him getting on and off the treadmill</b> 2 <b>safely.</b> 3 BY MS. CANTOR: 4 Q. And, again, you define safety device to be something that 5 allows you to get on and off the treadmill safely? 6 <b>A. Without the belt rotating in a reverse direction; correct.</b> 7 <b>That's one aspect of safety. Obviously the entire</b> 8 <b>treadmill, there is considerations around that, but as</b> 9 <b>we're talking specifically to this, yes, that is the</b> 10 <b>component I'm talking about.</b> 11 Q. Can you please -- and, sorry, I know this is repetitive, 12 but I think we're almost done. Can you please -- 13 <b>A. Okay.</b> 14 Q. -- turn to Exhibit 2050. 15 <b>A. Yes.</b> 16 Q. All right. And is this the article that you discuss in 17 paragraph 49 of your declaration? 18 <b>A. This is.</b> 19 Q. All right. And does this article or review, I guess, 20 discuss the safety device? 21 MS. JELENCHICK: Objection. Form. 22 <b>THE WITNESS: I believe it shows the</b> 23 <b>safety device. Again, this is a video of him</b> 24 <b>demonstrating how to use the product and use it safely</b> 25 <b>and effectively.</b></p>
<p>Page 55</p> <p>1 <b>A. Yes, we have. It's out of -- the University of Wisconsin</b> 2 <b>- Milwaukee did the research, I believe, in early -- end</b> 3 <b>of 2009, beginning of 2010. It was released both for</b> 4 <b>running and for walking and was posted on our website.</b> 5 Q. All right. Can you please turn to Exhibit 2048. 6 <b>A. Okay.</b> 7 Q. And can you confirm that Exhibit 2048 is what you refer to 8 in paragraph 47 of your declaration? 9 <b>A. That is correct.</b> 10 Q. And does this article discuss the safety device? 11 MS. JELENCHICK: Objection. Form. 12 <b>THE WITNESS: It does not directly talk</b> 13 <b>about that. They're talking about a workout and the</b> 14 <b>unique -- how the unique features of this treadmill</b> 15 <b>allows them to do this workout.</b> 16 BY MS. CANTOR: 17 Q. Can you please turn to Exhibit 2049. 18 <b>A. Yes.</b> 19 Q. And can you confirm that Exhibit 2049 is the exhibit you 20 discuss in paragraph 48 of your declaration. 21 <b>A. It is.</b> 22 Q. And does this article discuss the safety device? 23 MS. JELENCHICK: Objection. Form. 24 <b>THE WITNESS: This isn't necessarily an</b> 25 <b>article. This was a video, and I believe in the video it</b></p>	<p>Page 57</p> <p>1 BY MS. CANTOR: 2 Q. You didn't attach this video to your declaration, did you? 3 <b>A. I don't know if we did or not. I don't know if it's still</b> 4 <b>out there.</b> 5 Q. Okay. And going back to Exhibit 2049, which you mentioned 6 also was a video, you didn't attach that video to your 7 declaration, did you? 8 <b>A. I don't recall.</b> 9 Q. Do you happen to have Exhibit 2051? 10 MS. CANTOR: Kadie, this is the video. 11 MS. JELENCHICK: I do. 12 MS. CANTOR: All right. Can you -- it's, 13 like, four minutes. Can you show it to Mr. Weber, 14 please? 15 MS. JELENCHICK: Sure. I'm just queueing 16 it up right now. 17 MS. CANTOR: Okay. Are you okay if the 18 court reporter doesn't transcribe the video since we have 19 it? 20 MS. JELENCHICK: I have no objection. 21 (At 2:45 p.m., Exhibit 2051 is 22 shown to the deponent.) 23 (At 2:46 p.m., Exhibit 2051 is 24 paused.) 25 MS. JELENCHICK: We paused it for a</p>



<p>Page 58</p> <p>1 second.</p> <p>2 <b>THE WITNESS: So what number are you on,</b></p> <p>3 <b>so I'm on the same page?</b></p> <p>4 MS. CANTOR: Of course. This is</p> <p>5 Exhibit 2051, which should be paragraph 50 of your</p> <p>6 declaration.</p> <p>7 <b>THE WITNESS: Paragraph 50. Okay. I'm</b></p> <p>8 <b>sorry. I got confused. Now I'm good.</b></p> <p>9 MS. JELENCHICK: I'm going to start it</p> <p>10 over.</p> <p>11 (At 2:46 p.m., Exhibit 2051 is</p> <p>12 shown to the deponent.)</p> <p>13 (At 2:50 p.m., Exhibit 2051 is</p> <p>14 concluded.)</p> <p>15 <b>THE WITNESS: Okay.</b></p> <p>16 BY MS. CANTOR:</p> <p>17 Q. All right. And that is the video that you discuss in</p> <p>18 paragraph 50 of your declaration. Am I correct?</p> <p>19 <b>A. That is correct.</b></p> <p>20 Q. Did that video mention the safety device?</p> <p>21 <b>A. At the 1 minute 39 second, it showed a woman on the back</b></p> <p>22 <b>end of the curve pausing. So while it didn't say it, it</b></p> <p>23 <b>showed the safety risk that's involved. So it didn't</b></p> <p>24 <b>explicitly say it, but it showed it at that point.</b></p> <p>25 Q. Would you agree with me that in that video, the person</p>	<p>Page 60</p> <p>1 <b>A. The "rubber slats, which move on a low-friction ball-</b></p> <p>2 <b>bearing track" is all part of that transportation system.</b></p> <p>3 Q. So is it your opinion that anything that discusses the</p> <p>4 transportation system also discusses the safety device?</p> <p>5 MS. JELENCHICK: Objection. Form.</p> <p>6 <b>THE WITNESS: It is my opinion when you're</b></p> <p>7 <b>talking about the usability of the treadmill, it</b></p> <p>8 <b>incorporates things that make it safe to be used in the</b></p> <p>9 <b>first place.</b></p> <p>10 BY MS. CANTOR:</p> <p>11 Q. Do you believe that there is a difference between your</p> <p>12 definition of safety device and how that term is used in</p> <p>13 the Woodway patents?</p> <p>14 MS. JELENCHICK: Objection. Form. Scope.</p> <p>15 <b>THE WITNESS: I don't know the answer to</b></p> <p>16 <b>that.</b></p> <p>17 BY MS. CANTOR:</p> <p>18 Q. Why do you discuss the safety device in your declaration?</p> <p>19 <b>A. Because a treadmill wouldn't be commercially viable</b></p> <p>20 <b>without safety, and safety is paramount to our company, to</b></p> <p>21 <b>the industry, to users, to our insurance company, and, you</b></p> <p>22 <b>know, that -- it's an essential part before we would ever</b></p> <p>23 <b>launch a product is we make sure that it is safe, and not</b></p> <p>24 <b>only does it need to be safe, it needs to be a good</b></p> <p>25 <b>experience and a great product for us. And so safety is</b></p>
<p>Page 59</p> <p>1 running the class says that the curved treadmills are</p> <p>2 advantageous because they are human powered?</p> <p>3 MS. JELENCHICK: Objection. Form.</p> <p>4 <b>THE WITNESS: I wouldn't agree with that</b></p> <p>5 <b>in total. I mean, I think that she's talking about one</b></p> <p>6 <b>feature that she likes, but the assumption is that it's</b></p> <p>7 <b>safe for her members. As another person said, they have</b></p> <p>8 <b>people of all varieties and ages is also a factor.</b></p> <p>9 <b>The low impact was mentioned. There were</b></p> <p>10 <b>a number of features mentioned. The handrails available</b></p> <p>11 <b>for the anchor who lost his balance is an important</b></p> <p>12 <b>safety feature. All those things are important and are</b></p> <p>13 <b>factors within this process.</b></p> <p>14 BY MS. CANTOR:</p> <p>15 Q. All right. Can you please look at Exhibit 2052.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. And is this the exhibit that you reference in paragraph 51</p> <p>18 of your declaration?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And does this article discuss the safety device?</p> <p>21 MS. JELENCHICK: Objection. Form.</p> <p>22 <b>THE WITNESS: It talks about the parts of</b></p> <p>23 <b>the treadmill that include that, yes.</b></p> <p>24 BY MS. CANTOR:</p> <p>25 Q. What part of the treadmill includes the safety device?</p>	<p>Page 61</p> <p>1 <b>what I would consider a bedrock of all of the things that</b></p> <p>2 <b>we do, and so, of course, it's an important part of that</b></p> <p>3 <b>process.</b></p> <p>4 Q. If you looked at -- all right. Can you please turn to</p> <p>5 paragraph 34 of your declaration.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. In that paragraph, you use the term "safety mechanism."</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. What is the safety mechanism on the Curve treadmills?</p> <p>10 MS. JELENCHICK: Objection. Form.</p> <p>11 <b>THE WITNESS: There are a number of safety</b></p> <p>12 <b>mechanisms on the treadmill. There is handrails. There</b></p> <p>13 <b>is side covers hiding some of the moving parts. There is</b></p> <p>14 <b>a device to prevent the unit from going in the wrong</b></p> <p>15 <b>direction and catching someone unexpectedly, thus</b></p> <p>16 <b>creating a fall -- another fall hazard. Those are all</b></p> <p>17 <b>aspects of safety.</b></p> <p>18 BY MS. CANTOR:</p> <p>19 Q. So that's why you're using the term "safety mechanism" in</p> <p>20 this paragraph?</p> <p>21 <b>A. The safety mechanism within this paragraph is</b></p> <p>22 <b>predominantly related to the controlling of the unintended</b></p> <p>23 <b>rotation of the running belt, which could result in a</b></p> <p>24 <b>movement that could cause instability in the user.</b></p> <p>25 Q. All right. Can you please go to Exhibit 2053. And you</p>

<p>Page 62</p> <p>1 probably want to turn to paragraph 52 of your declaration.</p> <p>2 <b>A. Okay.</b></p> <p>3 Q. All right. Is Exhibit 2053 the exhibit you're referring</p> <p>4 to in paragraph 52 of your declaration?</p> <p>5 <b>A. Yes, it is.</b></p> <p>6 Q. All right. And this is an article about the curved</p> <p>7 treadmill; correct; the Woodway Curve?</p> <p>8 <b>A. It is.</b></p> <p>9 Q. Does it mention the safety device?</p> <p>10 MS. JELENCHICK: Objection. Form.</p> <p>11 <b>THE WITNESS: Hold on a second. The print</b></p> <p>12 <b>is so small I can't really --</b></p> <p>13 <b>It once again talks about the experience</b></p> <p>14 <b>of how to use the treadmill safely and effectively.</b></p> <p>15 BY MS. CANTOR:</p> <p>16 Q. Can you -- would you consider the Post &amp; Courier to be a</p> <p>17 trade publication?</p> <p>18 <b>A. No. But it was in a market where we had recently sold</b></p> <p>19 <b>treadmills, and we were hoping to sell more treadmills --</b></p> <p>20 Q. Would you consider the Los Angeles --</p> <p>21 <b>A. -- and --</b></p> <p>22 Q. Oh.</p> <p>23 <b>A. No. Go ahead.</b></p> <p>24 Q. Would you consider the Los Angeles Times to be a trade</p> <p>25 publication?</p>	<p>Page 64</p> <p>1 the reference to the Woodway Curve in the bottom of</p> <p>2 page 2?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Are there any other references to the Woodway Curve in</p> <p>5 this exhibit?</p> <p>6 <b>A. I don't see specific to the Curve. I see several</b></p> <p>7 <b>references to Woodway.</b></p> <p>8 Q. All right. So if we look at the bottom of page 2 --</p> <p>9 <b>A. Yep.</b></p> <p>10 Q. -- is this a Woodway advertisement?</p> <p>11 <b>A. This is a Woodway advertisement.</b></p> <p>12 Q. How often does Woodway advertise in Government Recreation</p> <p>13 &amp; Fitness?</p> <p>14 MS. JELENCHICK: Objection. Form.</p> <p>15 <b>THE WITNESS: Depends on what time period</b></p> <p>16 <b>you're talking about. I do not believe that we've</b></p> <p>17 <b>advertised in this magazine in many years, but we did on</b></p> <p>18 <b>occasion at -- back in this time period.</b></p> <p>19 BY MS. CANTOR:</p> <p>20 Q. What is woodwaymilitary.com?</p> <p>21 <b>A. It was a website we created that had our products on there</b></p> <p>22 <b>with the added information related to some of the</b></p> <p>23 <b>government contracts to make -- and our products related</b></p> <p>24 <b>to those contracts to allow the bases to have an easier</b></p> <p>25 <b>time of purchasing the product and making sure they had</b></p>
<p>Page 63</p> <p>1 <b>A. I would consider that brand awareness and product</b></p> <p>2 <b>awareness to the general public, which goes to the trades,</b></p> <p>3 <b>and if we can drive demand to the clubs asking for these</b></p> <p>4 <b>great products that they can't afford in their house, it</b></p> <p>5 <b>is a great brand awareness.</b></p> <p>6 Q. And do you recall the video we watched from the</p> <p>7 Channel 11Alive a few moments ago?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Exhibit 2051?</p> <p>10 <b>A. Yep.</b></p> <p>11 Q. Is 11Alive an -- a trade channel?</p> <p>12 <b>A. No. Again, it's -- it's a great brand awareness in one of</b></p> <p>13 <b>the biggest cities in the country that is heavily fitness</b></p> <p>14 <b>based, and we also are able to share these on social media</b></p> <p>15 <b>and our website for what's new adding credibility to the</b></p> <p>16 <b>product and the design as we develop and establish it as a</b></p> <p>17 <b>primary tool within the commercial and consumer segment</b></p> <p>18 <b>that didn't exist before. So I do think that they're very</b></p> <p>19 <b>important in establishing that education.</b></p> <p>20 Q. Can you please turn to Exhibit 2054.</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Is this the exhibit that you referred to in paragraph 53</p> <p>23 of your declaration?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And are you specifically -- I'm sorry, in Exhibit 2054, is</p>	<p>Page 65</p> <p>1 <b>the appropriate reference numbers to get their paperwork</b></p> <p>2 <b>done more effectively. I don't believe we still operate</b></p> <p>3 <b>that website.</b></p> <p>4 Q. Can you please turn to Exhibit 2055.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And is this the exhibit you referred to in paragraph 54 of</p> <p>7 your declaration?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And does this article discuss the safety device?</p> <p>10 MS. JELENCHICK: Objection. Form.</p> <p>11 <b>THE WITNESS: It talks about design using</b></p> <p>12 <b>gravity to help accelerate and brake and slow down as</b></p> <p>13 <b>they move out. It talks about the entire mechanical</b></p> <p>14 <b>system.</b></p> <p>15 BY MS. CANTOR:</p> <p>16 Q. Is the Wall Street Journal a trade publication?</p> <p>17 <b>A. It is a widely read publication with great credibility</b></p> <p>18 <b>that our trade customers use, as well as customers of ours</b></p> <p>19 <b>use and read, and it is considered a very valuable</b></p> <p>20 <b>reference as a well-established brand.</b></p> <p>21 Q. Is it a fitness industry trade publication?</p> <p>22 <b>A. It is not a fitness industry trade publication. However,</b></p> <p>23 <b>they do have a fitness and wellness section within the</b></p> <p>24 <b>magazine that I know many of our industry look for trends</b></p> <p>25 <b>related to what people are doing.</b></p>

<p style="text-align: right;">Page 66</p> <p>1 Q. And can you please turn to Exhibit 2056.</p> <p>2 <b>A. Yes. Okay.</b></p> <p>3 Q. And is this the article you discuss in paragraph 55 of</p> <p>4 your declaration?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. So does Exhibit 2056 mention the safety device of</p> <p>7 the Woodway treadmill, the Woodway Curve treadmill?</p> <p>8 MS. JELENCHICK: Objection.</p> <p>9 <b>THE WITNESS: It does not mention it</b></p> <p>10 <b>specifically, but, again, it does talk about the overall</b></p> <p>11 <b>experience of our product.</b></p> <p>12 BY MS. CANTOR:</p> <p>13 Q. Where does it discuss that?</p> <p>14 <b>A. Debora Warner talks about her choice is Woodway as a</b></p> <p>15 <b>runner's treadmill because there is nothing else. It's</b></p> <p>16 <b>especially great because it mimics the feel of running on a</b></p> <p>17 <b>trail.</b></p> <p>18 <b>So, again, it's about the experience on our</b></p> <p>19 <b>product, which is created by the way it's configured.</b></p> <p>20 Q. We've gone through a number of articles cited in your</p> <p>21 declaration.</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Is it your opinion that safety is implicit in each of them</p> <p>24 even if not specifically mentioned?</p> <p>25 MS. JELENCHICK: Objection. Form.</p>	<p style="text-align: right;">Page 68</p> <p>1 MS. JELENCHICK: Okay.</p> <p>2 <b>THE WITNESS: Sounds good.</b></p> <p>3 MS. JELENCHICK: Famous last words.</p> <p>4 MS. CANTOR: I know. I try not to say</p> <p>5 things like that.</p> <p>6 <b>THE WITNESS: Don't tease me.</b></p> <p>7 MS. JELENCHICK: Okay. We'll take five.</p> <p>8 (At 3:12 p.m., recessed;</p> <p>9 reconvened at 3:19 p.m.)</p> <p>10 MS. CANTOR: Ready to start again?</p> <p>11 <b>THE WITNESS: Yes.</b></p> <p>12 MS. JELENCHICK: Mm-hmm.</p> <p>13 BY MS. CANTOR:</p> <p>14 Q. All right. Mr. Weber, I would like to go to paragraph 57</p> <p>15 of your declaration, please. It's on page 22.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. You state in your view that Samsara Fitness, Technogym,</p> <p>18 Greenjog, Speedfit, Assault -- I have no idea -- In10</p> <p>19 something.</p> <p>20 <b>A. Intensity. In10ct.</b></p> <p>21 Q. Really? All right. Let me state that one again. Okay.</p> <p>22 You say that in your view Samsara Fitness, Technogym,</p> <p>23 Greenjog, Speedfit, Assault, In10ct -- and that's</p> <p>24 I-N-1-0-C-T -- Xebex, and NOHrD --</p> <p>25 Is that right?</p>
<p style="text-align: right;">Page 67</p> <p>1 <b>THE WITNESS: I think that safety is</b></p> <p>2 <b>something that is an expectation by every consumer, and</b></p> <p>3 <b>subsequently anything that is commercially sold has to</b></p> <p>4 <b>have safety considerations built into it, and these</b></p> <p>5 <b>people wouldn't be talking about this product if it</b></p> <p>6 <b>didn't have that because it wouldn't be available.</b></p> <p>7 BY MS. CANTOR:</p> <p>8 Q. Are you aware of any articles that discuss the specific</p> <p>9 way in which the Woodway Curve treadmill prevents the belt</p> <p>10 from moving forward when you get off?</p> <p>11 MS. JELENCHICK: Objection. Form.</p> <p>12 <b>THE WITNESS: I'm not aware of any</b></p> <p>13 <b>specific articles, nor do I think we would talk about</b></p> <p>14 <b>those types of features. In the end, the customers are</b></p> <p>15 <b>concerned that it works and it works well. They don't</b></p> <p>16 <b>necessarily worry about how those details work. I don't</b></p> <p>17 <b>know how the engine on my car works. I just know it</b></p> <p>18 <b>works.</b></p> <p>19 MS. CANTOR: I'm about to move to another</p> <p>20 topic. I don't know if you want to take a short break or</p> <p>21 you want to keep going.</p> <p>22 MS. JELENCHICK: We can take a break.</p> <p>23 MS. CANTOR: You want to take another five</p> <p>24 minutes? I really only have one thing to go, which I</p> <p>25 hope won't take that long.</p>	<p style="text-align: right;">Page 69</p> <p>1 <b>A. Yep.</b></p> <p>2 Q. N-O-H-R-D, Cascade, and Tru Grit, along with other no-name</p> <p>3 Chinese companies, each copied every aspect of the Woodway</p> <p>4 Curve line of treadmills. Do you see that?</p> <p>5 <b>A. I do.</b></p> <p>6 Q. Okay. And you state that they look nearly identical to</p> <p>7 certain drawings of the '580 patent, '884 patent, '745</p> <p>8 patent, and '005 patent, and operate as claimed therein.</p> <p>9 You see that?</p> <p>10 <b>A. I do.</b></p> <p>11 Q. All right. Why does it matter that these third-party</p> <p>12 treadmills look nearly identical to certain drawings of</p> <p>13 the Woodway patents?</p> <p>14 MS. JELENCHICK: Objection. Form.</p> <p>15 <b>THE WITNESS: I think if they operate</b></p> <p>16 <b>using some of our intellectual property, it makes them</b></p> <p>17 <b>infringing. And from my experience on them, they do.</b></p> <p>18 BY MS. CANTOR:</p> <p>19 Q. How do you determine whether a product infringes a patent?</p> <p>20 MS. JELENCHICK: Objection. Form. Scope.</p> <p>21 And I'm going to caution the witness not to reveal the</p> <p>22 content of attorney-client communications.</p> <p>23 <b>THE WITNESS: I don't -- I'm not an</b></p> <p>24 <b>engineer. I don't understand the technical details. I</b></p> <p>25 <b>have been on treadmills. And if they -- if the belt does</b></p>

<p>Page 70</p> <p>1 not move in the opposite direction, I have to make the</p> <p>2 belief -- I have the belief that it is likely infringing,</p> <p>3 but I am not an engineer, and I'm not aware of that part.</p> <p>4 BY MS. CANTOR:</p> <p>5 Q. Can you please read paragraph 60 of your declaration to</p> <p>6 yourself and let me know when you're done.</p> <p>7 A. I read paragraph 60.</p> <p>8 Q. Who is Dr. Kim Blair?</p> <p>9 A. He is a technical expert that we have contracted with.</p> <p>10 Q. Have you ever discussed this case with Dr. Blair?</p> <p>11 MS. JELENCHICK: That's a yes-or-no</p> <p>12 question.</p> <p>13 BY MS. CANTOR:</p> <p>14 Q. You can answer that yes or no if there have been attorneys</p> <p>15 present.</p> <p>16 A. No.</p> <p>17 Q. Has Woodway sued Technogym for patent infringement?</p> <p>18 MS. JELENCHICK: Objection. Form. Scope.</p> <p>19 THE WITNESS: I'm not aware.</p> <p>20 BY MS. CANTOR:</p> <p>21 Q. Has any court ever held that the Technogym treadmill</p> <p>22 infringes the Woodway patents?</p> <p>23 MS. JELENCHICK: Objection. Form. Scope.</p> <p>24 THE WITNESS: I'm not aware.</p> <p>25 BY MS. CANTOR:</p>	<p>Page 71</p> <p>1 Q. Does the Technogym treadmill contain a one-way bearing?</p> <p>2 MS. JELENCHICK: Objection. Form.</p> <p>3 THE WITNESS: Again, I'm not aware.</p> <p>4 BY MS. CANTOR:</p> <p>5 Q. Does the Technogym treadmill contain a safety device with</p> <p>6 a first and second rotatable element?</p> <p>7 MS. JELENCHICK: Objection. Form.</p> <p>8 THE WITNESS: I'm not aware. I'm not an</p> <p>9 engineer.</p> <p>10 BY MS. CANTOR:</p> <p>11 Q. Does the Technogym treadmill contain a first safety race</p> <p>12 element and a second safety race element?</p> <p>13 MS. JELENCHICK: Objection. Form.</p> <p>14 THE WITNESS: I'm not aware. I'm not an</p> <p>15 engineer.</p> <p>16 BY MS. CANTOR:</p> <p>17 Q. You understand that these are all requirements of the</p> <p>18 Woodway patents?</p> <p>19 A. I understand.</p> <p>20 Q. And the last sentence, you state, "As I understand it, the</p> <p>21 Technogym is not considered a non-infringing alternative."</p> <p>22 Do you see that?</p> <p>23 A. I do see that.</p> <p>24 Q. What do you mean by "non-infringing alternative"?</p> <p>25 A. We have been -- again, the belt does not move in the</p>	<p>Page 72</p> <p>1 opposite direction, and I believe it to be infringing.</p> <p>2 Q. But you do not have knowledge about whether it meets the</p> <p>3 claim limitations we just went through; correct?</p> <p>4 MS. JELENCHICK: Objection. Form.</p> <p>5 THE WITNESS: I am not involved in those</p> <p>6 details.</p> <p>7 BY MS. CANTOR:</p> <p>8 Q. But this is your declaration, sir; correct?</p> <p>9 A. I understand that. I don't understand the technical</p> <p>10 terminology of how their unit is constructed. I</p> <p>11 understand from my team their interpretation.</p> <p>12 Q. Let's move to paragraph 61. That's about the Speedfit</p> <p>13 treadmill; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And Speedfit also calls its treadmill Speedfit; correct?</p> <p>16 A. That is correct.</p> <p>17 Q. And that is Mr. Astilean's company?</p> <p>18 A. That is correct.</p> <p>19 Q. And Woodway has been involved in litigation with</p> <p>20 Mr. Astilean; correct?</p> <p>21 A. We have.</p> <p>22 Q. Are you aware that Mr. Astilean, that his Speedboard</p> <p>23 treadmill predates the Woodway Curve treadmill?</p> <p>24 MS. JELENCHICK: Objection. Form. Scope.</p> <p>25 THE WITNESS: I believe that Mr. Astilean</p>	<p>Page 73</p> <p>1 has made a number of assertions, but the court has not</p> <p>2 agreed with him.</p> <p>3 BY MS. CANTOR:</p> <p>4 Q. Do you know whether the Speedfit treadmill has a one-way</p> <p>5 bearing?</p> <p>6 MS. JELENCHICK: Objection. Form.</p> <p>7 THE WITNESS: I'm especially not aware.</p> <p>8 As I said in there, I would rely on the engineering</p> <p>9 manager at the time, Nick Oblamski's, assertion.</p> <p>10 BY MS. CANTOR:</p> <p>11 Q. So if we go back --</p> <p>12 And we read a number of different third-</p> <p>13 party treadmills in paragraph 57. Do you recall that?</p> <p>14 A. I do.</p> <p>15 Q. Is it fair to say that you don't know specifically how any</p> <p>16 of those treadmills work technically?</p> <p>17 MS. JELENCHICK: Objection. Form.</p> <p>18 THE WITNESS: I believe I know how they</p> <p>19 work. I've been on many of them, if not all of the ones</p> <p>20 on that list, and I know how they operate. What they do</p> <p>21 inside of the unit, I can't answer.</p> <p>22 BY MS. CANTOR:</p> <p>23 Q. Have you taken any of them apart?</p> <p>24 A. I have not.</p> <p>25 Q. So you don't know, for example, whether any of them have a</p>
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1 one-way bearing; correct?

2 MS. JELENCHICK: Objection. Form.

3 **THE WITNESS: I don't know whether they do**

4 **or they don't.**

5 BY MS. CANTOR:

6 Q. And you don't --

7 **A. I do know that they prevent the surface from rotating.**

8 Q. Do you understand that the Woodway patents claim a

9 specific way of preventing the belt from moving forward?

10 MS. JELENCHICK: Objection. Form.

11 **THE WITNESS: I believe that they have a**

12 **range of what they talk about related to that.**

13 BY MS. CANTOR:

14 Q. Is it your opinion that the Woodway patents cover all ways

15 of preventing the belt from moving forward?

16 MS. JELENCHICK: Objection. Form.

17 **THE WITNESS: I don't know what "all ways"**

18 **means. I believe that our experience so far has been the**

19 **methods that have been used do infringe.**

20 BY MS. CANTOR:

21 Q. All right. Going back to Speedfit. You don't know

22 whether it has a safety device with a first and second

23 rotatable element; correct?

24 MS. JELENCHICK: Objection. Form.

25 **THE WITNESS: I'm not aware.**

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1 BY MS. CANTOR:

2 Q. And with respect to the Speedfit treadmill, you don't know

3 whether it contains a first safety race element and a

4 second race element; correct?

5 MS. JELENCHICK: Objection. Form.

6 **THE WITNESS: Again, I am not aware. As**

7 **stated in paragraph 62, we attempted to secure one to**

8 **verify and were unable to do so.**

9 BY MS. CANTOR:

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 MS. JELENCHICK: Objection. Form. I'll

18 caution the witness not to reveal the contents of any

19 attorney-client communications.

20 **THE WITNESS: I'm not aware.**

21 BY MS. CANTOR:

22 Q. Okay. Do you believe the Greenjog unit infringes the

23 Woodway patents?

24 MS. JELENCHICK: Objection. Form.

25 **THE WITNESS: I believe that they were**

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1 **concerned it did, and they removed it. So we were unable**

2 **to verify, but the fact that they agreed that it would**

3 **not be sold in the U.S. makes me believe that, yes, they**

4 **did infringe.**

5 BY MS. CANTOR:

6 Q. Do you think that companies who receive a cease and desist

7 letter sometimes comply with the demand simply to avoid

8 litigation?

9 MS. JELENCHICK: Objection. Form. Scope.

10 **THE WITNESS: I don't know the answer to**

11 **that.**

12 BY MS. CANTOR:

13 Q. Well, you're making the assumption, though, that this --

14 the Gym Store decided to stop importing the Greenjog unit

15 because it was infringing; correct?

16 **A. That is true.**

17 Q. Have you considered any other reasons that the Gym Store

18 might have made that decision?

19 **A. I don't believe so. I believe we talked to them, and that**

20 **was their reasoning.**

21 Q. Who spoke with them?

22 **A. That was a long time ago. I don't know who we spoke to.**

23 Q. Has any court ever held that the Speedfit treadmill

24 infringes any Woodway patent?

25 MS. JELENCHICK: Objection. Form. Scope.

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1 **THE WITNESS: I'm not aware.**

2 BY MS. CANTOR:

3 Q. Has any court ever held that the Greenjog unit infringes

4 any Woodway patent?

5 MS. JELENCHICK: Objection. Form.

6 **THE WITNESS: I'm not aware.**

7 BY MS. CANTOR:

8 Q. Does the Greenjog unit have a one-way bearing?

9 MS. JELENCHICK: Objection. Form.

10 **THE WITNESS: Again, I'm not aware.**

11 BY MS. CANTOR:

12 Q. Does the Greenjog unit contain a safety device with a

13 first and second rotatable element?

14 MS. JELENCHICK: Objection. Form.

15 **THE WITNESS: I'm not aware.**

16 BY MS. CANTOR:

17 Q. Does the Greenjog device contain a first safety race

18 element and a second safety race element?

19 MS. JELENCHICK: Objection. Form.

20 **THE WITNESS: I'm not aware.**

21 BY MS. CANTOR:

22 Q. In paragraph 64 of your declaration, you discussed

23 Assault; correct?

24 **A. Yes.**

25 Q. And you understand that is my client's product; correct?

<p>Page 78</p> <p>1 <b>A. I do.</b></p> <p>2 Q. Are you aware that Assault has denied infringement?</p> <p>3 <b>A. I believe -- yes, I've heard that.</b></p> <p>4 Q. Are you aware that the court has not yet decided whether</p> <p>5 any of my client's products infringe any of the asserted</p> <p>6 Woodway patents?</p> <p>7 <b>A. I am aware that we are in that process.</b></p> <p>8 Q. Does the Assault AirRunner contain a one-way bearing?</p> <p>9 MS. JELENCHICK: Objection. Form.</p> <p>10 <b>THE WITNESS: I'm --</b></p> <p>11 MS. JELENCHICK: Scope.</p> <p>12 <b>THE WITNESS: I'm not aware of the</b></p> <p>13 <b>specifics of that aspect. I'm not an engineer.</b></p> <p>14 BY MS. CANTOR:</p> <p>15 Q. Does the Assault AirRunner contain a safety device with a</p> <p>16 first and second rotatable element?</p> <p>17 MS. JELENCHICK: Objection. Form. Scope.</p> <p>18 <b>THE WITNESS: Again, I'm not an engineer.</b></p> <p>19 <b>I don't know those details.</b></p> <p>20 BY MS. CANTOR:</p> <p>21 Q. All right. And does the Assault AirRunner contain a first</p> <p>22 safety race element and a second safety race element?</p> <p>23 MS. JELENCHICK: Objection. Form. Scope.</p> <p>24 <b>THE WITNESS: I'm not an engineer. I'm</b></p> <p>25 <b>not aware.</b></p>	<p>Page 80</p> <p>1 Woodway Curve treadmills?</p> <p>2 MS. JELENCHICK: Objection. Form.</p> <p>3 <b>THE WITNESS: I have tested a number of</b></p> <p>4 <b>these treadmills over the -- tried them at trade shows.</b></p> <p>5 BY MS. CANTOR:</p> <p>6 Q. By "testing," you mean trying them at trade shows?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Do you know whether any of these treadmills have a one-way</p> <p>9 bearing?</p> <p>10 MS. JELENCHICK: Objection. Form.</p> <p>11 <b>THE WITNESS: I'm not aware of the exact</b></p> <p>12 <b>method. That's something that the engineers would have</b></p> <p>13 <b>to determine. Not me.</b></p> <p>14 BY MS. CANTOR:</p> <p>15 Q. Do you know whether any of these treadmills have a safety</p> <p>16 device with a -- with a first and second rotatable</p> <p>17 element?</p> <p>18 MS. JELENCHICK: Objection. Form.</p> <p>19 <b>THE WITNESS: I would have to have that</b></p> <p>20 <b>referred to our engineers, not to me.</b></p> <p>21 BY MS. CANTOR:</p> <p>22 Q. And do you know whether any of these treadmills have a</p> <p>23 first safety race element and a second safety race</p> <p>24 element?</p> <p>25 MS. JELENCHICK: Objection. Form.</p>
<p>Page 79</p> <p>1 BY MS. CANTOR:</p> <p>2 Q. All right. In paragraph 56, you talk about another --</p> <p>3 strike that.</p> <p>4 In paragraph 66 of your declaration, you</p> <p>5 talk about a number of other third-party units, including</p> <p>6 In10ct, Health Runner, Xebex Runner, the NOHRD Sprintbok,</p> <p>7 the Cascade Ultra Runner Plus, the True Grit Runner, and</p> <p>8 other knockoffs -- no-name Chinese knockoffs. See that?</p> <p>9 <b>A. I do.</b></p> <p>10 Q. What is your basis for saying that these units infringe</p> <p>11 the Woodway patents? Actually, wait. Strike that. You</p> <p>12 believe these units infringe the Woodway patents.</p> <p>13 MS. JELENCHICK: Objection. Form.</p> <p>14 <b>THE WITNESS: I believe they have the</b></p> <p>15 <b>appearance that they do.</b></p> <p>16 BY MS. CANTOR:</p> <p>17 Q. Have you investigated any of these treadmills beyond</p> <p>18 appearance?</p> <p>19 MS. JELENCHICK: Objection. Form. I'm</p> <p>20 going to instruct the witness not to answer based on</p> <p>21 privilege of Woodway products.</p> <p>22 <b>THE WITNESS: I'm not going to answer.</b></p> <p>23 BY MS. CANTOR:</p> <p>24 Q. Can you tell me anything about your basis for saying that</p> <p>25 these products are copies of the Woodway patent -- of the</p>	<p>Page 81</p> <p>1 <b>THE WITNESS: I'm not an engineer. That's</b></p> <p>2 <b>not part of my --</b></p> <p>3 BY MS. CANTOR:</p> <p>4 Q. Is it fair to say that each of these treadmills have a</p> <p>5 curved surface and a belt that does not move forward?</p> <p>6 MS. JELENCHICK: Objection. Form.</p> <p>7 <b>THE WITNESS: I believe they all do have a</b></p> <p>8 <b>curved surface, and to the best of my knowledge they all</b></p> <p>9 <b>have some way to limit that movement.</b></p> <p>10 BY MS. CANTOR:</p> <p>11 Q. Some way to limit the belt from moving forward?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. Have you personally gotten on each of these treadmills?</p> <p>14 MS. JELENCHICK: Objection. Form.</p> <p>15 <b>THE WITNESS: I believe I have over the</b></p> <p>16 <b>years gotten on each of these treadmills.</b></p> <p>17 BY MS. CANTOR:</p> <p>18 Q. And is the fact that, for example, the In10ct has a curved</p> <p>19 surface and a belt that does not move forward when you get</p> <p>20 on being your basis for saying it's a copy?</p> <p>21 MS. JELENCHICK: Objection. Form.</p> <p>22 <b>THE WITNESS: I think there are a number</b></p> <p>23 <b>of factors that make us feel like it's a copy, but this</b></p> <p>24 <b>is one factor of that.</b></p> <p>25 BY MS. JELENCHICK:</p>

<p>Page 82</p> <p>1 Q. What are the other factors?</p> <p>2 <b>A. The use of the bearing rail and other components to create</b></p> <p>3 <b>that experience.</b></p> <p>4 Q. What other components?</p> <p>5 <b>A. The frame, handrails, slats.</b></p> <p>6 Q. Anything else?</p> <p>7 <b>A. I can't think of anything off the top of my head.</b></p> <p>8 Q. Other than Samsara, has any court found any treadmill to</p> <p>9 infringe a Woodway patent to your knowledge?</p> <p>10 MS. JELENCHICK: Objection. Form. Scope.</p> <p>11 <b>THE WITNESS: I'm not aware.</b></p> <p>12 MS. CANTOR: I don't have anything else.</p> <p>13 Pass the witness.</p> <p>14 MS. JELENCHICK: I just have a couple of</p> <p>15 questions.</p> <p>16 EXAMINATION</p> <p>17 BY MS. JELENCHICK:</p> <p>18 Q. Mr. Weber, you recall some questions this afternoon that</p> <p>19 were directed to the particular configuration of various</p> <p>20 third-party curved, manual treadmills; right?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. In offering opinions regarding your impressions of those</p> <p>23 third-party treadmills, were you relying on the technical</p> <p>24 expertise of Dr. Blair?</p> <p>25 <b>A. I did rely on Dr. Blair.</b></p>	<p>Page 84</p> <p>1 treadmill?</p> <p>2 <b>A. I don't believe in detail. Again, I'm not an engineer,</b></p> <p>3 <b>and in the end that's not my priority.</b></p> <p>4 MS. CANTOR: I have no further questions.</p> <p>5 MS. JELENCHICK: We're going to designate</p> <p>6 the transcript confidential under the protective order.</p> <p>7 We can go through and specifically identify those</p> <p>8 portions that are, indeed, confidential because a lot of</p> <p>9 what we talked about today is not, but we reserve the</p> <p>10 right to do that.</p> <p>11 MS. CANTOR: Of course.</p> <p>12 (At 3:45 p.m., the deposition of</p> <p>13 Eric A. Weber was concluded.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 83</p> <p>1 Q. Were you also relying on the technical expertise of the</p> <p>2 engineering department at Woodway, who also evaluated</p> <p>3 certain of these third-party treadmills?</p> <p>4 <b>A. Yes.</b></p> <p>5 MS. JELENCHICK: Pass the witness.</p> <p>6 MS. CANTOR: Just a couple follow-up.</p> <p>7 RE-EXAMINATION</p> <p>8 BY MS. CANTOR:</p> <p>9 Q. Who on the Woodway engineering team did you speak with?</p> <p>10 <b>A. At what point?</b></p> <p>11 MS. JELENCHICK: Objection. Form.</p> <p>12 <b>THE WITNESS: At what point?</b></p> <p>13 BY MS. CANTOR:</p> <p>14 Q. Do you recall that Ms. Jelenchick just asked you about</p> <p>15 relying on Woodway's engineering department for your</p> <p>16 opinions regarding copying?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Who in the Woodway engineering department in particular</p> <p>19 did you rely on?</p> <p>20 <b>A. Dan Simmons; Nick Oblamski at the time, who is no longer</b></p> <p>21 <b>with Woodway, but he was at that period; Scott Herring.</b></p> <p>22 <b>I'm sure there were others on their teams that were also</b></p> <p>23 <b>in those conversations, but those were the lead people.</b></p> <p>24 Q. Did they explain to you why they believed these third-</p> <p>25 party treadmills were copies of the Woodway Curve</p>	<p>Page 85</p> <p>CERTIFICATE OF REPORTER</p> <p>1</p> <p>2</p> <p>3</p> <p>4 I certify that this transcript, consisting</p> <p>5 of 84 pages, is a complete and accurate record of the</p> <p>6 testimony of ERIC A. WEBER held in this case on Tuesday,</p> <p>7 March 19, 2024.</p> <p>8 I also certify that prior to taking this</p> <p>9 deposition, ERIC A. WEBER was duly sworn to tell the</p> <p>10 truth.</p> <p>11 WITNESS my hand this the twenty-seventh</p> <p>12 day of March, 2024.</p> <p>13</p> <p>14 <i>Melinda Dexter</i></p> <p>15 Melinda I. Dexter, CRR, RMR, CSR-4629</p> <p>16 Notary Public, State of Michigan,</p> <p>17 County of Ingham</p> <p>18 Acting in the County of Ingham</p> <p>19 My commission expires 10-15-2029</p> <p>20 officialcourtreporting@gmail.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>