

1 The Honorable John C. Coughenour

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8 UNITED STATES DISTRICT COURT

9 FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 IN RE VALVE ANTITRUST LITIGATION

Case No. 2:21-cv-00563-JCC

11 **STIPULATED MOTION CONCERNING**

12 **DEPOSITIONS**

13 **NOTE ON MOTION CALENDAR:**

14 **AUGUST 2, 2023**

15

16 Plaintiffs Wolfire Games LLC, Dark Catt Studios Holdings Inc., and Dark Catt Studios

17 Interactive LLC (collectively “Plaintiffs”), and Defendant Valve Corporation (“Valve” or

18 “Defendant,” and together with Plaintiffs, “Parties”), by and through their undersigned counsel of

19 record, hereby stipulate and agree to the following Stipulated Motion Concerning Depositions

20 (“Deposition Protocol Order”). The Deposition Protocol Order may be modified at any time by

21 agreement of the parties or by order of the Court. All parties reserve all rights to seek relief from

22 the Court from any provision for good cause.

23 **I. DEPOSITION PROCEDURES AND LIMITS**

24 1. A witness may be deposed only once in his or her individual capacity in these

25 proceedings unless the Parties otherwise agree or the Court otherwise orders. This limitation will

26 not affect the rights of a Party to seek to depose as a fact witness an individual who has been

identified as a corporate representative of a party designated under Rule 30(b)(6), or of other

1 parties to object to such depositions. As set forth below a witness who is being deposed as a fact  
 2 witness and as a corporate representative in a Rule 30(b)(6) deposition will be deposed in a single  
 3 block on one day (or over consecutive days if (i) the witness so requests, or (ii) if the time on the  
 4 record would exceed eight (8) hours—see paragraph 6).

5         2. Where a deponent is represented by counsel (individual or firm) who does not  
 6 already represent a Party to the above-referenced litigation (e.g., a third party or an employee of a  
 7 Defendant with separate counsel), the noticing party shall provide a copy of this Deposition  
 8 Protocol Order and the Stipulated Protective Order (Dkt. # 95) to the deponent’s counsel along  
 9 with the deposition subpoena or notice.

10         3. Plaintiffs and Defendant may each notice up to **twenty-five (25) depositions** per  
 11 side<sup>1</sup> under Fed. R. Civ. P. 30(b)(1), up to twenty (20) of which may be Party depositions. The  
 12 remaining depositions may be third-party depositions, whether of third-party fact witnesses or Rule  
 13 30(b)(6) depositions of third parties. For purposes of this stipulation, the deposition of a former  
 14 employee of a Party counts as a Party deposition, even if the former employee must be served via  
 15 subpoena. As discussed below, Parties may cross-notice third-party depositions, but doing so  
 16 counts against their deposition limits. The following are not subject to the deposition limits in this  
 17 paragraph: (1) depositions of third parties solely to authenticate or qualify documents for  
 18 admission into evidence, and (2) depositions to perpetuate the testimony of a witness expected to  
 19 be unavailable at the time of trial within the meaning of Fed. R. Civ. P. 32(a)(4), if that  
 20 unavailability arises after the close of fact discovery.

21         4. Plaintiffs and Defendant may also serve 30(b)(6) deposition notices on the Parties.  
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24 <sup>1</sup> For the avoidance of doubt, Plaintiffs are collectively one “side” of the case and Defendant is  
 25 the other “side.” Accordingly, Plaintiffs may collectively take up to 25 depositions, including up  
 26 to 20 depositions of Defendant; Defendant may take 25 depositions, including up to 20  
 depositions of Plaintiffs, collectively.

1 Such notices may include no more than eighteen (18) discrete topics per side<sup>2</sup>, which must be  
2 sufficiently specific to provide reasonable notice of the scope and subject matter of the topic and  
3 may not be overly broad to circumvent these limits. Time for 30(b)(6) depositions of the Parties,  
4 however, is limited to eighteen (18) hours on the record per side.

5 5. A Party may designate a party witness (current or former employee) who has been  
6 noticed for a 30(b)(1) fact deposition to be a witness as to served 30(b)(6) topics. Any time spent  
7 on 30(b)(6) topics with that witness will not count as part of the seven (7) hour on-the-record time  
8 for the witness's 30(b)(1) fact deposition, but will count against the noticing Party's upper limit of  
9 eighteen (18) hours on the record for 30(b)(6) deposition time. The noticing party shall take fact  
10 testimony under 30(b)(1) and corporate representative testimony under 30(b)(6) in separate  
11 consecutive sessions to clarify the capacity in which testimony is given, with a separate transcript  
12 prepared for each session indicating the capacity in which the testimony is given.

13 6. A Party seeking a Rule 30(b)(6) deposition must serve a Rule 30(b)(6) notice at  
14 least twenty (20) business days before the 30(b)(6) deposition is scheduled. The Party receiving a  
15 Rule 30(b)(6) deposition notice from another Party shall identify the name(s) of the witness(es)  
16 designated to testify on each listed topic no later than ten (10) business days before the deposition.  
17 If a Party designates a given witness for 30(b)(6) topics, the noticing or requesting party will  
18 respond with an estimate of how much on-the-record time will be needed to pursue those 30(b)(6)  
19 topics and whether the noticing party also intends to take a 30(b)(1) deposition of the designated  
20 witness. If the sum of the forecasted 30(b)(1) and 30(b)(6) deposition time (in separate sessions,  
21 as described above) exceeds eight (8) hours, unless otherwise agreed between the Parties, the  
22 Parties will cooperate on scheduling multiple consecutive days of deposition for the witness.

23 7. As to 30(b)(6) topics not designated for any 30(b)(1) witnesses, the parties will  
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25 <sup>2</sup> For the avoidance of doubt, Plaintiffs may collectively serve no more than eighteen (18)  
26 discrete 30(b)(6) topics on Defendant; Defendant may serve no more than eighteen (18) discrete  
30(b)(6) topics on Plaintiffs, collectively.

1 confer in good faith regarding a logical grouping of topics and scheduling of deposition days so  
2 that 30(b)(6) depositions proceed in a logical and efficient manner.

3 **II. ALLOCATION OF DEPOSITION TIME**

4 8. Depositions of 30(b)(1) witnesses noticed by any Party will generally be limited to  
5 seven (7) hours of direct examination consistent with Fed. R. Civ. P. 30(d)(1) (except as set forth  
6 herein). This stipulation does not inhibit a party's ability to request additional direct examination  
7 time for good cause, or move for court relief in the event of a dispute regarding the propriety of  
8 additional direct examination time.

9 9. For a Rule 30(b)(6) designee, the time spent in deposition as such shall not be  
10 counted toward the time limit for a separate deposition of that witness as a 30(b)(1) witness.

11 10. If the witness does not speak English as a native language, the Party representing  
12 the witness will provide notice of that fact to the noticing Party within five (5) business days of  
13 the noticing party requesting a date for the deposition or noticing the deposition. In such a  
14 situation, the Parties shall promptly meet and confer in good faith to determine whether a translator  
15 is necessary and, if so, to identify a suitable translator. All costs for a certified translator to appear  
16 at and translate the deposition (professional fees, travel expenses, lodging, etc.) shall be borne  
17 entirely by the Party who noticed the depositions. If such a translator is required, the time limit  
18 for the deposition shall be extended to twice the amount of testimonial time otherwise provided by  
19 applicable court rules and this order (e.g., a seven (7) hour deposition may take up to fourteen (14)  
20 hours). However, no more than seven (7) hours of deposition time shall occur in a single day for  
21 such a witness and any deposition time over seven (7) hours must occur on the next business day,  
22 unless otherwise agreed.

23 11. If any technical issues are encountered during depositions, the parties will go off  
24 the record, and such time will not count against the time limit on depositions.

25 12. Noticing counsel will have a reasonable amount of time, not to exceed the shorter  
26 of the amount of time spent by defending counsel questioning the witness or thirty (30) minutes  
(one (1) hour if the deposition is translated), to conduct any redirect examination of the witness

1 limited to the scope of defending counsel's examination, which shall not count towards the seven  
2 (7) hour limit for the noticing party's direct examination.

3 13. In the event a Party cross-notices the deposition of a current or former employee of  
4 that Party, the time permitted by the Federal Rules of Civil Procedure shall be extended to eleven  
5 (11) hours (or from fourteen (14) to eighteen (18) hours for a translated deposition), with the  
6 noticing Party entitled to examine the witness for seven (7) hours and the cross-noticing Party  
7 entitled to examine the witness for at least four (4) hours, with the potential for additional time,  
8 provided advanced notice is given. To the extent that a Party reasonably believes that more than  
9 one (1) of the permitted four (4) hours (or any additional hours beyond four (4)) will be required  
10 to examine the witness, the parties shall meet and confer in good faith sufficiently in advance of  
11 the deposition to allow any dispute to be brought to the Court for resolution. Such cross-notices  
12 will count against the twenty-five (25) deposition limit for the side of the Party serving the cross-  
13 notice.

14 14. To the extent Plaintiffs or Defendant cross-notice a third party for deposition, the  
15 Parties shall each have 3.5 hours of on-the-record time at the third-party deposition (seven (7)  
16 hours for a translated deposition). If no cross-notice occurs, the non-noticing side (Plaintiffs or  
17 Defendant) will have up to two (2) hours of on-the-record time, leaving at least five (5) hours of  
18 on-the-record time to the noticing Party (again, the time periods are doubled if the deposition is  
19 translated).

### 20 **III. SCHEDULING AND LOCATION OF DEPOSITIONS**

21 15. Counsel will consult with one another to coordinate, to the extent practicable, all  
22 scheduling, noticing, and taking of depositions. Counsel shall not unilaterally take steps to  
23 schedule and notice a Party deposition without consulting in advance with counsel for the witness  
24 or the Party that is the current or former employer of the witness.

25 16. A Party may serve a deposition subpoena on a third party without consulting any  
26 opposing party; however, the serving party will contemporaneously provide the opposing parties  
with the as-served copy of the subpoena and will coordinate with the other Parties (as well as the

1 witness or witness' counsel) in selecting and finalizing the date for the deposition. Service will  
2 occur at least fourteen (14) business days before the third party deposition takes place absent  
3 agreement of the Parties.

4 17. For third-party depositions, an opposing Party will inform the noticing party within  
5 seven (7) business days of service on the opposing party whether the opposing party intends to  
6 cross-notice the third party's deposition. Regardless of whether an opposing Party cross-notices  
7 the deposition, the Parties shall coordinate with each other and with the witness (or counsel for the  
8 witness), to the extent possible, on scheduling the deposition.

9 18. Plaintiffs or Defendants seeking to schedule the deposition of a third party shall  
10 schedule such a deposition only on a date the Plaintiffs or Defendants, respectively, have not  
11 already scheduled a deposition. The noticing Party shall serve a copy of this order along with the  
12 subpoena to any third party.

13 19. Party depositions shall be noticed pursuant to the Federal Rules of Civil Procedure  
14 and this order, and all notices shall be served on all Parties electronically. Any subpoenas for  
15 deposition testimony shall be served on witnesses as required by law and this order, but copies  
16 may be served electronically on all Parties.

#### 17 **IV. DEPOSITION PROCEDURES**

18 20. **Noticing Depositions:** A Party can notice a deposition to be taken via remote  
19 means or in person, at its election. At the time of the issuance of the notice of deposition or  
20 subpoena, the noticing Party will indicate whether they intend for the deposition to proceed in  
21 person or via remote means. Depositions conducted in whole or part via a remote means consistent  
22 with this order shall be as admissible and useable in this litigation to the same extent that would  
23 otherwise be permissible under the Federal Rules of Civil Procedure, the Federal Rules of  
24 Evidence, and other applicable rules or procedures. If a witness has health or safety concerns with  
25 an in-person deposition, the parties shall meet and confer in good faith regarding whether the  
26 deposition may proceed remotely and the safety protocols to be used if it proceeds in person.

21. Defending counsel may appear in person with their witness, at the witness's

1 election, regardless of whether the deposition is conducted in person or remotely, and regardless  
2 of whether questioning counsel appears in person or remotely. If Defending counsel will appear  
3 in person for a deposition to be conducted remotely, she will provide notice of that at least seven  
4 (7) days in advance of the deposition. The noticing party can then switch the deposition to in  
5 person within three (3) days at the noticing party's option.

6 22. If a deposition was previously agreed to be an in-person deposition, the party  
7 noticing the deposition, witness, or opposing counsel may request the deposition be changed to a  
8 remote deposition. Such a request to change the format for the deposition should be provided as  
9 soon as reasonably practicable, but no later than seven (7) days in advance of the deposition. The  
10 Parties will work cooperatively and timely to arrange for the necessary logistics required for the  
11 change in format of the deposition.

12 23. **Objections to Rule 30(b)(6) Topics.** The recipient of a Rule 30(b)(6) deposition  
13 notice who objects to one or more of the listed topics shall serve written objections within fourteen  
14 (14) calendar days of service of the 30(b)(6) deposition notice containing the topic(s) objected to.  
15 The noticing party and the objecting party shall meet and confer regarding the objections within  
16 ten (10) calendar days of service of written objections. If they are unable to resolve the objections,  
17 the Parties shall use the expedited joint motion procedure in LR 37 to submit the objections to the  
18 Court for resolution, with the objecting party as the moving party on that motion. The 30(b)(6)  
19 deposition shall be scheduled on objected-to topics only after those objections are resolved by  
20 agreement of the parties or Court order.

21 24. **Real Time Text and Video Feeds.** For depositions proceeding remotely, counsel  
22 for the witness will ensure that the witness has access to a computer with a camera and microphone  
23 capable of utilizing the videoconference platform. If the witness already has the necessary  
24 technology, they shall utilize those resources. If the witness does not have the necessary  
25 technology, the cost of providing access to the technology shall be borne by the noticing party if  
26 the deposition takes place at the witness' home or at the office of a court reporting service (or other  
such location), but the cost shall be borne by the witness's counsel if the witness is deposed in

1 their counsel's office. The court reporting service will make available a real-time text feed to  
2 participants upon request. Any party requesting the additional real time text feed or equivalent  
3 electronic reporting shall be responsible for the cost.

4       **25. Exhibits for Remote Depositions:** For depositions proceeding remotely, any party  
5 intending to question the witness will deliver printed hard copies of exhibits that may be used to  
6 the deponent, opposing counsel, and the court reporter in advance of the deposition. Such hard  
7 copies shall be delivered by 3:00 p.m. local time the day before the deposition. The party sending  
8 hard copies shall inform the witness's counsel that hard copies are being sent, request the delivery  
9 address to be used, and provide tracking information for the package. All recipients of a package  
10 containing hard copies shall keep the package sealed until the deposition begins and shall unseal  
11 the package on the record, on video, and during the deposition when directed to do so by the  
12 counsel taking the deposition who sent the hard copies.

13       **26.** If logistical problems inhibit the delivery of hard copies, or if the questioning  
14 attorney in good faith did not know a potential exhibit would be used until shortly before or during  
15 the deposition, a party may utilize an electronic exhibit in connection with that deposition so long  
16 as the technology used for the remote deposition permits presentment of the electronic exhibit at  
17 the deposition to the witness and counsel (whether in the room or participating online) in a manner  
18 that enables them to independently and fully access and review each page of the exhibits during  
19 the course of the deposition at their discretion and on their own devices (for instance, the witness  
20 and counsel each need to be able to independently scroll through all pages of their electronic copy  
21 of a PDF or other type of document that constitutes the exhibit). In other words, counsel  
22 conducting an examination, when presenting an exhibit to a witness in the circumstances set forth  
23 in this paragraph, shall have the exhibit simultaneously made available electronically (*i.e.*,  
24 uploaded) for independent access by all others participating in the deposition.

25       **27. Hard Copy Exhibits for In-Person Depositions:** With respect to any hard copy  
26 exhibit used in an in-person deposition, deposing counsel shall at their own expense provide three  
(3) hard copies to attending counsel (in addition to any copies provided to the witness and/or court



1 reporter), unless deposing counsel knows in advance of the deposition that fewer (or more) copies  
2 will be needed for those attending. In all events, examining counsel, defending counsel, and all  
3 other counsel attending the deposition shall cooperate in good faith so that counsel for each party  
4 attending the deposition will have adequate access during the deposition to an exhibit used by  
5 examining counsel during the deposition, such as stating the Bates number for each exhibit on the  
6 record so counsel may view such documents electronically in their document review software.

7       **28. Remote Administration of the Oath:** The Parties agree that a court reporter may  
8 administer the oath to a deponent remotely, even if the court reporter is not in the physical presence  
9 of the witness. Further, if a court reporter is not authorized to take oaths in the place of examination  
10 pursuant to Fed. R. Civ. P. 28, the parties agree to the administration of such oaths remotely and  
11 that the transcripts may be used by or against all parties in this litigation to the same extent that  
12 would otherwise be permissible under the Federal Rules of Civil Procedure, the Federal Rules of  
13 Evidence, and other applicable rules or procedures.

14       **29. Videoconferencing:** For remote depositions, the videoconferencing platform must  
15 allow for the deponent, attending counsel, deposing counsel, defending counsel, court reporter,  
16 and videographer (and translator, if applicable) to participate in a deposition without attending the  
17 deposition in person. The noticing Party is responsible for ensuring that the remote means utilized  
18 for a deposition allow for the court reporter to accurately record the deponent's testimony. Should  
19 technical issues prevent the court reporter from reliably hearing or transcribing the testimony at  
20 any deposition taken remotely pursuant to this order and such technical issue cannot be remedied  
21 in a timely manner, deposing counsel, defending counsel, and attending counsel shall meet, confer,  
22 and cooperate with one another to address the problem, including but not limited to rescheduling  
23 the deposition if unable through reasonable efforts to secure a substitute court reporter. Either the  
24 noticing Party or defending counsel may elect to have a technical specialist attend a deposition  
25 taken by remote means to ensure that technical issues are dealt with in a timely manner, the costs  
26 of which will be borne solely by the party electing to do so.

30. The video conferencing for remote depositions shall be set up in such a way that

1 counsel attending the deposition remotely can see the witness and the witness's face clearly. There  
2 should be separate cameras for the witness and defending counsel in the event that defending  
3 counsel is defending the witness in person. Details regarding the video conferencing service will  
4 be made available to all parties at least five (5) business days before the deposition. The noticing  
5 Party and defending counsel shall, if necessary, meet, confer, and cooperate to ensure that the  
6 deponent has technology sufficient to attend a deposition via remote means.

7 31. In addition to recording deposition testimony by stenographic means, the noticing  
8 party may arrange for the deposition to be recorded via video by a videographer. The examining  
9 attorney, at their election, may make a video recording of their own examination of the witness in  
10 addition to a certified video recording of the witness alone made by a certified videographer.

11 **V. LEGAL STANDARDS AND CONDUCT OF DEPOSITIONS**

12 32. Regardless of location or whether the deposition is taken in-person or remotely, all  
13 depositions shall be conducted in accordance with applicable Federal Rules of Civil Procedure,  
14 Federal Rules of Evidence, the Local Rules of the United States District Court for the Western  
15 District of Washington, the Court's Order Regarding Depositions and Discovery (Dkt. #20),  
16 applicable standing orders regarding attorney conduct, ethical rules governing conduct of  
17 attorneys, rulings of courts in the United States District Court for the Western District of  
18 Washington, and this order. Counsel shall act in good faith to ensure compliance with these rules  
19 and all applicable ethical obligations and may seek appropriate relief for violations.

20 33. The parties agree that one objection by a Plaintiff or Defendant can be relied upon  
21 by all Plaintiffs or Defendants respectively.

22 34. The court-reporter service shall maintain a total running time for actual time on the  
23 record during each deposition to measure compliance with the time limitations and the time  
24 allocation provisions above.

25 **VI. DEPARTING DOCUMENT CUSTODIANS AND FORMER EMPLOYEES**

26 35. In response to a request for deposition, if the witness is a former employee of any  
Party and is not currently represented by counsel for that Party, counsel for that Party shall within

1 seven (7) business days of the deposition notice provide the date of departure and last known  
2 contact information of the former employee, whether counsel can accept service of the notice, and  
3 whether counsel will be representing that Party for the deposition.

4 36. In response to a request for deposition, if the witness is a departing designated  
5 document custodian who intends to leave his or her employment before the deposition would  
6 occur, counsel for the Party shall within five (5) business days of the deposition notice request that  
7 the deponent appear for deposition at a date, place, and time convenient for the Parties and the  
8 deponent, consistent with the local rules and this Deposition Protocol Order, without the need for  
9 service of a third-party subpoena or other formal judicial process on the deponent, and inform the  
10 noticing party of the deponent's response to such request. If a departing deponent agrees to appear  
11 without the need for service of a subpoena or other formal judicial process on the deponent, the  
12 procedures for scheduling the deposition of a current employee of a party shall apply and the  
13 deposition will be counted as a Party deposition.

#### 14 **VII. DEPOSITION TRANSCRIPTS**

15 37. The following paragraphs will apply to all depositions taken in this action (and any  
16 subsequent cases filed that are deemed by the Court to be consolidated with or related to this  
17 matter) and shall be included in each transcript by the court reporter.

18 38. Transcripts of depositions will be delivered from court reporters to counsel for the  
19 witness and all parties who have ordered a transcript. Counsel shall promptly forward it to the  
20 witness for review, correction, and signature under penalty of perjury. Within sixty (60) days of  
21 receiving the final transcript from the court reporter, the witness's counsel shall then forward the  
22 original transcript plus corrections to the court reporter, who will promptly notify all counsel of its  
23 receipt and any errata.

24 39. If the witness is not represented by counsel, the original transcript will be sent to  
25 the witness by the court reporter. After review, correction, and signature under penalty of perjury  
26 within thirty (30) days from the date of receipt of the final transcript, the witness shall return the  
original transcript to the court reporter, who will notify all counsel of its receipt and any errata

1 submitted by the witness. If the transcript is not returned, a certified copy may be used in lieu of  
2 the original for all purposes.

3 40. Any witness who submits errata must do so in accordance with Fed. R. Civ. P.  
4 30(e)(1).

5 41. The court reporter will provide the original transcript to the first examining  
6 attorney. If, for any reason, the original is lost, misplaced, not returned, not signed, or unavailable,  
7 a certified copy may be used in its place for all purposes.

8 **VIII. USE OF DEPOSITIONS**

9 42. The depositions taken by any Party pursuant to this Deposition Protocol Order may  
10 be made available and used in any subsequent cases filed that are deemed by the Court to be  
11 consolidated with this matter to the extent authorized under the Stipulated Protective Order (Dkt.  
12 # 95). Nothing in this paragraph prevents a party from objecting to the use of, or moving to exclude  
13 the use of, a deposition from any subsequently-related matter in that party's case.

14 43. The Parties agree that the transcript and/or recording of any deposition taken by  
15 any party pursuant to this Deposition Protocol Order by remote means shall be admissible in any  
16 proceeding in this matter (or any consolidated matter) to the same extent and as if the deposition  
17 were taken in-person.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED this August 2, 2023.

3 /s/ Alicia Cobb

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*Attorneys for Defendant Valve Corporation*

1 IT IS SO ORDERED.

2 DATED this 2nd day of August 2023.

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6 John C. Coughenour  
7 UNITED STATES DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2023, I caused a true and correct copy of the foregoing to be filed in this Court's CM/ECF system, which sent notification of such filing to counsel of record.

DATED August 2, 2023.

/s/ Alicia Cobb  
Alicia Cobb, WSBA #48685