PUBLIC VERSION

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

HEADWATER RESEARCH LLC,	
v.	**Case No. 2:25-cv-00961-JRG-RSP (Lead Case)**
WALMART INC.	
AMAZON.COM SERVICES LLC, *et al*	**Case No. 2:25-cv-00897-JRG-RSP (Member case)**
UBER TECHNOLOGIES, INC., *et al*	**Case No. 2:25-cv-00962-JRG-RSP (Member case)**
TARGET CORPORATION	**Case No. 2:25-cv-00963-JRG-RSP (Member Case)**

DEFENDANT TARGET CORPORATION'S
MOTION TO STAY

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I. INTRODUCTION

Target respectfully moves to stay[1] this case under the customer-suit exception. The Court is familiar with Headwater—a non-practicing entity engaged in an extensive patent-assertion campaign involving more than 70 patent infringement suits, including over a dozen cases currently pending in the Eastern District of Texas, the Western District of Texas, and the Northern District of California. In the latest iteration of its litigation campaign,[2] Headwater first sued Google, alleging that Google's Firebase Cloud Messaging ("FCM") infringes the same three patents that are at issue here. *See Headwater Research LLC v. Google LLC*, 7:25-cv-00231 (W.D. Tex.) (the "-231 Case") and *Headwater Research LLC v. Google LLC*, 7:25-cv-00367 (W.D. Tex.) (the "-367 Case") (together, the "Google Cases"). Just a few months later, Headwater launched a series of follow-on suits against a small subset of the thousands of companies and developers that use Google's FCM technology—specifically, Walmart, Amazon, Uber, and Target[3]—and asserted the ***same patents*** and the ***same infringement theories*** against the ***same Google technology***.

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[1] Target recognizes that the Court has broad discretion under Rule 21 to "add or drop a party" or to "**sever** any claim against a party" at any time on just terms. Fed. R. Civ. P. 21. Target does not seek severance in its motion but notes that should the Court find it appropriate in order to streamline proceedings or to address stay requests from other defendants in the above-captioned consolidated cases, severing claims against Target and other customer defendants is within the Court's authority.

[2] Headwater filed its original complaint against Target on September 18, 2025, alleging Target infringed its patents by virtue of its use of both Google's FCM technology ***and*** Apple's Push Notification service. *See, e.g.*, Dkt. 1-5 at 1 ("Exemplary Accused Instrumentalities: Defendant's use of a push messaging service, such as Google's Firebase Cloud Messaging or Apple Push Notification service. . ."). On November 4, 2025, Headwater filed a notice of settlement of its cases against Apple. *See* Dkt. 18. Based on that settlement, and tellingly as to what entity Headwater's infringement claims are actually targeted at, Headwater filed its FAC removing all allegations of infringement by Target via use of Apple's Push Notification service. Dkt. 20.

[3] Headwater has separately accused Tencent Holdings Limited and Supercell Oy of infringing the same Asserted Patents, but the Court has not consolidated those cases with this one. *See Headwater Research LLC v. Tencent Holdings Limited*, 2:25-cv-00965; *Headwater Research LLC v. Supercell Oy*, 2:25-cv-00964.

The complete overlap between Headwater's allegations in the Google Cases and its allegations here is no coincidence. Headwater's complaints against Google make clear that "[a] core aspect of the accused systems is Firebase Cloud Messaging ('FCM')," *e.g.*, Ex. 1 at 1, and Headwater's First Amended Complaint ("FAC") against Target confirms that Target is merely an end-user of Google's FCM technology. Neither Headwater's FAC, nor its recently-served infringement contentions, identify any Target-developed functionality as allegedly infringing—rather, they simply point to Target's use of Google's accused FCM technology.

Proceeding with this case in parallel with the Google Cases invites inconsistent rulings, duplicative discovery, and massive inefficiencies for the judicial system and parties. Because the customer-suit exception and traditional stay factors overwhelmingly favor deference to the earlier-filed Google Cases—and critically, Target agrees to be bound by their outcomes—Target respectfully requests that the Court stay this action pending final resolution of the Google Cases.

II. FACTUAL BACKGROUND

A. Headwater's Infringement Allegations Are Directed Entirely to Target's Use of Google's Firebase Cloud Messaging ("FCM") Technology

This case does not involve Target's technology. On November 4, 2025, Headwater filed its FAC against Target asserting infringement of three patents: U.S. Patent Nos. 9, 198,117, 8,615,192, and 10,321,320 (together, "the Asserted Patents") based solely on Target's alleged use of Google's FCM technology. *See* Dkt. 20. Indeed, the opening paragraph of the FAC makes clear that "the Accused Instrumentalities include Defendant's mobile applications and their ***use of push messaging technology*** and a push messaging service, ***such as [Google's] Firebase Cloud Messaging***, for push messaging in the United States. . . ." Dkt. 20 at 1; *id.* at ¶¶ 22, 38, 56, 74.

Aside from simply naming certain Target mobile apps, the claim charts accompanying the FAC rely on no Target-specific functionality or documentation. In fact, they fail to cite a single

piece of Target-specific evidence.[4] Instead, the claim charts appear to be allegations copied wholesale from Headwater's separate suits against Google on these same patents, as the charts repeatedly state that the "Accused Instrumentality" is "Google's Firebase Cloud Messaging (FCM)" system—not Target's apps. *See* Ex. 2 at 1-8. And Headwater's infringement contentions, served on November 10, 2025, appear to be substantially identical to the charts attached to the FAC. Exs. 3-5. Headwater alleges no unique conduct beyond Target's use of Google's FCM technology—the same as any other app developer that utilizes Google's backend service.

B. Headwater is Already Litigating—Against Google—Whether Google's FCM Technology Infringes the Asserted Patents

Headwater's cases against Google on the same patents asserted against the same functionality are already underway. On May 16, 2025, Headwater filed the -231 Case in the Western District of Texas alleging that Google infringes U.S. Patent Nos. 8,615,192, and 10,321,320. Just three months later, on August 27, 2025, Headwater filed another suit in the Western District of Texas, the -367 Case, accusing Google of infringing the '117 patent.

In the -231 Case, the court entered a scheduling order, with fact discovery set to close in less than a year, on September 21, 2026, and jury selection and trial set to begin on April 5, 2027. *See* -231 Case, Dkt. 44. In both Google Cases, Headwater filed notices of venue-related discovery following Google's motions to transfer the cases to the Northern District of California, with Headwater's Oppositions due December 10, 2025 in the -231 and -367 Cases. -231 Case, Dkt. 53; -367 Case, Dkt. 33. Consistent with Federal Circuit precedent addressing the timing of decisions on transfer motions, the court is expected to resolve transfer before claim construction. *See In re TracFone Wireless, Inc.*, 848 F. App'x 899, 900 (Fed. Cir. 2021) (instructing courts to promptly

[4] While Headwater inexplicably includes a link for a user to download the Target App with respect to the non-limiting claim 1 preambles of the '192 and '320 patents, Dkt. 20-5 at 4, Dkt. 20-6 at 1, Headwater does not cite to or include any Target screenshot or URL for any limiting element.

rule on stay motion); *In re Apple Inc.*, 979 F.3d 1332, 1338 (Fed. Cir. 2020) (granting mandamus petition where after the motion to transfer had been filed, "the district court barreled ahead on the merits in significant respects," including holding a *Markman* hearing). Accordingly, a decision on transfer in at least the -367 Case is likely to issue on or before the *Markman* hearing deadline, set for February 23, 2026. If the case remains in the Western District, it will proceed under the existing schedule. If transferred, the Northern District of California may adopt a comparable schedule given its familiarity with FCM-related technology and prior cases involving Google. *See Google LLC v. Headwater Rsch. LLC*, No. 5:25-cv-07453, Dkt. 1 (N.D. Cal. September 3, 2025) (declaratory judgment complaint concerning FCM).

C. This Case Is In Its Earliest Stages

This case against Target remains in its earliest stages. The parties have not yet complied with Rule 26(f)'s conference requirement, and the Case Management Conference occurred just two days ago, on November 24, 2025. Dkt. 9. No discovery has taken place, no invalidity contentions have been exchanged, claim construction exchanges are months away, the *Markman* hearing will not occur until March 2027, and expert discovery, pretrial motions, and trial remain far in the future. In short, the case is procedurally at its inception.

III. LEGAL STANDARD

"The Supreme Court has repeatedly observed that under the doctrine of comity, when cases involving substantially overlapping issues are pending before two federal district courts, there is a strong preference to avoid duplicative litigation." *In re Google Inc.*, 588 F. App'x 988, 990 (Fed. Cir. 2014). Under Fed. R. Civ. P. 21, "courts have developed a practice of severing and staying claims against customers pending resolution of the suit against the manufacturer." *St. Lawrence Commc'ns LLC v. Apple Inc.*, No. 2:16-cv-00082-JRG, 2017 WL 3712912, at *1 (E.D. Tex. July 12, 2017). "Where a manufacturer and its customer have both been sued, the action against the

manufacturer should ordinarily proceed first, regardless of which action was first filed." *CyWee Grp. Ltd. v. Huaewi Device Co.*, 2:17-cv-495-WCB, 2018 WL 4002776 (E.D. Tex. Aug. 22, 2018). *See also Glob. Equity Mgmt. (SA) Pty. Ltd. v. Ericsson, Inc.,* No. 2:16-cv-00618-RWS-RSP, 2017 WL 365398, at *9–10 (E.D. Tex. Jan. 25, 2017) (finding same).

"Underlying the customer-suit doctrine is the preference that infringement determinations should be made in suits involving the true defendant in the plaintiff's suit, i.e., the party that controls the product's design, rather than in suits involving secondary parties, i.e. customers." *Ciena Corp. v. Nortel Networks Inc.*, No. 2:05-cv-00014-LED, 2005 WL 1189881, at *9 (E.D. Tex. May 19, 2005). The Federal Circuit recognized that the "rule exists to avoid, if possible, imposing the burdens of trial on the customer, for it is the manufacturer who is generally the 'true defendant' in the dispute." *In re Nintendo of Am., Inc*., 756 F.3d 1363, 1365 (Fed. Cir. 2014).

Although a stay of litigation is not mandatory when the customer-suit exception applies (*Monterey Rsch., LLC v. Renesas Elecs. Corp.*, No. 2:24-cv-00238-JRG, 2025 WL 611046, at *1 (E.D. Tex. Feb. 25, 2025)), it is heavily favored, and the Federal Circuit has issued writs of mandamus under the customer-suit exception when the facts presented a "classic case for a stay," where "[t]he only potential results of adjudicating these cases in parallel fashion would be the Texas and California courts agree on the major issues of the litigation, thus producing wasteful and unnecessary litigation, or the courts disagree, thus producing conflicting decisions." *In re Google Inc.*, 588 F. App'x at 990-91.

"In determining whether the customer suit exception applies, the [C]ourt analyzes three factors: '(1) whether the customer-defendant . . . is merely a reseller [or end-user]; (2) whether the customer-defendant agrees to be bound by any decision in the [manufacturer] case that is in favor of the patent owner; and (3) whether the manufacturer is the only source of the infringing

product.'" *CyWee*, 2018 WL 4002776 at *5 (citations omitted); *Intell. Ventures I LLC v. Am. Airlines, Inc.*, No. 4:24-cv-980, 2025 WL 2161425, at *2 (E.D. Tex. July 30, 2025) (noting first factor involves determining "whether the defendant is a mere reseller or end user of the accused product"). Courts additionally consider the traditional stay factors in deciding whether a customer-suit exception stay should be granted: "(1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, including whether discovery is complete and a trial date has been set, and (3) whether the stay will likely result in simplifying the case before the court." *CyWee Grp. Ltd. v. Samsung Electronics Co. Ltd.*, 2:17-cv-140-WCB-RSP, 2019 WL 11023976 (E.D. Tex. Feb. 14, 2019).

IV. ARGUMENT

Target's request for a stay is supported by all three factors this Court considers under the customer-suit exception. First, Target is nothing more than an end-user "customer" of Google's accused FCM technology. It did not design, develop, or modify the accused functionality, and Target's liability, if any, is entirely dependent on Google's liability. Second, Target agrees to be bound by the final outcome of the Google Cases on issues of infringement, invalidity, and claim construction, ensuring that Headwater will not need to relitigate the fundamental liability claims. Third, Google is the sole source of the allegedly infringing technology, meaning that resolution of the Google cases will largely, if not entirely, resolve Headwater's infringement claims against Target. This is precisely the situation the customer-suit exception was designed for: to prevent duplicative litigation, avoid inconsistent rulings, and conserve judicial and party resources. A stay is not just appropriate in this case—it is the only efficient and equitable result.

A. Headwater's Allegations Against Target Are Focused Exclusively on Google's FCM Technology

Any potential liability determination in this case necessarily depends on Google's design, development, and operation of the accused FCM system design and operation—not Target's mere use of it. Headwater's own claim charts admit that the allegedly infringing functionality resides entirely within Google's software architecture and server-side infrastructure. *See* Dkts. 20-4–20-5; Exs. 3-5. Headwater repeatedly and explicitly identifies Google's FCM technology as the accused technology both here and in the Google Cases, while describing Target's role only as a "Defendant end-user" of that system. *See, e.g.*, Ex. 1 at 7 ("Google provides . . . back-end services (like FCM) ... that infringe Headwater's patents"), 1 ("A core aspect of the accused systems is Firebase Cloud Messaging ('FCM')."); Ex. 2; Dkt. 20-4 at 33 ("Defendant end-user").

Dkt.	Patent	Page	Headwater's Infringement Allegations Against Target
20-4	'117	1	"Exemplary Accused Instrumentalities: ***Google's Firebase Cloud Messaging (FCM)*** server system and/or a Defendant's use of a push messaging service such as ***Google's Firebase Cloud Messaging***[.]"
		1	"Defendant's use of … ***Google's Firebase Cloud Messaging*** system…"
		5	"Defendant's use of ***Google's FCM***…"
		5	"Defendant end-user applications use ***Google Play Store*** and ***Firebase Cloud Messaging***…"
		12	"Defendant's use of the ***FCM*** server system…"
		14	"***Google's FCM*** server system is a server…"
		15	"[T]he communications link between ***Firebase Cloud Messaging*** system and ***Android*** devices comprises a secure Internet data connection…"
		17	"Defendant causes the ***FCM*** system to receive…"
		18	"***FCM*** architecture overview"
		20	"Defendant causes the ***FCM*** system to receive…"
		22	"***FCM*** architecture overview"
		24	"Defendant causes the ***FCM*** system to receive…"
		25-26	"***FCM*** architecture overview"
		27	"Defendant end-user applications use ***Google Play Store*** and ***Firebase Cloud Messaging*** and include software for using ***FCM***…"
		28	"the ***FCM*** server system will generate"

Dkt.	Patent	Page	Headwater's Infringement Allegations Against Target
		33	"Defendant end-user applications use ***Google Play Store*** and ***Firebase Cloud Messaging*** and include software functionality for using ***FCM***…"
		42	"***Firebase Cloud Messaging client***…"
20-5	'192	1	"Exemplary Accused Instrumentalities: Defendant's use of a push messaging service, such as ***Google's Firebase Cloud Messaging***…"
		1	"***Google's FCM*** server system is a message link server that comprises elements [1a]-[1f]," i.e., a message link server that allegedly satisfies every limitation of the claim.
		2	"the ***FCM*** server handles…"
		4	"***Google's FCM*** server system is a server that…"
		5	"***Google's FCM*** server comprises…"
		8	"***Google's FCM*** server receives…"
		9	"***FCM*** identifies…"
		16	"Each accused push server system includes a message buffer system including a memory and logic, e.g. ***FCM*** data messaging backend subsystem…"
		22	"***FCM*** backend supplies messages to…"
		25	"[T]he ***Firebase*** framework…"
		26	"***FCM*** Architectural Overview"
		28	"***FCM*** supports…"
20-6	'320	1	"Exemplary Accused Instrumentalities: Defendant's use of a push messaging service, such as ***Google's Firebase Cloud Messaging***…"
		1	"***Google's FCM*** system is a networked system that includes elements [1a]-[1k]," i.e., a network system that allegedly satisfies every limitation of the claim.
		1	"[T]he ***FCM*** network server system includes…"
		2	"***Google's FCM*** server system is a network server system that…"
		3	"The ***accused FCM system***…"
		3	"***Google FCM*** system includes…"
		9	"[T]he ***FCM*** network server system includes…"
		21	"***FCM*** buffers content for the messages."
		21	"***FCM*** supports multiple triggers, including…"
		34	"***Firebase Cloud Messaging client***…"
		44	"***Firebase Cloud Messaging client***…"
		55	"***Firebase Cloud Messaging client***…"

See also Exs. 3-5 (Headwater's infringement contentions which are substantively identical to the claim charts Headwater attached to its First Amended Complaint against Target).

These allegations leave no doubt that Target's involvement is limited to its ordinary use of Google's FCM. Headwater does not allege—because it cannot—that Target developed or

modified the technology for use in its own operations. Instead, Target's mobile apps simply invoke FCM through the same publicly available Google application programming interfaces ("APIs") used by thousands of application developers worldwide. Herbst Decl. at ¶ 3. Target has no access to, or ability to alter, the underlying technology it implements as a mere end-user of Google's FCM platform. *Id.* at ¶ 4.

Headwater's allegations between Google and Target mirror the customer-manufacturer dynamic recognized in granting a stay under the customer-suit exception in *Network Systems Technologies, LLC. v. Samsung Electronics Co.*, No. 2:22-cv-00481-JRG, 2023 WL 7649372 (E.D. Tex. Nov. 14, 2023). There, the Court concluded that OnePlus was a "mere reseller" and granted a stay because the plaintiff's infringement allegations against OnePlus were "substantively identical" to those levied against Qualcomm—the actual manufacturer and designer of the accused chips—in a separate infringement suit. *Id.* at *5. The Court emphasized that OnePlus neither designed, manufactured, or modified the Qualcomm chips and therefore had "very little to offer in the way of evidence regarding the substantive aspects of the infringement case." *Id.* The same reasoning applies to Target here. Target has no role in developing, configuring, or controlling the accused functionality. Herbst Decl. at ¶ 4. Like OnePlus, Target merely invokes a third party's technology in precisely the form Google provides it—no different than the thousands of other application developers invoking FCM's standard APIs. *Id.* at ¶ 3. Just as in *Network Systems*, any infringement analysis turns entirely on the third party's technology, not on the customer's downstream use thereof. *Network Sys.*, 2023 WL 7649372 at *5. Target thus stands in the same position as OnePlus, as a "mere reseller," weighing in favor of a stay.

B. Target Agrees to Be Bound by the Outcome of the Google Cases

Should the Court stay this case under the customer-suit exception, Target agrees to be bound by the final outcome of the Google Cases on issues of infringement, invalidity,[5] and claim construction. This agreement ensures that resolution of Headwater's claims against Google will fully and finally resolve any overlapping issues in this case, thereby eliminating any risk of inconsistent judgments and further promoting judicial economy.

Target's commitment to be bound weighs heavily in favor of a stay. *See Wapp Tech. Ltd. P'ship v. Hewlett-Packard Enters.*, No. 4:18-cv-468-ALM, 2019 WL 3818761, at *4 (E.D. Tex. Aug. 14, 2019) (citing *CyWee*, 2018 WL 4002776, at *4 ("[A]greement to be bound by an infringement determination in a separate suit, that will leave little left for the court to adjudicate in the current suit, weighs heavily in favor of" a stay); *Network Sys.*, 2023 WL 7649372, at *8 (holding that a customer's agreement to be bound "reinforces that the claims against the Customer Defendants are peripheral to the central infringement dispute"); *CyWee*, 2018 WL 4002776, at *6 (granting a motion to stay where defendant agreed to be bound by the "infringement determination in the Delaware action"); *Sys. Stormseal PTY Ltd. v. SRS Distribution, Inc.*, No. 2:23-cv-00391-JRG, 2024 WL 1995432, at *5 (E.D. Tex. May 6, 2024) (granting motion to stay where "Defendant has agreed to be bound by infringement and validity determinations in" a parallel action involving same accused products).

Resolution of Headwater's claims against Google will thus resolve all—or nearly all—issues raised in Headwater's complaint against Target. A determination of noninfringement or

[5] On November 25, 2025, Target filed petitions for *inter partes* review as to the '192 and '320 patents, along with a petition to join Amazon's already-filed petitions against those patents. However, Target hereby agrees that if Target's Motion to Stay is granted by the Court, Target will request termination of all of its pending IPR proceedings against the Asserted Patents, thereby avoiding even the appearance of any added litigation burden upon Target during the stay.

invalidity in the Google Cases would moot every claim asserted against Target, while a judgment in Headwater's favor would preclude duplicative recovery from Target. *See, e.g., Glenayre Elecs., Inc. v. Jackson*, 443 F.3d 851, 864 (Fed. Cir. 2006) ("[A] party is precluded from suing to collect damages for direct infringement by a buyer and user of a product when actual damages covering that very use have already been collected from the maker and seller of that product.").

Even if limited ancillary issues were to remain after resolution of the Google Cases, the outcome of those cases would substantially narrow and simplify any residual disputes here. *See Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 1990); *Westport Fuel Sys. Can., Inc. v. Nissan N. Am., Inc.*, No. 2:21-cv-0455-JRG-RSP, 2023 WL 346807, *3 (E.D. Tex. Jan. 20, 2023); *Network Sys.*, 2023 WL 7649372, at *7. Accordingly, because Target has agreed to be bound by the outcome of the Google Cases, this factor strongly supports staying the claims against Target.

C. Google is the Sole Source of the Accused Technology

Google is the sole-remaining source of the allegedly infringing technology. This was made abundantly clear by Headwater's removal of any infringement assertions involving Apple Push Notification technology in the FAC. Indeed, in its original complaint, Headwater accused Target of infringement based on its use of ***both*** Google's FCM technology and Apple's Push Notification ("APN") service, which provides comparable functionality for iOS (rather than Android) users. *See, e.g.*, Dkts. 1-5 at 1, 1-6 at 1. After Headwater settled separate litigation with Apple involving several of the same Asserted Patents, however, Headwater filed the FAC, eliminating all allegations against Target based on use of APNs. *Compare* Dkt. 1, *with* Dkt. 20; Dkt. 18 ("Notice of Partial Settlement and Amendment to Complaint to Eliminate Claims and Issues No Longer in Dispute") at 2 ("Headwater acknowledges that it has executed a settlement agreement with Apple that satisfies its claims against Defendants. . . Headwater will no longer pursue claims against and liability owed by Defendants associated with Apple products and services[.]"); Dkt. 53 ("the Court

accepts and acknowledges, all claims against Defendants with respect to Apple products . . . are hereby dismissed"). Headwater's Notice of Partial Settlement and Amendment, Dkt. 18, and the Court's acceptance of the same, Dkt. 53, confirms what Headwater itself must admit—that the resolution of its infringement allegations against third-party manufacturers like Apple or Google will resolve its infringement allegations against customers or end-users like Target.

With Headwater's settlement with Apple, and Headwater's filing of the FAC dropping all Apple-based infringement allegations, Google is the sole-remaining source of any allegedly infringing technology (e.g., Google's FCM technology). *See* Dkt. 20-4 ("Exemplary Accused Instrumentalities: Google's Firebase Cloud Messaging (FCM) server system"); Ex. 1 at 1 (acknowledging that "Google provides . . . back-end services []like FCM"), 7 (conceding that "[a] core aspect of the accused systems is Firebase Cloud Messaging ('FCM')"). No other supplier provides the accused functionality to Target. Accordingly, there is no independent infringement issue for this Court to decide apart from whether Google's FCM technology infringes the Asserted Patents. Already-pending litigation between Headwater and Google will determine whether the accused FCM technology infringes the Asserted Patents and, as a result, will dispose of the question of whether Target's use of Google's FCM technology infringes here.

D. The Traditional Stay Factors Also Favor Staying This Case Against Target

The same facts that warrant a stay under the customer suit exception similarly support a stay pursuant to the Court's inherent power under the traditional stay factors. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the [cases] on its [own] docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). In addition to the customer-suit exception stay factors, this Court also considers: "(1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether a stay will simplify the

issue[s] in question and the trial of the case; and (3) whether discovery is complete and whether a trial date has been set." *CyWee*, 2018 WL 4002776, at *3 (internal quotation marks and citation omitted). All three of these factors favor staying the case as well.

1. A Stay Will Not Unduly Prejudice Headwater

First, a stay will not unduly prejudice Headwater. Headwater itself recognizes that its dispute lies with Google—not Target. Headwater first filed suit in the Western District of Texas, asserting the same patents based on the same accused FCM technology. *See generally* -231 Case, Dkt. 1; -367 Case, Dkt. 1. Headwater's claims against Target are purely derivative of its allegations against Google. Target does not possess, control, or have access to any confidential technical documents or source code related to Google's FCM technology. Indeed, Google has confirmed in the Google Cases that the relevant discovery regarding FCM resides with Google and is maintained by Google personnel. Ex. 6 at 1 ("Google created the FCM technology . . . in NDCA [and] . . . has developed and managed FCM primarily from there."), 5–6.

Staying this case will not deprive Headwater of any discovery, relief, or remedy. To the contrary, Headwater will obtain full access to the relevant technical information directly from Google in the Google Cases, where the accused FCM technology is properly at issue. *See Lighthouse Consulting Grp., LLC v. BBVA USA*, No. 4:19-cv-00894, 2020 WL 6781977, at *2 (finding no prejudice where patentee would "have full access to relevant discovery regarding the accused technology directly from the developer and supplier"). If anything, Headwater may benefit from staying these proceedings and litigating solely against Google instead of wasting Court and party resources pursuing unnecessarily duplicative claims here.

2. A Stay Will Potentially Dispose of, and At Minimum, Simplify, the Issues in This Case

Second, as discussed above, resolution of the Google Cases will greatly simplify this case against Target by resolving: (1) whether the only technology accused of infringement (i.e., Google's FCM technology) infringes; and (2) the invalidity of the asserted claims. *See* Sections IV.A-C. The reverse is not true, because Target is only one of many "customers" that use Google's FCM technology. *See, e.g.*, *Headwater Rsch. LLC v. Amazon.com Servs. LLC*, No. 2:25-cv-00897-JRG-RSP (E.D. Tex.); *Headwater Rsch. LLC v. Walmart Inc.*, No. 2:25-cv-00961 (E.D. Tex.); *Headwater Rsch. LLC v. Uber Techs., Inc.*, No. 2:25-cv-00962 (E.D. Tex.); *Headwater Rsch. LLC v. Supercell Oy*, No. 2:25-cv-00964 (E.D. Tex.); *Headwater Rsch. LLC v. Tencent Holdings Ltd.*, No. 2:25-cv-00965 (E.D. Tex.). Staying the case would also moot wasteful motion practice and obviate the need for non-party discovery from Google, which Google admits will be ongoing in the Google Cases. Ex. 7 at 5–6. Thus, this factor also weighs in favor of a stay. *CyWee*, 2018 WL 4002776, at *3-4 (finding such simplification favored a stay); *see also Network Sys.*, 2023 WL 7649372, at *9 (finding resolution of suit against manufacturer "will greatly simplify" suit against reseller "by resolving whether the accused products infringe").

3. Target Promptly Filed This Motion

Third, this case remains in its earliest procedural stage, and Target acted promptly in seeking a stay. The Court very recently set dates for the *Markman* hearing and trial, but otherwise has not provided a docket control order. Accordingly, this case is far less advanced than cases such as *CyWee*, in which the Court nevertheless granted a stay under the customer-suit exception. 2019 WL 11023976 at *6-7, 10.

In *CyWee*, the Court explained that "the state of the proceedings is generally assessed as of the date the motion to stay is filed" and noted that, at that time, "claim construction . . . [had] been

conducted and discovery [was near] complete." *Id.* at *6. Even so, the Court determined that "the most burdensome parts of the case—filing and responding to pretrial motions, preparing for trial, going through the trial process, and engaging in post-trial motions practice—all lie in the future." *Id*.

Here, by contrast, the parties have only just reached the starting line. Fact discovery has just begun, no invalidity contentions have been exchanged, claim construction exchanges will likely be almost one year away, and expert discovery, pretrial motions, and trial remain far in the future—far more so than in *CyWee* and other cases where a stay was granted. *See id.*; *see also NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-cv-1058-WCB, 2015 WL 1069111, at *3 (E.D. Tex. Mar. 11, 2015) ("bulk of the expenses that the parties would incur in pretrial work and trial preparation are still in the future"). There can be no question that the early posture of this case strongly favors a stay. *See Network Sys.*, 2023 WL 7649372, at *9 (finding factor favored a stay).

V. CONCLUSION

For these reasons, Target respectfully requests that the Court stay this case under the customer-suit exception, until entry of final judgment and exhaustion of all appeals in the Google Cases. The equities, judicial economy, and all relevant customer-suit exception and traditional stay factors weigh decisively in favor of such a stay.

Dated: November 26, 2025

Respectfully submitted,

By: */s/ Thad C. Kodish*

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ATTORNEYS FOR DEFENDANT TARGET CORPORATION

CERTIFICATE OF CONFERENCE

Counsel for Plaintiff and counsel for Defendant telephonically met and conferred on November 24, 2025, in compliance with Local Rule CV-7(h). Plaintiff opposes this motion.

/s/ Jared Hartzman
Jared Hartzman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic services are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on November 26, 2025.

/s/ Thad C. Kodish
Thad C. Kodish

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify that a motion to seal the foregoing document and all attachments thereto has been filed.

/s/ Thad C. Kodish
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