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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HEADWATER RESEARCH LLC, Plaintiff, vs. GOOGLE LLC, Defendant.	Case No. 3:26-cv-01460-AMO **GOOGLE LLC'S NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE AMENDED ANSWER AND COUNTERCLAIMS** Hearing Date: July 11, 2026 Time: 2:00 p.m. Place: Courtroom 10 Judge: Hon. Araceli Martínez-Olguín

Google Exhibit 1082
Google v. Headwater
IPR2026-00271

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 11, 2026 at 2:00 p.m., or as soon as counsel may be heard, before the Honorable Araceli Martínez-Olguín, in Courtroom 10 located on the 19th Floor at 450 Golden Gate Avenue, San Francisco, California 94102, Defendant Google LLC ("Google") will, and hereby does, move this Court pursuant to Federal Rules of Civil Procedure 15(a)(2), for leave to file an Amended Answer and Counterclaims (the "Motion"). Google's Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the concurrently filed Declaration of Jocelyn Ma ("Ma Declaration"), the proposed order submitted herewith, all exhibits and other materials on file in this action, and such other written or oral argument as may be presented at or before the time this motion is heard and/or taken under submission by the Court.

STATEMENT OF REQUESTED RELIEF

Google requests leave to file an Amended Answer and Counterclaims, attached as Exhibit A to the accompanying Ma Declaration, to add two counterclaims for declaratory judgment of noninfringement of two patents related to the patents currently asserted by Plaintiff Headwater Research LLC ("Headwater") in this action: U.S. Patent Nos. 9,232,403 and 9,491,564.

DATED: March 26, 2026

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By *\/s/ Lance Yang*

Lance Yang (SBN 260705)
Attorney for Defendant Google LLC

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I. INTRODUCTION

Google respectfully moves for leave to amend its Answer for the first time to add two counterclaims for declaratory judgment of noninfringement of Headwater's U.S. Patent Nos. 9,232,403 (the "'403 patent") and 9,491,564 (the "'564 patent"). These two patents are from the same patent family as the two patents asserted by Headwater in this action and cover generally similar networking system technology. They have the same specifications and lead inventor, and Headwater has alleged that Google's Firebase Cloud Messaging service infringes all four patents.

Google's proposed counterclaims were previously standalone claims in a declaratory judgment action that Google filed in this District: *Google LLC v. Headwater Research LLC*, 5:25-cv-07453-NW (N.D. Cal.) (the "DJ Action"). Headwater responded by filing a motion to dismiss for lack of personal jurisdiction. While Headwater's motion was pending, the Western District of Texas granted Google's motion to transfer this action to the Northern District of California, prompting the opening of this action here. On March 20, 2026, Judge Wise indicated that the Court was inclined to find that it lacked personal jurisdiction over the DJ Action and ordered supplemental briefing. Although Google has since learned (through venue discovery in another matter) that, contrary to its representations, Headwater ***had*** in fact "engaged in patent enforcement actions relating to the '403 and '564 patents in California," Google will be voluntarily moving to dismiss the DJ Action and seeks leave to add its noninfringement claims as counterclaims in this case both to conserve resources and to moot any personal jurisdiction issue now that this case had been transferred to this District.[1] Both judicial economy and the policy of granting leave under Federal Rule of Civil Procedure 15 with "extreme liberality" favor granting leave to do so. *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).

All factors relevant to the Rule 15(a) analysis weigh in favor of permitting the amendments. ***First***, Google's proposed amendments will not unduly prejudice Headwater as this case is still in its

[1] Google maintains that this Court had personal jurisdiction over Headwater in the DJ Action. Although Headwater has now submitted itself to the jurisdiction of this Court, Google has reasserted all of the facts regarding Headwater's contacts with, and enforcement activity within, California. *See* Declaration of Jocelyn Ma ("Ma Decl."), Ex. A ¶¶ 13-35.

early stages, discovery has yet to begin in earnest, the parties have not yet proposed a new schedule since the case was transferred, and the initial case management conference has not been held. ***Second***, Google does not bring this Motion in bad faith but to promote efficiency by litigating its counterclaims with Headwater's related claims in a single proceeding. Any argument that Google's Motion improperly circumvents Judge Wise's tentative order is belied by (1) the new facts confirming that [redacted] which Google believes would have resolved the jurisdictional question in its favor, and (2) authority confirming that a prior court's personal jurisdiction ruling does not bar a party from asserting the same claims as counterclaims where the opposing party has submitted to the forum as plaintiff—even through involuntary transfer. ***Third***, the amendments are not futile for the same reason and because Google's counterclaims are pled with sufficient specificity to state a claim. ***Fourth***, there is no undue delay since Google filed this Motion shortly after Headwater's deadline to appeal the transfer order in the Western District of Texas.

For these reasons, and as discussed in greater detail below, Google respectfully requests that the Court grants Google's Motion for Leave to Amend its Answer and Counterclaims.

II. STATEMENT OF ISSUES TO BE DECIDED

Whether the Court should grant Google leave to file an amended answer to add two counterclaims for declaratory judgment of noninfringement of the '403 and '564 patents.

III. BACKGROUND

A. Headwater's Patent Infringement Actions In Texas

On May 16, 2025, Headwater filed this case in the Western District of Texas, asserting that Google's Firebase Cloud Messaging ("FCM") infringes its U.S. Patent Nos. 9,615,192 (the "'192 Patent") and 10,321,320 (the "'320 Patent"). *See* Dkt. 1. Google filed its Motion to transfer the case to this District on September 4, 2025. The Western District of Texas granted Google's motion to transfer and transferred the case to this District on February 26, 2026. Dkts. 83 & 84. Headwater did not appeal or move for reconsideration of the Western District of Texas' transfer order, and its deadline to do so expired on March 4, 2026. The parties have not yet proposed a new schedule given that the initial case management is scheduled for April 30, 2026. Dkt. 97.

The Western District of Texas court previously entered into a Scheduling Order that set June 15, 2026 as the last day to amend pleadings. Dkt. 44 at 3. Pursuant to that district's local rules, fact discovery was stayed until the parties recently completed their claim construction briefings on January 27, 2026. Dkt. 72. Although the parties served initial disclosures on February 24, 2026, no other discovery has been served in this action. Headwater served its preliminary infringement contentions on September 8, 2025, and amended preliminary infringement contentions on November 19, 2025. Google served its preliminary invalidity contentions on November 3, 2025, and amended invalidity contentions on February 17, 2026. Pursuant to the Western District of Texas' Scheduling Order, final contentions have not yet been served. Dkt. 44 at 3.

Soon after the commencement of this case, Headwater filed several more lawsuits in the Eastern District of Texas against Google's customers asserting other patents from the same patent family. Three of those lawsuits accused carriers Verizon, T-Mobile, and AT&T (the "Carrier Defendants") of infringing the '403 patent and the '564 patent based on their offering of devices that implement Google's FCM—as evidenced by the claim charts Headwater attached to the complaints.[2] *See* DJ Action, Dkt. 1 ¶¶ 3, 9-10. Headwater dismissed those lawsuits on September 15, 2025 after the parties settled.[3]

B. Google's Declaratory Judgment Action In The Northern District of California

Headwater's litigation pattern made clear there was a real and immediate threat that Headwater would soon also sue Google for infringement of the '403 and '564 patents through its FCM system and related components. Against that backdrop, Google filed the DJ Action against Headwater seeking declaratory judgment of noninfringement of the '403 and '564 patents. Because the majority of the key witnesses—including the lead inventor of the '403 and '564 patents (who is

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[2] *Headwater Rsch. LLC v. Google LLC*, No. 7:25-cv-367, Dkt. 1 ¶ 28 (W.D. Tex. Aug. 27, 2025) ("-367 Case"); *Headwater Rsch. LLC v. Cellco Partnership*, No. 2:25-cv-709, Dkts. 1-3 & 1-5 (E.D. Tex. July 11, 2025) ("Verizon -709 Case"); *Headwater Rsch. LLC v. T-Mobile USA*, No. 2:25-cv-710, Dkts. 1-3 & 1-5 (E.D. Tex. July 11, 2025) ("T-Mobile -710 Case"); *Headwater Rsch. LLC v. AT&T Servs., Inc.*, No. 2:25-cv-711, Dkts. 1-3 & 1-5 (E.D. Tex. July 11, 2025) ("AT&T -711 Case").

[3] Verizon -709 Case, Dkt. 7; T-Mobile -710 Case, Dkt. 10; AT&T -711 Case, Dkt. 7.

also the lead inventor of the asserted patents in this case), the Google team responsible for the development of the accused FCM, and a number of key third parties witnesses—reside in or close to northern California, Google filed the DJ Action in this District. In addition, the patents were conceived, developed, and prosecuted in California. DJ Action, Dkt. 29 at 3-4.

On November 17, 2025, Headwater filed a motion to dismiss for lack of personal jurisdiction, requesting in the alternative that the case be transferred to the Eastern District of Texas pursuant to 28 U.S.C. § 1406(a). DJ Action, Dkt. 27. In its briefing, Headwater made several representations regarding its lack of relevant contacts with California, including:

- "[A]ll of Headwater's alleged contacts with California … do not relate to enforcement of the patents-in-suit" (*id.* at 1);
- "Headwater has never conducted any enforcement actions relating to the '403 and '564 patents in California" (*id.* at 16);
- "Headwater had ***no*** meetings [and] sent ***no*** letters … in California involving the '403 and '564 patents" (DJ Action, Dkt. 31 at 2);
- "Headwater's contacts involve no meetings [or] letters … in California involving the '403 and '564 patents…" (*id.*);
- "Headwater never conducted any enforcement activities of the patents-in-suit in California" (*id.* at 14);
- "[T]here has been no enforcement ***of the patents-in-suit*** in California, which is what matters here" (*id.* at 15) (emphasis in original);
- "There are no agreements, licensing or otherwise, that impose any continuing obligations on Headwater to enforce the patents-in-suit in California" (*id.*).

Headwater made those representations knowing that [redacted]

[redacted]

When Google raised the relevance of this information and asked to disclose it in connection with Headwater's personal jurisdiction arguments in the DJ Action, Headwater declined, refusing to allow this information to be shared with Google's counsel in the DJ Action while also refusing to correct the misstatements itself. *Id.* ¶ 3d. Google then promptly sought relief from the protective order through the Western District of Texas' discovery dispute process. *Id.* ¶ 3e. The court granted the request on March 26, 2026, expressly permitting Google's counsel in the Western District of Texas cases to relay the information to Google's counsel in the DJ Action. *Id.*

However, a few days prior, on March 20, 2026, Judge Wise had notified the parties that the Court was inclined to grant Defendant's motion to dismiss the DJ Action and ordered supplemental briefing on whether it should dismiss or transfer the case. DJ Action, Dkt. 45. In its submission, Google maintains that the Court has personal jurisdiction over its noninfringement claims in the DJ Action—particularly in light of the newly-discovered facts—but goes on to explain that Google is resolving any dispute over personal jurisdiction by voluntarily dismissing the DJ Action and refiling the claims as counterclaims in this case, which was just transferred to this District.

Since Headwater's motion to dismiss the DJ Action for lack of personal jurisdiction had

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[4] *Headwater Rsch. LLC v. Google LLC*, No. 7:25-cv-00378 (W.D. Tex.); *Headwater Rsch. LLC v. Google LLC*, No. 7:25-cv-00376 (W.D. Tex.); *Headwater Rsch. LLC v. Google LLC*, 7:25-cv-00374 (W.D. Tex.); *Headwater Rsch. LLC v. Google LLC*, No. 7:25-cv-00518 (W.D. Tex.); *Headwater Rsch. LLC v. Google LLC*, No. 7:25-cv-00372 (W.D. Tex.); *Headwater Rsch. LLC v. Google LLC*, No. 7:25-cv-00380 (W.D. Tex.).

[5] *Headwater Rsch. LLC v. Apple, Inc.*, No. 7:25-cv-00407, Dkt. 1 ¶ 1 (W.D. Tex. Sept. 4, 2025) (asserting the '403 and '564 patents).

been pending since November 2025 and the initial case management conference never took place, no discovery has been served in that case.

C. The Patents At Issue

The ’192 and ’320 patents, which are asserted by Headwater in this action, and the ’403 and ’564 patents, which Google proposes to add to this action in the form of counterclaims for declaratory judgment of noninfringement, are from the same patent family. They claim priority to the same handful of patent applications: Application No. 12/380,780 and Provisional Application Nos. 61/206,354, 61/206,944, 61/207,393, and 61/207,739. All four patents share the same specification and lead inventor, Dr. Raleigh. The four patents generally cover the same technology—networking systems involving transmitting messages to specific elements on an end-user device using agents on the end-user device to maintain a link to the server and to receive messages and forward them to an identified element—and thus will share much of the same prior art.

IV. LEGAL STANDARD

Because this Court has not entered any scheduling orders (and the deadline to amend pleadings has not yet passed under the Western District of Texas’ prior scheduling order), Federal Rule of Civil Procedure 15 applies. *See, e.g.*, *Amerisourcebergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 952 (9th Cir. 2006) (Rule 15(a) governs a motion for leave to amend when the motion is filed within the deadline for amending the pleadings set by the district court in the court’s pretrial scheduling order); *Ziptronix, Inc. v. Omnivision Techs., Inc.*, 2012 WL 3155554, at *1 (N.D. Cal. Aug. 2, 2012) (“because the Court’s Scheduling Order does not establish a deadline for amending pleadings, Plaintiff’s motion for leave to amend is governed by Rule 15(a), not Rule 16(b)”).

A party may amend its pleadings with the court’s leave under Federal Rule of Civil Procedure 15(a). “The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). As the Ninth Circuit has noted, this policy “is to be applied with extreme liberality.” *Eminence Cap., LLC*, 316 F.3d at 1051 (internal citation and quotations omitted). One of the purposes of Rule 15(a) is to promote judicial efficiency and avoid duplication of discovery and other burdens imposed upon the court and parties by the filing of separate lawsuits. *See, e.g.*, *Regents of*

the Univ. of Cal. v. IKEA of Sweden AB, 2020 WL 7379381, at *2-3 (C.D. Cal. Oct. 20, 2020).

In determining whether a motion for leave to amend should be granted, the Court should draw "all inferences in favor of granting the motion." *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999). Courts evaluate several factors when making such a determination: (i) prejudice to the opposing party, (ii) undue delay, (iii) bad faith or dilatory motive, (iv) futility of amendment, and (v) repeated failure to cure deficiencies by previous amendments. *See Eminence Cap., LLC*, 316 F.3d at 1052 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). "[I]t is the consideration of prejudice to the opposing party that carries the greatest weight." *Id.* "Absent prejudice, or a strong showing of any of the remaining [] factors, there exists a ***presumption*** under Rule 15(a) in favor of granting leave to amend." *Id.* (emphasis in original); *see also Griggs*, 170 F.3d at 880 ("Generally, this determination should be performed with all inferences in favor of granting the motion.").

V. ARGUMENT

Because each of the Ninth Circuit's factors relevant to the Rule 15(a) analysis weigh in favor of granting leave to amend, Google's Motion should be granted.

A. Google's Proposed Amendments Will Not Unduly Prejudice Headwater And Would Only Promote Judicial Economy

The most important factor, undue prejudice, weighs in favor of granting leave to amend. Headwater, as "[t]he party opposing amendment[,] bears the burden of showing prejudice." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). And that prejudice "must be substantial." *James ex rel. James Ambrose Johnson, Jr., 1999 Trust v. UMG Recordings, Inc.*, 2012 WL 4859069, at *2 (N.D. Cal. Oct. 11, 2012) (internal citation omitted). The Ninth Circuit has found substantial prejudice where the claims sought to be added "would have greatly altered the nature of the litigation and would have required defendants to have undertaken, at a late hour, an entirely new course of defense." *Hip Hop Beverage Corp. v. RIC Representcoes Importacao e Comercio Ltda.*, 220 F.R.D. 614, 622 (C.D. Cal. 2003) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). That is not applicable here.

First, the addition of Google's proposed counterclaims will not meaningfully alter the nature or scope of this litigation or require Headwater to change course. The counterclaims Google seeks

to add in this action are not new—they are identical to the claims Google previously asserted in the DJ Action, such that they do not confront Headwater with anything it has not already been required to consider. Moreover, the '403 and '564 patents that are the subject of the proposed counterclaims are directed to similar technology as the '192 and '320 patents that Headwater has asserted in this action, and the accused products are the same (FCM). This strongly weighs against any finding of undue prejudice. *See Ziptronix, Inc. v. Omnivision Techs., Inc.*, 2012 WL 3155554, *3-*5 (N.D. Cal. 2012) (allowing plaintiff to add three patents from the same patent family against the same accused products and methods presented no undue prejudice); *UPEK, Inc. v. AuthenTec, Inc.*, 2010 WL 2889125, *3 (N.D. Cal. 2010) (similarity in relevant technology supported finding of no undue prejudice despite that the overlap was "less than perfect").

Indeed, comparing the infringement contentions Headwater served in this case for the '192 and '320 patents (left) and the claim charts for the '403 and '564 patents Headwater filed in the cases against the Carrier Defendants (right) reveals that Headwater has accused many of the same alleged FCM features and relies on many of the same Google documents for its infringement theories with respect to all four patents, as summarized in the below chart:

Headwater's Infringement Theories for the '192 and '320 Patents in This Case	**Headwater's Infringement Theories for the '403 and '564 Patents in the Carrier Cases**
"Google's FCM server comprises … a **device link agent** (FCM client) … **[that receive] secure message link messages."** *See, e.g.*, Dkt. 82-1 ('192 chart) at 28-32 (citing **https://firebase.google.com/docs/cloud-messaging/android/client;** https://firebase.google.com/docs/cloud-messaging/fcm-architecture; https://firebase.google.com/docs/cloud-messaging/ios/client; https://firebase.google.com/docs/cloud-messaging/ios/receive)	"The Accused Devices comprise a **device messaging agent** to **receive secure Internet data messages**." *See, e.g*, Verizon -709 Case, Dkt. 1-3 ('403 chart) at 13-16 (citing https://firebase.google.com/docs/cloud-messaging; **https://firebase.google.com/docs/cloud-messaging/android/client)**
"a **device link agent** (e.g. FCM client) …[receives] messages … (apps invoke FCM client and register to use FCM)" *See, e.g.*, Dkt. 82-2 ('320 chart) at 30-33 (citing **https://firebase.google.com/docs/cloud-messaging/android/client; https://firebase.google.com/docs/cloud-messaging/fcm-architecture;** https://firebase.google.com/docs/cloud-	"The Accused Devices comprise **a device link agent**, configured to maintain a secure message link through the wireless network and an Internet network to a message link server," *See, e.g*, Verizon -709 Case, Dkt. 1-5 ('564 chart) at 16-21 (citing https://firebase.google.com/docs/cloud-messaging; **https://firebase.google.com/docs/cloud-**

Headwater's Infringement Theories for the '192 and '320 Patents in This Case	Headwater's Infringement Theories for the '403 and '564 Patents in the Carrier Cases
messaging/ios/client; https://firebase.google.com/docs/cloud-messaging/ios/receive)	**messaging/android/client, https://firebase.google.com/docs/cloud-messaging/fcm-[sic]ecture**; https://firebase.google.com/docs/cloud-messaging/android/receive).
"FCM's link interface **maintains a single persistent connection (secure Internet data message link**) with a **device link agent** (e.g. FCM client) on a wireless end-user device." Dkt. 82-2 ('320 chart) at 30-33 (citing **https://firebase.google.com/docs/cloud-messaging/android/client; https://firebase.google.com/docs/cloud-messaging/fcm-architecture;** https://firebase.google.com/docs/cloud-messaging/ios/client; https://firebase.google.com/docs/cloud-messaging/ios/receive).	"The Accused Devices comprise **a device link agent**, configured to **maintain a secure message link** through the wireless network and an Internet network to a message link server," *See, e.g*, Verizon -709 Case, Dkt. 1-5 ('564 chart) at 16-21 (citing https://firebase.google.com/docs/cloud-messaging; **https://firebase.google.com/docs/cloud-messaging/android/client, https://firebase.google.com/docs/cloud-messaging/fcm-[sic]ecture;** https://firebase.google.com/docs/cloud-messaging/android/receive).
"the FCM client receives **push messages** from the FCM system that **contain a unique identifier** (such as application package name) **for a corresponding one of the software agents**." Dkt. 82-2 ('320 patent) at 62-69 (citing **https://firebase.google.com/docs/cloud-messaging/fcm-architecture; https://firebase.google.com/docs/cloud-messaging/android/client; https://firebase.google.com/docs/cloud-messaging/android/receive)**	"at least a subset of the secure **Internet data messages contain an identifier for a corresponding one of the software applications** and application data from a respective network application server corresponding to that application." *See, e.g*, Verizon -709 Case, Dkt. 1-3 ('403 chart) at 13-16 (citing https://firebase.google.com/docs/cloud-messaging; **https://firebase.google.com/docs/cloud-messaging/android/client)** "the received messages identified for delivery to multiple ones of the software components, and including message content received by the message link server from multiple ones of the network functions." *See, e.g*, Verizon -709 Case, Dkt. 1-5 ('564 chart) at 21-26 (citing https://firebase.google.com/docs/cloud-messaging; **https://firebase.google.com/docs/cloud-messaging/android/client, https://firebase.google.com/docs/cloud-messaging/fcm-architecture;**

Headwater's Infringement Theories for the '192 and '320 Patents in This Case	Headwater's Infringement Theories for the '403 and '564 Patents in the Carrier Cases
	https://firebase.google.com/docs/cloud-messaging/android/receive).

The addition of the '403 and '564 patents thus would not implicate additional products or be likely to expand the scope of discovery. Judicial efficiency strongly favors granting leave to add these counterclaims to this action rather than requiring the parties to maintain a separate lawsuit and go through a separate discovery process, and forcing a jury to sit through a separate trial. *See Ziptronix, Inc. v. Omnivision Techs., Inc.*, 2012 WL 3155554, at *5 (N.D. Cal. Aug. 2, 2012) (allowing amendment to "add three patents to [the] lawsuit that are related to the patents already at issue in [the] case will serve the foregoing [judicial economy] interests articulated by the Ninth Circuit"); *Pavemetrics Sys., Inc. v. Tetra Tech, Inc.*, 2021 WL 4776361, at *4 (C.D. Cal. Aug. 23, 2021) (granting defendant's motion to add counterclaim for patent infringement "particularly given the overlap in specifications, claim terms, and accused technology").

Second, this case is still in its early stages. The case was recently transferred from the Western District of Texas, and the initial case management conference is scheduled for April 30, 2026. Dkt. 97. The parties are still negotiating a protective order and ESI protocol. Ma Decl. ¶ 4. Initial disclosures were exchanged on February 24, 2026, but no document requests or interrogatories have been served by either party. *Id.* ¶ 5. Under the Western District of Texas Scheduling Order, the parties previously served preliminary infringement and invalidity contentions with respect to the '192 and '320 patents on September 8, 2025 and November 3, 2025. However, no final contentions (which were permitted under the prior Western District of Texas scheduling order but are not available here absent court order) have been served. Dkt. 44 at 3. Given that this District has its own set of Patent Local Rules and deadlines, no claim construction order has previously been entered, and there has been virtually no discovery, a new schedule will need to be set. Even if the prior Western District of Texas schedule is maintained (which would be highly unlikely given the procedural posture of the case), fact discovery would not close for another six months. *See id.* at 4; *see Finjan, Inc. v. Juniper Network, Inc.*, 2018 WL 6431889, at *2 (N.D. Cal.

July 19, 2018) (granting leave where "there are still nine months left for fact discovery and trial is a year away").

Thus, adequate opportunity remains for Headwater to investigate Google's proposed counterclaims and develop its positions, which it would already have been doing for the DJ Action. In addition, much of the relevant analysis would overlap with its existing infringement allegations for the '192 and '320 patents in this case. *MR Techs., GMBH v. Western Digital Techs., Inc.*, 2024 WL 4150723, at *4 (C.D. Cal. Jan. 18, 2024) (no prejudice "where the facts show that the timeline of the case has not so progressed to the point when [non-moving party] could not reasonably investigate the amended [pleading]") (citation omitted); *see also Caravan Canopy*, 2024 WL 1118994, at *4 (no prejudice where discovery did not close for another three months and no trial date had been set). Headwater also should have already investigated infringement theories for the '403 and '564 patents against Google's FCM in connection with the lawsuits it filed against the Carrier Defendants, given that Headwater presumably determined it had a Rule 11 basis for filing those complaints. *See supra* Section III.A.

B. Google's Proposed Amendments Are Not Made In Bad Faith

Google does not propose adding the amended counterclaims in bad faith or for a dilatory purpose. "Examples of bad faith have included—but are not limited to—instances in which a party makes a claim without alleging any newly discovered facts, makes a tactical decision to omit a claim to avoid summary judgment, or includes a claim to harass or burden the other party." *Khanna v. Walia*, 2025 WL 2521734, at *2 (N.D. Cal. Sept. 2, 2025). None are applicable here. On the contrary, Google is seeking to conserve both the parties' and the Court's resources by (1) consolidating Headwater's and Google's overlapping claims into a single proceeding and (2) mooting Headwater's personal jurisdiction objections through proper procedural channels to avoid unnecessary additional motion practice.

Headwater may argue this Motion has been brought in bad faith because Google is attempting to circumvent Judge Wise's order stating that the Court was "inclined to grant Defendants motion to dismiss" in Google's DJ Action (DJ Action, Dkt. 45)—but this argument fails for two reasons. First, Judge Wise did not actually issue a ruling, and Google believes that the Court

would have ultimately found personal jurisdiction after reviewing the new facts submitted in Google's supplemental briefing. Headwater made several misrepresentations in its motion to dismiss—including that it never engaged in enforcement activity in California or sent any correspondence to California residents relating to the '403 and '564 patents in California—while fully aware that [redacted]. *See supra* Section III.B. Though Google attempted to supplement its briefing in the DJ Action with the new information earlier (and prior to Judge Wise's March 20, 2026 tentative ruling), Headwater blocked Google's ability to do so by prohibiting Google from disclosing the information (which Headwater maintained was Highly Confidential – Attorneys' Eyes Only) in the DJ Action. Ma. Decl. ¶ 3d. Google was thus forced to engage in the discovery dispute process to obtain relief from the Western District of Texas court, which was not resolved until March 23, 2026 when the court permitted Google's counsel in that case to share the information with undersigned counsel. *Id.* ¶ 3e.

Second, this Court's ruling in *AbCellera Biologics v. Berkeley Lights, Inc*. makes clear that there is nothing improper with Google seeking to add the counterclaims to this case notwithstanding Judge Wise's inclination to dismiss the same claims in the DJ Action. 2021 WL 2719264, at *4 (N.D. Cal. July 1, 2021). There, the defendant had asserted Lanham Act and state unfair competition claims against the plaintiff in this District, only to have them dismissed for lack of personal jurisdiction. The defendant thereafter moved to add those same claims as counterclaims in a related patent infringement case between the parties that had been transferred to this District. Although plaintiff AbCellera objected to amendment based on that prior dismissal—arguing the other judge had found "no personal jurisdiction over claims virtually identical to the proposed counterclaims"—Judge Koh granted leave to amend because the prior ruling had involved "different facts and a different procedural posture." *Id.* at *4. Critically, because AbCellera was now "a plaintiff in [the case]" who had taken the "voluntary act [of] demanding justice from the [D]efendant" and had "continued to litigate in [this District]," it had "waived any objection to personal jurisdiction." *Id.* at *4–5 (citing *Adam v. Saenger*, 303 U.S. 59, 67 (1938)) (emphasis in original). The same reasoning compels the same result here: Headwater, as plaintiff, has submitted itself to this Court's

jurisdiction by virtue of this transferred case and has actively litigated in this District, such that it cannot now argue the Court only has personal jurisdiction to adjudicate infringement of some of its patents but not others within the same patent family.

Indeed, courts regularly exercise personal jurisdiction over counterclaims after a contested transfer. *See, e.g.*, *Competitive Techs. v. Fujitsu Ltd.*, 286 F. Supp. 2d 1118, 1141 (N.D. Cal. 2003) (rejecting argument that the court had no personal jurisdiction over compulsory counterclaims after contested transfer from Illinois); *Grupke v. Linda Lori Sportswear, Inc.*, 174 F.R.D. 15, 19 (E.D.N.Y. 1997) (same after contested transfer from Wisconsin). That Google's proposed counterclaims are permissive, not compulsory, is also inapposite because "if defendant interposes a permissive counterclaim, plaintiff cannot object that the court lacks personal jurisdiction or that venue is improper for purposes of adjudicating the claim." *AbCellera*, 2021 WL 2719264, at *4 (internal citation and quotations omitted) ("[I]f defendant interposes a permissive counterclaim, plaintiff cannot object that the court lacks personal jurisdiction or that venue is improper for purposes of adjudicating the claim.").

C. Google's Proposed Amendments Are Not Futile

Headwater cannot claim that Google's proposed amendments are futile. "An amendment is futile when no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017). Movants should thus "be granted leave to amend unless it appears beyond doubt" that the amended pleading "would also be dismissed for failure to state a claim." *Crown Energy Servs., Inc. v. Zurich Am. Ins. Co.*, 2021 WL 2207348, at *5 (N.D. Cal. June 1, 2021).

Google's declaratory judgment claims for the '403 and '564 patent are robust, clearly identifying (1) concrete enforcement actions Headwater has taken accusing Google's products of infringement and mapping their functionality to the asserted claims, (2) the specific accused instrumentalities at issue, and (3) the specific claim limitations of the '403 and 564 patents that are not met. Ma Decl., Ex. A at Counterclaims. Indeed, Headwater did not raise Rule 12(b)(6) arguments in responding to Google's DJ Action complaint alleging claims identical to the counterclaims Google now seeks to add to this case. To the extent that Headwater contends the

proposed amendments would be futile because the Court lacks personal jurisdiction over the counterclaims, that argument would fail. As discussed above, Headwater "submitted themselves to the jurisdiction of the court" when its case against Google was transferred to this District and it continued to litigate here. *AbCellera*, 2021 WL 2719264 at *4-5. Moreover, all the facts Google pleaded in its DJ Action complaint regarding Headwater's patent enforcement activity contacts directed towards California—which have been reasserted in Google's proposed counterclaims—independently support a finding of personal jurisdiction. In any event, "[d]enial of leave to amend" on futility grounds "is rare" as courts ordinarily "will defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed." *Gregg v. Monastery Camp*, 2024 WL 2304564, at *2 (N.D. Cal. May 21, 2024).

D. Google Did Not Unduly Delay In Seeking Leave To Amend

Google did not unduly delay in filing this Motion. Google's position has always been that claims related to Headwater's infringement allegations against FCM belong in this District as the clearly more convenient forum, thus Google filed the DJ Action here. After the Western District of Texas court agreed and transferred this case to this District, it became procedurally possible for Google to move for leave to add declaratory judgment claims as counterclaims here—thereby combining them with Headwater's infringement claims in one action and mooting the personal jurisdiction issue. However, Google could not do so until it was clear that this case would be staying in the Northern District of California, as the case was transferred prior to Headwater's deadline to object to the Western District of Texas' transfer order. That deadline passed on March 4, 2026, and Google is seeking leave merely three weeks thereafter.

E. Google Has Not Previously Amended Its Answer

This is Google's first request for leave to amend its answer to add counterclaims. Thus, there is "no history of repeated failures [to] cure deficiencies by amendment," which "favors granting leave to amend." *Jones*, 2023 WL 2173417, at *3.

VI. CONCLUSION

Given the absence of prejudice, futility, bad faith, or undue delay, the policy of "extreme liberality" in favor of granting leave to amend controls and favors allowing Google to amend its

answer to assert declaratory judgment noninfringement counterclaims for the ’403 and ’564 patents. *Howey v. U.S.*, 481 F.2d 1187, 1190-91 (9th Cir. 1973) (denial of leave to amend is an abuse of discretion “[w]here there is a lack of prejudice to the opposing party and the amended complaint is obviously not frivolous, or made as a dilatory maneuver in bad faith”). For the foregoing reasons, Google respectfully requests that the Court grant its Motion for Leave to file the Amended Answer and Counterclaims filed herewith as Exhibit A.

DATED: March 26, 2026

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HEADWATER RESEARCH LLC, Plaintiff, v. GOOGLE LLC, Defendant.	Case No. 3:26-cv-01460-AMO **[PROPOSED] ORDER GRANTING GOOGLE LLC'S MOTION FOR LEAVE TO FILE AMENDED ANSWER AND COUNTERCLAIMS**

This matter comes before the Court on Defendant Google LLC's ("Google") Motion for Leave to File Amended Answer and Counterclaims (the "Motion"). The Court, having fully considered the Motion and all papers on file and submitted herewith, and finding that the requirements of Fed. R. Civ. P. 15 have been met, hereby **GRANTS** the Motion.

Google is hereby ordered to file its Amended Answer and Counterclaims, a copy of which was attached as Exhibit A to the Declaration of Jocelyn Ma in Support of Google's Motion, within __ days of issuance of this Order.

IT IS SO ORDERED.

DATED: March _____, 2026

_____
Hon. Araceli Martínez-Olguín
United States District Judge