

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

CELLSPIN SOFT, INC.,

Plaintiff,

v.

BYTEDANCE, LTD, BYTEDANCE
PTE. LTD, TIKTOK PTE. LTD.

Defendant.

Case No. 2:23-cv-496-JRG-RSP

[PUBLIC VERSION]

**PLAINTIFF’S OPPOSED MOTION TO COMPEL VENUE DISCOVERY AND
EXPEDITED BRIEFING**

Pursuant to Rules 33 and 34, and ¶ 9(a) of the Discovery Order (Dkt. 33), Plaintiff moves for expedited briefing consistent with Court’s Order (Dkt. 41), and to compel additional responses to 4 (four) Interrogatories as described below, allow 5 (five) hours to depose TikTok’s corporate representative about *Project Texas* (Dkt. 1 at 1), and an extension of the Venue Discovery Deadline by 60 days before Cellspin files its opposition to Defendants’ Section 1404 motion.

Background

On October 20, 2023, Cellspin filed its complaint for patent infringement against defendants ByteDance Ltd. (“BDL”), ByteDance Pte. Ltd. (“BDPL”), and TikTok Pte. Ltd. (“TTPL”), who are “organized in the Cayman Islands and Singapore.” Dkt. 19 at 1. On March 6, 2024, defendants filed an answer and counterclaims. Dkt. 17. Defendants did not challenge Cellspin’s assertion that venue is proper in the Eastern District of Texas (“EDTX”) under Rule 12(b)(3). Thus, Defendants waived their defense that venue is not proper in this District. Fed.R.Civ.P 12(b) (“A motion asserting any of these defenses [Rule 12(b)(3) Improper Venue] must be made before pleading if a responsive pleading is allowed.”).

I. Venue Interrogatory No. 1 and the Corresponding Document Request is Insufficient.

TikTok’s response to Venue Interrogatory No. 1 fails to “identify with specificity the location of any and all servers hosting all or part of the user data, data processing and source code.” According to multiple publicly available sources, TikTok use Plano’s **CyrusOne** Data Centers, **Texas** based **Aligned** Data Centers, **Texas**

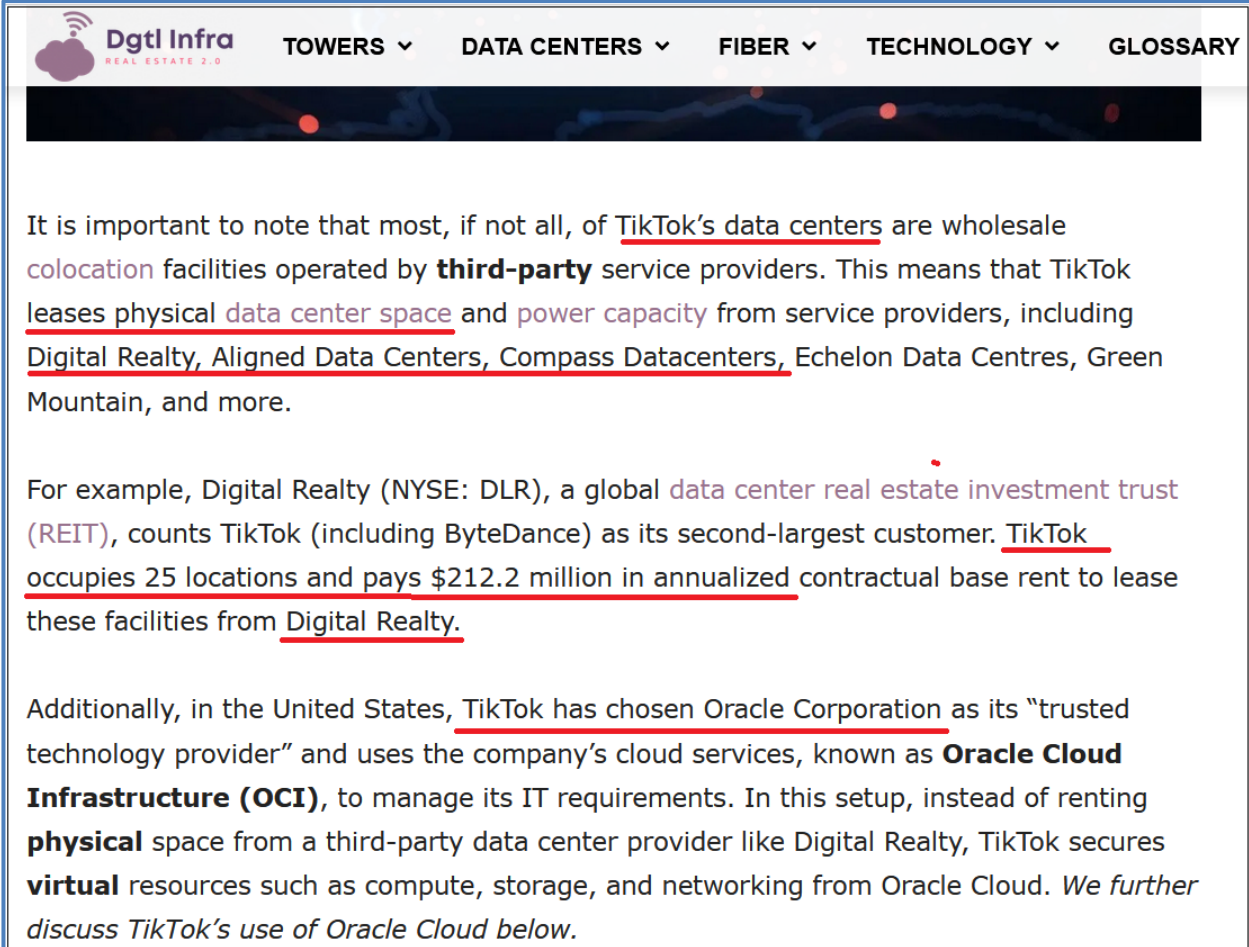
based **Compass one** Data Centers, **Texas** based **DE-CIX** data-center-neutral Internet Exchanges. Indeed, Texas based CyrusOne Data Centers counts “TikTok is one of the largest tenants in its portfolio” with it reporting \$70 Million S&P Global in its financial disclosure. *See Figure below.*

- **TikTok** is one of the largest tenants in the portfolio. On April 24, 2024, President Biden signed the 21st Century Peace Through Strength Act, which requires ByteDance (the Chinese parent of **TikTok**) to divest its U.S. operations by Jan. 19, 2025, or face a nationwide ban after that date.

- The presence of several mitigants in the event the **TikTok** ban goes into effect, including a termination fee calculated based on the remaining term at lease termination and a **TikTok**-specific guarantee from CyrusOne totaling \$70 million. In addition, the leases are at

<https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/3158719>

Another Texas data center that TikTok has not produced any discovery related to is named “**Aligned Data Centers.**” <https://dgtlinfra.com/tiktok-data-centers-cloud-locations/>

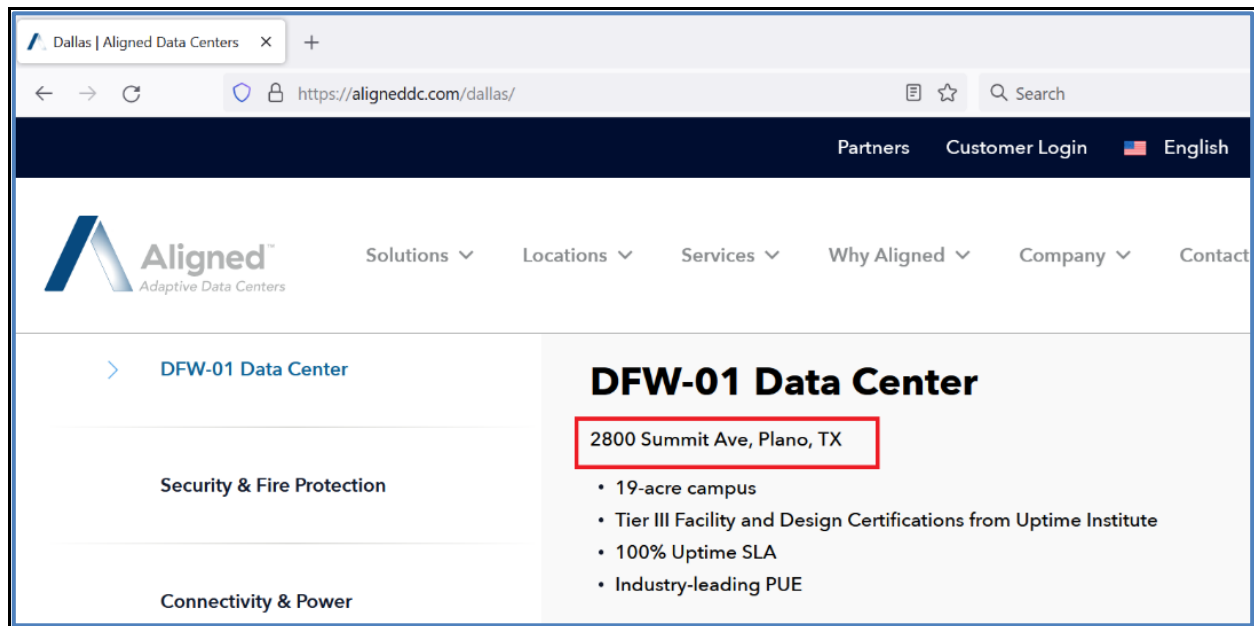


Dgtl Infra REAL ESTATE 2.0 TOWERS ▾ DATA CENTERS ▾ FIBER ▾ TECHNOLOGY ▾ GLOSSARY

It is important to note that most, if not all, of TikTok's data centers are wholesale colocation facilities operated by **third-party** service providers. This means that TikTok leases physical data center space and power capacity from service providers, including Digital Realty, Aligned Data Centers, Compass Datacenters, Echelon Data Centres, Green Mountain, and more.

For example, Digital Realty (NYSE: DLR), a global data center real estate investment trust (REIT), counts TikTok (including ByteDance) as its second-largest customer. TikTok occupies 25 locations and pays \$212.2 million in annualized contractual base rent to lease these facilities from Digital Realty.

Additionally, in the United States, TikTok has chosen Oracle Corporation as its “trusted technology provider” and uses the company’s cloud services, known as **Oracle Cloud Infrastructure (OCI)**, to manage its IT requirements. In this setup, instead of renting **physical** space from a third-party data center provider like Digital Realty, TikTok secures **virtual** resources such as compute, storage, and networking from Oracle Cloud. *We further discuss TikTok's use of Oracle Cloud below.*



Aligned Data Center, DFW-01 Data Center, is located in Plano, Texas and its operations with respect to TikTok is relevant to Section 1404 venue analysis, including its employees or third party contractors that implement the accused functionality. Aligned's Plano based data center is located at 2800 Summit Ave, Plano, Texas. *See* Figure above.

Also, Texas based DE-CIX data-center-neutral Internet Exchanges, plainly show Peering being performed for ByteDance (TikTok) in Plano and Dallas, not just Dallas. As again, like DFW-01, it is not located in Dallas, but instead Plano, Texas. *See* <https://www.peeringdb.com/ix/1249>

PeeringDB		Search here for a network, IX, or facility.		Register or Login
Advanced Search		Legacy Search		English (English)
DE-CIX Dallas		Platinum Sponsor		
Peers	Connections	Open Peers	Total Speed	% with IPv6
137	151	91	7.2T	94
Organization	DE-CIX Group AG			
Also Known As	DE-CIX DFW			
Long Name				
City	Dallas			
Country	US			
Continental Region	North America			
Media Type	Ethernet			
Service Level	24/7 Support			
Terms	Recurring Fees			
		Peers at this Exchange Point		
		Filter		
		Peer Name aZ v	ASN	Speed
		IPv4	IPv6	Policy...
		BSQ	4455	1G
		206.53.202.1	2001:504:61::1167:0:1	Open
		ByteDance	396986	100G
		206.53.202.159	2001:504:61:0:6:eba:0:1	Selective
		ByteDance	396986	100G
		206.53.202.167	2001:504:61:0:6:eba:0:2	Selective

DE-CIX Dallas - PeeringDB

https://www.peeringdb.com/ix/1249

Technical Email	support@de-cix.net
Technical Phone	+12127966914
Policy Email	sales@de-cix.net
Policy Phone	+12127966914
Sales Email	
Sales Phone	
Health Check	

Local Facilities

Facility A-Z	Country	City
Aligned Dallas (DFW-01)	United States of America	Plano
Cologix DAL1	United States of America	Dallas
Cologix DAL2	United States of	Dallas

TikTok’s interrogatory response to Interrogatory No. 1 is insufficient, including its Rule 33(d) citation to BYTEDANCE-CS0003740 – BYTEDANCE-CS-0003775 that is incomplete as it does any information about Texas based CyrusOne, Aligned, Compass, and DE-CIX. Additionally, there is no description of what is being done at these physical locations provided inside or outside of Texas, which is non-responsive to the request to “**identify with specificity**” . . . all servers hosting all or part of the user data, data processing and source code for the Accused Instrumentalities on behalf of Defendant or any of its agents [] include, but are not limited to, those **servers hosting source code** associated with any of the following: (i) TikTok Shop; (ii) TikTok advertising; (iii) TikTok Mobile Applications; (iv) TikTok database, (v) TikTok user profile (vi) TikTok user authentication (vii) TikTok data monetization; (vii) TikTok location data processing; and/or (viii) TikTok data storage.”

As such, Cellspin moves for additional discovery as the locations TikTok lists do not identify what is going on at those locations and the spreadsheet is not produced by the witnesses and not self-explanatory nor complete as it does not provide any description of what occurs at these locations with any specificity, none. For example, what agent or third party owns the data centers and what TikTok endeavor is it associated with, the TikTok Shop, TikTok user profiles or something unrelated to this interrogatory.

When asked during the deposition, where physically the servers are located in Texas, TikTok Head of Engineering (Yufan Zhu) inexplicably knew of only 2 (two) in Dallas, within about 10 miles of this District. The other two witnesses had no idea, and Huang negotiated agreements for TikTok with Oracle.¹

¹ The TikTok produced its agreements with Oracle with the amounts redacted. On or about May 16, counsel ask Defendant to explain the breakdown of the \$2 billion purportedly spent on Project Texas, if TikTok wanted to maintain

So where is the \$2 billion being spent on “Project Texas”? This is the question Cellspin respectfully moves to compel more transparent discovery responses on. Data Centers, including CyrusOne, Aligned, Compass, and DE-CIX, all say they have agreements with TikTok, yet those are not produced by TikTok.

As such, Cellspin moves for 5 (five) hours of deposition time with a USDS’s Will Ferrell on *Project Texas* after TikTok provides a complete response to Interrogatory No 1.

II. TikTok’s Response to Venue Interrogatory No. 2 is grossly insufficient.

TikTok’s Response to Venue Interrogatory No. 2 is insufficient. Cellspin’s Venue Interrogatory No. 2 recites, in relevant part, as follows:

As of the date of filing of the Original Complaint in this matter, please identify with specificity each employee, including employees of subsidiary TikTok U.S. Data Security Inc. (“USDS”), **contractor** or individual who possesses knowledge relating to the design, engineering, testing, datacenter, database, data storage, operation, advertising, user data monetization, user authentication, user profile, location data processing and marketing of the Accused Instrumentalities in the United States. For each such individual, please provide:

- (i) the name of each such individual;
- (ii) the city of residence for each such individual; . . . and
- (v) a description of the relevant knowledge possessed by each such individual.**

Cellspin moves for a complete response and more deposition time. TikTok’s response is incomplete. TikTok only named one person, Michelle Huang who is not even an active member of the team Project Texas and has no interaction and no knowledge of Oracle or TikTok’s support of third party servers located in the Eastern District of Texas, or anywhere else. In the parties most recent meet and confer, now TikTok is taking the position that Yufan Whu, the first of three TikTok Rule 30(b)(6) deponents, who testified he is not part of USDS located in Texas, “was” in fact the corporate representative on the technical aspects of Project Texas, but counsel has emails leading up to his deposition that contradict this TikTok attorney argument.² TikTok bases its refusal on an agreement that TikTok proposed that included a representation that Michelle Huang would be able to testify about *Project Texas*, which turned out to be incorrect.

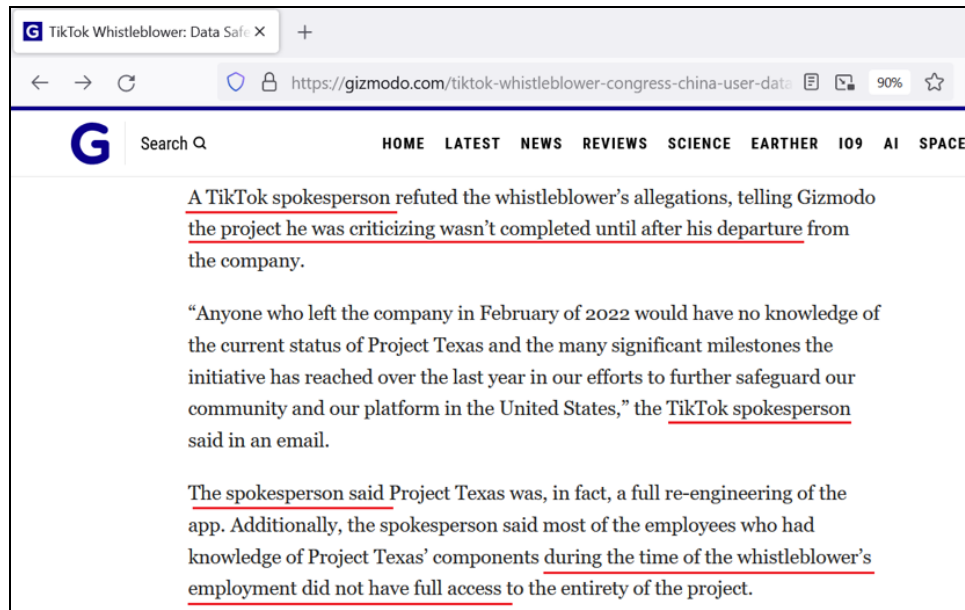
Thus, Cellspin is now forced to move for an additional 5 (five) of Rule 30(b)(6) time after TikTok supplements its response to Venue Interrogatory No. 2, and Project Texas agreements without redactions.

these redactions. Defendant TikTok ignored Cellspin’s request, then filed its own motion to compel even though Cellspin agreed to provide its initial and additional disclosures that it had delayed waiting on TikTok’s production. But TikTok still refused to provide the accounting. As such, Cellspin now moves to remove the redactions and for more time to complete venue discovery, an additional 5 hours of deposition time to depose a TikTok’s Will Ferrell, who TikTok agreed to provide but for only an hour. This is not sufficient time given the frustration of deposition testimony from TikTok thus far reminds me of a tooth extraction.

² Indeed, Head Engineer Yufan Zhu owns a house in Singapore and testified he’s lived there the last 3 years.

III. Venue Interrogatory No. 3. TikTok Refuses to Provide the Name of the “TikTok whistleblower,” who went to U.S. Senator Josh Hawley (R-Mo.) as described in two separate independent articles.

Cellspin moves for the name for the February 2022 departing employee, TikTok’s whistleblower involved with Project Texas, that TikTok refuses to disclose. In its inadequate response, TikTok recites, “Defendants are not aware of any employees who are knowledgeable about issues relating to the ‘TikTok whistleblower.’” But this **cannot be true** because *Gizmodo* article clearly states that TikTok’s spokesperson is aware of who the whistleblower is and when that identified person, the whistleblower, left the company.



Excerpt from <https://gizmodo.com/tiktok-whistleblower-congress-china-user-data-ban-1850213984>.

TikTok’s spokesperson said that because the TikTok/USDS whistleblower employee left in February of 2022, that the former employee’s knowledge was not complete about the current status of *Project Texas*. Figure 2 above; see also <https://www.hawley.senate.gov/tiktok-whistleblower-hawley-demands-thorough-review-explosive-new-allegations/>, as last visited on May 19, 2024, (recites as follows: “TikTok and ByteDance employees – including members of the Chinese Communist Party known to be on ByteDance’s payroll – can switch between Chinese and U.S. data with nothing more than the click of a button using a proprietary tool called Dorado. In his words, ‘[i]t’s just like a light switch.’”).

Cellspin moves for the name of the whistleblower to be identified so Cellspin can serve a third party subpoena to obtain testimony from this prior employee.³

³ The whistleblower testimony relates to *Project Texas* and alleged safety concerns or “back doors” that allow U.S. user information and collected data to be accessed in mainland China.

IV. TikTok Needs to Supplement its Response to Venue Interrogatory No. 5 and Its Associated Request for Production.

Cellspin's Venue Interrogatory No. 5 recites, in pertinent part, as follows:

[I]dentify with specificity each employee, contractor or individual who possesses knowledge relating to the business activities performed by Oracle in relation to the Accused Instrumentalities (including but not limited to: (i) activities relating to source code; (ii) activities relating to data storage; (iii) data center; (iv) oracle cloud; (v) user privacy; (vi) databases; (vii) mobile app signage; (viii) digital signature; (ix) security review process; (x) user authentication; (xi) user GPS location; (xii) user profile; (xiii) user ad recommendation (xiv) testing). For each such individual, please provide:

- (i) the name of each such individual; . . .
- (iii) the location where each such individual performs their job tasks;
- (iv) the job title of each such individual; . . .
- (v) a description of the relevant knowledge possessed by each such individual.

TikTok's response just provides one name: "Defendants identify **Michelle Huang** as an employee knowledgeable." The interrogatory wanted names of people that work with Oracle, and she does not even do that in the context of this interrogatory. Then, TikTok cited to just a massive spreadsheet with no explanation of employees not tailored or restricted to responding to this interrogatory. Plus, Michelle Huang is a ByteDance employee based in New York. When Cellspin deposed Ms. Huang, as TikTok's designated declarant on *Project Texas*, she could not answer any questions about these topics or interactions with Oracle employees under *Project Texas*. Instead, after about three hours, she identified Will Ferrell, and only then did TikTok indicate it would make him available if Cellspin would stop the Michelle Huang Deposition.

As such, now Cellspin moves to depose Will Ferrell for 5 (five) hours after TikTok supplements its production and interrogatory responses that do not identify a description of the relevant knowledge possessed by each individual as it relates to business activities performed by Oracle in relation to the Accused Instrumentalities (including but not limited to: (i) activities relating to source code; (ii) activities relating to data storage; (iii) data center; (iv) oracle cloud; (v) user privacy; (vi) databases; (vii) mobile app signage; (viii) digital signature; (ix) security review process; (x) user authentication; (xi) user GPS location; (xii) user profile; (xiii) user ad recommendation (xiv) testing). TikTok provided a spreadsheet of employees of only USDS with no explanation to their interaction with Oracle, and at best just obfuscates the employees that may work with Oracle on *Project Texas*. As such, Cellspin moves for additional 60 days to complete venue discovery while TikTok revises its interrogatory responses and associated discovery responses and then provides a five (5) hour deposition under Rule 30(b)(6) to address its Interrogatory Responses.

Date: June 3, 2024

/s/ Randall Garteiser

M. Scott Fuller

Texas Bar No. 24036607

sfuller@ghiplaw.com

Randall Garteiser

Texas Bar No. 24038912

rgarteiser@ghiplaw.com

Christopher A. Honea

Texas Bar No. 24059967

chonea@ghiplaw.com

GARTEISER HONEA, PLLC

119 W. Ferguson Street

Tyler, Texas 75702

Telephone: (903) 705-7420

Facsimile: (903) 405-3999

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on June 3, 2024, I caused to be electronically-filed the foregoing document with the Clerk of Court using the Court's CM/ECF system. As such, this document was served on all counsel who are deemed to have consented to electronic service.

By: /s/ Randall Garteiser

Randall Garteiser

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Eastern District of Texas Local Rule CV-7(i), counsel has complied with the meet and confer requirement in Local Rule CV-7(h). The Parties telephonically met and conferred on or about May 30, 2024, and additionally at three depositions and by email to discuss the relief requested in this Motion. This motion is opposed.

By: /s/ Randall Garteiser

Randall Garteiser

CERTIFICATE OF FILING UNDER SEAL

Pursuant to Eastern District of Texas Local Rule CV-5(a)(7), counsel is filing this motion under seal pursuant to the protected information designated by the non-moving party. Counsel has served this document and the attachment to non-moving defendants to provide redactions as Plaintiff contends it does not contain confidential information.

By: /s/ Randall Garteiser

Randall Garteiser

**CERTIFICATE OF GOOD FAITH CONFERENCE
AS TO REDACTIONS**

Pursuant to Eastern District of Texas Local Rule CV-7(i), counsel has complied with the meet and confer requirement in Local Rule CV-7(h). The Parties discussed each specific redaction by email on June 4–5, 2024.

Date: June 6, 2024

/s/ Randall Garteiser

Randall Garteiser