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

Sandpiper CDN, LLC, *Plaintiff*, v. Comcast Cable Communications, LLC d/b/a Xfinity; Comcast Cable Communications Management, LLC d/b/a/ Comcast Technology Solutions; and Comcast Corporation. *Defendants*.	Civil Case No. 2:24-cv-00886-JRG-RSP

PROTECTIVE ORDER

WHEREAS, Plaintiff Sandpiper CDN, LLC ("Sandpiper") and Defendants Comcast Cable Communications, LLC, d/b/a Xfinity, Comcast Cable Communications Management, LLC d/b/a Comcast Technology Solutions, and Comcast Corporation (collectively, "Comcast" or "Defendants") hereafter referred to as "the Parties," believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material ("Protected Material"). Protected Material shall be

designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE." The phrase "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) and/or on a slip-sheet bearing the bates number of the native document, which shall be appended to the native document when being used in a deposition or in a filing with the Court for which such protection is sought. For deposition and hearing transcripts, the phrase "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE."

2. Any document produced under Patent Rules 2-2, 3-2, and/or 3-4 before issuance of this Order with the designation "Confidential," "Confidential — Attorneys' Eyes Only," or "Confidential — Outside Attorneys' Eyes Only" shall receive the same treatment as if designated "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY" under this

Order, unless and until such document is redesignated to have a different classification under this Order.

3. With respect to documents, information or material designated "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" ("DESIGNATED MATERIAL"),[1] subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (i.e., "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE") may be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED

[1] The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE," both individually and collectively.

MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.

5. "CONFIDENTIAL" documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 12 herein:

(a) outside counsel of record in this Action[2] for the Parties;

(b) personnel of such outside counsel's law firm assigned to and reasonably necessary to assist such counsel in the litigation of this Action;

(c) in-house counsel who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action, including in-house paralegals and in-house e-Discovery personnel assisting said in-house counsel;

(d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, provided that the name and title of the designated representative(s) are disclosed at least ten (10) days before access to the Protected Material is to be given to the designated representative(s) so that the producing Party may object to and notify the receiving Party in writing that it objects to disclosure of Protected Material to the designated representative(s). The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order. Either party may in good faith request the other party's consent to designate one or more additional representatives, the other party shall not unreasonably withhold such consent, and the requesting party may seek leave of Court to designate such additional

[2] The term "Action" refers to Case Nos. 2:24-cv-00886.

representative(s) if the requesting party believes the other party has unreasonably withheld such consent;

(e) outside consultants or experts *(i.e.,* not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; (2) before access is given, the consultant or expert has completed the Undertaking attached as Exhibit A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert including an identification of his/her (i) current employer(s), (ii) each person or entity from whom s/he has received compensation from for work (as an employee, consultant, contractor, or the like) pertaining to the field of the invention of the patent(s)-in-suit or the products accused of infringement within the preceding five years, and a brief description of the subject matter of the work for which s/he was compensated; (iii) each case or proceeding [3] (by name and number of the case/proceeding, filing date, and name or the court or tribunal) in which the individual has provided a report, a declaration, or testified (at trial or deposition) pertaining to the field of the invention of the patent(s)-in-suit or the products accused of infringement within the last five years,[4] at least ten (10) days before access to the Protected Material is to be given to that consultant or expert so that the producing Party may object to and notify the receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order;

(f) independent litigation support services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services;

(g) the Court and its personnel; and

[3] This includes any proceeding at the U.S. Patent and Trademark Office or at the U.S. International Trade Commission.

[4] If such consultant or expert reasonably believes any of this information is subject to a confidentiality obligation to a third-party, then the s/he should provide whatever information can be disclosed without violating any confidentiality agreements and note in the disclosure that s/he reasonably believes other information is subject to a confidentiality obligation to a third-party. The producing and receiving Parties may meet and confer regarding the withheld information.

(h) the author(s) or recipient(s) of a document containing the DESIGNATED MATERIAL or a custodian or other person who otherwise possessed or personally knows the information.

6. A Party shall designate documents, information or material as "CONFIDENTIAL" only upon a good faith belief that the documents, information or material contains confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.

7. DESIGNATED MATERIAL shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.

8. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material "RESTRICTED — ATTORNEYS' EYES ONLY" or "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or to the extent such Protected Material includes computer source code and/or live data (that is, data as it exists residing in a database or databases) ("Source Code Material"), the producing Party may designate such Protected Material as "RESTRICTED CONFIDENTIAL SOURCE CODE."

9. For Protected Material designated "RESTRICTED — ATTORNEYS' EYES ONLY," access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 5(a-c) and (e-h); provided, however, that access by in-house counsel pursuant to paragraph 5(c) be limited to in-house counsel who exercise no competitive decision-making authority on behalf of the client; with the exception that the following "Designated Persons" identified and pre-approved below, in subsection 9.a., who have agreed and signed Appendix A, may receive all non-technical material designated "RESTRICTED - ATTORNEYS' EYES ONLY" that is potentially relevant to damages issues and/or settlement negotiations.

Subsection 9.a.

(1) Sandpiper's Designated Persons

- Mark Chen
- Jim Amend

(2) Comcast's Designated Persons

- Teri Evans
- Kevin Chung

10. For Protected Material designated "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 5(a—b) and (e—h); provided, however, that the designating Party shall accommodate reasonable requests to provide summary information of non-technical material that is potentially relevant to damages issues and/or settlement negotiations to the Designated Persons identified in subsection 9(a) who reasonably require access to such information.

11. For Protected Material designated RESTRICTED CONFIDENTIAL SOURCE CODE, the following additional restrictions apply:

(a) Access to a Party's Source Code Material shall be provided only on a "stand-alone" computer (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet or the Internet) in a secure location. The stand-alone computer will be (i) connected to a printer and (ii) provided with software that allows for a "print to PDF" functionality or similar, so PDFs of source code that a person accessing the code desires to print can be saved. The stand-alone computer may only be located within the continental United States at the offices of the producing Party's outside counsel or its vendors, at the producing Party's discretion. The producing Party may not be disruptive of the activities of the receiving Party's representatives. The producing Party may not record (visually, audibly or by other means) the activities of the receiving Party's representatives;

(b) The receiving Party shall make reasonable efforts to restrict its requests for such access to the stand-alone computer to normal business hours, which for purposes of this paragraph shall be 9:00 a.m. through 5:00 p.m, Monday through Friday. However, upon reasonable notice from the receiving party, the producing Party shall make reasonable efforts to accommodate the receiving Party's request for access to the stand-alone computer outside of normal business hours. The Parties agree to cooperate in good faith such that maintaining the producing Party's Source Code Material at the offices of its outside counsel shall not unreasonably hinder the receiving Party's ability to efficiently and effectively conduct the prosecution or defense of this Action;

(c) The producing Party shall provide the receiving Party with information explaining how to start, log on to, and operate the stand-alone computer in order to access the produced Source Code Material on the stand-alone computer, how to take digital notes, and how to print portions of Source Code Material and save desired portions of Source Code material as PDFs;

(d) The producing Party will produce Source Code Material in computer searchable format on the stand-alone computer as described above;

(e) Access to Protected Material designated RESTRICTED CONFIDENTIAL - SOURCE CODE shall be limited to individuals listed in paragraphs 5(a-b) and (g-h) and up to three (3) outside consultants or experts[5] *(i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation and approved to access such Protected Materials pursuant to paragraph 5(e) above. A receiving Party may include excerpts of Source Code Material in a pleading, exhibit, expert report, discovery document, deposition transcript, other Court

[5] For the purposes of this paragraph, an outside consultant or expert is defined to include the outside consultant's or expert's direct reports and other support personnel, such that the disclosure to a consultant or expert who employs others within his or her firm to help in his or her analysis shall count as a disclosure to a single consultant or expert.

document ("Source Code Documents'), provided that the Source Code Documents are appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court's rules, procedures and orders;

(f) To the extent portions of Source Code Material are quoted in a Source Code Document, either (1) the entire Source Code Document will be stamped and treated as RESTRICTED CONFIDENTIAL SOURCE CODE or (2) those pages containing quoted Source Code Material will be separately stamped and treated as RESTRICTED CONFIDENTIAL SOURCE CODE;

(g) Except as set forth in this paragraph, no electronic copies or images of Source Code Material shall be made without prior written consent of the producing Party, except as to take notes under paragraph 11(k) below and as necessary to create documents which, pursuant to the Court's rules, procedures, and order, must be filed or served electronically, including any drafts of such documents.

(h) The receiving Party shall be permitted to print, in paper or to PDF, a reasonable amount of Source Code Material ("Source Code Printouts"), which is presumptively 500 pages (paper and PDF pages combined) from the Source Code Material of each Defendant Group, all of which shall be designated and labeled "RESTRICTED CONFIDENTIAL SOURCE CODE." The stand-alone computer shall be equipped with: (1) a printer to print copies of the source code on bright yellow colored, pre-Bates numbered paper (or reasonably similar paper), with each sheet of paper bearing a header and footer reading "RESTRICTED CONFIDENTIAL SOURCE CODE" ("Source Code Printout Format"), which shall be provided by the producing Party; and (2) software that allows for a "print to PDF" functionality or similar, so PDFs of source code that a person accessing the code desires to print can be saved. At the end of a review session, the receiving Party will request any pages it wishes to print in paper or to PDF. If paper printouts are requested, counsel for the producing Party will keep the originals of the printed documents, and copies shall be made for counsel for the receiving party on paper in the Source Code Printout Format either at the time they are requested (if less than 50 pages) or within two business days (if more than 50 pages). Counsel for the receiving Party may request up to four (4) paper copies of any portion of printed source code. If PDF printouts are requested, counsel for the producing Party will create PDFs using the Source Code Printout Format, load the PDFs to a password-protected and encrypted external hard drive, and deliver the external hard drive to the office of the receiving Party's outside counsel within a reasonable amount of time, where it shall remain for the pendency of this litigation and be securely stored when not in use. The contents of the external hard drive may not be copied or transmitted except as otherwise provided in this Order. The receiving Party shall not request a paper or PDF printout of any continuous block of source code that results in more than 50 printed pages. The producing Party shall maintain an access log identifying, for each and every time any Source Code Material is viewed, accessed, or analyzed by the receiving Party: (1) the name of each person who accessed the Source Code; (2) the date and time of access; (3) the length of time of

access: and (4) whether any hard copies of any portion of the Source Code Material was printed. Should the receiving Party require additional pages beyond the 500-page maximum for Source Code Printouts, the receiving Party shall seek written approval from the producing Party. If the Parties cannot agree, the receiving Party shall be permitted to move the Court for the ability to print additional Source Code Material, or to make additional copies.

(i) If the receiving Party's outside counsel, consultants, or experts obtain Source Code Printouts, the receiving Party shall ensure that such outside counsel, consultants, or experts keep the Source Code Printouts under their direct control in a secured locked area in the offices of such outside counsel, consultants, or expert. The receiving Party may also temporarily keep the Source Code Printouts at: (i) the Court for any proceedings(s) relating to the Source Code Material, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code Material are taken, for the dates associated with the deposition(s); and (iii) any intermediate location reasonably necessary to transport the Source Code Printouts to a Court proceeding or deposition, provided that the Source Code Printouts are kept in a secure manner that ensures access is limited to the persons authorized under this Order.

(j) A producing Party's Source Code Material may only be transported by the receiving Party at the direction of a person authorized under paragraph 11(e) above to another person authorized under paragraph 11(e) above on paper via hand carry, Federal Express, or other similarly reliable courier. Source Code Material may not be transported or transmitted electronically over a network of any kind, including a LAN, an intranet, or the Internet.

(k) The receiving Party's outside counsel and/or expert and/or consultant shall be entitled to take digital notes on the stand-alone computer. The receiving Party shall be permitted to print, in paper or to PDF, digital notes taken, which will not count against page limits set forth in above paragraphs, including paragraph 11(h). The receiving Party may not reproduce or copy the Source Code Material into the digital notes. All digital notes will be marked and treated as RESTRICTED CONFIDENTIAL SOURCE CODE. The producing Party may review digital notes taken by the receiving Party. The receiving Party's outside counsel and/or expert and/or consultant shall also be entitled to take notes on paper relating to the Source Code Material. All notes taken on paper will be stamped and treated as RESTRICTED CONFIDENTIAL SOURCE CODE. The producing Party may not review notes taken on paper by the receiving Party. To the extent the receiving Party desires to take notes on paper, if such paper notes are left behind at the site, they will be destroyed by the producing Party without review. The Parties agree that if there are any disputes regarding the receiving Party's notes, all notes taken by the receiving Party shall be subject to review by a mutually agreed-upon non-party to ensure compliance with this Protective Order.

(l) The name(s) of the person(s) who will review Source Code Material on the stand-alone computer will be provided to the producing Party in conjunction with any

written (including email) notice requesting inspection. The receiving Party shall provide three business days' notice in advance of scheduling any inspections. Such notice shall include the names and titles for every individual from the receiving Party who will attend the inspection and the expected time per day they are expected to review.

(m) Copies of Source Code Printouts that are used as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers.

(n) The producing Party shall install tools that are sufficient for viewing and searching the Source Code Material produced and for taking digital notes. The receiving Party's outside counsel and/or experts may request, at the receiving Party's expense, that additional commercially available software tools for viewing and searching Source Code Material and for taking digital notes be installed on the stand-alone computer, including but not limited to each of the following tools: a text editor capable of printing Source Code Material with filename, page and line number; a comparison tool such as a "diff' tool (e.g., Winmerge); and a multi-text file search tool (e.g., Notepad++, Visual Studio, grep, PowerGrep). The producing Party shall ensure that such tools are installed on the stand-alone computer, provided, however, that (a) the receiving Party possesses an appropriate license to such software tools; (b) there is a lack of a reasonable objection to such software tools by the producing Party. The receiving Party must provide the producing Party with a CD, DVD, or e-mail containing such software tool(s) at least five (5) business days in advance of the date upon which the receiving Party wishes to have the additional software tools available for use on the Source Code computer.

12. Any attorney representing a Party, whether in-house or outside counsel, and any person associated with a Party and permitted to receive the other Party's Protected Material that is designated RESTRICTED — ATTORNEYS' EYES ONLY, RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY and/or RESTRICTED CONFIDENTIAL SOURCE CODE (collectively "HIGHLY SENSITIVE MATERIAL"), who reviews or otherwise learns, in whole or in part, of the contents of the other Party's HIGHLY SENSITIVE MATERIAL under this Order (except for HIGHLY SENSITIVE MATERIAL that is provided under subsection 9.a) shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application pertaining to the field of the invention of the patents-in-suit during the pendency of this Action and for one year after its conclusion, including any appeals. To ensure

compliance with the purpose of this provision, each Party shall create an "Ethical Wall" between those persons with access to HIGHLY SENSITIVE MATERIAL and any individuals who, on behalf of the Party or its acquirer, successor, predecessor, or other affiliate, prepare, prosecute, supervise or assist in the preparation or prosecution of any patent application pertaining to the field of invention of the patent-in-suit. Nothing in this Order shall preclude a person with access to HIGHLY SENSITIVE MATERIAL from working on or participating in, directly or indirectly, an ex parte reexamination, a post grant proceeding, or an inter partes review proceeding, provided that the individual is not involved in the drafting, amending, or providing of instruction with respect to the drafting or amending of claims in such action or proceeding.

13. The privilege logs exchanged in accordance of Paragraph 6 of the Discovery Order will contain the following information for each item withheld for reasons of privilege, to the extent such information is reasonably available and providing such information will not destroy the privilege: (1) the name(s) of the individual(s) who created the document or, for electronic mail, the name(s) of the individual(s) who sent and received the document or a copy of it; (2) the date on which the document was sent or last modified; (3) a description of the nature of the document sufficient to enable the receiving party to assess the applicability of the privilege or protection; and (4) privilege(s) claimed. To the extent reasonably ascertainable, legal personnel shall be identified as such by adding an asterisk before or after their names in the privilege log. The parties agree that the parties shall not be required to log (1) any privileged documents created on or after the date of the Complaint in each of the cases in this Action respectively or (2) any privileged communications with a Party's outside counsel of record in an active litigation of that Party

that was filed before the date of the Complaint in each of the cases in this Action, so long as the communication concerns that active litigation and does not discuss, relate to, or concern any of the other Parties in this Action.

14. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. Pursuant to Federal Rule of Evidence 502(d) and (e), if documents, information or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall gather and return all copies of such documents, information or other material to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party.

15. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties are hereby ORDERED to safeguard all such documents, information and material to protect against disclosure to any unauthorized persons or entities. If a Receiving

Party or person authorized to access Protected Material ("Authorized Recipient") discovers any loss of Protected Material or a breach of security, including any actual or suspected unauthorized access, relating to another party's Protected Material, the receiving Party or Authorized Recipient shall: (1) promptly stop the unauthorized breach, if possible; (2) promptly (within 72 hours of discovery, if possible) provide written notice to producing Party of such breach, including information regarding the size and scope of the breach; and (3) investigate and make reasonable efforts to remediate the effects of the breach. In any event, the receiving Party or Authorized Recipient shall promptly take all necessary and appropriate corrective action to terminate any unauthorized access.

16. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating Party, (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information, (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL, (iv) a current or former officer, director or employee of the producing Party or a current or former officer, director or employee of a company affiliated with the producing Party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to paragraph 9 of this Order); (vi) an independent contractor, consultant, and/or expert retained for the purpose of this litigation; (vii) court reporters and videographers; (viii) the Court; or (ix) other persons entitled hereunder to access to DESIGNATED MATERIAL. DESIGNATED MATERIAL

shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or from the Court. [6] If DESIGNATED MATERIAL is referred to during the course of a deposition in these actions, or if any question asked, answer given, or answer about to be given contains or is reasonably likely to contain DESIGNATED MATERIAL, then, in the case of material designated "CONFIDENTIAL" any person who is not designated in Paragraph 5 above and is not the deponent, the deponent's counsel, the reporter, or the videographer must leave the room during such portion of the deposition; in the case of material designated "RESTRICTED - ATTORNEYS' EYES ONLY," any person who is not designated in Paragraph 9 above and is not the deponent, the deponent's counsel, the reporter, or the videographer must leave the room during such portion of the deposition; in the case of material designated "RESTRICTED - OUTSIDE ATTORNEYS' EYES ONLY," any person who is not designated in Paragraph 10 above and is not the deponent, the deponent's counsel, the reporter, or the videographer must leave the room during such portion of the deposition; and in the case of material designated "RESTRICTED CONFIDENTIAL SOURCE CODE," any person who is not designated in paragraph 11(e) above and is not the deponent, the deponent's counsel, the reporter, or the videographer must leave the room during such portion of the deposition. This paragraph shall not be interpreted to authorize disclosure of

[6] In the event a non-Party witness is authorized to receive Protected Material that is to be used during his/her deposition but is represented by an attorney not authorized under this Order to receive such Protected Material, the attorney must provide prior to commencement of the deposition an executed Undertaking attached as Exhibit A. In the event such attorney declines to sign the Undertaking prior to the examination, the Parties, by their attorneys, shall jointly seek a protective order from the Court prohibiting the attorney from disclosing Protected Material in order for the deposition to proceed.

Designated Material to any person to whom disclosure is prohibited by this Protective Order.

17. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY."

18. Any DESIGNATED MATERIAL that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend "FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER" above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on DESIGNATED MATERIAL, such confidential portions shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court.

19. The Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at the trial of

this Action, or from using any information contained in DESIGNATED MATERIAL at the trial of this Action, subject to any pretrial order issued by this Court.

20. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) days of receipt of the written request, the requesting Party may apply to the Court for relief. Upon any such application to the Court, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Federal Rules of Civil Procedure 37, subject to the Rule's provisions relating to sanctions. In making such application, the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Court shall be met. Pending the Court's determination of the application, the designation of the designating Party shall be maintained.

21. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has agreed to be bound by this Order. A copy of the acknowledgment form is attached as Appendix A.

22. To the extent that any discovery is taken of persons who are not Parties to this Action ("Third Parties") and in the event that such Third Parties contended the discovery sought involves trade secrets, confidential business information, or other proprietary information, then such Third Parties may agree to be bound by this Order.

23. To the extent that discovery or testimony is taken of Third Parties, the Third Parties may designate as "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," and/or "RESTRICTED CONFIDENTIAL SOURCE CODE" any documents, information or other material, in whole or in part, produced by such Third Parties. The Third Parties shall have ten (10) days after production of such documents, information or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY" in accordance with this Order. Where a Third Party designates any documents, information, or other material as provided herein, experts previously disclosed and approved hereunder prior to said Third Party's production of any Protected Material need not be disclosed to said Third Party. Subsequently disclosed experts need not be disclosed to said Third Party before that Third Party's Protected Material may be disclosed thereto.

24. If a receiving Party is served with a subpoena issued by a court, arbitral, administrative, or legislative body, or with a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," and/or "RESTRICTED CONFIDENTIAL SOURCE CODE" by a producing Party or Third Party, the receiving Party must:

(a) promptly notify in writing the designating Party. Such notification shall include a copy of the subpoena or court order, and be provided to the designating Party at least 14 days in advance of any response or production deadline;

(b) promptly notify in writing the person who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and

(c) cooperate with respect to all reasonable procedures pursued by the designating Party whose Protected Material may be affected. If the designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," and/or "RESTRICTED CONFIDENTIAL SOURCE CODE" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the designating Party's permission. The designating Party shall bear the burden and expense of seeking protection in that court of its Protected Material, and nothing in these provisions should be construed as authorizing or encouraging a receiving Party in this action to disobey a lawful directive from another court.

25. Within forty-five (45) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall at the producing Party's election either be returned to the producing Party or be destroyed. The receiving Party shall verify the return or destruction by affidavit furnished to the producing Party, upon the producing Party's request. Notwithstanding this provision, outside counsel are entitled to retain an archival

copy of pleadings, motions, and trial briefs (including all supporting and opposing papers and exhibits thereto), written discovery requests and responses (and exhibits thereto), deposition transcripts (and exhibits thereto), trial transcripts and demonstratives, and exhibits offered or introduced into evidence at any hearing or trial, and their attorney work product which refers or is related to any "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," and "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY" information for archival purposes. However, outside counsel shall not be entitled to maintain any document productions, Source Code Documents, or RESTRICTED CONFIDENTIAL SOURCE CODE information from a producing party for any reason whatsoever (including archival purposes). Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order.

26. The failure to designate documents, information or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.

27. Any Party knowing or believing that any other Party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing Party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall

discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

28. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.

29. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.

30. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

31. Any person in possession of DESIGNATED MATERIAL will maintain appropriate administrative, technical, and organizational safeguards ("Safeguards") that protect the security and privacy of DESIGNATED MATERIAL. As part of these Safeguards, each person will take reasonable measures to protect DESIGNATED MATERIAL, including insuring that devices hosting such material are password protected.

SIGNED this 12th day of February, 2025.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

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

Sandpiper CDN, LLC, *Plaintiff*, v. Comcast Cable Communications, LLC d/b/a Xfinity; Comcast Cable Communications Management, LLC d/b/a/ Comcast Technology Solutions; and Comcast Corporation. *Defendants*.	Civil Case No. 2:24-cv-00886-JRG-RSP **JURY TRIAL DEMANDED**

APPENDIX A
UNDERTAKING OF EXPERTS OR CONSULTANTS REGARDING PROTECTIVE ORDER

I,_____, declare that:

1. My address is_____.

   My current employer is_____.

   My current occupation is_____.

2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as "CONFIDENTIAL," "RESTRICTED — ATTORNEYS' EYES ONLY," "RESTRICTED — OUTSIDE ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" that is disclosed to me.

4. Promptly upon termination of these actions, I will return all documents and things designated as “CONFIDENTIAL,” “RESTRICTED — ATTORNEYS’ EYES ONLY,” “RESTRICTED — OUTSIDE ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the party by whom I am employed.

5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature ____

Date ....

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

SANDPIPER CDN, LLC, *Plaintiff,* v. COMCAST CABLE COMMUNICATIONS, LLC *d/b/a* XFINITY and COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC *d/b/a* COMCAST TECHNOLOGY SOLUTIONS, *Defendants*.	§	CASE NO. 2:24-CV-00886-JRG-RSP

ORDER

Comcast Cable Communications, LLC; Comcast Cable Communications Management, LLC; and Comcast Corporation previously filed a Motion to Dismiss or Transfer (Dkt. No. 18.) Magistrate Judge Payne entered a Report and Recommendation (Dkt. No. 67), recommending denial of Comcast's Motion to Dismiss or Transfer. Comcast has now filed Objections (Dkt. No. 68), with Sandpiper CDN, LLC filing a Response (Dkt. No. 72.)

After conducting a *de novo* review of the briefing on the Motion to Dismiss or Transfer, the Report and Recommendation, and the briefing on Comcast's Objections, the Court agrees with the reasoning provided within the Report and Recommendation and concludes that the Objections fail to show that the Report and Recommendation was erroneous. Consequently, the Court **OVERRULES** Comcast's Objections and **ADOPTS** the Report and Recommendation and orders that the Motion to Dismiss or Transfer (Dkt. No. 18) is **DENIED**.

So ORDERED and SIGNED this 24th day of September, 2025.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

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

Sandpiper CDN, LLC, *Plaintiff*, v. Comcast Cable Communications, LLC d/b/a Xfinity; et al. *Defendant*.	§ § § § § § § § § § § §	CASE NO. 2:24-CV-00886-JRG-RSP

REPORT AND RECOMMENDATION

Before the Court is the Motion to Dismiss for Improper Venue or, in the Alternative, Transfer Venue to the Eastern District of Pennsylvania, filed by Defendants Comcast Cable Communications, LLC d/b/a Xfinity; Comcast Cable Communications Management, LLC d/b/a Comcast Technology Solutions; and Comcast Corporation. **Dkt. No. 18**. For the reasons discussed below, the Motion should be **DENIED**.

I. BACKGROUND

On November 1, 2024, Plaintiff Sandpiper brought suit against Defendants, alleging patent infringement. Dkt. No. 1 (Complaint).

On January 13, 2025, Defendant filed the instant Motion. Dkt. No. 18.

On February 11, 2025, the Parties stipulated to a dismissal of Defendant Comcast Corp.. Dkt. No. 36.

II. LEGAL STANDARD

The Judicial Code provides that 28 U.S.C. § 1400(b) is the "sole and exclusive provision controlling venue in patent infringement actions" and is not supplemented by the general venue

statutes. *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 266 (2017) (citing *Fourco Glass Co. v. Transmirra Prod. Corp.*, 353 U.S. 222, 229 (1957)). Pursuant to 28 U.S.C. § 1400(b), venue lies "in the judicial district where the defendant resides" or "where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b). A "domestic corporation 'resides' only in its State of incorporation for purposes of the patent venue statute." *TC Heartland*, 581 U.S. at 267-70.

III. ANALYSIS

In the Motion, Defendants argue that they are incorporated in either Pennsylvania or Delaware, making them residents of those states—a point that Plaintiff does not dispute. *See* Dkt. No. 18 at 6; *compare generally* Dkt. No. 51. Defendants further argue that they also are not residents of Texas under the other prong of 1400(b) because they commit no acts of infringement here and that Plaintiff has failed to plausibly allege such facts.[1] Dkt. No. 18 at 6.

Specifically, Defendants assert that all asserted claims are method claims which can, therefore, only be infringed "by one practicing the patented method." *Id.* at 7 (quoting *Mirror Worlds, LLC v. Apple, Inc.*, 784 F. Supp. 2d 703 (E.D. Tex. 2011)). Defendants argue that "[h]ere, each asserted claim recites a method performed by one or more CDN[2] servers that comprise a CDN," but "[b]ecause each claim requires a CDN server . . . performance of the patented method can only occur where CDN servers are located." *Id.* "Therefore," continue Defendants, "for [Plaintiff] to meet its burden to establish proper venue, it must plausibly allege that the CDN servers are in this District," but that "[i]t does not even attempt to do so." *Id.* Defendants claim that "[t]he closest the Complaint gets to alleging acts of infringement in the District is to assert

[1] Defendants also argue that Defendant Comcast Corp. specifically does not have a regular and established place of business in this District. Dkt. No. 18 at 11. This issue is moot in view of the Parties' stipulation dismissing Comcast Corp.. *See supra* Section I; Dkt. No. 36.
[2] "Content Distribution Network."

that Comcast tests, distributes, markets, offers to sell, sells, and/or utilizes products and services 'utilizing' the 'accused CDN technology' in the Eastern District of Texas." *Id.* at 8 (quoting Complaint at ¶ 12). Defendants argue that this is not enough because "a method claim is not directly infringed by the sale of an apparatus even though it is capable of performing only the patented method. . . . A method claim is directly infringed only by one practicing the patented method." *Id.* (quoting *Mirror Worlds*, 784 F. Supp. 2d at 712–13). "Thus," conclude Defendants, "'distribut[ing],' 'market[ing],' 'offer[ing] to sell,' and 'sell[ing],' products and services in the District cannot constitute direct acts of infringement," and that, "[s]imilarly, testing or utilizing products and services that themselves 'utilize' the accused CDN technology cannot constitute acts of infringement in the District unless the accused CDN technology is itself located in the District, which the Complaint nowhere alleges." *Id.*

In response, Plaintiff argues that "there is nothing in the Complaint limiting the asserted claims to 'CDN servers.' To the contrary, the Complaint expressly and repeatedly explains that the asserted claims cover Comcast's CDN as a whole. 'CDN servers' are only one piece of the network." Dkt. No. 51 at 10. Plaintiff asserts that, so long as one step of the method is performed in this District, then the "acts of infringement" prong is satisfied for method claims. *Id.* (citing *SEVEN Networks, LLC v. Google LLC*, 315 F. Supp. 3d 933, 944-45 (E.D. Tex. 2018)).

Regarding steps allegedly performed in this District, as one example, Plaintiff refers to asserted claim 28 of the '903 patent, which recites "a content delivery system operative in a computer network for delivering content to client machines" (*Id.* at 5 (citing '903 Patent at claim 28)), and then points to paragraph 88 of its Complaint, which alleges that Comcast infringes this claim because, among other things, "Comcast provides a content delivery system, delivering content for gaming, video playback, and other purposes, including by providing CDN solutions

for CDN customers" (*Id.* (quoting Complaint at ¶ 88)). Plaintiff contends that because "Comcast's CDN serves Comcast customers in the Eastern District of Texas, the 'delivering content' of claim 28 is necessarily performed in this District." *Id.* (citing Dkt. No. 51-2 at 109:12-110:9).

The Court finds that Plaintiff has properly laid venue in this Court. As this Court has previously said, it is sufficient to establish that acts of infringement were committed within this District for venue purposes when at least one step of a method claim is performed in this district. *SEVEN Networks*, 315 F. Supp. 3d at 944-45 (E.D. Tex. 2018)).

Here, the Court agrees with Plaintiff that, contrary to Defendants' assertions, the claims at issue contemplate a Content Distribution Network as a whole and not merely the CDN servers, which are but one component of that network. Turning to the asserted patents, for each one, Plaintiff provides at least one step that it alleges is performed in this District and provides sufficient support for these allegations. *See* Dkt. No. 51 at 5-7. While Defendants clearly disagree with this, this is of no moment because "[i]n assessing whether a defendant has committed an act of infringement within the District, an allegation of infringement–even if contested–is sufficient to establish venue is proper." *Intell. Ventures II LLC*, No. 2:16-CV-00980-JRG, 2017 WL 5630023, at *8.

IV. CONCLUSION

For the reasons discussed above, the Motion should be **DENIED**.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this report within 14 days bars that party from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. FED. R. CIV. P. 72(b)(2); *see also Douglass v. United Servs.*

Auto. Ass'n, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (*en banc*). Any objection to this Report and Recommendation must be filed in ECF under the event "Objection to Report and Recommendation [cv, respoth]" or it may not be considered by the District Judge.

SIGNED this 13th day of August, 2025.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE