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BAKER BOTTS L.L.P.
Jeremy J. Taylor (SBN 249075)
jeremy.taylor@bakerbotts.com
Arya Moshiri (SBN 324231)
arya.moshiri@bakerbotts.com
101 California St., Ste. 3600
San Francisco, CA 94111
Telephone: 415.291.6200
Facsimile: 415.291.6300

Kurt M. Pankratz (*pro hac vice*)
Bethany R. Salpietra (*pro hac vice*)
kurt.pankratz@bakerbotts.com
bethany.salpietra@bakerbotts.com
2001 Ross Ave., Ste. 900
Dallas, TX 75201
Telephone: 214.953.6500
Facsimile: 214.953.6503

Attorneys for Plaintiff Lyft, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

LYFT, INC.

Plaintiff,

v.

AGIS SOFTWARE DEVELOPMENT LLC,

Defendant.

Case No. 5:21-cv-04653-BLF (SVK)

**PLAINTIFF LYFT, INC.’S STATEMENT
REGARDING PRODUCTION OF AGIS,
INC. DOCUMENTS IN EDTX ACTION**

Judge: Hon. Beth Labson Freeman
Trial Date: October 16, 2023
Courtroom: 3, Fifth Floor

1 Pursuant to this Court's Order re Supplemental Briefing and Protective Order ("Order")
2 (Dkt. 117), Plaintiff Lyft, Inc. ("Lyft") respectfully submits this Statement Regarding Production of
3 AGIS, Inc. Documents in the Eastern District of Texas Action¹ and whether they were produced
4 pursuant to a subpoena as AGIS represented in the April 29, 2022 hearing. This submission follows
5 Defendant AGIS Software Development LLC's ("AGIS Software") May 2, 2022 unauthorized
6 correspondence with the Court, which incorrectly suggested that the parties resolved their dispute
7 concerning AGIS Software's Patent L.R. 3-2 production. *See* Ex. 1. As Lyft explained to AGIS
8 Software on May 1, 2022, AGIS Software's agreement to reproduce its Patent L.R. 3-2 production
9 from the EDTX Action and settlement agreements does not resolve the parties' dispute concerning
10 AGIS Software's Patent L.R. 3-2 production in the above-captioned matter. *See* Ex. 2. Notably,
11 N.D. Cal. Patent L.R. 3-2 requires the production of seven additional categories of documents
12 beyond those required by E.D. Tex. Patent L.R. 3-2, and thus AGIS Software's agreement to
13 produce its 3-2 documents from the EDTX Action does not fully satisfy the substantially larger
14 scope of material required to be produced under N.D. Cal. Patent L.R. 3-2.

15 Though AGIS Software's May 2 submission to this Court purports to be a joint resolution
16 (which, as Lyft notes above, it is not), it is actually a capitulation. Indeed, AGIS Software admits
17 in its correspondence with the Court that it produced AGIS, Inc. documents in the EDTX Action on
18 its own volition under no subpoena power. *See* Ex. 1 (explaining that "the AGIS, Inc. documents []
19 were produced in EDTX . . . prior to issuance of a subpoena"). AGIS Software's submission to this
20 Court is but a thinly veiled attempt to conceal that it has possession, custody, and/or control over
21 AGIS, Inc.'s documentation, as this fact would be fatal to AGIS Software's contention that it is not
22 the alter ego of AGIS, Inc. Based on the timing of production in the EDTX Action, it appears AGIS
23 Software not only has possession but also control over AGIS, Inc.'s documentation, and thus should
24 be required to produce those documents pursuant to N.D. Cal. Patent L.R. 3-2.

25 As Lyft previewed for the Court during the April 29, 2022 hearing, AGIS Software produced
26 *numerous* AGIS, Inc. documents in the EDTX Action months before Lyft served a subpoena on

27 _____
28 ¹ *AGIS Software Development LLC v. Lyft, Inc.*, Case No. 2:21-cv-00072-JRG (later consolidated
with 2:21-cv-00072-JRG) (the "EDTX Action")

1 AGIS, Inc. *See, e.g.*, Ex. 3 at 1 (explaining that AGIS Software produced nearly 200 pages of AGIS,
2 Inc. documents, specifically identifying AGISSOFTWARE_0007815,
3 AGISSOFTWARE_0007754, and AGISSOFTWARE_0000027 as examples designated under the
4 protective order); *see also* Decl. of B. Salpietra at ¶ 8 (confirming that AGISSOFTWARE_0007815,
5 AGISSOFTWARE_0007754, and AGISSOFTWARE_0000027 were produced on May 19, 2021).
6 On September 21, 2021, Lyft served a subpoena on AGIS, Inc. due to concerns that AGIS Software
7 was selectively producing AGIS, Inc. materials. *See* Exs. 4 & 5 (subpoena and proof of service to
8 AGIS, Inc.). On October 4, 2021, AGIS, Inc. issued Objections and Responses to Lyft’s subpoena
9 agreeing to produce relevant documents and acknowledging that AGIS Software had already
10 produced AGIS, Inc. documents in the EDTX Action. *See, e.g.*, Ex. 6 at 6 (“AGIS, Inc. will produce
11 relevant, responsive, non-privileged documents responsive to this request ***to the extent that such***
12 ***documents*** exist, are in AGIS, Inc.’s possession, custody, or control, and are located after reasonable
13 search, and ***have not been produced by the parties to the above-captioned case***”) (emphasis added).
14 In fact, by the time AGIS, Inc. provided its objections and responses to Lyft’s subpoena, AGIS
15 Software had already produced nearly 650,000 pages of documents (representing over 95% of its
16 entire production in the EDTX Action), which included documents purportedly from AGIS, Inc.
17 *See* Ex. 7 (September 29, 2021 email providing service of AGIS Software’s production volumes 7
18 and 8 containing documents through AGISSOFTWARE_0648414); Decl. of B. Salpietra at ¶¶ 13-
19 14.

20 The primary reason that Lyft issued a subpoena to AGIS, Inc. during the pendency of the
21 EDTX Action was to ensure that it received a complete production of AGIS, Inc. documents.
22 Indeed, as AGIS Software is well aware, Lyft was concerned that AGIS Software was only making
23 self-serving productions of AGIS, Inc. documents. *See, e.g.*, Ex. 3 at 2 (“It would be improper for
24 AGIS to use its corporate structure to selectively produce information from AGIS, Inc. that AGIS
25 would like to rely on in this case while refusing to provide relevant information to Lyft from AGIS,
26 Inc.”); Ex. 8 at 2 (“Rather than producing all minutes from the minute books of Advanced Ground
27 Information Systems, Inc. and AGIS Holdings, Inc.—as Lyft understood AGIS to be doing—AGIS
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1 has made a selective production of the requested minutes, and has produced minutes for only three
2 meetings.”).

3 Furthermore, AGIS Software also made AGIS, Inc.’s source code available for inspection in
4 the EDTX Action prior to Lyft issuing its subpoena to AGIS, Inc. *See* Ex. 9 (showing that AGIS
5 Software made source code available for inspection on August 13, 2021); Ex. 3 at 1-2 (clarifying
6 that the code produced was source code of AGIS, Inc. and not AGIS Software). And, subsequently,
7 AGIS Software made AGIS, Inc.’s LifeRing products available for inspection. *See* Ex. 10; *see also*
8 Ex. 11 at 4 (identifying the “LifeRing products” as products of AGIS, Inc. that practice the patents-
9 in-suit). AGIS Software’s production of AGIS, Inc.’s source code and products is particularly
10 noteworthy as N.D. Cal. Patent L.R. 3-2 requires the production of “documents sufficient to show
11 the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as
12 embodying any asserted claims,” which AGIS Software has not done in the instant case as of the
13 date of this filing. *See* Patent L.R. 3-2. AGIS Software’s failure to produce these materials in this
14 case despite previous production in the EDTX Action is one example of how AGIS Software’s N.D.
15 Cal. Patent L.R. 3-2 production remains deficient even with AGIS Software’s agreement to produce
16 its 3-2 documents from the EDTX Action.

17 As demonstrated by the evidence cited herein, AGIS Software has possession, custody,
18 and/or control over AGIS, Inc. documentation, including some of which AGIS Software should
19 have produced pursuant to Patent L.R. 3-2 on February 25, 2022. And, although AGIS Software
20 has agreed to produce *some* of this documentation (e.g., license agreements and 3-2 documents
21 produced in the EDTX Action), there is still a live dispute between the parties concerning the
22 production of documents pursuant to the seven other categories of documents not required by the
23 E.D. Tex. Patent L.R. 3-2. Lyft respectfully submits that AGIS Software should be compelled to
24 produce the full scope of documents required by N.D. Cal Patent L.R. 3-2, including the AGIS, Inc.
25 documents demonstrated to be within AGIS Software’s possession, custody and/or control.

26 Dated: May 3, 2022

Respectfully submitted,

27 By: /s/ Jeremy J. Taylor
28 Jeremy J. Taylor

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Jeremy J. Taylor (SBN 249075)
Arya Moshiri (SBN 324231)
jeremy.taylor@bakerbotts.com
arya.moshiri@bakerbotts.com
BAKER BOTTS L.L.P.
101 California St., Ste. 3600
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bethany.salpietra@bakerbotts.com
BAKER BOTTS L.L.P.
2001 Ross Ave., Ste. 900
Dallas, TX 75201
Telephone: 214.953.6500
Facsimile: 214.953.6503

Attorneys for Plaintiff Lyft, Inc.