Exhibit A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LYFT, INC.,	Case No. 21-cv-04653-BLF
Plaintiff,	
v.	**ORDER GRANTING PLAINTIFF LYFT, INC.'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**
AGIS SOFTWARE DEVELOPMENT LLC,	
Defendant.	
	[Re: ECF No. 78]

Before the Court is Plaintiff Lyft, Inc.'s ("Lyft") motion for leave to file a first amended complaint in this patent declaratory judgment action against AGIS Software Development LLC ("AGIS Software"). Lyft seeks to add three new parties—Advanced Ground Information Systems, Inc. ("AGIS, Inc."); AGIS Holdings, Inc. ("AGIS Holdings"); and Malcolm K. Beyer, Jr. (collectively, the "Proposed Parties")—and a breach of contract claim in its first amended complaint. *See* Motion, ECF No. 78. AGIS Software opposes. *See* Opposition, ECF No. 94.

Pursuant to Civil Local Rule 7-1(b), the Court finds that Lyft's motion is appropriate for determination without oral argument. Based on the below reasoning, the Court GRANTS Lyft's motion.

I.   BACKGROUND

On January 29, 2021, AGIS Software filed a patent infringement action against Lyft in the Eastern District of Texas regarding the Patents-in-Suit based on "the Lyft and Lyft Driver applications and the related services and/or servers for the applications." *See* Complaint, ECF No. 1 ¶ 4. The case was consolidated with other AGIS Software cases under the caption *AGIS Software*

1   On January 19, 2022, Judge Gilstrap dismissed Lyft from the case for improper venue. *See*

2   E.D. Texas Action, ECF No. 334.

3   On June 16, 2021, while AGIS Software's Eastern District of Texas action against Lyft was

4   still pending, Lyft filed the present action for declaratory judgment of noninfringement of the same

5   patents asserted against it in the E.D. Texas Action. *See* Complaint, ECF No. 1. On January 28,

6   2022, the Court dismissed Lyft's complaint for lack of personal jurisdiction with leave to amend.

7   *See* Order, ECF No. 61. The Court further granted Lyft's request for jurisdictional discovery in the

8   form of five interrogatories and one four-hour Rule 30(b)(6) deposition. *See id.* at 10. Additionally,

9   the Court ordered that Lyft could not add any new claims or new parties to any amended complaint

10   without the leave of the Court or a stipulation with AGIS Software. *See id.*

11   On March 28, 2022, Lyft filed a motion for leave to file a first amended complaint, seeking

12   to (1) add the Proposed Parties and (2) add a breach of contract claim against AGIS Software and

13   the Proposed Parties. *See* Motion, ECF No. 78. Lyft seeks to add the Proposed Parties because it

14   argues that jurisdictional discovery has indicated that the Proposed Parties are alter egos of AGIS

15   Software. *See id.* at 4–5. The breach of contract claim is based on AGIS Software's alleged breach

16   of ███ by

17   accusing the Lyft application installed on ███ devices in the E.D. Texas Action and the present case.

18   *See* Proposed First Amended Complaint, ECF No. 2 ¶¶ 213–237. AGIS Software opposes, arguing

19   that (1) the evidence does not indicate the Proposed Parties are alter egos of AGIS Software and

20   (2) Lyft was dilatory in seeking to add its breach of contract claim, which is moot based on AGIS

21   Software's pending motion to amend its infringement contentions. *See* Opposition, ECF No. 94

22   at 4–8.

23   **II.   LEGAL STANDARD**

24   Under Federal Rule of Civil Procedure 15, "a party may amend its pleading only with the

25   opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should

26   freely give leave when justice so requires." *Id.* A district court ordinarily must grant leave to amend

27   unless one or more of the following "*Foman* factors" is present: (1) undue delay, (2) bad faith or

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1   opposing party, or (5) futility of amendment. *See Eminence Capital, LLC v. Aspeon, Inc.*,

2   316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Foman v. Davis*, 37 U.S. 178, 182 (1962)). "[I]t is the

3   consideration of prejudice to the opposing party that carries the greatest weight." *Id.* However, a

4   strong showing with respect to one of the other factors may warrant denial of leave to amend. *Id.*

5   **III.   DISCUSSION**

6   Lyft seeks leave to (1) add the Proposed Parties and (2) add a breach of contract claim to its

7   first amended complaint. *See* Motion, ECF No. 78. AGIS Software opposes each request. *See*

8   Opposition, ECF No. 94. The Court will consider each issue in turn.

9   **A.   Leave to Add Proposed Parties**

10   Lyft argues that adding the Proposed Parties is warranted because (1) they have opposed

11   Lyft's discovery requests on the basis that they are not parties to the present suit and

12   (2) jurisdictional discovery has shown that ████████████████████████████████████

13   ████████████, so AGIS Software may seek to avoid liability ████████████████████████

14   ██████. *See* Motion, ECF No. 78 at 4–5 (citing Salpietra Decl., ECF No. 78-1, Ex. 7 at 12–17; *id.*,

15   Ex. 11 at 144:7–8). Lyft also argues that jurisdictional discovery has revealed facts indicating that

16   the Proposed Parties are alter egos of AGIS Software, including shared office space and ██████████,

17   ██████████████████████████, and AGIS Software's undercapitalization. *See* Reply, ECF No. 107

18   at 4–7. In response, AGIS Software argues that the evidence shows that AGIS Software paid for

19   the Proposed Parties' services—it does not indicate ██████████ or undercapitalization. *See*

20   Opposition, ECF No. 94 at 4–6. Further, AGIS Software argues that the evidence indicates that

21   AGIS Software, AGIS Holdings, and AGIS, Inc. are separate and distinct business entities—for

22   instance, they have different ████████████████████████████████████. *See id.* at 6–7.

23   The Court agrees with Lyft. AGIS Software's only objections to Lyft's motion are directed

24   to the merits of Lyft's alter ego case. In other words, AGIS Software appears to be arguing that

25   Lyft's proposed amendment would be futile, because Lyft cannot show that the Proposed Parties

26   are alter egos of AGIS Software. AGIS Software has failed to show that addition of the Proposed

27   Parties would be futile. Lyft has raised facts indicating significant ████████████████████████

1   *id.*, Ex. 11 at 144:7–8.   Further, Lyft points to facts indicating ███████████████████

2   ████████████████████, shared office space, and shared ████████████.   *See* Salpietra

3   Reply Decl., ECF No. 107-1, Ex. 13 at 12:22–13:24, 24:1–32:21, 36:11–43:15, 119:9–128:10,

4   134:19–135:14; *id.*, Exs. 14–16.   Based on the evidence, the Court finds that it cannot say there is

5   "no set of facts [that] can be proved under the amendment to the pleadings that would constitute a

6   valid and sufficient claim" against the Proposed Parties.   *Missouri ex rel. Koster v. Harris*,

7   847 F.3d 646, 656 (9th Cir. 2017) (citations omitted).   Without a sufficient showing as to any of the

8   *Foman* factors, the Court finds that leave to amend regarding the Proposed Parties is appropriate.

9   *See Foman*, 371 U.S. at 182.

10   Accordingly, the Court GRANTS Lyft leave to add the Proposed Parties in the first amended

11   complaint.

12   **B.   Leave to Add Breach of Contract Claim**

13   Lyft argues that the Court should grant it leave to add the breach of contract claim because

14   it previously asserted the claim in the E.D. Texas Action, and Lyft was not dismissed from that case

15   until January 2022.   *See* Motion, ECF No. 78 at 5–6.   Further, Lyft argues that it waited to bring its

16   breach of contract claim in this case because AGIS Software has objected to Lyft using any protected

17   information from the E.D. Texas Action in this case, and █████████████████████████

18   ████████████████████████████████████.   *See* Reply, ECF No. 107 at 7–8. In

19   response, AGIS Software argues that Lyft was dilatory in asserting the breach of contract claim in

20   this action, since Lyft waited until April 2022—nearly six months after originally asserting the claim

21   in the E.D. Texas Action in November 2021.   *See* Opposition, ECF No. 94 at 7–8.   Further, AGIS

22   Software argues that Lyft's breach of contract claim is mooted by AGIS Software's pending motion

23   to amend its infringement contentions at ECF No. 84, which Lyft opposes.   *See id.* at 7.   AGIS

24   Software's motion to amend its infringement contentions seeks to "mak[e] clear" that it is not

25   alleging infringement of "any Lyft iOS-based application" or "any Apple products."   *See*

26   Opposition, ECF No. 94 at 7 (quoting ECF No. 84-8 at 2 n.1).   On reply, Lyft argues that regardless

27   of the outcome of AGIS Software's motion to amend its infringement contentions, Lyft can still

28   ███ ████████████ ██ █████

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