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16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
 18 **SAN JOSE DIVISION**

19 LYFT, INC.,

20 *Plaintiff,*

21 v.

22 AGIS SOFTWARE DEVELOPMENT LLC,

23 *Defendant.*

Case No. 5:21-cv-04653-BLF

Hon. Judge Beth Labson Freeman

**NOTICE OF MOTION AND MOTION TO
 DISMISS COMPLAINT FOR
 DECLARATORY JUDGMENT;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT**

Date: January 27, 2022

Time: 9:00 a.m.

Location: Courtroom 3

*[Declaration of Malcolm K. Beyer, Jr; and
 Proposed Order filed concurrently herewith]*

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that on January 27, 2022 at 9:00 a.m., or as soon thereafter as the matter may be heard before The Honorable Beth Labson Freeman in the United States District Court for the Northern District of California in the Robert F. Peckham Federal Building & United States Courthouse, Courtroom 3, 5th Floor, 280 South 1st Street, San Jose, California 95113, Defendant AGIS Software Development LLC (“AGIS Software” or “Defendant”) will and hereby does move the Court, for: (1) an order dismissing the Complaint for Declaratory Judgment filed by Plaintiff Lyft, Inc. (“Lyft” or “Plaintiff”) pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure; (2) an order dismissing the Complaint for Declaratory Judgment in favor of the first-filed action; or (3) in the alternative, an order staying this action pending a decision on Lyft’s motion to dismiss, or in the alternative, to transfer, which is currently pending in the Eastern District of Texas.

This Motion is made on the grounds that the Court lacks personal jurisdiction over AGIS Software. AGIS Software is a Texas corporation with its principal place of business in Marshall, Texas. AGIS Software is not registered to conduct business in California; does not have a registered agent for service of process in California; does not have offices, employees, equipment, bank accounts or other assets in California; is not subject and has never paid taxes in California; does not manufacture or sell products in California; does not solicit or engage in business in California; has not signed contracts in California; does not recruit employees in California; and does not own, lease, or rent any property in California. Additionally, AGIS Software has not purposefully directed any activities related to the enforcement or defense of the Patents-in-Suit at California.

Additionally, this Motion requests that this Court dismiss the Complaint based on the first-to-file rule. AGIS Software filed a complaint against Lyft in the Eastern District of Texas nearly five months prior to the filing of Lyft’s Complaint in this Court. The two actions involve the same parties and the same issues, and accordingly, the first-to-file rule applies here. There are no exceptions to the rule that apply and, even if there were, whether any exceptions should trump the first-to-file rule should be determined by the Eastern District of Texas. In the alternative, the Court should stay this action pending resolution of Lyft’s motion in the Eastern District of Texas, where

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1 parties have completed briefing and the court has ordered an evidentiary hearing for September 29,
2 2021. *AGIS Software Dev. LLC v. T-Mobile USA, Inc. et al.*, No. 2:21-cv-00072-JRG, Dkt. 125
3 (E.D. Tex. Aug. 18, 2021).

4 The Motion will be and is based on this Notice of Motion and Motion, the accompanying
5 Memorandum of Points and Authorities, the accompanying declaration, the pleadings and papers
6 filed herein, as well as upon such and other further matters, papers, and arguments as may be
7 presented to the Court.

8
9 DATED: September 27, 2021

Respectfully submitted,

10 **RUSS AUGUST & KABAT**

11 By: /s/ Benjamin T. Wang

Benjamin T. Wang

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