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Attorneys for Plaintiff Lyft, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYFT, INC.	Case No. 5:21-cv-04653-BLF
Plaintiff,	**PLAINTIFF LYFT, INC.'S NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**
v.	
AGIS SOFTWARE DEVELOPMENT LLC,	**REDACTED VERSION**
Defendant.	Date: July 28, 2022
	Time: 9:00 A.M.
	Judge: Hon. Beth Labson Freeman
	Trial Date: October 16, 2023
	Courtroom: 3, Fifth Floor

1

NOTICE OF MOTION AND MOTION

2   Plaintiff Lyft, Inc. ("Lyft") hereby gives notice that on July 28, 2022 at 9:00 A.M., in

3 Courtroom 3, Fifth Floor, of the United States District Court for Northern District of California, San

4 Jose Division, located at 280 South First Street, San Jose, California, or as soon thereafter as counsel

5 may be heard, a hearing will be held by the Honorable Beth Labson Freeman, United States District

6 Judge, on Lyft's Motion for Leave to File First Amended Complaint ("FAC") in this action.

7   Through this Motion Lyft moves for leave to amend its complaint against AGIS Software

8 Development LLC, pursuant to Civil L.R. 7-2 and Fed. R. Civ. P. 15(a), in order to add (1) parties

9 Advanced Ground Information Systems, Inc., AGIS Holdings, Inc., and Malcolm K. Beyer, Jr.; and

10 (2) a breach of contract claim.

11   This Motion is based on the following Memorandum of Points and Authorities, the

12 accompanying declaration of Bethany R. Salpietra, the pleadings and records on file in this action,

13 and such other written and/or oral arguments as may be presented at or before the time this Motion

14 is taken under submission by the Court. The FAC, which Lyft seeks leave to file, is attached hereto

15 as Ex. 1.

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MEMORANDUM OF POINTS AND AUTHORITIES

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I.   INTRODUCTION

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On January 28, 2022, this Court granted Lyft leave to file an amended complaint with the

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benefit of jurisdictional discovery. *See* Dkt. 61. The same Order requires Lyft to seek leave of

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Court or a stipulation with AGIS Software Development LLC ("AGIS Software") in order to add

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new parties or claims to the amended complaint. Recent case developments have confirmed that

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additions of both are required. As is set forth below, Lyft's FAC seeks to add Advanced Ground

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Information Systems, Inc. ("AGIS, Inc."), AGIS Holdings, Inc. ("AGIS Holdings") and Malcolm

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K. Beyer, Jr. (collectively, "Alter Ego Parties") as new parties given that each is an alter ego of

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AGIS Software and add a breach of contract claim to the instant suit that had previously been plead

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in the Eastern District of Texas lawsuit. Because these amendments are made in the interest of

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justice and AGIS Software cannot show strong evidence that such amendments are at odds with the

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Foman factors, Lyft respectfully requests the Court grant Lyft's motion.

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II.   STATEMENT OF FACTS

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On June 16, 2021, Lyft filed the instant action against AGIS Software seeking a declaratory

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judgment of non-infringement of United States Patent Nos. 7,031,728, 7,630,724, 8,213,970,

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10,299,100, and 10,341,838 (collectively, "Patents-in-Suit"). *See* Dkt. 1. In its Complaint, Lyft

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alleged that this Court has specific jurisdiction over AGIS Software based on, *inter alia*, AGIS

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Software's affiliate's contacts with this forum under an alter ego theory. *Id.*, ¶¶ 2, 14, 6 and 21. On

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January 28, 2022, the Court dismissed Lyft's Complaint for lack of personal jurisdiction under FED.

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R. CIV. P. 12(b)(2), granting Lyft leave to amend its complaint with the benefit of jurisdictional

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discovery but noting that no new claims or parties should be added without "leave of the Court or a

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stipulation with AGIS Software." *See* Dkt. 61 at 10. In its Order, the Court specifically found that

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Lyft had "presented sufficient facts to justify jurisdictional discovery" regarding its claim that AGIS

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Software is an alter ego of its affiliates AGIS, Inc. and AGIS Holdings and granted Lyft leave to

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pursue jurisdictional discovery "regarding the relationship between AGIS Software, AGIS, Inc., and

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AGIS Holdings and their contacts with California." *Id.* at 9. The Order specifically granted Lyft's

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1   request for jurisdictional discovery in the form of five interrogatories and one four-hour Rule

2   30(b)(6) deposition. *Id*. at 10.

3   Pursuant to the Court's order, Lyft served a 30(b)(6) notice and five jurisdictional

4   interrogatories on AGIS Software on February 4, 2022. *See* Exs. 2 & 3. Simultaneously, Lyft issued

5   document and deposition subpoenas to AGIS, Inc. and AGIS Holdings, which included requests

6   that are coextensive with the interrogatories and deposition topics directed at AGIS Software. *See*

7   Exs. 4 & 5. AGIS Software served objections and responses to Lyft's 30(b)(6) notice and

8   interrogatories thereafter, which clarified that AGIS Software responded only on behalf of itself and

9   was not responding on behalf of AGIS, Inc. or AGIS Holdings because they are not parties to this

10   action. *See* Exs. 6 - 8. Likewise, AGIS, Inc. and AGIS Holdings also refused to produce documents

11   or witnesses pursuant to Lyft's subpoenas because the subpoena requests allegedly "exceed the

12   scope of jurisdictional discovery ordered by the Court." *See generally*, Ex. 9 & 10.

13   **III.   LEGAL STANDARD**

14   Rule 15(a)(2) provides that, when, as here, a motion for leave to amend is filed prior to the

15   deadline to amend pleadings, "[t]he court should freely give leave when justice so requires." FED.

16   R. CIV. P. 15(a)(2). This policy is to be applied with "extreme liberality." *Owens v. Kaiser Found.*

17   *Health Plan, Inc*., 244 F.3d 708, 712 (9th Cir. 2001) (quoting *Morongo Band of Mission Indians v.*

18   *Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)). In fact, the denial of a motion for leave to amend "must

19   be 'strictly' reviewed in light of the strong policy permitting amendment." *Poling v. Morgan*, 829

20   F.2d 882, 886 (9th Cir. 1987). A party opposing an amendment bears the burden of showing why

21   the amendment should not be granted. *See Senza-Gel Corp. v. Seiffhart*, 803 F.2d 661, 666 (Fed.

22   Cir. 1986); see also *DCD Programs, Ltd. V. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).

23   Leave to amend should especially be granted where the nonmoving party is unable to show

24   strong evidence that the amendment would cause prejudice, is sought in bad faith, creates undue

25   delay, is futile, or there was "repeated failure to cure deficiencies by amendments previously

26   allowed." *Sonoma Cty. Ass'n of Ret. Emps. v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013)

27   (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *see also Chudacoff v. Univ. Med. Ctr. of S. Nev.*,

28   649 F.3d 1143, 1153 (9th Cir. 2011). Of these "*Foman* factors," prejudice is the most important.

1   *Eminence Capital*, 316 F.3d 1048, 1052 (9th Cir. 2003); *see also DCD Programs*, 833 F.2d at 187

2   ("The party opposing amendment bears the burden of showing prejudice.").

3   **IV.   ARGUMENT**

4   Lyft seeks leave under Federal Rule of Civil Procedure 15(a) to add the Alter Ego Parties to

5   the instant lawsuit and add a breach of contract claim previously plead in the Eastern District of

6   Texas lawsuit. The Court should grant Lyft's request because "justice so requires." FED. R. CIV. P.

7   15(a)(2). Lyft's proposed addition of parties and its breach of contract claim directly results from

8   recent case developments. First, Lyft's addition of the Alter Ego Parties is necessary in view of

9   AGIS Software and its affiliates' refusal to provide the jurisdictional discovery sought by Lyft

10   concerning AGIS, Inc. and AGIS Holdings under the present circumstances. Second, Lyft's

11   addition of the breach of contract claim is directly related to the same breach of contract claim Lyft

12   brought as a counterclaim against AGIS Software in the Eastern District of Texas before that case

13   was dismissed in January of this year. *AGIS Software Development LLC v. Lyft, Inc.*, 2:21-cv-

14   00072-JRG (hereinafter, "EDTX Action"), ECF No. 334. Because the Eastern District of Texas

15   case has been dismissed, Lyft seeks leave to add the breach of contract claim to this case. Because

16   AGIS Software cannot show strong evidence that these proposed additions are at odds with the

17   *Foman* factors, this Court should grant this motion under the liberal amendment policy contemplated

18   by Rule 15.

19   **a.   ADDITION OF ALTER EGO PARTIES TO FAC**

20   Pursuant to this Court's Order (Dkt. 61), Lyft served jurisdictional discovery on AGIS

21   Software and two of its affiliates, AGIS, Inc. and AGIS Holdings. In pertinent part, Lyft's discovery

22   sought two types of information from both AGIS, Inc. and AGIS Holdings: (1) information

23   regarding whether the entity is an alter ego of AGIS Software; and (2) information regarding

24   whether the entity has contacts with the state of California. Neither entity has provided the requested

25   discovery, objecting that the production of documents or a witness allegedly "exceed[s] the scope

26   of jurisdictional discovery ordered by the Court" or objecting because "Advanced Ground

27   Information Systems, Inc. and AGIS Holdings, Inc. are not parties to the present litigation." *See*

28   *generally*, Ex. 9 & 10; *see also* Exs. 7 & 8 at 2. Lyft disagrees that refusing to produce the requested

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