BAKER BOTTS L.L.P.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 1	Alfred R. Fabricant (<i>pro hac vice</i>) afabricant@fabricantllp.com Peter Lambrianakos (<i>pro hac vice</i>) plambrianakos@fabricantllp.com Vincent J. Rubino, III (<i>pro hac vice</i>) vrubino@fabricantllp.com Enrique Iturralde (<i>pro hac vice</i>) eiturralde@fabricantllp.com FABRICANT LLP 411 Theodore Fremd Road, Suite 206 South Rye, New York 10580 Telephone: (212) 257-5797 Facsimile: (212) 257-5796 Benjamin T. Wang (CA SBN 228712) bwang@raklaw.com Minna Y. Chan (CA SBN 305941) mchan@raklaw.com RUSS AUGUST & KABAT 12424 Wilshire Boulevard, 12th Floor Los Angeles, California 90025 Telephone: (310) 826-7474 Facsimile: (310) 826-9226 <i>Attorneys for Defendant/Counterclaim Plaintiff</i> <i>AGIS Software Development LLC</i>					
BAKE	17 18	UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA					
	10						
	20	LYFT, INC., Plaintiff,	Case No. 5:21-cv-04653-BLF DECLARATION OF VINCENT J. RUBINO				
	21	V.	IN RESPONSE TO LYFT'S MOTION TO CONSIDER WHETHER ANOTHER PARTY'S MATERIAL SHOULD BE SEALED (DKT. 79)				
	22	AGIS SOFTWARE DEVELOPMENT LLC,					
	23	Defendant.	Dept: Courtroom 3 – 5th Floor				
	24		Judge: Hon. Beth Labson Freeman				
	25		Trial date: October 16, 2023				
	26						
	27						
	28						
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1 I, Vincent J. Rubino, hereby declare as follows: 2 1. I am a partner at the law firm of Fabricant LLP and counsel for AGIS Software 3 Development LLC ("AGIS Software"). I am admitted to practice before this Court. I have 4 personal knowledge of the facts stated in this declaration and can and would testify truthfully 5 thereto if called upon to do so. 6 2. Pursuant to Civil L.R. 79-5, 7-11, and the Court's Standing Order Governing 7 Administrative Motions to File Materials Under Seal, I submit this declaration in support of 8 Plaintiff Lyft Inc.'s ("Lyft") Motion to Consider Whether Another Party's Material Should be 9 Sealed ("Motion") (Dkt. 79). 3. 10 AGIS Software has determined that the information requested to be sealed is 11 narrowly tailored and able to overcome the presumption in favor of access to court records. AGIS 12 Software also submits that there are compelling reasons to grant Lyft's Motion to Consider 13 Whether Another Party's Material Should Be Sealed. 14 4. Specifically, the following documents submitted in connection with Lyft's Motion 15

16 ECF or Document Portions to be Sealed **Reason(s)** for Sealing Ex. No. 17 ECF 78 Plaintiff Lyft, Highlighted Portions The highlighted portions disclose information from Inc.'s at: 18 Motion for Leave Exhibits 7 and 11 to Plaintiff • Page 5: lines 6-12, 19 to File Lyft, Inc.'s Motion for Leave 18, 23-26; to File First Amended First Amended • Page 6: line 4; 20 Complaint Complaint, which AGIS • Page 7: lines 13-14 Software Development LLC 21 ("AGIS Software") designated as highly 22 confidential. These highlighted 23 portions contain confidential financial information, such as AGIS Software's 24 confidential bank records. They also contain highly confidential settlement 25 licenses and negotiations with third parties, and which are covered by 26 confidentiality provisions in the 27 written agreements. Revealing the identity and nature of third parties who 28 RATION OF UNIONT DUBDIO DI CURDORT OF LATING MOTION TO

should be sealed:

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1				have entered into licenses and/or
2				settlement agreements with AGIS Software would be harmful if its
2				contents became known to competitors
3				of these third parties, would cause
4				AGIS Software harm, and also violate
				the confidentiality provisions in those
5				third party agreements. Moreover, the
6				parties to these agreements have
U				maintained the confidentiality of the
7				information contained in the license agreements. <i>See Powertech Tech., Inc.</i>
8				<i>v. Tessera, Inc.,</i> 2013 WL 12324116,
0				at *19 (N.D. Cal. April 15, 2013)
9				(granting a motion to seal a draft
10				license agreement with a third party);
10				see also In re Elec. Arts, Inc., 298 Fed.
11				Appx. 568, 569 (9th Cir. 2008)
10				(finding the Court abused its discretion
12				when it refused to seal "pricing terms, royalty rates, and guaranteed minimum
13				payment terms" found in a license
1.4				agreement); Nixon v. Warner
14				Commc'ns, Inc., 435 U.S. 589, 598
15				(1978) (holding that "sources of
1.6				business information that might harm a
16				litigant's competitive standing" may
17				give rise to a compelling reason to seal).
	ECF	Exhibit 1 to	Highlighted Portions	These highlighted portions that AGIS
18	78-2	Declaration	at:	requests be sealed contain confidential
19		of Bethany R.	• Page 5: lines 18-22	financial information, such as AGIS
		Salpietra	• Page 14: lines 13-	Software's confidential bank records.
20		ISO Plaintiff	17;	They also contain highly confidential
21		Lyft, Inc.'s	• Page 15: lines 25-	settlement licenses and negotiations
		Motion for Leave to File	28;	with third parties, and which are
22		First Amended	• Page 16: lines 15-	covered by confidentiality provisions in the written agreements. They also
23		Complaint (First	16, 20-27;	contain information regarding the
23		Amended	AGIS Software submits	corporate structure and contents of
24		Complaint)	that Lyft's proposals to	agreements between business entities,
25			seal the following	including the identities of shareholders.
23			portions are	Revealing the identity and nature of
26			unnecessary and do not	third parties who have entered into
27			require redaction:	licenses and/or settlement agreements with AGIS Software would be harmful
28				
20	DECLARA	TION OF UNIOPAIT DU	DRIA DI DEGRANICE TA LVE	

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		I	I	
1			• Page 4: lines 8-10,	if its contents became known to competitors of these third parties,
2			16-17; • Page 15: lines 1,	would cause AGIS Software harm, and
3			16-19,	also violate the confidentiality
			• Page 16: lines 26-	provisions in those third party
4			27,	agreements. Moreover, the parties to these agreements have maintained the
5			• Page 17: lines 5-7, 12-13.	confidentiality of the information
(12-13.	contained in the license agreements.
6				See Powertech Tech., Inc. v. Tessera,
7				<i>Inc.</i> , 2013 WL 12324116, at *19 (N.D. Cal. April 15, 2013) (granting a motion
8				to seal a draft license agreement with a
				third party); see also In re Elec. Arts,
9				<i>Inc.</i> , 298 Fed. Appx. 568, 569 (9th Cir.
10				2008) (finding the Court abused its discretion when it refused to seal
11				"pricing terms, royalty rates, and
				guaranteed minimum payment terms"
12				found in a license agreement); <i>Nixon v.</i> <i>Warner Commc'ns, Inc.</i> , 435 U.S. 589,
13				598 (1978) (holding that "sources of
14				business information that might harm a
				litigant's competitive standing" may
15				give rise to a compelling reason to seal).
16	ECF	Exhibit 7 to	Although Lyft had	These portions that AGIS requests be
17	78-8	Declaration	proposed the "Entire	sealed contain confidential financial
		of Bethany R. Salpietra	Document" be sealed in Lyft's Motion, AGIS	information, such as AGIS Software's confidential bank records. They also
18		ISO Plaintiff	Software requests only	contain highly confidential settlement
19		Lyft, Inc.'s	the following portions	licenses and negotiations with third
20		Motion for Leave to File	be sealed at:Page 6: lines 4-	parties, and which are covered by confidentiality provisions in the
		First Amended	• Fage 0. miles 4- 8; 24-27;	written agreements. They also contain
21		Complaint	• Page 7: lines 1-	information regarding the corporate
22		(Defendant AGIS Software's	7; 13-17; 26-27;	structure and contents of agreements between business entities, including
23		First	• Page 8: lines 22-27;	the identities of shareholders.
		Supplemental	 Page 9: line 1; 	Revealing the identity and nature of
24		Objections and	• Page 10: lines	third parties who have entered into
25		Responses to Lyft Inc.'s	27-28;	licenses and/or settlement agreements with AGIS Software would be harmful
26		First Set of	 Page 11: lines 1-11; 	if its contents became known to
		Jurisdictional	• Page 12: lines	competitors of these third parties,
27		Interrogatories)	3-28;	would cause AGIS Software harm, and
28				

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1			• Page 13: lines 1-28;	also violate the confidentiality provisions in those third party
2			 Page 14: lines 	agreements. Moreover, the parties to
3			1-28;	these agreements have maintained the
А			• Page 15: lines	confidentiality of the information contained in the license agreements.
4			1-28; • Page 16: lines	See Powertech Tech., Inc. v. Tessera,
5			1-28;	<i>Inc.</i> , 2013 WL 12324116, at *19 (N.D.
6			• Page 17: lines	Cal. April 15, 2013) (granting a motion to seal a draft license agreement with a
7			1-21; • Page 20: lines	third party); see also In re Elec. Arts,
			12-14; 18-22;	<i>Inc.</i> , 298 Fed. Appx. 568, 569 (9th Cir.
8			23-27;	2008) (finding the Court abused its discretion when it refused to seal
9			• Page 22: lines	"pricing terms, royalty rates, and
10			14-22; • Page 23: lines	guaranteed minimum payment terms"
			15-27.	found in a license agreement); <i>Nixon v.</i> <i>Warner Commc'ns, Inc.</i> , 435 U.S. 589,
11				598 (1978) (holding that "sources of
12				business information that might harm a
13				litigant's competitive standing" may give rise to a compelling reason to
14				seal).
	ECF	Exhibit 11 to	Entire Document	This document discloses excerpts of
15	78-12	Declaration of Bethany		the deposition testimony of Thomas Meriam, the corporate representative
16		R. Salpietra ISO		of AGIS Software. Mr. Meriam's
17		Plaintiff Lyft,		testimony includes confidential
		Inc.'s Motion for Leave		information regarding the corporate structure and employees of AGIS
18		to File		Software, and contents of agreements
19		First Amended		between business entities, including
20		Complaint (30(b)(6)		the identities of shareholders. They also contain highly confidential
21		Deposition		settlement licenses and negotiations
		Transcript of Thomas Meriam,		with third parties, and which are covered by confidentiality provisions
22		dated		in the written agreements. They also
23		March 22, 2022)		contain confidential financial
24				information, such as AGIS Software's confidential bank records.
25	5.	For the reasons	set forth above. AGIS So	
26 27	cause exists for Lyft's Motion (Dkt. 79) and AGIS Software respectfully requests the court grant Lyft's Motion (Dkt. 79) with respect to the portions identified by AGIS Software above.			
27	Lyn's Mo	(DKt. /9) with re	espect to the portions iden	umed by AGIS Sonware above.
28	DECLARA			
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