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AGIS Software Development LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LYFT, INC.,
 	
        Plaintiff,
 	
    v.
 	
AGIS SOFTWARE DEVELOPMENT LLC,
 	
        Defendant.
	Case No. 5:21-cv-04653-BLF
	
	DECLARATION OF VINCENT J. RUBINO IN SUPPORT OF LYFT'S MOTION TO CONSIDER WHETHER ANOTHER PARTY'S MATERIAL SHOULD BE SEALED (DKT. 89)
	
	Dept: Courtroom 3 – 5th Floor
	Judge: Hon. Beth Labson Freeman
	
	Trial date: October 16, 2023

BAKER BOTTS L.L.P.

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"). I am admitted to practice before this Court. I have personal

4   knowledge of the facts stated in this declaration and can and would testify truthfully thereto if

5   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. 89).

10   3.   AGIS has determined that the information requested to be sealed is narrowly

11 tailored and able to overcome the presumption in favor of access to court records. AGIS also

12 submits that there are compelling reasons to grant Lyft's Motion to Consider Whether Another

13 Party's Material Should Be Sealed.

14   4.   Specifically, the following documents submitted in connection with Lyft's Motion

15 should be sealed:

ECF or Ex. No.	Document	Description of Portions to be Sealed	Reasons for Sealing
ECF 88	Plaintiff Lyft, Inc.'s Motion to Compel Discovery and Compliance with Local Patent Rules	Highlighted Portions at: • Page 2: lines 14-15; • Page 3: lines 16-17; 19; 25-28; • Page 4: lines 1-2; 26-27; • Page 5: lines 2-7.	The highlighted portions disclose information from: • Exhibit 10 to Plaintiff Lyft, Inc.'s Motion to Compel Discovery and Compliance with Local Patent Rules, and • Ex. 18 to Plaintiff Lyft, Inc.'s Motion to Compel Discovery and Compliance with Local Patent Rules, which AGIS designated as highly confidential and confidential, respectively. These highlighted portions contain highly confidential settlement licenses and negotiations with third parties, and which are covered by confidentiality provisions in the written agreements. Revealing the identity and nature of

DECLARATION OF VINCENT RUBINO IN SUPPORT OF LYFT'S MOTION TO

			third parties who have entered into licenses and/or settlement agreements with AGIS would be harmful if its contents became known to competitors of these third parties, would cause AGIS harm, and also violate the confidentiality provisions in those third party agreements. Moreover, the parties to these agreements have maintained the confidentiality of the information contained in the license agreements. *See Powertech Tech., Inc. v. Tessera, Inc.,* 2013 WL 12324116, at *19 (N.D. Cal. April 15, 2013) (granting a motion to seal a draft license agreement with a third party); *see also In re Elec. Arts, Inc.*, 298 Fed.Appx. 568, 569 (9th Cir. 2008) (finding the Court abused its discretion when it refused to seal "pricing terms, royalty rates, and guaranteed minimum payment terms" found in a license agreement); *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (holding that "sources of business information that might harm a litigant's competitive standing" may give rise to a compelling reason to seal).
ECF 88-10, Ex. 10	Exhibit 10 to Plaintiff Lyft, Inc.'s Motion to Compel Discovery and Compliance with Local Patent Rules	Although Lyft had proposed the "Entire Document" be sealed in Lyft's Motion, AGIS Software requests only the highlighted portions be sealed at: • Page 6: lines 4-8; 24-27; • Page 7: lines 1-7; 13-17; 26-27; • Page 8: lines 22-27; • Page 9: line 1; • Page 10: lines 27-28; • Page 11: lines	These highlighted portions contain confidential financial information, such as AGIS Software's confidential bank records. They also contain highly confidential settlement licenses and negotiations with third parties, and which are covered by confidentiality provisions in the written agreements. They also contain information regarding the corporate structure and contents of agreements between business entities, including the identities of shareholders. Revealing the identity and nature of third parties who have entered into licenses and/or settlement agreements with AGIS Software would be harmful if its

DECLARATION OF VINCENT RUBINO IN SUPPORT OF LYFT'S MOTION TO

| | | 1-11;
• Page 12: lines 3-28;
• Page 13: lines 1-28;
• Page 14: lines 1-28;
• Page 15: lines 1-28;
• Page 16: lines 1-28;
• Page 17: lines 1-21;
• Page 20: lines 12-14; 18-22; 23-27;
• Page 22: lines 14-22;
• Page 23: lines 15-27. | contents became known to competitors of these third parties, would cause AGIS Software harm, and also violate the confidentiality provisions in those third party agreements. Moreover, the parties to these agreements have maintained the confidentiality of the information contained in the license agreements. *See Powertech Tech., Inc. v. Tessera, Inc.,* 2013 WL 12324116, at *19 (N.D. Cal. April 15, 2013) (granting a motion to seal a draft license agreement with a third party); *see also In re Elec. Arts, Inc.*, 298 Fed. Appx. 568, 569 (9th Cir. 2008) (finding the Court abused its discretion when it refused to seal "pricing terms, royalty rates, and guaranteed minimum payment terms" found in a license agreement); *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (holding that "sources of business information that might harm a litigant's competitive standing" may give rise to a compelling reason to seal). |
| ECF 88-10, Ex. 18 | Ex. 18 to Plaintiff Lyft, Inc.'s Motion to Compel Discovery and Compliance with Local Patent Rules | Entire Document | This document discloses excerpts of the deposition testimony of Thomas Meriam, the corporate representative of AGIS Software. Mr. Meriam's testimony includes confidential information regarding the corporate structure and employees of AGIS Software, and contents of agreements between business entities, including the identities of shareholders. They also contain highly confidential settlement licenses and negotiations with third parties, and which are covered by confidentiality provisions in the written agreements. They also contain confidential financial information, such as AGIS Software's confidential bank records. |

5.   For the reasons set forth above, AGIS respectfully submits that good cause exists

1   for Lyft's Motion (Dkt. 89) and AGIS respectfully requests the court grant Lyft's Motion (Dkt.

2   89).

3   I declare under penalty of perjury under the laws of the United States the foregoing is true

4   and correct.

5   Executed April 12, 2022.   Respectfully submitted,

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7   */s/ Vincent J. Rubino, III*
                                          Vincent J. Rubino, III, Declarant
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