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15   **UNITED STATES DISTRICT COURT**

16   **NORTHERN DISTRICT OF CALIFORNIA**

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18 LYFT, INC.,   Case No. 5:21-cv-04653-BLF

19   *Plaintiff*,
                                        DEFENDANT AGIS SOFTWARE
20   v.   **DEVELOPMENT LLC'S RESPONSE IN**
                                        OPPOSITION TO LYFT, INC.'S
21   **MOTION FOR LEAVE TO AMEND**
   AGIS SOFTWARE DEVELOPMENT LLC,   **COMPLAINT (Dkt. 78)**
22
                Defendant.   **Hon. Judge Beth Labson Freeman**
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I.   INTRODUCTION

Defendant AGIS Software Development LLC's ("AGIS Software") filed a Motion to Dismiss for Lack of Personal Jurisdiction which was granted by this Court on January 28, 2022. Dkt. 61.   While the Court granted Plaintiff Lyft, Inc.'s ("Lyft") leave to amend and conduct jurisdictional discovery, Lyft now seeks to add three additional parties to its complaint: Advanced Ground Information Systems, Inc. ("AGIS, Inc."), AGIS Holdings, Inc. ("AGIS Holdings"), and Malcolm K. Beyer, Jr.   While Lyft alleges these additional parties are "alter ego parties" of AGIS Software, the jurisdictional discovery conducted by Lyft are to the contrary.   Rather, the discovery produced by AGIS Software in response to Lyft's jurisdictional discovery requests revealed that AGIS Software maintains corporate formalities, and thus, there is no intermingling between the entities, and naming entities that do not own the Asserted Patents is both unwarranted and has been done in the past to no avail.   In addition, Lyft has no basis to add Mr. Beyer as a party to this action where he is merely the inventor and CEO of AGIS Software, and where he has assigned all his rights to the Asserted Patent.   Accordingly, AGIS respectfully requests that Lyft's Motion be denied.

II.   STATEMENT OF FACTS

On June 16, 2021, Lyft filed a Complaint against AGIS Software seeking declaratory judgment of non-infringement of United States Patent Nos. 7,031,728; 7,630,724; 8,213,970; 10,299,100; and 10,341,838 (the "Asserted Patents").   Dkt. 1.   AGIS Software moved to dismiss Lyft's Complaint for lack of personal jurisdiction over AGIS Software. Dkt. 32.   The Court conducted a hearing on January 27, 2022 (Dkt. 57) and granted AGIS Software's Motion to Dismiss. *See* Dkt. 61.   However, the Court granted Lyft leave to amend its complaint and conduct jurisdictional discovery. *See* Dkt. 61 at 10.   The Court expressly limited jurisdictional discovery to five interrogatories and one four-hour Rule 30(b)(6) deposition. *See* Dkt. 61 at 10.   While the Court granted leave to pursue jurisdictional discovery "regarding the relationship between AGIS Software, AGIS, Inc., AGIS Holdings and their contacts with California," the Court's Order did not authorize any third-party discovery and expressly stated that no new claims or parties may be added to Lyft's complaint without "leave of the Court or a stipulation with AGIS Software."   Dkt. 61 at 9-10.

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1   Yet in addition to the allotted Rule 30(b)(6) Notice of Deposition and five jurisdictional

2   interrogatories, on February 4, 2022, Lyft served deposition and document subpoenas to third-party

3   AGIS, Inc. and AGIS Holdings. Lyft's request for third-party discovery was not authorized by the

4   Court and should not be permitted.

5   **III.   LEGAL STANDARD**

6   Rule 15 of the Federal Rules of Civil Procedure mandates that leave to amend "be freely

7   given when justice so requires." Fed. R. Civ. P. 15(a). In considering whether to grant a motion to

8   amend under Rule 15(a), the Supreme Court has stated: "In the absence of any apparent or declared

9   reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure

10 to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by

11 virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the

12 rules require, be 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Smith v. Pac. Prop.*

13 *Dev. Co.*, 358 F.3d 1097, 1101 (9th Cir. 2004).

14   "A proposed amendment is 'futile if no set of facts can be proved under the amendment to

15 the pleadings that would constitute a valid and sufficient claim or defense.'" *L.A. Gem & Jewelry*

16 *Design, Inc. v. NJS.COM, LLC*, 2018 WL 6131185, at *2 (C.D. Cal. Mar. 5, 2018) (citing *Miller v.*

17 *Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988)).

18 **IV.   ARGUMENT**

19   Lyft's motion for leave to amend its complaint ("Motion") should be denied. First, Lyft

20 alleges that it should be permitted to add AGIS, Inc., AGIS Holdings, Inc., and Malcolm K. Beyer,

21 Jr. as parties to the present litigation, but AGIS, Inc., AGIS Holdings, Inc., and Malcolm K. Beyer,

22 Jr. are (1) not the owners or assignees of the Asserted Patents, and (2) irrelevant to Lyft's claims for

23 non-infringement of the Asserted Patents. While Lyft alleges that addition of these parties is

24 necessary "in view of AGIS Software and its affiliates' refusal to provide the jurisdictional

25 discovery," this is incorrect. The jurisdictional discovery permitted by this Court in dismissing

26 Lyft's original complaint was limited to a four-hour Rule 30(b)(6) deposition of AGIS Software and

27 five interrogatories directed to AGIS Software. Dkt. 60 at 10. The Court's Order did not permit

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1   Lyft to serve subpoenas on AGIS, Inc. and AGIS Holdings. *See id.* Nonetheless, Lyft's amendment

2   would be futile where the discovery produced by AGIS Software do not support Lyft's alleged alter

3   ego theory.

4   Second, because the discovery produced by AGIS Software does not support Lyft's "alter

5   ego" theory, Lyft now seeks to add AGIS, Inc., AGIS Holdings, and Malcolm K. Beyer, Jr. as parties

6   to the present litigation under the pretense of a breach of contract claim. However, by Lyft's own

7   admission, the breach of contract theory alleged in the parallel Eastern District of Texas action

8   ("EDTX Action") was not included in Lyft's original complaint for declaratory judgment. *See* Dkt.

9   1. Despite knowledge that it had this "breach of contract" claim, Lyft at no point sought to amend

10 its complaint, despite the allegation that the claim was brought against AGIS Software in the EDTX

11 Action since at least November 2021, and thus, Lyft was dilatory in seeking its amendment. *See*

12 *AGIS Software Dev. LLC v. T-Mobile USA, Inc.*, No. 2:21-cv-00072-JRG, Dkt. 190 (E.D. Tex. Nov.

13 3, 2021) (Lead Case). Accordingly, this Court should deny Lyft's Motion as such amendments

14 would be futile and unduly prejudicial.

15   A. **Lyft Fails to Establish that Addition of AGIS, Inc., AGIS Holdings, and Malcolm K.**

16   **Beyer, Jr. is Warranted**

17   The jurisdictional discovery sought by Lyft and produced by AGIS Software reveals that

18 Lyft's "alter ego" theory fails. By Lyft's own admission, the subpoenas served by Lyft on AGIS,

19 Inc. and AGIS Holdings were not within the narrow scope of jurisdictional discovery permitted by

20 this Court. Nonetheless, Lyft persisted in seeking information from these entities and now, Lyft

21 appears to argue that it should be permitted to add these parties to the complaint *in order to seek*

22 *discovery from them.* Dkt. 78 at 4. AGIS Software objects to Lyft's fishing expedition as improper.

23 Moreover, AGIS Software has produced the relevant discovery for jurisdictional discovery.

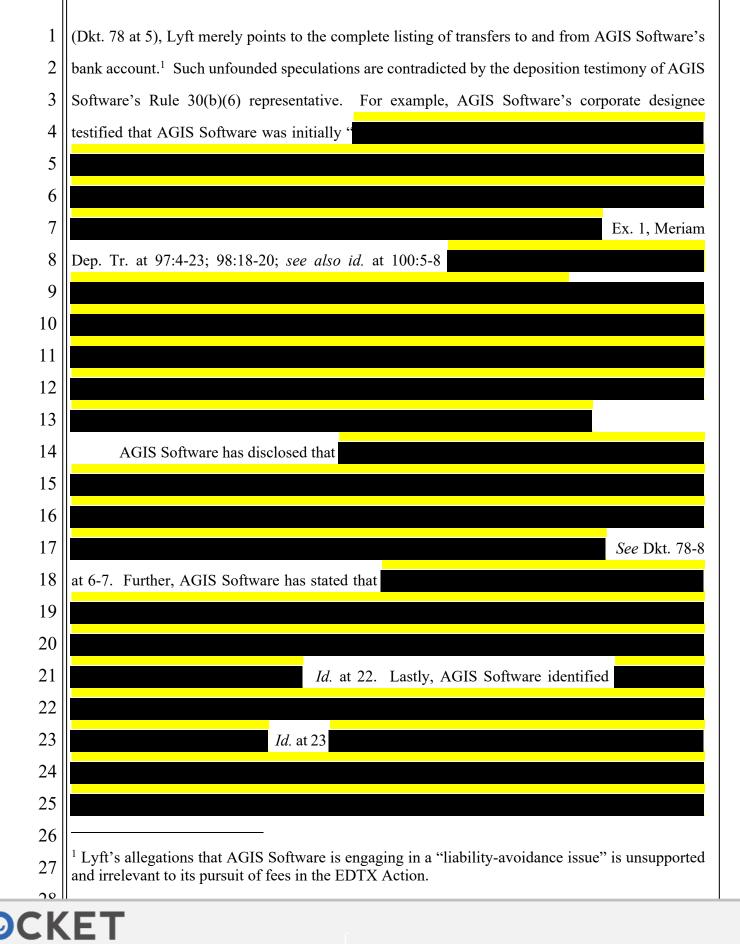24   Moreover, Lyft mischaracterizes the evidence produced by AGIS Software. Lyft alleges

25 that AGIS Software is "undercapitalized" and "routinely moves money out of its account and into

26 the accounts of its affiliate." Dkt. 79-3 at 5. While Lyft alleges such transfers indicate "AGIS

27 Software may try to avoid liability . . . by moving its money to an account owned by an affiliate"

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1   (Dkt. 78 at 5), Lyft merely points to the complete listing of transfers to and from AGIS Software's

2   bank account.[1] Such unfounded speculations are contradicted by the deposition testimony of AGIS

3   Software's Rule 30(b)(6) representative.   For example, AGIS Software's corporate designee

4   testified that AGIS Software was initially "

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7   Ex. 1, Meriam

8   Dep. Tr. at 97:4-23; 98:18-20; *see also id.* at 100:5-8

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14   AGIS Software has disclosed that

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17   *See* Dkt. 78-8

18   at 6-7. Further, AGIS Software has stated that

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21   *Id.* at 22. Lastly, AGIS Software identified

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23   *Id.* at 23

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27   [1] Lyft's allegations that AGIS Software is engaging in a "liability-avoidance issue" is unsupported
     and irrelevant to its pursuit of fees in the EDTX Action.

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