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14 Attorneys for Defendant
 15 *AGIS Software Development LLC*

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **SAN FRANCISCO DIVISION**

20 SMITH MICRO SOFTWARE, INC., AND
 21 SMITH MICRO SOFTWARE, LLC,

22 *Plaintiffs,*

23 v.

24 AGIS SOFTWARE DEVELOPMENT LLC,
 25 AND DOES 1 TO 10,

26 *Defendants.*

Case No. 3:21-cv-3677-JD

**DEFENDANT AGIS SOFTWARE
 DEVELOPMENT LLC'S NOTICE OF
 PENDENCY OF OTHER ACTION OR
 PROCEEDING PURSUANT TO LOCAL
 RULE 3-13**

Hon. Judge James Donato

1 Pursuant to Local Rule 3-13, Defendant AGIS Software Development LLC (“AGIS”) hereby
2 provides this Notice of Pendency of Other Action or Proceeding.

3 This case began when, on May 17, 2021, Plaintiffs Smith Micro Software, Inc. and Smith
4 Micro Software, LLC (collectively, “Smith Micro”) filed a complaint in the U.S. District Court for
5 the Northern District of California against AGIS, alleging infringement of U.S. Patent Nos.
6 7,031,728 (“’728 patent”), 7,630,724 (“’724 patent”), 9,408,055 (“’055 patent”), 9,445,251 (“’251
7 patent”), 9,467,838 (“’7,838 patent”), and 9,749,829 (“’829 patent”).

8 AGIS is the defendant in two other pending patent cases in this District, *WhatsApp LLC v.*
9 *AGIS Software Development LLC*, Case No. 5:21-cv-03076-BLF (“WhatsApp action”), which was
10 initiated on April 27, 2021, and *Lyft, Inc. v. AGIS Software Development LLC*, Case No. 4:21-cv-
11 04653-HSG (“Lyft action”), which was initiated on June 16, 2021.

12 Both the *WhatsApp* action and the *Smith Micro* action involve the exact same patents, and
13 therefore will likely involve the same issues as to claim construction and validity of the patents.
14 Two out of five¹ of the patents at issue in the *Lyft* action are also at issue in the *WhatsApp* and *Smith*
15 *Micro* actions, and will involve the same issues as to claim construction and validity of these patents.
16 Certain venue and jurisdictional issues are also the same or closely related.

17 The three *Lyft*, *WhatsApp*, and *Smith Micro* actions concern substantially the same parties in
18 that AGIS Software is a defendant in each, substantially the same property (*i.e.*, the patents at issue
19 in each action), and it appears likely that there will be unduly burdensome duplication of labor and
20 expense or conflicting results if the cases are conducted before different judges. Therefore, transfer
21 and coordination of this case into the first-filed case (the *WhatsApp* action) should be effected under
22 Local Rule 3-13(b) because it would avoid conflicts, conserve resources and promote an efficient
23 determination of the action.

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27 ¹ The ’728 and ’724 Patents are commonly at issue in all three *Lyft*, *WhatsApp*, and *Smith Micro*
28 actions. In addition, U.S. Patent Nos. 8,213,970 (“’970 patent”), 10,299,100 (“’100 patent”), and
29 10,341,838 (“’1,838 patent”) are asserted in the *Lyft* action. The *WhatsApp* and *Smith Micro* actions

1 DATED: August 20, 2021

Respectfully submitted,

2 **RUSS AUGUST & KABAT**

By: /s/ Benjamin T. Wang

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CERTIFICATE OF SERVICE

I certify that I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Northern District of California using the CM/ECF System on August 20, 2021.

I certify that all counsel of record who are deemed to have consented to electronic service are being served on August 20, 2021 with a copy of this document via the Court’s CM/ECF systems per Local Rule CV-5(a)(3). Any other counsel will be served by electronic mail, facsimile, overnight delivery and/or First Class Mail on this date.

DATED: August 20, 2021

/s/ Benjamin T. Wang

Benjamin T. Wang

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