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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LYFT, INC.

Plaintiff,

v.

AGIS SOFTWARE DEVELOPMENT LLC,

Defendant.

Case No. 5:21-cv-04653-BLF

**PLAINTIFF LYFT, INC.'S NOTICE OF
MOTION AND MOTION FOR LEAVE
TO FILE FIRST AMENDED
COMPLAINT**

REDACTED VERSION

Date: July 28, 2022
Time: 9:00 A.M.
Judge: Hon. Beth Labson Freeman
Trial Date: October 16, 2023
Courtroom: 3, Fifth Floor

NOTICE OF MOTION AND MOTION

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Plaintiff Lyft, Inc. (“Lyft”) hereby gives notice that on July 28, 2022 at 9:00 A.M., in Courtroom 3, Fifth Floor, of the United States District Court for Northern District of California, San Jose Division, located at 280 South First Street, San Jose, California, or as soon thereafter as counsel may be heard, a hearing will be held by the Honorable Beth Labson Freeman, United States District Judge, on Lyft’s Motion for Leave to File First Amended Complaint (“FAC”) in this action.

Through this Motion Lyft moves for leave to amend its complaint against AGIS Software Development LLC, pursuant to Civil L.R. 7-2 and Fed. R. Civ. P. 15(a), in order to add (1) parties Advanced Ground Information Systems, Inc., AGIS Holdings, Inc., and Malcolm K. Beyer, Jr.; and (2) a breach of contract claim.

This Motion is based on the following Memorandum of Points and Authorities, the accompanying declaration of Bethany R. Salpietra, the pleadings and records on file in this action, and such other written and/or oral arguments as may be presented at or before the time this Motion is taken under submission by the Court. The FAC, which Lyft seeks leave to file, is attached hereto as Ex. 1.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

On January 28, 2022, this Court granted Lyft leave to file an amended complaint with the benefit of jurisdictional discovery. *See* Dkt. 61. The same Order requires Lyft to seek leave of Court or a stipulation with AGIS Software Development LLC (“AGIS Software”) in order to add new parties or claims to the amended complaint. Recent case developments have confirmed that additions of both are required. As is set forth below, Lyft’s FAC seeks to add Advanced Ground Information Systems, Inc. (“AGIS, Inc.”), AGIS Holdings, Inc. (“AGIS Holdings”) and Malcolm K. Beyer, Jr. (collectively, “Alter Ego Parties”) as new parties given that each is an alter ego of AGIS Software and add a breach of contract claim to the instant suit that had previously been plead in the Eastern District of Texas lawsuit. Because these amendments are made in the interest of justice and AGIS Software cannot show strong evidence that such amendments are at odds with the *Foman* factors, Lyft respectfully requests the Court grant Lyft’s motion.

II. STATEMENT OF FACTS

On June 16, 2021, Lyft filed the instant action against AGIS Software seeking a 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 (collectively, “Patents-in-Suit”). *See* Dkt. 1. In its Complaint, Lyft alleged that this Court has specific jurisdiction over AGIS Software based on, *inter alia*, AGIS Software’s affiliate’s contacts with this forum under an alter ego theory. *Id.*, ¶¶ 2, 14, 6 and 21. On January 28, 2022, the Court dismissed Lyft’s Complaint for lack of personal jurisdiction under FED. R. CIV. P. 12(b)(2), granting Lyft leave to amend its complaint with the benefit of jurisdictional discovery but noting that no new claims or parties should be added without “leave of the Court or a stipulation with AGIS Software.” *See* Dkt. 61 at 10. In its Order, the Court specifically found that Lyft had “presented sufficient facts to justify jurisdictional discovery” regarding its claim that AGIS Software is an alter ego of its affiliates AGIS, Inc. and AGIS Holdings and granted Lyft leave to pursue jurisdictional discovery “regarding the relationship between AGIS Software, AGIS, Inc., and AGIS Holdings and their contacts with California.” *Id.* at 9. The Order specifically granted Lyft’s

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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