

Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”), by and through its undersigned counsel, respectfully requests the Court to compel Defendant Lyft, Inc. (“Defendant” or “Lyft”) to produce relevant discovery. Despite AGIS’s numerous requests, Lyft has failed to provide (1) a complete response to Interrogatory No. 3 and corresponding documents identifying financial data for Lyft, including financial data for only the United States and the fixed and variable costs for Lyft and its Accused Products; (2) a complete response to Interrogatory No. 8, which requests an identification of downloads, distribution, installation, and statistics related to the same, and corresponding documents; and (3) a complete response to Interrogatory No. 9 and corresponding documents, regarding usage information and summaries sufficient to show user engagement with the Lyft Accused Products. AGIS has followed up on each of these requests, as detailed below, to no avail.

I. LEGAL STANDARDS

The Court’s Discovery Order requires, upon request, production or access to “all documents . . . in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action.” Dkt. 79 at 3. In the Eastern District of Texas, “[t]he rules of discovery are accorded a broad and liberal application to affect their purpose of adequately informing litigants in civil trials.” *Edward D. Ioli Trust v. Avigilon Corp.*, No. 2:10-cv-605, 2012 WL 5830711, at *3 (E.D. Tex. Nov. 16, 2012); *Charles E. Hill & Assocs. v. ABT Elecs., Inc.*, 854 F. Supp. 2d 427, 428 (E.D. Tex. 2012) (same language); *see also STMicroelectronics, Inc. v. Motorola, Inc.*, 308 F. Supp. 2d 754, 756 (E.D. Tex. 2004) (“In any case the Court will not tolerate gamesmanship that attempts to conceal or delay the production of discoverable items.”).

After a party attempts in good faith to obtain discovery without assistance from the court, the party may move for an order compelling disclosure or discovery. Fed. R. Civ. P. 37(a)(1). The party resisting discovery carries the burden to demonstrate “specifically how each discovery

request is not relevant or [is] otherwise objectionable.” *See McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, No. 3:14-cv-2498-B, 2016 WL 2997744, at *4 (N.D. Tex. May 25, 2016) (citing *McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990)). Here, Lyft does not contend that AGIS’s discovery requests seek irrelevant information.

II. DISCUSSION

Throughout this case, AGIS has attempted to avoid involving the Court in its attempts to convince Lyft to provide responsive information. AGIS has diligently sought discovery from Lyft. Following extensive correspondence and a meet-and-confer, AGIS has yet to receive the following relevant discovery.

A. Lyft Should Be Required to Provide a Complete Response to Interrogatory No. 3 and Accompanying Documents¹

Lyft has provided an incomplete response to Interrogatory No. 3 which requested that Lyft identify “on a monthly basis from January 2015 to present: the gross revenue, net profits, profit margins, fixed and variable costs, average cost per unit (i.e., application, service, and server) and transfer pricing.” In response, Lyft has identified documents pursuant to Fed. R. Civ. P. 33(d). *See Ex. A.*

However, the documents produced and identified by Lyft in response to Interrogatory No. 3 contain information for outside the United States and for Lyft products aside from its ride-sharing products, and do not contain the fixed and variable costs for the Lyft Accused Products.

Accordingly, Lyft should be compelled to provide (1) a complete response to Interrogatory No. 3 regarding the gross revenue, net profits, profit margins, fixed and variable

¹ On the November 3, 2021 meet-and-confer, Lyft’s counsel represented that it was producing some documents in response and would update its response to Interrogatory No. 3 to identify these documents. AGIS agrees to withdraw its motion to compel with respect to Interrogatory No. 3 and accompanying documents if Lyft provides a complete response and produces all relevant documents.

costs, average cost per unit (i.e., application, service, and server), and transfer pricing for only the United States and the Lyft ride-sharing products. In addition, Lyft should provide more specific information regarding the fixed and variable costs for the Lyft Accused Products.

B. Lyft Should Be Required to Provide a Complete Response to Interrogatory Nos. 8 and 9 and Accompanying Documents²

Lyft has provided an incomplete response to Interrogatory No. 8 which seeks an identification of (1) the number of instances each Lyft Accused Product was distributed, downloaded, and/or installed on a device; (2) the number of unique devices that downloaded and/or installed the Lyft Accused Products; (3) the number of instances each Lyft Accused Product was activated or turned on after distribution, download, and/or installation; (4) the number of unique users or accounts for each Lyft Accused Product; (5) the daily active users or accounts for each Lyft Accused Product; (6) the number of instances in which an end-user authenticated and/or signed in to each Lyft Accused Product with a Lyft account; (7) the total number of transactions for each Lyft Accused Product; (8) the total amount of fees owed for completed transactions on the Lyft Accused Products; and (9) the total amount of fees collected. In response, Lyft fails to provide a substantive response and merely incorporates by reference its expert report. *See* Ex. B. Lyft has failed to provide a complete response to Interrogatory No. 9 which requests usage information and summaries sufficient to show user engagement with each Lyft Accused Product, including an identification of internal and external systems and/or tools used to obtain and analyze such data including, but not limited to, the system or tool name and all metrics, data points, studies, and/or surveys related to usage and engagement of the Lyft Accused Products. In response, Lyft

² On the parties' November 3, 2021, meet-and-confer teleconference, Lyft's counsel represented that they would produce documents responsive to this Request and that they would supplement Lyft's responses to Interrogatory Nos. 8 and 9. AGIS will promptly review any anticipated production and supplementation for completion, and inform the Court in the event that it is sufficient to withdraw its motion to compel.

has failed to provide a substantive response and cites to its forthcoming expert report. *See* Ex. B.

Lyft's corporate representative designated on topics regarding download, installation, and usage statistics, the number of Lyft accounts and unique devices, activations, location requestion and location sharing, testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] testifying as to the existence of these statistics, Lyft has failed to produce *any* metrics or statistics related to the Lyft Accused Products.

Accordingly, Lyft should be compelled to (1) provide a complete response to Interrogatory No. 8 regarding downloads, distribution, and installation related statistics for the Lyft Accused Products; (2) produce relevant documents and information responsive to Interrogatory No. 8; (3) provide a complete response to Interrogatory No. 9 regarding metrics and usage statistics; and (4) produce relevant documents and information responsive to Interrogatory No. 9.

III. CONCLUSION

For the foregoing reasons, AGIS respectfully requests that the Court compel Lyft to provide the requested discovery.

Dated: November 3, 2021

Respectfully submitted,

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