

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

AGIS SOFTWARE DEVELOPMENT LLC	§	
	§	CASE NO. 2:21-cv-00072-JRG
v.	§	(Lead Case)
	§	
T-MOBILE USA, INC., and T-MOBILE	§	
US, INC.	§	
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AGIS SOFTWARE DEVELOPMENT LLC	§	
	§	CASE NO. 2:21-cv-00024-JRG
v.	§	(Member Case)
	§	
LYFT, INC.	§	
	§	

**DEFENDANT LYFT, INC.’S OPPOSED MOTION TO STAY PENDING ADOPTION OF  
THE DISPOSITIVE REPORT AND RECOMMENDATION (DKT. 212)**

Defendant Lyft, Inc. (“Lyft”) respectfully requests that the Court stay this case and all forthcoming deadlines that apply to Lyft in light of Magistrate Judge Payne’s Report and Recommendation (Dkt. 212) finding venue improper in this case. Further, given the urgency of impending deadlines, Lyft also respectfully requests an expedited briefing schedule and ruling on the present motion as reflected in the motion to expedite briefing filed simultaneously with this motion.

AGIS has fourteen days from November 10 to object to the Report and Recommendation, and Lyft will have an opportunity to respond to any objections filed by AGIS before this Court decides whether to adopt the Report and Recommendation. During this objection period, there are deadlines for Lyft and AGIS to serve rebuttal expert reports and respond to various motions filed by both parties, all of which will be moot if the Report and Recommendation is adopted. In

addition to the upcoming deadlines, it has become recently apparent that numerous discovery deficiencies exist in AGIS's document production and interrogatory responses which would also be rendered moot if the Court adopts the Report and Recommendation. Because of the substantial work associated with both the upcoming deadlines and the need to remedy AGIS's discovery deficiencies—all of which would be rendered moot if the Court adopts the Report and Recommendation—Lyft respectfully requests a stay of all deadlines in this case with respect to Defendant Lyft, while the Court considers the Report and Recommendation to dismiss this case for improper venue.

Plaintiff AGIS Software Development LLC ("AGIS") opposes this motion because it plans to file objections to the Report and Recommendation, but has not provided an explanation for why a stay would be inappropriate or improper while its objections are being considered.

On November 10, 2021, Magistrate Judge Payne issued a Report and Recommendation finding venue improper against Lyft in this case and recommending granting Lyft's Motion to Dismiss for Improper Venue (Dkt. 30). Dkt. 212 at 12. In its Report and Recommendation, the Court rejected all of AGIS's bases for venue in this District, finding that AGIS's arguments "either fail as a matter of law under *Cray* or lack factual support in the record" and concluded that venue was improper over Lyft in this District. *Id.* at 13.

If the Court adopts the Report and Recommendation and grants Lyft's Motion to Dismiss, it will dispose of this case in its entirety. Accordingly, Lyft submits that it would be most efficient to await the Court's order on Lyft's Motion to Dismiss without expending the resources necessary to meet the upcoming deadlines in this case. Over the next six weeks, for example, the parties are due to engage in briefing related to Lyft's Motion to Compel Document Production, Written Discovery, and Depositions (Dkt. 199), AGIS's Motion to Compel Lyft to Provide Discovery (Dkt.

201), Lyft's Motion to Strike Plaintiff's First Amended Disclosure of Asserted Claims and Infringement Contentions (Dkt. 191). Additionally, the parties are also due to complete expert discovery on December 8 and file dispositive motions and motions to strike expert testimony by December 13. *See* Dkt. 170 at 3-4. Should the Court defer any ruling until after the new year, the burden and expense on the parties is further compounded. Specifically, under the current schedule, the parties are to complete briefing on dispositive motions, file any motions *in limine* and serve pretrial disclosures, objections to pretrial disclosures, and rebuttal pretrial disclosures all by mid-January 2022. *See* Dkt. 170 at 2-3. As such, Lyft seeks the requested stay to preserve resources and avoid the burden and expense of litigating this case and meeting the aforementioned deadlines while awaiting the Court's decision on the Report and Recommendation. The requested stay will promote efficiency and reduce the burden on the parties and the Court.

Lyft has also recently learned of numerous discovery deficiencies in both AGIS's document production and interrogatory responses that would not need to be immediately remedied if a stay of the case was granted. For example, an AGIS employee recently confirmed the existence of product manuals and testing materials for products AGIS claims embody the asserted patents that were not produced during the discovery period. In addition, despite assurances from counsel on the final day of discovery that AGIS's book of corporate meeting minutes would be produced, AGIS only produced narrowly curated excerpts from the minute book in the hours before discovery closed. As with AGIS's deficient document production, it has also become recently apparent that AGIS's interrogatory responses are deficient from recent testimony from AGIS's employees. For example, in its interrogatory responses, AGIS identifies only companies it has sued for infringement as competitors, while testimony from AGIS's employees directly contradicts this position. In addition, AGIS does not identify any product delivery since 2018 in its interrogatory

responses despite testimony and other evidence to the contrary. In addition to AGIS's garden-variety discovery failures, it appears AGIS is also attempting to muddy the corporate distinction between AGIS, Inc. and AGIS Software Development LLC to leverage benefits from AGIS, Inc. when helpful while simultaneously using its corporate structure to try to avoid discovery.

While the deficiencies identified in AGIS's discovery responses are numerous and growing, entering a stay while the Court considers the dispositive Report and Recommendation avoids the need to address these concerns with yet another motion to compel information and documents that should have been provided by AGIS months ago along with relief from the current schedule while AGIS provides the missing information. If the Court adopts the Report and Recommendation and dismisses the case, these discovery deficiencies would be rendered moot.

The Court routinely grants motions to stay under circumstances similar to those presented here. *See, e.g., Cellular Commc'ns Equip. LLC v. AT&T Inc.*, No. 2:15-cv-00576-RWS-RSP, Order at 1, ECF 547 (E.D. Tex. July 4, 2017) (ordering case stayed sua sponte pending court's adoption of magistrate judge's dispositive report and recommendation over plaintiff's objection); *Allergan Sales, LLC v. Teva Pharm. USA, Inc.*, No. 2:15-cv-01471-JRG-RSP, Order at 1, ECF 259 (E.D. Tex. Oct. 3, 2017) (ordering sua sponte stay pending adoption of pending report and recommendation); *Cave Consulting Grp., Inc. v. Health Care Serv. Corp.*, 6:17-cv-00344-RWS-JDL, Order at 2, ECF 49 (E.D. Tex. Jan. 18, 2018) (granting opposed motion to stay deadlines pending court's adoption of dispositive report and recommendation); *Honeywell Int'l Inc. v. Acer Am. Corp.*, No. 6:07-cv-00125-LED-JDL, Order at 2, ECF 242 (E.D. Tex. May 26, 2009) (same).

This request is not being sought solely for the purpose of delay, but rather to facilitate the fair, efficient, and effective use of the parties' and the Court's resources.

Dated: November 15, 2021

By: /s/ Bethany R. Salpietra

Bethany R. Salpietra

Jeremy Taylor  
Arya Moshiri (*Pro Hac Vice*)  
**Baker Botts L.L.P.**  
jeremy.taylor@bakerbotts.com  
arya.moshiri@bakerbotts.com  
101 California St., Suite 3600  
San Francisco, CA 94111  
Telephone: (415) 291-6200  
Facsimile: (415) 291-6300

Danny David  
**Baker Botts L.L.P.**  
danny.david@bakerbotts.com  
910 Louisiana Street  
Houston, TX 77002  
Telephone: (713) 229-1234  
Facsimile: (713) 229-1522

Kurt Pankratz  
Bethany R. Salpietra  
Megan LaDriere White  
**Baker Botts L.L.P.**  
kurt.pankratz@bakerbotts.com  
bethany.salpietra@bakerbotts.com  
megan.ladriere@bakerbotts.com  
2001 Ross Ave., Ste. 900  
Dallas, TX 75201  
Telephone: (214) 953-6500  
Facsimile: (214) 953-6503

Brianna Potter (*Pro Hac Vice*)  
**Baker Botts L.L.P.**  
brianna.potter@bakerbotts.com  
1001 Page Mill Road  
Palo Alto, CA 94304  
Telephone: (650) 739-7556  
Facsimile: (650) 739-7656

Deron R. Dacus  
**The Dacus Firm, P.C.**  
ddacus@dacusfirm.com  
821 ESE Loop 323, Suite 430  
Tyler, Texas 75701

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