

**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
Plaintiff,	§	(LEAD CASE)
	§	
v.	§	<u>JURY TRIAL DEMANDED</u>
	§	
T-MOBILE USA, INC. and T-MOBILE US, INC.,	§	
	§	
Defendants.	§	

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	Case No. 2:21-cv-00026-JRG
Plaintiff,	§	(MEMBER CASE)
	§	
v.	§	<u>JURY TRIAL DEMANDED</u>
	§	
UBER TECHNOLOGIES, INC., d/b/a UBER,	§	
	§	
Defendant.	§	

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S RESPONSE
IN OPPOSITION TO DEFENDANT UBER TECHNOLOGIES, INC.,
D/B/A UBER'S OPPOSED MOTION TO COMPEL RESPONSES
TO INTERROGATORY NOS. 11 AND 12 (DKT. 193)**

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Plaintiff AGIS Software Development LLC (“AGIS” or “Plaintiff”), by and through its undersigned counsel, hereby submits this response in opposition to Defendant Uber Technologies, Inc., d/b/a Uber’s (“Defendant” or “Uber”) Opposed Motion to Compel Responses to Interrogatory Nos. 11 and 12 (Dkt. 193) (the “Motion”).

I. INTRODUCTION

Uber seeks additional responses to two interrogatories. However, AGIS has provided supplemental responses to these interrogatories. On the meet and confer between the parties prior to the filing of the instant Motion, AGIS indicated that it would supplement its interrogatory responses and asked for clarification regarding certain interrogatories which were either vague or burdensome to the extent they were impermissibly broad. Nonetheless, to the extent AGIS was able to ascertain the bounds of Uber’s interrogatories, it provided responses or provided a basis by which it objected. AGIS has satisfied its discovery obligations and in good faith, served supplemental interrogatory responses. Accordingly, Uber’s Motion should be denied.

II. LEGAL STANDARDS

Rule 26(b)(1) of the Federal Rules of Civil Procedure provide that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense . . .” Fed. R. Civ. P. 26(b)(1). While “discovery rules are to be accorded a broad and liberal treatment to effect their purpose of adequately informing the litigants in civil trials” (*Herbert v. Lando*, 441 U.S. 153, 176 (1979)), discovery does have “ultimate and necessary boundaries.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Courts “cannot compel [a party or non-party] to produce non-existent documents” because a party “cannot produce what it does not have.” *ORIX USA Corp. v. Armentrout*, No. 3:16-mc-63-N-BN, 2016 WL 4095603, at *5 (N.D. Tex. Aug. 1, 2016).

On a motion to compel, “[t]he moving party bears the burden of showing that the materials and information sought are relevant to the action or will lead to the discovery of admissible evidence.” *Van Dyke v. Retzlaff*, No. 4:18—247, 2020 WL 1866075, at *1 (E.D. Tex. Apr. 14, 2020). “The federal rules follow a proportionality standard for discovery.” *Id.* Under this standard, “the burden falls on both parties and the Court to consider the proportionality of all discovery in resolving discovery disputes.” Fed. R. Civ. P. 26(b)(1), advisory committee note (2015).

III. ARGUMENT

A. AGIS Has Already Supplemented Its Interrogatory Responses and Uber’s Requests Are Moot

AGIS has fully responded to Uber’s Interrogatory Nos. 11 and 12. Interrogatory No. 11 requested an identification of, *inter alia*, “every AGIS or AGIS Inc. product and versions of such product that you assert practices the Asserted Claims.” Ex. A. In addition, Uber requested that AGIS state “for each such product, . . . the complete basis for that assertion, including, but not limited to, a claim chart showing how each element of each Asserted Claim is met by each AGIS or AGIS Inc. product, including citations to all source code . . .” *Id.* Interrogatory No. 12 requested AGIS identify for each AGIS or AGIS Inc. product identified in response to Interrogatory No. 11 “that is an application on or service for a phone or other mobile device, (i) identification of the name . . . and platform; (ii) identification of each version and revision; (iii) first and last dates [of] each version and revision; and (iv) a detailed explanation of the timeline . . . of testing.” It also requested that each product that is a server in response to Interrogatory No. 11, provide the (1) internal and external name and model number; (2) the physical location of each server; (3) identification of each application or service used with or provided by the server; (4) the identification of each function or service carried out by each server; and (5) the identification of

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