



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	§	<u>JURY TRIAL DEMANDED</u>
US, INC.	§	
	§	
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AGIS SOFTWARE DEVELOPMENT LLC	§	
	§	CASE NO. 2:21-cv-00024-JRG
v.	§	(Member Case)
	§	
LYFT, INC.	§	<u>JURY TRIAL DEMANDED</u>
	§	

DEFENDANT LYFT, INC.’S RESPONSE TO PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC’S OPPOSED MOTION TO COMPEL (DKT. 201)

Defendant Lyft, Inc. (“Lyft”), by and through its counsel, hereby responds in opposition to Plaintiff AGIS Software Development LLC’s (“AGIS”) Motion to Compel Defendant Lyft, Inc. to Provide Discovery (Dkt. 201) (“Motion”).

AGIS moves to compel Lyft to provide complete responses to Interrogatory Nos. 3, 8, and 9, and to produce documents and information responsive to each. Dkt. 201. However, Lyft already supplemented its responses to each of these interrogatories as confirmed in the meet and confer on the same day AGIS filed its motion, and produced all responsive documents and information located after a reasonable and diligent search. This Court need not take any action. Although Lyft has acted in a manner consistent with its representations, the same cannot be said about AGIS. Indeed, despite AGIS informing the Court that it would withdraw its motion to compel if the



alleged discovery deficiencies were resolved,¹ AGIS has not done so. AGIS's failure to withdraw its Motion has caused Lyft to incur additional costs to needlessly prepare this response, and unnecessarily burdens the Court with a moot discovery issue. As made clear by AGIS's refusal to agree to stay deadlines pending adoption of this Court's dispositive Report and Recommendation (Dkt. 212), AGIS is not concerned with wasting resources of the judiciary or the parties. *See* Dkt. 217. The tactics employed by AGIS not only harass and create unnecessary work for Lyft, they also burden this Court. Accordingly, for at least the reasons stated herein, Lyft respectfully requests this Court deny AGIS's Motion.

I. LEGAL STANDARD

A party moving to compel "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," and "that the materials requested are within the scope of permissible discovery." *SSL Servs., LLC v. Citrix Sys. Inc.*, No. 2-08-cv-158-TJW, 2010 U.S. Dist. LEXIS 11470, at *4-5 (E.D. Tex. Feb. 8, 2010). Further, discovery should be "proportional to the needs of the case" as defined by Rule 26(b). FED. R. CIV. P. 26(b)(1). A motion to compel should be denied where answers to discovery requests have already been provided and the discovery sought to be compelled seeks to elicit the same information already produced. *See In re Norplant Contraceptive Prods. Liab. Litig.*, 170 F.R.D. 427, 428 (E.D. Tex. 1997). Moreover, a party is not required to create information that it does not possess. *Cunningham v. Concentrix Sols. Corp.*, No. 4:20-cv-661, 2021 U.S. Dist. LEXIS 48667, at *13 (E.D. Tex. Mar. 16, 2021) ("[A] party is not required to create or prepare a new or previously non-existent document solely for its production.").

¹ *See* Dkt. 201 at 2-3 nn.1-2.



II. DISCUSSION

Lyft confirmed that it would supplement its responses to Interrogatory No. 3, 8 and 9, subject to its objections,² and produce all responsive documents within its possession, custody or control that were identified after a reasonable and diligent search. Despite Lyft's assurances that supplemental responses and document productions were forthcoming, AGIS filed the instant Motion. As detailed below, each of the requests propounded in AGIS's Motion have been resolved, either in view of Lyft's supplemental interrogatory responses and document productions or because such documentation simply does not exist.

A. Lyft has provided a complete response to Interrogatory No. 3.

AGIS complains that Lyft's response to Interrogatory No. 3 is deficient because it identifies documents that "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." Dkt. 201 at 2. This complaint, as stated, fails to provide a fulsome account of the facts related to these requests, including that Lyft provided responsive information in its timely supplemental response to Interrogatory No. 3.

With respect to AGIS's complaints regarding Lyft's financial documentation being overinclusive, Lyft submits that these requests are now moot. AGIS first raised concerns regarding the overinclusive nature of Lyft's financial document production on October 29, 2021—four business days before the close of fact discovery. After diligently investigating AGIS's stated concerns, counsel for Lyft explained to counsel for AGIS that the complained-about documents

² AGIS incorrectly asserts that Lyft did not object to the relevance of the information sought by AGIS's discovery requests. See Dkt. 201 at 2 ("Lyft does not contend that AGIS's discovery requests seek irrelevant information."). Lyft did, in fact, raise relevance objections to many of AGIS's discovery requests, including Interrogatory Nos. 8 and 9.

[REDACTED]

contained information sufficient to distinguish ride-sharing financial data from non-ride-sharing financial data. Notwithstanding the foregoing, Lyft confirmed that it would supplement its financial document production—which it did prior to AGIS filing its Motion—to address each of AGIS’s stated concerns. As Lyft has produced documentation resolving the alleged deficiencies identified by AGIS and supplemented its response to Interrogatory No. 3 to identify such documentation, this request is moot.

On October 28, 2021—five business days before the close of fact discovery—AGIS first communicated its concern that Lyft’s financial document production allegedly did not contain information regarding fixed and variable costs. As Lyft made clear in correspondence with AGIS, Lyft’s financial document production did, in fact, provide detailed cost information, including information regarding fixed and variable costs. AGIS subsequently clarified its request on October 29, 2021, articulating that it sought a breakdown or other identification showing which of Lyft’s costs were fixed versus variable. Lyft investigated AGIS’s request and confirmed with AGIS (within two business days) that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. AGIS’s request, therefore, seeks information that Lyft simply does not possess. And,

[REDACTED]

there is no requirement that Lyft create such documentation simply for the purpose of litigation. See *Cunningham v. Concentrix Sols. Corp.*, No. 4:20-cv-661, 2021 U.S. Dist. LEXIS 48667, at *13 (E.D. Tex. Mar. 16, 2021) (“[A] party is not required to create or prepare a new or previously non-existent document solely for its production.”); *Biote Med., LLC v. Jacobsen*, No. 4:18-cv-00866, 2021 U.S. Dist. LEXIS 18097, at *46 (E.D. Tex. Feb. 1, 2021) (“If the [] Defendants genuinely do not have any responsive documents, there is nothing to produce.”). This Court should thus deny AGIS’s Motion with respect to its request for additional information regarding fixed and variable costs.

B. Lyft has provided a complete response to Interrogatory Nos. 8 and 9.

AGIS’s information and document requests related to Interrogatory Nos. 8 and 9 have also been mooted by Lyft’s supplemental responses and document productions. As recognized in AGIS’s Motion, counsel for Lyft represented to counsel for AGIS, during the parties’ November 3, 2021 meet and confer, that Lyft would supplement its responses to Interrogatory Nos. 8 and 9 and produce any responsive documents. Lyft did just that. [REDACTED]

[REDACTED]

[REDACTED] In view of the fact that Lyft has provided a complete response to Interrogatory Nos. 8 and 9, and produced all responsive documents identified after a reasonable and diligent search, consistent with the testimony of its corporate witness on this topic, this request is moot as there is nothing further to compel.

[REDACTED]

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