



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

AGIS SOFTWARE DEVELOPMENT LLC §
v. § CASE NO. 2:21-cv-00072-JRG
(Lead Case)

T-MOBILE USA, INC., and T-MOBILE §
US, INC. § **JURY TRIAL DEMANDED**

AGIS SOFTWARE DEVELOPMENT LLC §
v. § CASE NO. 2:21-cv-00024-JRG
(Member Case)

LYFT, INC. §
§ **JURY TRIAL DEMANDED**

**DEFENDANT LYFT, INC.’S RESPONSE TO PLAINTIFF AGIS SOFTWARE
DEVELOPMENT LLC’S MOTION FOR RECONSIDERATION AND OBJECTIONS
TO THE ORDER RECOMMENDING GRANT OF
LYFT, INC.’S MOTION TO DISMISS FOR IMPROPER VENUE (DKT. 212)**



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I. INTRODUCTION

AGIS Software Development LLC's ("AGIS") request for reconsideration and objections ("Motion") rehash the same arguments previously considered by Judge Payne in his well-reasoned Report and Recommendation (Dkt. 212) (hereinafter, "Report and Recommendation"). AGIS makes three arguments, none of which warrant deviation from Judge Payne's recommendation to dismiss this case.

First, contrary to sworn testimony and the evidence already considered by Judge Payne, AGIS incorrectly argues that the Hertz agreement "establishes that Lyft had a regular and established place of business in the District at the time the Complaint was filed." Dkt. 258 at 1. It does not. And AGIS has not, and cannot, provide any evidence contradicting sworn testimony that no such place existed at any time around or after AGIS filed its Complaint. There is little doubt that if Lyft operated an Express Drive location in this District, AGIS would have provided photos, testimony, and other evidence confirming it. AGIS provided no such evidence because it cannot; Lyft does not have a regular and established place of business in this District.

Second, based on attorney argument alone, AGIS incorrectly argues that payments to third-party airports, cities, jurisdictions, or municipalities should support a finding that Lyft has a regular and established place of business in the District. *See id.* at 1 & 8-10. Such arguments are legally flawed, directly contradict Federal Circuit precedent, and are not relevant to the venue inquiry—namely, whether Lyft operates a regular and established place of business at third-party sites.

Lastly, AGIS argues that the Court should transfer this case to a district previously found inappropriate for Lyft—rather than dismiss—based on the record Judge Payne already found inadequate to support transfer. Consistent with Judge Payne's Report and Recommendation, there is insufficient evidence to support transfer. Furthermore, AGIS failed to rebut Lyft's evidence that transfer would be inappropriate as confirmed by previous W.D. Tex. court orders finding the

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