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

AGIS SOFTWARE DEVELOPMENT LLC, Plaintiff, v. T-MOBILE USA, INC. and T-MOBILE US, INC., Defendants.	§	Case No. 2:21-cv-00072-JRG (LEAD CASE) **JURY TRIAL DEMANDED**
AGIS SOFTWARE DEVELOPMENT LLC, Plaintiff, v. LYFT, INC., Defendant.	§	Case No. 2:21-cv-00024-JRG (MEMBER CASE) **JURY TRIAL DEMANDED**

PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S SUR-REPLY IN FURTHER OPPOSITION TO DEFENDANT LYFT, INC.'S OPPOSED MOTION FOR EXTENSION OF TIME TO FILE BILL OF COSTS AND MOTION FOR FEES (DKT. 356)

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Plaintiff AGIS Software Development LLC ("AGIS" or "Plaintiff"), by and through its undersigned counsel, hereby submits this sur-reply in further opposition to Defendant Lyft, Inc.'s ("Defendant" or "Lyft") Opposed Motion for Extension of Time to File Bill of Costs and Motion for Fees (Dkt. 356) (the "Motion").

This is a dispute over whether the deadlines apply to Lyft. Lyft cannot show good cause for this extension because the deadlines do not apply to Lyft when it is not the "prevailing party" under the applicable rules. The Court should not endorse the applicability of this deadline to Lyft. In addition, Lyft expressly declines to address the question of whether it is a "prevailing party" and refuses to compare the instant facts to the circumstances of the cases it contends support its motion. Those two cases, *CRST* and *B.E. Tech*, involve exceptional circumstances where the district court specifically identified a defendant as a "prevailing party." Those specific identifications invited the defendants to request costs and fees. It is undisputed that there are no such facts here. Lyft's refusal to address the shortcoming of its own situation improperly shifts the burden of demonstrating good cause to the Court. Respectfully, the Court should decline to do the work for Lyft.

As a preliminary matter, on January 28, 2022, the Northern District of California granted AGIS's motion to dismiss Lyft's declaratory-judgment complaint for lack of personal jurisdiction. *Lyft Inc. v. AGIS Software Development LLC*, Case No. 21-cv-04653-BLF, Dkt. 61 (N.D. Cal., January 28, 2022). In that case, the Court "agree[d] with AGIS Software" and found that "Lyft has not alleged enough facts to indicate that this case involves a situation similar to the one in *Trimble*" which "involved a very specific set of facts." *Id*. at 5-6. The Court found that "Lyft can only generally allege licensing negotiations between AGIS Software and California companies" and that "Lyft has failed to meet its burden of showing that AGIS Software purposefully directed its

activities at residents of the forum based on *Trimble*." *Id*. at 5-6. The Court also rejected Lyft's alter ego theory finding that "Lyft has alleged minimal facts. . .not sufficient to meet Lyft's burden for showing that AGIS Software, AGIS, Inc., and AGIS Holdings had a unity of interest." *Id*. at 7-8. Under Lyft's interpretation of "prevailing party," AGIS may now request costs and attorney fees for that case.

In its Reply for this Motion, Lyft misleads the Court when it states that "AGIS failed to provide any basis for opposing the requested extension." Reply at 3. But in the same paragraph, Lyft states that AGIS responded. *Id*. As explained in its briefing, AGIS responded that Lyft is unable to show that Lyft is the "prevailing party," as required by Fed. R. Civ. P. 54(d) and 35 U.S.C § 285, and Lyft cannot obtain costs under L.R. CV-54 because there is no "final judgment or by judgment that a presiding judge directs be entered as final under Fed. R. Civ. P. 54(b)." Because neither deadline for costs nor fees applies to it, Lyft lacks sufficient cause to extend the deadline.

Lyft's Reply confirms that it lacks sufficient good cause required to receive relief under this Motion. Rather than explain the applicability of the deadline it seeks to extend, Lyft "defer[s] until the appropriate time to provide a fulsome analysis" and shifts the burden onto the Court to analyze the cases to find a reason to grant the extension. Lyft's attempt to "correct certain mischaracterizations or inaccuracies in AGIS's Response" is limited to the simple identification of three additional cases, none of which Lyft contends apply to the issue of whether Lyft can be a "prevailing party." Reply at 3. Lyft does not compare or contrast any of the circumstances of the cases, and Lyft does not attempt to distinguish AGIS's presentation of the cases. Lyft simply waves its hand and expects the Court to review the cases and make the arguments for it. Reply at 3.

Lyft does not dispute that the Report and Recommendation did not identify a "prevailing

party." Dkt. 212 at 14. Disregarding that Lyft was not declared a "prevailing party" in this action, Lyft generally alleges that Defendant can seek costs and fees as a prevailing party. But whether the district court *can* ever find defendants to be prevailing parties is not the issue before the Court. The question is whether Lyft is the prevailing party in this case. It is not.

It is undisputed that the Court did not declare Lyft a "prevailing party" in this action. The specific identification of a prevailing party in the motion to dismiss was a predicate requirement in both cases cited by Lyft. The reason why those disputes advanced to appeal was that the district court specifically identified the defendants as prevailing parties. Such cases are few and far between because, unlike this action, they involve exceptional circumstances. Regarding the first case, Lyft does not dispute that *CRST* involves "exceptionally rare circumstances" where an agency "wholly abandoned its statutory duties" to investigate and conciliate the claims of class members in a Title VII employment discrimination action. Lyft does not dispute that, in *CRST*, the district court specifically identified the defendant as a "prevailing party" and specifically invited the defendant to request costs after the agency. *CRST Van Expedited, Inc. v. E.E.O.C.*, 578 U.S. 419, 427 (2016) ("The District Court then dismissed the suit, held that CRST is a prevailing party, and invited CRST to apply for attorney's fees."). Regarding the second case, Lyft does not dispute that, in *B.E. Tech*, the district court's order dismissing the action specifically identified the defendant as the "prevailing party" after the PTAB invalidated all asserted claims in a parallel administrative proceeding and the plaintiff did not withdraw its claims. *B.E. Tech., L.L.C. v. Facebook, Inc.*, 940 F.3d 675, 677 (Fed. Cir. 2019). Lyft does not dispute that both of these cases involve a specific finding in the district court's order identifying a particular "prevailing party." Other than generally showing that a defendant *can* be a prevailing party, Lyft provides no authority to show that it can proceed with its request for costs and fees without being declared a prevailing

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