

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

**PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S
RESPONSE IN OPPOSITION TO DEFENDANT LYFT, INC.'S
OPPOSED MOTION FOR FURTHER EXTENSION OF TIME TO
FILE BILL OF COSTS AND MOTION FOR FEES (DKT. 361)**

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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 Lyft, Inc.’s (“Defendant” or “Lyft”) Opposed Motion for Further Extension of Time to File Bill of Costs and Motion for Fees (Dkt. 361) (the “Motion”). This is Lyft’s second motion for an extension to request costs and attorney fees. *See* Dkt. 356. AGIS hereby incorporates its opposition briefing in Dkts. 357 and 360.

I. INTRODUCTION

In this serial motion, Lyft artfully suggests that: (a) Lyft does not know AGIS’s position, (b) this Motion moots Lyft’s previous motion for less time, and (c) there is no immediate need for the Court to decide this Motion due to ongoing discussions. Lyft’s suggestions lack candor.

The parties have already conferred and are at an impasse over whether the deadlines apply to Lyft. 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).” Thus, because the deadlines do not apply to Lyft when it is not the “prevailing party” and there is no final judgment under the applicable rules, Lyft cannot show good cause for the extension. Lyft cannot avoid a decision on the merits by filing a new motion¹ or by ignoring the parties’ impasse. AGIS requests a ruling on the merits of this dispute because it involves a threshold issue regarding predicate facts necessary to request the intended relief.

II. BACKGROUND

On November 10, 2021, the Court issued a Report and Recommendation to dismiss AGIS’s action against Lyft under 28 U.S.C. § 1406(a), “without prejudice.” Dkt. 212 at 14. The Report

¹ AGIS again reserves the right to seek costs and fees associated with responding to Lyft’s frivolous requests.

and Recommendation did not identify a “prevailing party.”

Plaintiff filed a timely motion for reconsideration. Dkt. 258. Defendant did not file a motion for reconsideration on any grounds.

On January 19, 2022, the Court overruled the objections raised in AGIS’s motion for reconsideration, adopted the Report and Recommendation, and directed the clerk to close the action against Lyft. Dkt. 334.

On January 31, 2022, 11:56 P.M., 48 hours before the deadline for its Motion, counsel for Lyft raised the issue of costs for the first time when it emailed counsel for AGIS a copy of its proposed bill of costs. AGIS promptly notified Lyft that it had no legal basis for requesting costs and fees because it had not been identified as the “prevailing party” and because the action had been dismissed “without prejudice.” Dkt. 334 (adopting Dkt. 212 at 14).

Since being informed that it is not the “prevailing party” and that there is no final judgment, Lyft has done nothing to modify the existing facts.

III. LEGAL STANDARDS

Fed. R. Civ. P. 54(d) provides that, “[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.”

L.R. CV-54 provides that “[a] party awarded costs by final judgment or by judgment that a presiding judge directs be entered as final under Fed. R. Civ. P. 54(b) must apply to the clerk for taxation of such costs by filing a bill of costs. Unless otherwise provided by statute or by an order of the presiding judge, the bill of costs must be filed with the clerk and served on any party entitled to such service no later than fourteen days after the clerk enters the judgment on the docket.”

35 U.S.C § 285 provides that “[t]he court in exceptional cases may award reasonable attorney fees to the **prevailing party.**”

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