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

AGIS SOFTWARE DEVELOPMENT LLC v. T-MOBILE USA, INC., and T-MOBILE US, INC.	§ § § § § §	CASE NO. 2:21-cv-00072-JRG (Lead Case) **JURY TRIAL DEMANDED**
AGIS SOFTWARE DEVELOPMENT LLC v. LYFT, INC.	§ § § § § §	CASE NO. 2:21-cv-00024-JRG (Member Case) **JURY TRIAL DEMANDED**

DEFENDANT LYFT, INC.'S REPLY IN SUPPORT OF OPPOSED MOTION FOR ATTORNEYS' FEES UNDER 35 U.S.C. § 285 AND ENTRY OF BILL OF COSTS (DKT. 372)

I. INTRODUCTION

In its Response, AGIS argues that Lyft has not yet been declared the prevailing party by the Court and that fees would otherwise be improper because AGIS's venue claims were not objectively baseless. Neither argument withstands scrutiny. On the first issue, if this Court agrees that fees should be awarded for AGIS's insufficient pre-suit investigation, it can identify Lyft as the prevailing party in its order on Lyft's Motion. On the second issue, if AGIS even attempted to verify whether an Express Drive location existed in Plano when it filed its complaint, it could have simply driven to or called the Pep Boys at the Plano site to confirm that Lyft was not operating an Express Drive at that location. It did neither and instead maintained its path of willful blindness, forcing Lyft to incur substantial legal fees to defend itself against AGIS's baseless venue allegations. Lyft seeks only fees associated with the motion, discovery, hearing, and post-decision briefing needed to defend itself from AGIS's baseless venue allegations. With respect to costs, if the Court decides Lyft is the prevailing party, costs should be awarded as a matter of course, and AGIS's attempt to be the arbiter of discovery necessary for Lyft to defend itself should be rejected.

II. ARGUMENT

a. Lyft is the Prevailing Party.

In its Response, AGIS argues that Lyft cannot seek its fees and costs because "the Court has not identified Lyft as the 'prevailing party'" in this case. Dkt. 374 at 4. But just because the Court has not *yet* made such finding does not mean that it cannot or will not. Indeed, as Lyft pointed out in its Motion, this Court has previously made declarations of prevailing party status simultaneously when ruling on motions seeking costs and fees. *See* Dkt. 372 at 7-8. Lyft respectfully requests that the Court do the same here and declare Lyft as the prevailing party in this case consistent with controlling precedent. The "touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties," which a "plaintiff seeks"

and a "defendant seeks to prevent." *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419, 422, 431 (2016); *see also B.E. Tech., L.L.C. v. Facebook, Inc.*, 940 F.3d 675, 679 (Fed. Cir. 2019). Because it rebuffed AGIS's infringement claims, Lyft is the prevailing party.

B.E. Tech. is particularly instructive. In that case, the Federal Circuit identified Facebook as the prevailing party in a case dismissed as moot. *See generally, id.* Relying on *CRST*, the Federal Circuit affirmed the district court's determination that Facebook was the prevailing party because it "obtained the outcome it sought via the mootness dismissal; it rebuffed B.E.'s attempt to alter the parties' legal relationship in an infringement suit." *Id.* at 678–79. Additionally, the Federal Circuit recognized that such dismissal "placed a judicial *imprimatur* upon B.E.'s claim for patent infringement" giving rise to the prevailing party status. *Id.*

For the same reasons Facebook was the prevailing party in *B.E. Tech.*, this Court should declare Lyft the prevailing party here. Namely, Lyft rebuffed AGIS's attempt to alter the parties' legal relationship in an infringement suit, and the Court's dismissal placed a judicial *imprimatur* on AGIS's infringement claim. AGIS's attempt to distinguish *B.E. Tech.* and *CRST* by arguing the district court "explicitly held out the prevailing party," puts form before function and ignores the Courts' finding of prevailing parties in non-merits decisions. *See* Dkt. 374 at 4. Controlling authority confirms Lyft is the prevailing party here, and Lyft requests this Court make such finding.

b. This Court Should Award Lyft's Limited Request for Fees

Lyft's Motion requests a limited subset of its total fees incurred in the instant case—those relating to (1) defending against AGIS's venue assertions premised on an inadequate pre-suit investigation[1]; and (2) AGIS's failure to mitigate the damages with a prompt stay following the

[1] AGIS criticizes Lyft for relying on cases awarding fees based on inadequate pre-suit investigations, characterizing those cases as inapposite because the pre-suit investigations related to the merits of the case. Dkt. 374 at 10. Lyft respectfully disagrees but nonetheless submits that the merits of this case provide an independent basis for exceptionality due to the weakness of

Court's report and recommendation to dismiss (Dkt. 212). As detailed in Lyft's Motion, these fees were directly incurred as a result of AGIS's unreasonable actions and inactions, which make this case "exceptional" under 35 U.S.C. § 285 when considering the totality of the circumstances. *See generally*, Dkt. 372; *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014). AGIS subjected Lyft to needless litigation for nearly ten months (most of which Lyft does not seek to recover fees for[2]) all because AGIS failed to perform a rudimental pre-suit investigation to confirm its venue allegations. Even after being confronted with sworn evidence establishing the Plano Express Drive location did not exist, AGIS refused to perform its own independent investigation (e.g., by calling or visiting the location) and maintained its unverified venue allegations. Although AGIS disputes the reasonableness of its venue allegations, it does not dispute that AGIS acted unreasonably by initially refusing and subsequently relenting to stipulate to a stay. *See* Dkts. 372 & 374. The Court should adopt Lyft's unrebutted positions on this point.

Instead of accepting its mistakes, AGIS attempts to blame Lyft for its own unreasonable litigation conduct. *See* Dkt. 374 at 8-9. In doing so, AGIS ignores that Lyft invited AGIS to propound venue discovery months before AGIS served any, and—once it eventually did—Lyft provided responses and documents on an expedited basis, in addition to providing numerous supplementations while simultaneously obtaining necessary third-party permissions. *See* Dkt. 372 at 3-4. Even now, AGIS continues to take untenable and inaccurate positions, asserting that Lyft is a bad actor because it did not produce "any materials related to the termination of its relationship with Hertz and Pep Boys in the District." Dkt. 374 at 9. As an initial matter, AGIS's assertion is

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AGIS's positions. *See, e.g.*, Dkt. 213 at 25-28 (finding a claim indefinite); Dkt. 190 at 13 & 18-19 (alleging that AGIS's infringement claims were barred due to a breach of contract).

[2] AGIS takes the position that Lyft should be unable to request fees incurred as a result of preparing its Motion. *See* Dkt. 374 at 10. These fees, however, are properly included in Lyft's request as these fees were incurred only because AGIS failed to perform an adequate pre-suit investigation.

factually incorrect—Lyft *did* provide documentary evidence demonstrating that Lyft discontinued its relationship with Hertz and Pep Boys at the Plano site, which was further supported by sworn deposition and hearing testimony. *See* Dkt. 30-1, ¶ 6. Furthermore, as both AGIS and this Court knows, Lyft did not produce documentation evincing the termination of Lyft's relationship with Hertz because no such documentation exists. *See* Dkt. 312 at 4-5.

AGIS's recitation of events also fails to recognize that Lyft was unnecessarily cooperative and unquestionably reasonable by agreeing to share its deposition time with the co-defendants in this case. *See* Dkt. 374 at 9. The Discovery Order entered in this case permits Lyft to take its own 7-hour deposition of an AGIS witness, and Lyft only asked this Court for additional time with respect to one witness whom Lyft never had the opportunity to ask a single question. *See* Dkt. 79 at 5 ("Each party may take up to 40 total hours of deposition testimony of another party . . . each deposition will be limited to no more than 7 hours."); Dkt. 199 at 3-5. The fact of the matter is that Lyft went to great lengths to efficiently manage and streamline this case while, in parallel, preparing for trial in an improper venue by meeting its obligations to AGIS and this Court.

c. The Costs Sought by Lyft are Recoverable.

AGIS explains—for the first time in its response—that it objects to Lyft's ability to recover certain costs identified as "fees advanced in connection with subpoena to [witness]" in a previous version of Lyft's proposed Bill of Costs. *See* Dkt. 374 at 13-14; Dkt. 373-5. Had AGIS raised such objection during the parties' meet and confer regarding Lyft's proposed bill of costs, Lyft would have prepared a corrected version seeking only the witness costs specifically contemplated in 28 U.S.C. § 1821. *See Halupka v. Fed. Express Corp.*, No. 4:03-cv-350, 2006 U.S. Dist. LEXIS 115956, at *9 (E.D. Tex. Aug. 1, 2006) (granting prevailing party witness-related costs under 28 U.S.C. § 1821). Instead, AGIS waited to present this non-issue to the Court in briefing, resulting in a waste of time and resources for the parties and Court. Likewise, AGIS contests—for the first

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