

**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.	§	
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AGIS SOFTWARE DEVELOPMENT LLC	§	
v.	§	CASE NO. 2:21-cv-00024-JRG
	§	(Member Case)
LYFT, INC.	§	
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AGIS SOFTWARE DEVELOPMENT LLC	§	
v.	§	CASE NO. 2:21-cv-00026-JRG
	§	(Member Case)
UBER TECHNOLOGIES, INC., d/b/a UBER	§	
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AGIS SOFTWARE DEVELOPMENT LLC	§	
v.	§	CASE NO. 2:21-cv-00029-JRG
	§	(Member Case)
WHATSAPP, INC.	§	
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**LYFT, INC.'S REPLY IN SUPPORT OF ITS  
MOTION TO DISMISS FOR IMPROPER VENUE**

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## I. INTRODUCTION

AGIS has failed to meet its burden of establishing that venue is proper in this District, and as a result, the Court must dismiss or transfer this case. *See In re ZTE (USA) Inc.*, 890 F.3d 1008, 1013 (Fed. Cir. 2018). It is undisputed that the only physical location AGIS has identified in this district was closed over a year ago and that venue is decided at the time a complaint is filed. AGIS's only remaining venue argument—that privately-owned vehicles operated by drivers using the Lyft app support venue (*see* Dkt. 67 (“Opp.”), at 9–16)—is inconsistent with clear guidance from the Federal Circuit on venue.<sup>1</sup>

Should this Court decide that transfer of this case is warranted over dismissal, Lyft submits that this case should be transferred to the Northern District of California because AGIS has not shown that this case could have been brought in the Western District of Texas. The Northern District of California is also more convenient under the Fifth Circuit's § 1404 transfer factors.

## II. ARGUMENT

### A. Venue is Improper in the Eastern District of Texas Because Lyft Does Not Maintain a Regular and Established Place of Business in This District.

#### 1. The Closed Express Drive Location Cannot Serve as a Basis for Venue.

It is undisputed that venue is determined in this District when a complaint is filed, and that the Plano Express Drive location was closed for over a year when AGIS filed the current lawsuit. *See* Mot. (“Mot.”), § V(B)(1); *Pers. Audio, LLC v. Google, Inc.*, 280 F. Supp. 3d 922, 931 (E.D. Tex. 2017). In its opposition, AGIS ignores the fact that there is no Express Drive location in this District and instead focuses on whether the closed Plano Express Drive location was owned or rented by Lyft. *See* Dkt. 67 (“Opp.”) at 9–14. Because the location is closed, the

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<sup>1</sup> AGIS abandons venue arguments based on alleged “dedicated pickup locations” which do not exist. *See* Mot. at 7–10. AGIS's reference to a pick-up location at the Tyler airport, raised for the first time in AGIS's brief, is no different than ordinary pick-up locations discussed in Lyft's motion which are street corners, restaurants, homes, airports, or other locations requested by users and not owned, leased, or otherwise controlled by Lyft. *See id.*

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