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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 KENNETH HOAGLAND, individually
12 and on behalf of all others similarly
13 situated,
14 Plaintiff,
15 v.
16 AXOS BANK,
17 Defendant.

Case No.: 20-cv-807-BAS-DEB

**ORDER GRANTING UNOPPOSED
MOTION FOR ENTRY OF AGREED
T-MOBILE PRODUCTION ORDER
[DKT. NO. 58] AND ENTERING
PRODUCTION ORDER**

18 Before the Court is Plaintiff's Unopposed Motion for Entry of Agreed T-Mobile
19 Production Order. Dkt. No. 58. Good cause appearing, the Court GRANTS the Motion and
20 enters the Stipulated Order to Compel Document Production as follows:

21 Plaintiff and third-party T-Mobile US, Inc. ("T-Mobile") stipulate as follows:

22 1. On about July 26, 2021, Plaintiff issued a subpoena to T-Mobile (the
23 "Subpoena"). Ancillary to the subpoena, Plaintiff also provided T-Mobile with a list of
24 6,830 unique calls relevant to the case ("Schedule A"), and asked T-Mobile to provide
25 subscriber and user information for each phone number on the date identified.

26 2. T-Mobile objected to the Subpoena on multiple grounds, including that it was
27 barred from releasing information about subscribers located in California, Delaware and
28

1 Pennsylvania without a Court order, pursuant to state law, including Cal. Pub. Util. Code
2 § 2894, 11 Del. C. § 2423 and 18 Pa. C.S.A. § 5742.

3 3. California law permits the production of subscriber information pursuant to a
4 court order. Specifically, Cal. Pub. Util. Code § 2894 provides:

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6 Notwithstanding subdivision (e) of Section 2891, the disclosure of any
7 information by an interexchange telephone corporation, a local exchange
8 telephone corporation, or a provider of commercial mobile radio service, as
9 defined in Section 2168, in good faith compliance with the terms of a state or
10 federal court warrant or order or administrative subpoena issued at the request
11 of a law enforcement official or other federal, state, or local governmental
12 agency for law enforcement purposes, is a complete defense against any civil
action brought under this chapter or any other law, including, but not limited
to, Chapter 1.5 (commencing with Section 630) of Part 1 of Title 15 of the
Penal Code, for the wrongful disclosure of that information.

13 Cal. Pub. Util. Code § 2894(a). Federal courts have held that these provisions expressly
14 allow for production of subscriber information upon court order. *See Kaur v. City of Lodi*,
15 2016 WL 10679575, at *1 (E.D. Cal. Jan. 28, 2016) (“[I]t does not authorize [respondent]
16 to withhold documents in the face of a federal court order compelling their production.”);
17 *McArdle v. AT&T Mobility LLC*, 2010 WL 1532334, at *6 (N.D. Cal. Apr. 16, 2010)
18 (“[S]ection 2894 of the utilities code provides an exception to this rule for court orders.”).

19 4. Delaware law also expressly allows for disclosure of subscriber information
20 pursuant to a court order. The Delaware Code provides:

21 Except as provided in this subdivision, a provider of electronic
22 communications service or remote computing service may not disclose a
23 record or other information pertaining to a subscriber or customer of the
24 service to any person other than an investigative or law-enforcement officer.

25 11 Del. C. § 2423 (c)(2). The same section of the Delaware law goes on to say:

26 Nothing in this chapter may be construed as creating a cause of action against
27 any provider of electronic communication service or remote computing
28 service, such service's officers, employees, or agents or other specified

1 persons for providing information, facilities or assistance in accordance with
2 the terms of a court order, warrant, subpoena or certification under this
3 chapter.

4 11 Del. C. § 2423(e). Thus, the Delaware law at issue does not preclude production upon
5 entry of a Court order.

6 5. The Pennsylvania Wiretapping and Electronic Surveillance Control Act
7 provides in relevant part:

8 A person or entity may divulge a record or other information pertaining to a
9 subscriber to, or customer of, the service if any of the following paragraphs
10 apply: . . .

11 (2) A record or other information may be divulged to any of the following:

- 12 (i) An investigative or law enforcement official as authorized in
13 section 5743.
- 14 (ii) The subscriber or customer upon request.
- 15 (iii) A third party, upon receipt from the requester of adequate proof
16 of lawful consent from the subscriber to, or customer of, the
17 service to release the information to the third party.
- 18 (iv) A party to a legal proceeding, upon receipt from the party of a
19 court order entered under subsection (c.1). This subparagraph
20 does not apply to an investigative or law enforcement official
authorized under section 5743. . . .

21 (4) Subject to paragraph (2), a record or other information may be divulged as
22 authorized by Federal law or as authorized by a Federal regulatory agency
having oversight over the person or entity.

23 18 Pa. C.S.A. § 5742(c). Paragraph (4) thus expressly permits disclosure in federal court
24 “as authorized by federal law.”

25 6. Based on the foregoing authorities, T-Mobile contends that it is unable to
26 comply with the Subpoena with respect to California, Delaware or Pennsylvania
27 subscribers unless ordered by a court to do so.
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1 7. Through counsel, Plaintiff and T-Mobile reached the following agreement
2 with regard to T-Mobile’s additional objections to the Subpoena: (a) T-Mobile will produce
3 the subscriber name and billing address within its possession for any postpaid account
4 holder associated with the target telephone numbers on the specific unique dates provided
5 in Schedule A; (b) T-Mobile will not produce user information; (d) T-Mobile will not
6 produce email addresses; (c) T-Mobile will only search its post-paid customer data, and
7 will not search pre-paid customer data, for its response to the Subpoena; and (d) Plaintiff
8 will reimburse T-Mobile for the reasonable costs incurred in the production and delivery
9 of the responsive records.

10 8. T-Mobile will comply with the Subpoena, subject to the provisions of
11 Paragraph 7, only after the entry of an order requiring such compliance.

12 9. T-Mobile estimates that it can produce the requested data within two weeks
13 of the entry of this order. However, the parties further agree that T-Mobile reserves its
14 right to seek additional time if issues arise during the production process. The parties may
15 agree to additional time without seeking further Court intervention.

16 10. As such, Plaintiff and T-Mobile respectfully ask that the Court order as
17 follows:

18 **ORDER**

19 Upon review of the foregoing stipulation, the Court finds that the stipulated relief
20 sought is due to be granted. Accordingly, it is ORDERED:

- 21 1. T-Mobile is ordered to comply with the Subpoena with respect to California,
22 Delaware and Pennsylvania subscribers.
- 23 2. T-Mobile shall produce the following information (the “Subpoenaed
24 Information”) to Plaintiff’s counsel:
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26 A data compilation in a *.csv or Excel format spreadsheet format
27 reflecting the name and billing address for each postpaid account
28 holder associated with each target telephone number on the
 unique date indicated on Schedule A.

1 3. The Subpoenaed Information shall be maintained as “CONFIDENTIAL –
2 FOR COUNSEL ONLY” in accordance with the Protective Order entered in
3 this action, Dkt. 36.

4 4. Plaintiffs will reimburse T-Mobile for the reasonable costs of production and
5 delivery of the Subpoenaed Information.

6 **IT IS SO ORDERED.**

7 Dated: November 16, 2021



8
9 Honorable Daniel E. Butcher
10 United States Magistrate Judge

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1 Dated: November 9, 2021

2 T-MOBILE US, INC.

3 By: s/ Katie Gamsey

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10 *Counsel for T-Mobile*

Stipulated and respectfully submitted,

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himself and all others similarly situated

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Counsel for Plaintiff

1 **SIGNATURE CERTIFICATION**

2 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and
3 Procedures Manual, I hereby certify that the content of this document is acceptable to Katie
4 Gamsey, counsel for T-Mobile US, Inc., and that I have obtained Ms. Gamsey's
5 authorization to affix her electronic signature to this document.

6 *s/ Alexander H. Burke*

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