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22  
 23 UNITED STATES DISTRICT COURT  
 24 CENTRAL DISTRICT OF CALIFORNIA

25 WILLIAM L. MCCARTHY,  
 26 Plaintiff,  
 27 v.  
 28 CHARTER COMMUNICATIONS  
 OF CALIFORNIA, LLC,  
 Defendant.

Case No. CV 16-6059-JFW (JCx)

**STIPULATION AND PROTECTIVE ORDER**

IT IS HEREBY STIPULATED by and between the parties. Plaintiff William L. McCarthy and Defendant Charter Communications of California, LLC (collectively “Parties”), by and through their respective counsel of record, that in order to facilitate the exchange of information and documents which may be subject to confidentiality limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties stipulate as follows:

1           A. PURPOSES AND LIMITATIONS

2           As the parties have represented that discovery in this action is likely to  
3 involve production of confidential, proprietary, or private information for which  
4 special protection from public disclosure and from use for any purpose other than  
5 prosecuting this litigation may be warranted, this Court enters the following  
6 Protective Order. This Order does not confer blanket protections on all disclosures  
7 or responses to discovery. The protection it affords from public disclosure and use  
8 extends only to the limited information or items that are entitled to confidential  
9 treatment under the applicable legal principles. Further, as set forth in Section 12.3,  
10 below, this Protective Order does not entitle the parties to file confidential  
11 information under seal. Rather, when the parties seek permission from the court to  
12 file material under seal, the parties must comply with Civil Local Rule 79-5 and  
13 with any pertinent orders of the assigned District Judge and Magistrate Judge.

14           B. GOOD CAUSE STATEMENT

15           In light of the nature of the claims and allegations in this case and the parties’  
16 representations that discovery in this case will involve the production of confidential  
17 records, and in order to expedite the flow of information, to facilitate the prompt  
18 resolution of disputes over confidentiality of discovery materials, to adequately  
19 protect information the parties are entitled to keep confidential, to ensure that the  
20 parties are permitted reasonable necessary uses of such material in connection with  
21 this action, to address their handling of such material at the end of the litigation, and  
22 to serve the ends of justice, a protective order for such information is justified in this  
23 matter. The parties shall not designate any information/documents as confidential  
24 without a good faith belief that such information/documents have been maintained  
25 in a confidential, non-public manner, and that there is good cause or a compelling  
26 reason why it should not be part of the public record of this case.

27

28

1     2.     DEFINITIONS

2             2.1     Action: The instant action: *William McCarthy v. Charter*  
3     *Communications of California, LLC*, Case No. CV 16-6059-JFW (JCx).

4             2.2     Challenging Party: a Party or Non-Party that challenges the  
5     designation of information or items under this Order.

6             2.3     “CONFIDENTIAL” Information or Items: information (regardless of  
7     how it is generated, stored or maintained) or tangible things that qualify for  
8     protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
9     the Good Cause Statement.

10            2.4     Counsel: Outside Counsel of Record and House Counsel (as well as  
11     their support staff).

12            2.5     Designating Party: a Party or Non-Party that designates information or  
13     items that it produces in disclosures or in responses to discovery as  
14     “CONFIDENTIAL.”

15            2.6     Disclosure or Discovery Material: all items or information, regardless  
16     of the medium or manner in which it is generated, stored, or maintained (including,  
17     among other things, testimony, transcripts, and tangible things), that are produced or  
18     generated in disclosures or responses to discovery in this matter.

19            2.7     Expert: a person with specialized knowledge or experience in a matter  
20     pertinent to the litigation who has been retained by a Party or its counsel to serve as  
21     an expert witness or as a consultant in this Action.

22            2.8     House Counsel: attorneys who are employees of a party to this Action.  
23     House Counsel does not include Outside Counsel of Record or any other outside  
24     counsel.

25            2.9     Non-Party: any natural person, partnership, corporation, association, or  
26     other legal entity not named as a Party to this action.

27            2.10    Outside Counsel of Record: attorneys who are not employees of a  
28     party to this Action but are retained to represent or advise a party to this Action and

1 have appeared in this Action on behalf of that party or are affiliated with a law firm  
2 which has appeared on behalf of that party, and includes support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,  
4 employees, consultants, retained experts, and Outside Counsel of Record (and their  
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation  
9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
11 and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is  
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery  
15 Material from a Producing Party.

### 16 3. SCOPE

17 The protections conferred by this Order cover not only Protected Material (as  
18 defined above), but also (1) any information copied or extracted from Protected  
19 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;  
20 and (3) any deposition testimony, conversations, or presentations by Parties or their  
21 Counsel that might reveal Protected Material, other than during a court hearing or at  
22 trial.

23 Any use of Protected Material during a court hearing or at trial shall be  
24 governed by the orders of the presiding judge. This Order does not govern the use  
25 of Protected Material during a court hearing or at trial.

### 26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations  
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be  
2 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
3 or without prejudice; and (2) final judgment herein after the completion and  
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
5 including the time limits for filing any motions or applications for extension of time  
6 pursuant to applicable law.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

9 Each Party or Non-Party that designates information or items for protection under  
10 this Order must take care to limit any such designation to specific material that  
11 qualifies under the appropriate standards. The Designating Party must designate for  
12 protection only those parts of material, documents, items, or oral or written  
13 communications that qualify so that other portions of the material, documents,  
14 items, or communications for which protection is not warranted are not swept  
15 unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations  
17 that are shown to be clearly unjustified or that have been made for an improper  
18 purpose (e.g., to unnecessarily encumber the case development process or to impose  
19 unnecessary expenses and burdens on other parties) may expose the Designating  
20 Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it  
22 designated for protection do not qualify for protection, that Designating Party must  
23 promptly notify all other Parties that it is withdrawing the inapplicable designation.

24 **5.2 Manner and Timing of Designations.** Except as otherwise provided in  
25 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise  
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
27 under this Order must be clearly so designated before the material is disclosed or  
28 produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic  
3 documents, but excluding transcripts of depositions), that the Producing Party affix  
4 at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL  
5 legend”), to each page that contains protected material. If only a portion or portions  
6 of the material on a page qualifies for protection, the Producing Party also must  
7 clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
8 margins).

9 A Party or Non-Party that makes original documents available for inspection  
10 need not designate them for protection until after the inspecting Party has indicated  
11 which documents it would like copied and produced. During the inspection and  
12 before the designation, all of the material made available for inspection shall be  
13 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
14 documents it wants copied and produced, the Producing Party must determine which  
15 documents, or portions thereof, qualify for protection under this Order. Then, before  
16 producing the specified documents, the Producing Party must affix the  
17 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
18 portion or portions of the material on a page qualifies for protection, the Producing  
19 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
20 markings in the margins).

21 (b) for testimony given in depositions that the Designating Party identifies  
22 on the record, before the close of the deposition as protected testimony.

23 (c) for information produced in some form other than documentary and  
24 for any other tangible items, that the Producing Party affix in a prominent place on  
25 the exterior of the container or containers in which the information is stored the  
26 legend “CONFIDENTIAL.” If only a portion or portions of the information  
27 warrants protection, the Producing Party, to the extent practicable, shall identify the  
28 protected portion(s).

1           5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
2 failure to designate qualified information or items does not, standing alone, waive  
3 the Designating Party's right to secure protection under this Order for such material.  
4 Upon timely correction of a designation, the Receiving Party must make reasonable  
5 efforts to assure that the material is treated in accordance with the provisions of this  
6 Order.

7           6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8           6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
9 designation of confidentiality at any time that is consistent with the Court's  
10 Scheduling Order.

11           6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
12 resolution process under Local Rule 37-1 et seq.

13           6.3 The burden of persuasion in any such challenge proceeding shall be on  
14 the Designating Party. Frivolous challenges, and those made for an improper  
15 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
16 parties) may expose the Challenging Party to sanctions. Unless the Designating  
17 Party has waived or withdrawn the confidentiality designation, all parties shall  
18 continue to afford the material in question the level of protection to which it is  
19 entitled under the Producing Party's designation until the Court rules on the  
20 challenge.

21           7. ACCESS TO AND USE OF PROTECTED MATERIAL

22           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
23 disclosed or produced by another Party or by a Non-Party in connection with this  
24 Action only for prosecuting, defending, or attempting to settle this Action. Such  
25 Protected Material may be disclosed only to the categories of persons and under the  
26 conditions described in this Order. When the Action has been terminated, a  
27 Receiving Party must comply with the provisions of Section 13 below.

28

1 Protected Material must be stored and maintained by a Receiving Party at a  
2 location and in a secure manner that ensures that access is limited to the persons  
3 authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
5 otherwise ordered by the court or permitted in writing by the Designating Party, a  
6 Receiving Party may disclose any information or item designated  
7 “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
9 well as employees of said Outside Counsel of Record to whom it is reasonably  
10 necessary to disclose the information for this Action;

11 (b) the officers, directors, and employees (including House Counsel) of  
12 the Receiving Party to whom disclosure is reasonably necessary for this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom  
14 disclosure is reasonably necessary for this Action and who have signed the  
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and Professional  
19 Vendors to whom disclosure is reasonably necessary for this Action and who have  
20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (g) the author or recipient of a document containing the information or a  
22 custodian or other person who otherwise possessed or knew the information;

23 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
24 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
25 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”  
26 form attached as Exhibit A hereto; and (2) they will not be permitted to keep any  
27 confidential information unless they sign the “Acknowledgment and Agreement to  
28 Be Bound” attached as Exhibit A, unless otherwise agreed by the Designating Party



1 or ordered by the court. Pages of transcribed deposition testimony or exhibits to  
2 depositions that reveal Protected Material may be separately bound by the court  
3 reporter and may not be disclosed to anyone except as permitted under this  
4 Protective Order; and

5 (i) any mediator or settlement officer, and their supporting personnel,  
6 mutually agreed upon by any of the parties engaged in settlement discussions.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
8 IN OTHER LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation  
10 that compels disclosure of any information or items designated in this Action as  
11 “CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification  
13 shall include a copy of the subpoena or court order unless prohibited by law;

14 (b) promptly notify in writing the party who caused the subpoena or order  
15 to issue in the other litigation that some or all of the material covered by the  
16 subpoena or order is subject to this Protective Order. Such notification shall include  
17 a copy of this Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be  
19 pursued by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with  
21 the subpoena or court order shall not produce any information designated in this  
22 action as “CONFIDENTIAL” before a determination by the court from which the  
23 subpoena or order issued, unless the Party has obtained the Designating Party’s  
24 permission, or unless otherwise required by the law or court order. The Designating  
25 Party shall bear the burden and expense of seeking protection in that court of its  
26 confidential material and nothing in these provisions should be construed as  
27 authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
28 directive from another court.

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a  
4 Non-Party in this Action and designated as "CONFIDENTIAL." Such information  
5 produced by Non-Parties in connection with this litigation is protected by the  
6 remedies and relief provided by this Order. Nothing in these provisions should be  
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to  
9 produce a Non-Party's confidential information in its possession, and the Party is  
10 subject to an agreement with the Non-Party not to produce the Non-Party's  
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party  
13 that some or all of the information requested is subject to a confidentiality  
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Protective  
16 Order in this Action, the relevant discovery request(s), and a reasonably specific  
17 description of the information requested; and

18 (3) make the information requested available for inspection by the  
19 Non-Party, if requested.

20 (c) If a Non-Party represented by counsel fails to commence the process  
21 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the  
22 notice and accompanying information or fails contemporaneously to notify the  
23 Receiving Party that it has done so, the Receiving Party may produce the Non-  
24 Party's confidential information responsive to the discovery request. If an  
25 unrepresented Non-Party fails to seek a protective order from this court within 14  
26 days of receiving the notice and accompanying information, the Receiving Party  
27 may produce the Non-Party's confidential information responsive to the discovery  
28 request. If the Non-Party timely seeks a protective order, the Receiving Party shall

1 not produce any information in its possession or control that is subject to the  
2 confidentiality agreement with the Non-Party before a determination by the court  
3 unless otherwise required by the law or court order. Absent a court order to the  
4 contrary, the Non-Party shall bear the burden and expense of seeking protection in  
5 this court of its Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
8 Protected Material to any person or in any circumstance not authorized under this  
9 Protective Order, the Receiving Party must immediately (a) notify in writing the  
10 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
11 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
12 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
13 request such person or persons to execute the “Acknowledgment and Agreement to  
14 Be Bound” that is attached hereto as Exhibit A.

15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
16 PROTECTED MATERIAL

17 When a Producing Party gives notice to Receiving Parties that certain  
18 inadvertently produced material is subject to a claim of privilege or other protection,  
19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
21 may be established in an e-discovery order that provides for production without  
22 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar  
23 as the parties reach an agreement on the effect of disclosure of a communication or  
24 information covered by the attorney-client privilege or work product protection, the  
25 parties may incorporate their agreement into this Protective Order.

26 12. MISCELLANEOUS

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
28 person to seek its modification by the Court in the future.

1           12.2 Right to Assert Other Objections. No Party waives any right it  
2 otherwise would have to object to disclosing or producing any information or item  
3 on any ground not addressed in this Protective Order. Similarly, no Party waives  
4 any right to object on any ground to use in evidence of any of the material covered  
5 by this Protective Order.

6           12.3 Filing Protected Material. A Party that seeks to file under seal any  
7 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent  
8 orders of the assigned District Judge and Magistrate Judge. If a Party's request to  
9 file Protected Material under seal is denied by the court, then the Receiving Party  
10 may file the information in the public record unless otherwise instructed by the  
11 court.

12       13.    FINAL DISPOSITION

13           After the final disposition of this Action, as defined in Section 4, within 60  
14 days of a written request by the Designating Party, each Receiving Party must return  
15 all Protected Material to the Producing Party or destroy such material. As used in  
16 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
17 summaries, and any other format reproducing or capturing any of the Protected  
18 Material. Whether the Protected Material is returned or destroyed, the Receiving  
19 Party must submit a written certification to the Producing Party (and, if not the same  
20 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
21 (by category, where appropriate) all the Protected Material that was returned or  
22 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
23 abstracts, compilations, summaries or any other format reproducing or capturing any  
24 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
25 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
26 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
27 reports, attorney work product, and consultant and expert work product, even if such  
28 materials contain Protected Material. Any such archival copies that contain or



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3  
4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
6 that I have read in its entirety and understand the Protective Order that was issued  
7 by the United States District Court for the Central District of California on February  
8 8, 2017 in the case of *William McCarthy v. Charter Communications of California,*  
9 *LLC*, Case No. CV 16-6059-JFW (JCx). I agree to comply with and to be bound by  
10 all the terms of this Protective Order and I understand and acknowledge that failure  
11 to so comply could expose me to sanctions and punishment in the nature of  
12 contempt. I solemnly promise that I will not disclose in any manner any information  
13 or item that is subject to this Protective Order to any person or entity except in strict  
14 compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court  
16 for the Central District of California for the purpose of enforcing the terms of this  
17 Protective Order, even if such enforcement proceedings occur after termination of  
18 this action. I hereby appoint \_\_\_\_\_ [print or type full  
19 name] of \_\_\_\_\_ [print or type full address  
20 and telephone number] as my California agent for service of process in connection  
21 with this action or any proceedings related to enforcement of this Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24  
25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_

28