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13 UNITED STATES DISTRICT COURT  
14 CENTRAL OF CALIFORNIA  
15

16 ALEX KROSS, an individual,  
17 Plaintiff,  
18  
19 v.  
20 T-MOBILE USA, INC., a Delaware  
corporation; and DOES 1 - 50,  
21 inclusive,  
22 Defendants.

Case No. 2:17-cv-00116-DSF-JEM

**STIPULATED PROTECTIVE  
ORDER**

Judge: Hon. Dale S. Fischer  
Magistrate Judge: John E. McDermott

**PRELIMINARY STATEMENT**

1  
2 Plaintiff Alex Kross (“Plaintiff”) and Defendant T-Mobile USA, Inc.  
3 (“Defendant”) (collectively referred to as the “Parties”) recognize that disclosure  
4 and discovery activity in the above-captioned action (the “Action”) are likely to  
5 involve production of confidential, sensitive, or private information, including, but  
6 not limited to, the medical records of the Parties and sensitive, private or personal  
7 information of third parties, for which special protection from public disclosure and  
8 from use for any purpose other than prosecuting this litigation may be warranted.  
9 Good cause exists to protect this information from public disclosure to protect the  
10 privacy interests of the Parties and certain non-parties, including, but not limited to  
11 Defendant’s employees.

12 The Parties acknowledge that the below Protective Order does not confer  
13 blanket protections on all disclosures or responses to discovery, and that the  
14 protection it affords from public disclosure and use extends only to the limited  
15 information or items that are entitled to confidential treatment under the applicable  
16 legal principles. The Parties further acknowledge that this Stipulated Protective  
17 Order does not entitle them to file confidential information under seal; Local Rule  
18 79-5 sets forth the procedures that must be followed and the standards that will be  
19 applied when a party seeks permission from the court to file material under seal.

20 In light of the foregoing—and pursuant to Federal Rule of Civil Procedure  
21 26(c)—the parties hereby stipulate to and petition the Court to enter the following  
22 Protective Order:

**PROTECTIVE ORDER**

23  
24 **1. Right to Designate.** Any party to this Action and any non-party from  
25 whom discovery is sought in connection with this Action who agrees to be bound  
26 by the procedures of this Protective Order (“the Designator”) may designate any  
27 “Protected Information” produced by such party as “Confidential.”  
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1 (a) "Protected Information" is defined herein as any information  
2 which is in the possession of a Designating Party who believes in good faith that  
3 such information is entitled to confidential treatment under applicable law. For  
4 purposes of this Protective Order, "Protected Information" includes, but is not  
5 limited to, medical records of the Parties and sensitive, private or personal  
6 information of third parties.

7 (b) "Designator" means the party that designates Protected  
8 Information as "Confidential."

9 (c) "Recipient" as used herein refers to any party who receives  
10 Protected Information designated pursuant to this Protective Order.

11 (d) Protected Information shall not include information or material  
12 that: (i) was, is, or becomes public knowledge in a manner other than by violation  
13 of this Protective Order or other fault of the Recipient; (ii) is acquired by the  
14 Recipient from a non-party not owing a duty of confidentiality to the Designator;  
15 (iii) before receipt from the Designator, was lawfully possessed by the Recipient  
16 without a duty of confidentiality to the Designator; (iv) is disclosed by the  
17 Designator to a third party not owing a duty of confidentiality to the Designator; or  
18 (v) was independently developed by the Recipient.

19 **2. Confidential Designation.** By designating material "Confidential,"  
20 the Designator is representing that it believes, in good faith, that such information is  
21 entitled to confidential treatment under applicable law. Designations of  
22 "Confidential" under this Protective Order shall apply to the Protected Information  
23 so designated, all copies, extracts, compilations, and summaries thereof, and any  
24 information contained therein.

25 (a) "Confidential" material includes any Protected Information that  
26 constitutes or contains private, sensitive, or personal information about the  
27 Designator.

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1           **3. Limitations on Use of Protected Information.** No Recipient of  
2 Protected Information shall use such information for any purpose other than in  
3 connection with this Action, including any appeals. Such Protected Information  
4 shall be maintained in confidence by the Recipient and shall not be disclosed to  
5 anyone except as provided herein, by further written agreement of the parties, or by  
6 further order of the Court.

7           **4. Disclosure of "Confidential" Protected Information.** Protected  
8 Information designated "Confidential" shall not be disclosed or otherwise  
9 communicated to any person except:

10           (a) Outside Counsel of record for the parties. As used herein,  
11 "Outside Counsel" shall mean attorneys (and their law clerks, interns, and clerical  
12 support staff) who are not employees of a party but are retained to represent or  
13 advise a party and have appeared in this Action on behalf of that party or are  
14 affiliated with a law firm, which has appeared on behalf of that party.

15           (b) The officers, directors, and employees (including House Counsel)  
16 of the Recipient to whom disclosure is reasonably necessary for this litigation and  
17 who have executed an undertaking in the form of Exhibit A. As used herein,  
18 "House Counsel" shall mean attorneys who are employees of the Recipient.

19           (c) Testifying experts, non-testifying experts, consultants, and/or  
20 consulting firms (and their clerical support staff) for each of the parties, specifically  
21 engaged by counsel or the parties to assist in this Action, who have been properly  
22 designated in accordance with paragraph 5 and have executed an undertaking in the  
23 form of Exhibit A.

24           (d) Vendors retained by a party or by Outside Counsel, including  
25 without limitation: graphics or design services retained for purposes of preparing  
26 demonstrative or other exhibits for deposition, trial or other court proceedings; copy  
27 services, companies that digitize documents, and other similar document  
28 management vendors; jury research or trial consulting services. Any such vendors

1 shall first execute an undertaking in the form of Exhibit A. Such agreement may be  
2 signed by an authorized agent on behalf of a vendor that is an entity; it need not be  
3 signed by each employee of a vendor performing services.

4 (e) Mediators, retained by the parties or assigned by the Court, who  
5 have executed an undertaking in the form of Exhibit A.

6 (f) Mock jurors, retained by the parties or vendors thereof, who have  
7 executed an undertaking in the form of Exhibit A.

8 (g) Any person employed by the Designator of the Protected  
9 Information being examined as a witness during a deposition or at trial, to whom  
10 disclosure is reasonably necessary. Any such person must have first executed an  
11 undertaking in the form of Exhibit A.

12 (h) The author, actual recipient, or intended recipient (as identified in  
13 the Protected Information) of the Protected Information.

14 (i) The Court and its personnel, pursuant to paragraph 15, jurors, and  
15 any Court officers, Court stenographers, and outside copy services used by the  
16 Court whose function requires them to have access to Protected Information.

17 (j) Any other person upon order of the Court.

18 (k) Any other person upon written consent of the Designator.

19 **5. Designation of Consultants.** Any Recipient may designate a  
20 reasonable number of retained expert consultants (either testifying or non-  
21 testifying) ("Consultants") to have access to Protected Information under this  
22 Protective Order, if the consultants: (i) are neither employees of a party nor  
23 anticipated to become employees of a party in the near future, (ii) are engaged by or  
24 on behalf of a party as bona fide consultants or experts for purposes of this Action,  
25 and (iii) who have executed an undertaking in the form of Exhibit A.

26 **6. Inadvertent Disclosure of Designated Protected Information.** In  
27 the event of any disclosure of Protected Information other than in a manner  
28 authorized by this Protective Order, counsel for the party responsible for the

1 unauthorized disclosure shall immediately notify counsel for the Designator and  
2 shall make every effort to further prevent unauthorized disclosure, including  
3 retrieving all copies of the Protected Information from the unauthorized recipient(s)  
4 thereof and securing the agreement of the unauthorized recipient(s) not to further  
5 disseminate the Protected Information in any form. Compliance with the foregoing  
6 shall not prevent the Designator from seeking further relief from the Court.

7 (a) "Disclose" or "Disclosed" or "Disclosure" means to reveal,  
8 divulge, give, or make available Protected Information, or any part thereof, or any  
9 information contained therein.

10 **7. Designating Protected Information.** No designation of documents or  
11 things shall be effective unless there is placed or affixed on such material a  
12 "Confidential" marking as required herein, except as provided for in paragraph 11.  
13 The designation of information or material as "Confidential" for purposes of this  
14 Protective Order shall be made in the following manner:

15 (a) The Designator shall affix the legend "Confidential," as  
16 appropriate, to each page of any document containing such information at the time  
17 such documents are produced, or as soon thereafter as the Designator becomes  
18 aware of the confidential nature of the information or material disclosed and sought  
19 to be protected hereunder. All documents produced from hard copy that the  
20 Designator deems "Confidential" shall be so marked by the Designator in  
21 accordance with this subparagraph, even if produced in the form of electronic  
22 images.

23 (b) In the case of documents produced on magnetic, optical, or other  
24 encoded media (except for images of hard copy documents), the Designator shall  
25 affix the legend "Confidential," as appropriate, on the outside of the storage  
26 medium (e.g., the magnetic disk enclosure or optical disk). A Recipient desiring to  
27 make electronic copies of such media or portions thereof shall — if permitted to  
28 make such copies under the terms of this Protective Order — affix the same

1 designation on the copy as exists on the original, produced medium. A party  
2 desiring to make a "hard copy" of all or a portion of the contents of information or  
3 documents stored electronically — if permitted to make such copies under the  
4 terms of this Protective Order — shall place on each page of such hard copy the  
5 same designation found on the outside of the storage medium.

6 (c) In the case of transcripts or recordings of depositions or other  
7 pretrial proceedings in this Action, counsel for the Designator may identify on the  
8 record, before the close of the deposition or other proceeding, all "Confidential"  
9 testimony, by specifying all portions of the testimony that qualify as  
10 "Confidential;" or designate the entirety of the testimony at the deposition or  
11 proceeding as "Confidential" (before the deposition or proceeding is concluded)  
12 with the right to identify more specific portions of the testimony as to which  
13 protection is sought within 30 days following receipt of the transcript. In  
14 circumstances where portions of the testimony are designated for protection, the  
15 transcript pages containing Protected Information may be separately bound by the  
16 court reporter, who must affix to the top of each page the legend "Confidential," as  
17 instructed by the Designator. If any document or material designated as  
18 "Confidential" is used during the course of a deposition, that portion of the  
19 deposition record reflecting such document or material shall be stamped with the  
20 designated degree of confidentiality, and access thereto shall be limited pursuant to  
21 the other terms of this Protective Order.

22 (d) In the case of pleadings, briefs, memoranda, exhibits, written  
23 discovery responses, or other documents prepared in this Action for the purpose of  
24 discovery or Court proceedings, counsel shall affix the legend "Confidential," as  
25 appropriate, to each page of any document containing any such Protected  
26 Information at the time such documents are served or filed, or promptly after  
27 learning that the document contains Protected Information.

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1           **8. Designation With Respect to Original or Native Documents.** In the  
2 event the Designator elects to produce documents or other materials in native or  
3 original form for inspection or sampling, no confidentiality designations need be  
4 made by the producing party in advance of the inspection, and the inspection shall  
5 not be deemed to constitute an express or implied waiver (a) of any right to  
6 designate such documents as "Protected Information" under this Order or (b) of any  
7 applicable privilege (e.g., attorney-client privilege, work-product doctrine, common  
8 interest doctrine, or other applicable privilege). All such documents or other  
9 material shall be considered as marked "Confidential." After selection by the  
10 inspecting party of specified documents or material for copying, the Designator  
11 shall place the appropriate confidentiality designations on the copies of the selected  
12 documents or materials produced to the inspecting party.

13           **9. Inadvertent Failure to Designate.** The inadvertent production by any  
14 party or non-party to the Action of any Protected Information during discovery in  
15 this Action, without a "Confidential" designation, shall be without prejudice to any  
16 claim that such information is "Confidential" and such party shall not be held to  
17 have waived any rights by such inadvertent production. In the event that any  
18 material that is subject to a "Confidential" designation is inadvertently produced  
19 without such designation, the party that inadvertently produced the material shall  
20 give written notice of such inadvertent production within twenty (20) days of  
21 discovery of the inadvertent production, together with a further copy of the subject  
22 material designated as "Confidential" (the "Inadvertent Production Notice").

23           **10. Challenging Confidentiality Designations.** The propriety of a  
24 designation of Protected Information may be challenged at any time, and the failure  
25 to promptly challenge a designation of Protected Information shall not constitute an  
26 admission that the information constitutes or incorporates confidential information  
27 of the Designator. If a Recipient desires to challenge a designation of Protected  
28 Information, the Recipient shall explain the basis for the challenge, in writing, to



1 counsel for the Designator, and seek to resolve the issue. If the dispute is not  
2 thereby resolved, the Recipient may apply to the Court for relief (pursuant to the  
3 Court's Rules regarding Discovery Disputes) and the Designator shall bear the  
4 burden of proving that the information was properly designated.

5 **11. Protected Information Sought by Non-Parties.** If a Recipient is  
6 (a) subpoenaed in another action, (b) served with a demand in another action to  
7 which it is a party, or (c) served with any other legal process by one not a party to  
8 this Action, seeking Protected Information that was produced in this Action, the  
9 Recipient shall (i) object to its production to the extent permitted by law, setting  
10 forth the existence of this Protective Order; (ii) within seven (7) business days after  
11 receipt thereof, or the earliest practicable date thereafter, give written notice by e-  
12 mail, hand, or facsimile of such process or discovery request together with a copy  
13 thereof, to counsel for the Designator; (iii) cooperate to the extent necessary to  
14 permit the Designator to seek to quash such process or discovery request; and  
15 (iv) not produce or disclose such Protected Information until the Designator  
16 consents in writing or unless in compliance with an order specifically requiring  
17 production or disclosure by a court, U.S. or foreign government agency, or  
18 administrative body of competent jurisdiction. Nothing herein shall be construed as  
19 requiring any party or other person subject to this Protective Order to challenge or  
20 appeal any order requiring production of Protected Information or subject itself to  
21 any penalties for noncompliance with any legal process or order. Compliance with  
22 such other legal process or order by a person or party who has otherwise complied  
23 with the provisions of this paragraph will not be a violation of this Protective Order.

24 **12. Filing Protected Information.** Without written permission from the  
25 Designator or a Court order secured after appropriate notice to all interested  
26 persons, a party may not file any Protected Information in the public record in this  
27 Action. A party that seeks to file under seal any Protected Information must  
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1 comply with Federal Rule of Civil Procedure 26(c), applicable case law, and Local  
2 Rule 79-5.

3 **13. Use of this Protective Order by Non-Parties.** Any non-party who  
4 produces documents and/or testimony in this matter shall be provided with a copy  
5 of this Protective Order and notified of the opportunity to designate materials in  
6 accordance therewith. Any non-party that discloses Protected Information under  
7 this Protective Order shall be entitled to the rights and obligations of a party under  
8 this Protective Order with respect to the Protected Information produced. Non-  
9 parties may move the Court to enforce the provisions of this Protective Order. The  
10 use of this Protective Order by a non-party does not entitle that non-party to access  
11 the Protected Information produced by any other party or non-party in this Action.

12 **14. No Application to Party's Own Information.** This Protective Order  
13 has no effect upon, and shall not apply to, a party's use or disclosure of its own  
14 confidential information for any purpose.

15 **15. Consent to Jurisdiction.** All persons who have access to Protected  
16 Information under this Protective Order shall be bound by this Protective Order and  
17 shall be subject to the jurisdiction of this Court for purposes of enforcing this  
18 Protective Order.

19 **16. No Admission.** Entering into, agreeing to, or otherwise complying  
20 with the terms of this Protective Order, and/or producing or receiving Protected  
21 Information under this Protective Order, shall not:

22 (a) operate as an admission by any party that the restrictions and  
23 procedures set forth herein constitute or do not constitute adequate protection for  
24 any particular information;

25 (b) prejudice in any way the right of any party to object to the  
26 production of documents they consider not subject to discovery, whether on  
27 grounds of privilege or otherwise;

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1 (c) prejudice in any way the right of any party to object to the  
2 authenticity or admissibility into evidence of any document, testimony or other  
3 evidence;

4 (d) prejudice in any way the right of any party to seek a determination  
5 by the Court as to whether any information or material should be subject to the  
6 terms of this Protective Order;

7 (e) prejudice in any way the right of any party to petition the Court for  
8 a further protective order relating to any purportedly confidential information; or

9 (f) prevent a Designator from agreeing in writing or on the record  
10 during a deposition or hearing in this Action to alter or waive the provisions or  
11 protections provided for herein with respect to any particular information or  
12 material.

13 **17. Modification/Trial.** It is the intention of the parties that the  
14 provisions of this Protective Order shall govern discovery and other pretrial  
15 proceedings in this Action. Nonetheless, each of the parties hereto shall be entitled  
16 to seek modification of this Protective Order by application to the Court upon  
17 notice to the other parties hereto and upon a showing of good cause. If this Action  
18 proceeds to trial, the parties shall meet and confer on the procedures necessary to  
19 protect the confidentiality of any documents, information, and transcripts used in  
20 court during trial.

21 **18. Effective Before Entry.** The parties agree to be bound by the terms of  
22 this Protective Order once it is signed by all the parties hereto, pending its entry or  
23 the entry of an alternative Protective Order by the Court. Any violation of the  
24 terms of this Protective Order during such pendency shall be subject to the same  
25 sanctions and penalties as if this Protective Order had been entered by the Court.

26 **19. Survival After Final Disposition.** Even after Final Disposition of this  
27 Action, the confidentiality obligations imposed by this Protective Order shall  
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1 remain in effect until a Designator agrees otherwise in writing or a Court order  
2 otherwise directs.

3       **20. Obligations Upon Final Disposition.** “Final Disposition” shall be  
4 deemed to be the later of (1) dismissal of all claims and defenses in this action, with  
5 or without prejudice; and (2) final judgment herein after the completion and  
6 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
7 including the time limits for filing any motions or applications for extension of time  
8 pursuant to applicable law. Upon written request made within thirty (30) days after  
9 Final Disposition, each Recipient must return to the Designator or destroy all  
10 Protected Information, including all copies, abstracts, compilations, summaries, and  
11 any other format reproducing or capturing any Protected Information. Whether the  
12 Protected Material is returned or destroyed, upon written request, the Recipient  
13 must submit a written certification to the Designator within 30 days after Final  
14 Disposition that (1) identifies (by category, where appropriate) all the Protected  
15 Information that was returned or destroyed and (2) affirms that the Recipient has  
16 not retained any copies, abstracts, compilations, summaries, or any other format  
17 reproducing or capturing any of the Protected Material. Notwithstanding this  
18 provision, counsel are entitled to retain an archival copy of all pleadings, motion  
19 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
20 deposition and trial exhibits, expert reports, attorney work product, and consultant  
21 and expert work product, even if such materials contain Protected Material. Any  
22 such archival copies that contain or constitute Protected Material remain subject to  
23 this Protective Order.

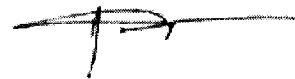
24       **21.** Without separate Court order, this Order and the parties’ stipulation  
25 does not change, amend, or circumvent any Court rule or local rule.

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27 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**  
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DATED: June 6, 2017

**PERKINS COIE LLP**



By:

Jon G. Daryanani  
Jill L. Ripke

Attorneys for Defendant  
T-MOBILE USA, INC.

DATED: June 6, 2017

**YOOSEFIAN LAW FIRM, P.C.**

By:   
Ronald Yoosefian

Attorneys for Plaintiff  
ALEX CROSS

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**EXHIBIT A**

**CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

I hereby acknowledge that I, \_\_\_\_\_ [NAME],  
\_\_\_\_\_ [POSITION AND EMPLOYER], am

about to receive Protected Information supplied in connection with the Action, United States District Court for the Central District of California case number 2:17-cv-00116-DSF-JEM. I certify that I understand that the Protected Information is provided to me subject to the terms and restrictions of the Protective Order filed in this Action. I have been given a copy of the Protective Order; I have read it, and I agree to be bound by its terms.

I understand that Protected Information, as defined in the Protective Order, including any notes or other records that may be made regarding any such materials, shall not be Disclosed to anyone except as expressly permitted by the Protective Order. I will not copy or use, except solely for the purposes of this Action, any Protected Information obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Action.

I further understand that I am to retain all copies of all Protected Information provided to me in the Action in a secure manner, and that all copies of such materials are to remain in my personal custody until termination of my participation in this Action, whereupon the copies of such materials will be returned to counsel who provided me with such materials.


I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.

BY: \_\_\_\_\_  
Signature  
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 7/13/2017

  
\_\_\_\_\_  
Honorable John E. McDermott  
Magistrate Judge