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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN TORRES
Plaintiff,
vs.
CHARTER COMMUNICATIONS,
Defendant.

CASE NO. CV 17-04265-VAP-JEM
The Hon. Virginia A. Phillips
**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

Action filed: June 8, 2017

IT IS HEREBY STIPULATED by and between the parties. Plaintiff John Torres and Defendant Charter Communications, Inc. (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**

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

B. GOOD CAUSE STATEMENT

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

1 2. **DEFINITIONS**

2 2.1 **Action**: The instant action: *John Torres v. Charter Communications*,
3 Case No. CV 17-04265-VAP-JEM.

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. A party challenging the designation of
9 information as "CONFIDENTIAL" must do so in good faith and must begin the
10 process by conferring directly with counsel for the designating party no later than
11 thirty (30) days after the confidential designation is received, unless an extension is
12 further provided by the Designating Party. The designating party must respond to
13 the challenge within ten (10) business days. A motion challenging the confidential
14 designation must be made no later than thirty (30) days after the parties complete the
15 Meet and Confer process outlined in section 6.2 below.

16 6.2 Meet and Confer. In conferring with the Designating Party, the
17 Challenging Party must explain the basis for its belief that the confidentiality
18 designation was not proper and must give the designating party an opportunity to
19 review the designated material, to reconsider the designation, and, if no change in
20 designation is offered, to explain the basis for the designation. Prior to filing of any
21 motion challenging a confidentiality designation, the Challenging Party shall initiate
22 the dispute resolution process under Local Rule 37-1 *et seq.*

23 6.3 Judicial Intervention. A party that elects to challenge a confidentiality
24 designation may file and serve a motion that identifies the challenged material and
25 sets forth in detail the basis for the challenge. Each such motion must be
26 accompanied by a competent declaration that affirms that the movant has complied
27 with the meet and confer requirements of this procedure and the dispute resolution
28 process under Local Rule 37-1 *et seq.* The burden of persuasion in any such

1 challenge proceeding shall be on the Designating Party. Frivolous challenges, and
2 those made for an improper purpose (e.g., to harass or impose unnecessary expenses
3 and burdens on other parties) may expose the Challenging Party to sanctions. Unless
4 the Designating Party has waived or withdrawn the confidentiality designation, all
5 parties shall continue to afford the material in question the level of protection to
6 which it is entitled under the Producing Party's designation until the Court rules on
7 the challenge.

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 Action only for prosecuting, defending, or attempting to settle this Action. Such
12 Protected Material may be disclosed only to the categories of persons and under the
13 conditions described in this Order. When the Action has been terminated, a
14 Receiving Party must comply with the provisions of Section 13 below.

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

18 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
19 otherwise ordered by the court or permitted in writing by the Designating Party, a
20 Receiving Party may disclose any information or item designated
21 “CONFIDENTIAL” only to:

22 (a) the Receiving Party's Outside Counsel of Record in this Action, as
23 well as employees of said Outside Counsel of Record to whom it is reasonably
24 necessary to disclose the information for this Action;

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

27 (c) Experts (as defined in this Order) of the Receiving Party to whom
28 disclosure is reasonably necessary for this Action and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (d) the court and its personnel;

3 (e) court reporters and their staff;

4 (f) professional jury or trial consultants, mock jurors, and Professional

5 Vendors to whom disclosure is reasonably necessary for this Action and who have
6 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

9 (h) during their depositions, witnesses, and attorneys for witnesses, in the
10 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
11 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
12 form attached as Exhibit A hereto; and (2) they will not be permitted to keep any
13 confidential information unless they sign the “Acknowledgment and Agreement to
14 Be Bound” attached as Exhibit A, unless otherwise agreed by the Designating Party
15 or ordered by the court. Pages of transcribed deposition testimony or exhibits to
16 depositions that reveal Protected Material may be separately bound by the court
17 reporter and may not be disclosed to anyone except as permitted under this
18 Protective Order; and

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

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
22 **IN OTHER LITIGATION**

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

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

28 (b) promptly notify in writing the party who caused the subpoena or order

1 to issue in the other litigation that some or all of the material covered by the
2 subpoena or order is subject to this Protective Order. Such notification shall include
3 a copy of this Protective Order; and

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

6 If the Designating Party timely seeks a protective order, the Party served with
7 the subpoena or court order shall not produce any information designated in this
8 action as “CONFIDENTIAL” before a determination by the court from which the
9 subpoena or order issued, unless the Party has obtained the Designating Party’s
10 permission, or unless otherwise required by the law or court order. The Designating
11 Party shall bear the burden and expense of seeking protection in that court of its
12 confidential material and nothing in these provisions should be construed as
13 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
14 directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a
18 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

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

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

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

6 (c) If a Non-Party represented by counsel fails to commence the process
7 called for by Local Rules 45-1 and 37-1, et seq. within fourteen (14) days of
8 receiving the notice and accompanying information or fails contemporaneously to
9 notify the Receiving Party that it has done so, the Receiving Party may produce the
10 Non-Party's confidential information responsive to the discovery request. If an
11 unrepresented Non-Party fails to seek a protective order from this court within
12 fourteen (14) days of receiving the notice and accompanying information, the
13 Receiving Party may produce the Non-Party's confidential information responsive
14 to the discovery request. If the Non-Party timely seeks a protective order, the
15 Receiving Party shall not produce any information in its possession or control that is
16 subject to the confidentiality agreement with the Non-Party before a determination
17 by the court unless otherwise required by the law or court order. Absent a court
18 order to the contrary, the Non-Party shall bear the burden and expense of seeking
19 protection in this court of its Protected Material.

20 | 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

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

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. No Party waives any right it
16 otherwise would have to object to disclosing or producing any information or item
17 on any ground not addressed in this Protective Order. Similarly, no Party waives
18 any right to object on any ground to use in evidence of any of the material covered
19 by this Protective Order.

20 12.3 Filing Protected Material. A Party that seeks to file any Protected
21 Material must first seek approval by the court to file the Protected Material under
22 seal in compliance with Civil Local Rule 79-5 and with any pertinent orders of the
23 assigned District Judge and Magistrate Judge. If a Party's request to file Protected
24 Material under seal is denied by the court, then the Receiving Party may file the
25 information in the public record unless otherwise instructed by the court.

26 13. FINAL DISPOSITION

27 After the final disposition of this Action, as defined in Section 4, within sixty
28 (60) days of a written request by the Designating Party, each Receiving Party must

1 return all Protected Material to the Producing Party or destroy such material. As
2 used in this subdivision, “all Protected Material” includes all copies, abstracts,
3 compilations, summaries, and any other format reproducing or capturing any of the
4 Protected Material. Whether the Protected Material is returned or destroyed, the
5 Receiving Party must submit a written certification to the Producing Party (and, if
6 not the same person or entity, to the Designating Party) by the 60 day deadline that
7 (1) identifies (by category, where appropriate) all the Protected Material that was
8 returned or destroyed and (2) affirms that the Receiving Party has not retained any
9 copies, abstracts, compilations, summaries or any other format reproducing or
10 capturing any of the Protected Material. Notwithstanding this provision, Counsel
11 are entitled to retain an archival copy of all pleadings, motion papers, trial,
12 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
13 and trial exhibits, expert reports, attorney work product, and consultant and expert
14 work product, even if such materials contain Protected Material. Any such archival
15 copies that contain or constitute Protected Material remain subject to this Protective
16 Order as set forth in Section 4.

17 14. Any violation of this Order may be punished by any and all appropriate
18 measures including, without limitation, contempt proceedings and/or monetary
19 sanctions.

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21 DATED: October 24, 2017

THOMPSON COBURN LLP

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24 By: /s/ Geoffrey L. Warner
25 **HELEN B. KIM**
26 **GEOFFREY L. WARNER**
27 Attorneys for Defendant
28 CHARTER COMMUNICATIONS, INC.

1 DATED: October 24, 2017

KIMMEL & SILVERMAN, P.C.

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By: /s/ Rachel R. Stevens

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**RACHEL R. STEVENS,
AMY LYNN B. GINSBURG**
Attorneys for Plaintiff,
JOHN TORRES.

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IT IS SO ORDERED.

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DATED: October 25, 2017

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***Pursuant to Local Rule 5-4.3.4(a)(2)(i), I Geoffrey L. Warner, hereby attest that
14 all other signatories listed herein, and on whose behalf the filing is submitted,
concur in the filing's content and have authorized the filing.

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Honorable John E. McDermott
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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
8 _____ in the case of *John Torres v. Charter*
9 *Communications*, Case No. CV 17-04265-VAP-JEM. I agree to comply with and to
10 be bound by all the terms of this Protective Order and I understand and acknowledge
11 that failure to so comply could expose me to sanctions and punishment in the nature
12 of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Protective Order to any person or entity
14 except in strict 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:

25 Printed name:

27 | Signature: _____