

1 KEITH A. JACOBY, Bar No. 150233
LITTLER MENDELSON, P.C.
2 2049 Century Park East, 5th Floor
Los Angeles, CA 90067.3107
3 Telephone: 310.553.0308
Facsimile.: 310.553.5583
4

GREGORY G. ISKANDER, Bar No. 200215
5 NATALIE M.KUZMA, Bar No. 286401
LITTLER MENDELSON, P.C.
6 Treat Towers
1255 Treat Boulevard
7 Suite 600
Walnut Creek, CA 94597
8 Telephone: 925.932.2468

9 SOPHIA BEHNIA, Bar No. 289318
LITTLER MENDELSON, P.C.
10 333 Bush Street, 34th Floor
San Francisco, California 94104
11 Telephone: 415.433.1940
Facsimile: 415.399.8490
12

13 Attorneys for Defendant
T-MOBILE USA, INC.

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA
16

17 EMMANUEL SALGADO, on behalf of
18 himself and all others similarly situated,
19 Plaintiff,
20 v.
21 T-MOBILE USA, INC., a Delaware
corporation; and DOES 1 to 100, inclusive,
22 Defendant.
23

Case No. 1:17-cv-00339-DAD-JLT

STIPULATED PROTECTIVE ORDER;
ORDER GRANTING STIPULATED
PROTECTIVE ORDER

(Doc. 10)

1 CONFIDENTIALITY STIPULATION AND AGREEMENT AND PROTECTIVE ORDER
2 AND FRE 502(D) AND (E)

3 WHEREAS, Plaintiff EMMANUEL SALGADO, on behalf of himself and all others
4 similarly situated (“Plaintiff”) and Defendant T-MOBILE USA, INC. (“Defendant”) (collectively
5 the “parties”) are presently engaged in discovery;¹

6 WHEREAS, some information sought by the parties is of a confidential or proprietary nature;

7 WHEREAS, the purpose of this Stipulation is to permit the parties to discover such
8 information pursuant to procedures designed to protect and preserve the confidentiality of that
9 information;

10 WHEREAS, the parties have agreed to stipulate to protect certain privileged, work-product
11 or otherwise protected information (including metadata where applicable), whether stored in
12 electronic, paper, or other tangible form, against claims of waiver in the event they are produced
13 during the course of this Proceeding whether pursuant to a Court Order, a party’s discovery request
14 or informal production;

15 WHEREAS, both parties may be required to produce large volumes of information during
16 discovery, and wish to comply with discovery deadlines and complete discovery as expeditiously as
17 possible, while preserving and without waiving any evidentiary protections or privileges applicable
18 to the information contained in the information produced, including as against third parties and other
19 Federal and State proceedings, and in addition to their agreement, need the additional protections of
20 a Court Order under FRE 502(d) and (e) to do so;

21 WHEREAS, in order to comply with applicable discovery deadlines, parties may be required
22 to produce information that has been subject to minimal or no attorney review, and wish to foreclose
23 any arguments that the disclosure or production of information subject to a legally recognized claim
24 of protection from disclosure, including without limitation the attorney-client privilege, the work-
25 product doctrine, or other applicable protection (“Protected Information”):

26 _____
27 ¹ Current discovery is specifically and only regarding Plaintiff’s Motion for Remand and the issue of federal jurisdiction,
28 and in no way does Plaintiff intend by entering this Agreement to voluntarily avail himself of federal jurisdiction;
however, whether this action remains in Federal Court or is remanded to state court, the terms of this Stipulation and any
order of the Court shall remain enforceable as to any materials produced pursuant to the Stipulated Protective Order.

- 1 (a) was not inadvertent by the Producing Party;
- 2 (b) that the Producing Party did not take reasonable steps to prevent the disclosure
3 of Protected Information;
- 4 (c) that the Producing Party did not take reasonable or timely steps to rectify such
5 disclosure; and/or
- 6 (d) that such disclosure acts as a waiver of applicable privileges or protections
7 associated with such Protected Information.

8 WHEREAS, because the purpose of this Stipulation is to protect and preserve Protected
9 Information, the parties agree they are bound as follows from and after the date their counsel have
10 signed it, even if such execution occurs prior to Court approval.

11 THEREFORE, the parties seek the entry of an Order, pursuant to Federal Rule of Civil
12 Procedure 26(c), governing the disclosure of “Confidential Information” and “Highly Confidential –
13 Attorneys’ Eyes Only Information” on the terms set forth herein, as well as an Order, pursuant to
14 FRE 502, governing the destruction of Protected Information and affording them the protections of
15 FRE 502(d) and (e), on the terms set forth herein.

16 **IT IS HEREBY STIPULATED**, as follows:

17 This Protective Order will be entered pursuant to Rule 26(c) of the Federal Rules of Civil
18 Procedure and Rule 502 of the Federal Rules of Evidence.

19 **1. Definition of “Documents or Electronically Stored Information.”**

20 The terms “Documents”, “Electronically Stored Information” and “Documents or
21 Electronically Stored Information” shall be synonymous in meaning and equal in scope to the usage
22 of these terms in Rule 34 of the Federal Rules of Civil Procedure.

23 **2. Definition of “Confidential Information.”**

24 “Confidential Information” shall include sensitive research, development, financial,
25 accounting, commercial, confidential, proprietary or private information in the possession of any
26 party that is generally unavailable to others in the industry or to the public, and is not readily
27 determinable from public sources. A Party or a Non-Party may designate as “Confidential” any
28 information produced in disclosures or in response to discovery requests or subpoenas by that party

1 or by any other party that, in good faith, the designating party deems confidential, including without
2 limitation any information concerning: (a) classified and proprietary human resources information of
3 Defendant relating to any current or former employees, including without limitation, Documents or
4 Electronically Stored Information containing employee compensation-related information, and other
5 personally identifiable information, health or medical-related information, home addresses, or home
6 telephone numbers; (b) Defendant’s policies or procedures; (c) Defendant’s financial, accounting,
7 commercial, operations, training, or other proprietary or trade secret information of Defendant; (d)
8 the financial, accounting, or other private or confidential information of any current, former, or
9 prospective customer, business partner, or third-party vendor of Defendant; (e) business or
10 marketing plans of Defendant; (f) proprietary business or pricing information; (g) written discovery,
11 Documents, Electronically Stored Information and deposition testimony previously marked
12 “Confidential” in the Prior T-Mobile Cases; and (h) any portion of depositions (including audio or
13 video) where information described in Sub-paragraphs (a)-(g) above is disclosed or used in an
14 exhibit.

15 **3. Designation and Use of Confidential Information.**

16 The Confidential designation shall be made by stamping or otherwise affixing a label or
17 sticker stating “CONFIDENTIAL” to the information so designated at the time of their production.
18 In the case of Electronically Stored Information, a party producing Confidential Information in an
19 electronically-stored format shall stamp or otherwise affix a label or sticker to the physical medium
20 by which the information is transmitted (e.g. computer disk, CD Rom, etc.) stating
21 “CONFIDENTIAL.” If the party to whom such confidential-designated Electronically Stored
22 Information is produced shall create any readable report or output from such Confidential
23 Information that is disclosed to another person authorized to review the information pursuant to
24 Paragraph 5 below, that party shall prominently label each page of such output report as
25 “CONFIDENTIAL.” A party need not perform such labeling for any report or output that is
26 reviewed solely by that party.

27 Information previously produced may be retroactively designated, by the party producing the
28 information or by another party, by written notice specifically identifying the information within

1 thirty (30) days of the Court ordering this Stipulation. Information produced without designation or
2 with improper designation may be retroactively designated in the same manner and shall be treated
3 as confidential from the date written notice of the designation is provided to the Receiving Party. In
4 the event of any change in designation pursuant to this Paragraph, the party making the change shall
5 promptly provide substitute copies of all information as to which confidential status is claimed, with
6 the replacement information to bear a stamp, label, or sticker identifying the information as
7 Confidential. Thereafter, the original, incorrectly designated information (and all copies thereof)
8 shall be promptly destroyed, with confirmation in writing.

9 Information disclosed or discussed in a deposition may be designated as “Confidential” by
10 any party by so indicating on the record at the time of the deposition or, within thirty (30) days after
11 receipt by the party of the applicable deposition transcript, by notifying counsel for the other party in
12 writing as to which portions of the deposition transcript contain Confidential Information.

13 Nothing contained in this Stipulation shall affect the right of a party to use or disclose
14 information that such party has produced and designated “Confidential” as such party sees fit;
15 however, if the disclosing party uses or discloses the information in a manner inconsistent with the
16 designation of the information as Confidential, and such use or disclosure is not inadvertent or
17 unintentional, and is left uncorrected upon discovery of such use or disclosure, the information will
18 not be deemed Confidential for purposes of this Stipulation. All Confidential Information obtained
19 by any person shall be maintained carefully so as to preclude access by persons who are not entitled
20 to receive such information.

21 **4. Designation and Use of Highly Confidential - Attorneys’ Eyes Only**
22 **Information**

23 A Party or a Non-Party may designate as “Highly Confidential – Attorneys’ Eyes Only
24 Information” any documents or information produced in response to informal or formal discovery
25 requests, subpoenas and/or other exchanges of documents/information which, in good faith, such
26 designating Party or Non-Party believes could place it at a competitive disadvantage if disclosed to
27 anyone other than Receiving Party’s counsel of record in this Proceeding because such documents or
28 information contain commercially sensitive information, proprietary information, or trade secrets,

1 the disclosure of which is likely to cause irreparable harm of significant injury to the competitive
2 position of the designating Party. Such a designation specifically includes, but is not limited to, any
3 “Class List” that may be produced by T-Mobile containing the names, private contact information,
4 and any other information of individuals who will be captured by the class definition adopted in this
5 Proceeding.²

6 **5. Disclosure of Confidential Information.**

7 Other than at trial, a deposition related to this Proceeding, court filings subject to Paragraph
8 14, or a hearing or conference regarding any motion in this Proceeding, Confidential Information
9 may not be disclosed or made available by a recipient of such information to any person other than:

10 (a) current employees of the Defendant, whose assistance is needed in the
11 prosecution or defense of this Proceeding;

12 (b) former employees of the Defendant, whose assistance is needed in the
13 prosecution or defense of this Proceeding;

14 (c) the in-house legal counsel of Defendant, and the clerical, paralegal, and
15 secretarial staff of such in-house legal counsel;

16 (d) the Named Plaintiff to this Proceeding;

17 (e) the counsel of record of any party to this Proceeding, and the legal, clerical,
18 paralegal, and secretarial staff of such counsel;

19 (f) individuals whom any party to this Proceeding intends to call as witnesses at
20 trial, provided that such party reasonably believes that the witness has knowledge concerning the
21 information, including deponents during the course of their depositions;

22 (g) outside experts or consultants who are engaged expressly for the purpose of
23 assisting in the Proceeding, as well as commercial copy services, data entry and computer support
24 organizations hired by and assisting outside counsel for a party;

25 (h) A mediator selected by mutual agreement of the Parties; and

26 (i) the Court, court personnel, any court or shorthand reporter or typist used to

27 _____
28 ² T-Mobile reserves the right to request distribution of a *Belaire-West* notice prior to producing any “Class List” to
counsel for Plaintiff.

1 record or transcribe testimony, and jurors or alternate jurors.

2 Nothing herein shall prevent any person from seeking, by written agreement of the
3 signatories hereto or court order, further, greater or lesser protection with respect to the use of any
4 Confidential Information in connection with this Proceeding.

5 **6. Disclosure of Highly Confidential - Attorneys' Eyes Only Information**

6 In the case of documents and the information contained therein, designation of Highly
7 Confidential – Attorneys' Eyes Only Information produced pursuant to this Order shall be made by
8 placing the following legend on the face of and/or in the title of the document or collection of
9 documents: "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY." Upon such designation,
10 all parties shall treat the identified information as highly confidential under this agreement until and
11 unless it is otherwise agreed by all parties or ordered by the Court. In the event a Party or Non-Party
12 neglects to identify any disclosed information as highly confidential, it may do so after disclosure by
13 sending notice to all parties that clearly delineates the highly confidential information, which shall
14 be treated as highly confidential from the date written notice of the designation is provided to the
15 Receiving Party.

16 Highly Confidential–Attorneys' Eyes Only Information shall be disclosed only to the
17 Receiving Party's counsel of record in this Proceeding for purposes that are specifically and directly
18 related to the reasonable conduct of this Proceeding, and to no other persons. Such information shall
19 be held in the highest confidence by each person to whom it is disclosed, shall be used only for
20 purposes that are specifically and directly related to the conduct of this Proceeding, and shall not be
21 used for any business purpose. The Receiving Party shall maintain a log of all electronic images and
22 paper copies of Highly Confidential–Attorneys' Eyes Only Information in its possession and all such
23 copies shall be securely destroyed subject to the provisions of Paragraph 7 herein.

24 The unauthorized disclosure of Highly Confidential–Attorneys' Eyes Only Information shall
25 give the Producing Party or Non-Party the right to seek and obtain immediate injunctive or other
26 equitable relief to enjoin any unauthorized use or disclosure of its Highly Confidential-Attorneys'
27 Eyes Only Information in addition to any other rights or remedies that it may have at law or
28 otherwise.

1 **7. Information Security Protections.**

2 Any person in possession of another party's Confidential Information shall maintain a written
3 information security program that includes reasonable administrative, technical, and physical
4 safeguards designed to protect and confidentiality of such Confidential Information, protect against
5 any reasonably anticipated threats or hazards to the security of such Confidential Information, and
6 protect against unauthorized access to or use of such Confidential Information. To the extent a
7 person or party does not have an information security program they may comply with this provision
8 by having the Confidential Information managed by and/or stored with e-discovery vendors or
9 claims administrators who maintain such an information security program.

10 If the Receiving Party discovers a breach of security, including any actual or suspected
11 unauthorized access, relating to another party's Confidential Information, the Receiving Party shall:
12 (1) promptly provide written notice to Designating Party of such breach; (2) investigate and take
13 reasonable efforts to remediate the effects of the breach, and provide Designating Party with
14 assurances reasonably satisfactory to Designating Party that such breach shall not recur; and (3)
15 provide sufficient information about the breach that the Designating Party can reasonably ascertain
16 the size and scope of the breach. If required by any judicial or governmental request, requirement or
17 order to disclose such information, the Receiving Party shall take all reasonable steps to give the
18 Designating Party sufficient prior notice in order to contest such request, requirement or order
19 through legal means. The Receiving Party agrees to cooperate with the Designating Party or law
20 enforcement in investigating any such security incident. In any event, the Receiving Party shall
21 promptly take all necessary and appropriate corrective action to terminate the unauthorized access.

22 No copies of Confidential Information shall be made except as required for the conduct of
23 this Proceeding and by or on behalf of attorneys of record in this action. Any person making copies
24 of such information shall maintain all copies within their possession or the possession of those
25 entitled to access to such information under this Order. Exhibits containing Confidential
26 Information that are attached to pleadings or motions filed with the court may be retained in
27 counsel's file. Any other copies of Confidential Information shall be destroyed when no longer
28 required for purposes of this Proceeding.

1 All information produced in this matter shall be used by the Receiving Party solely for the
2 purpose of prosecuting or defending this Proceeding, and not for, or in connection with, any other
3 cases or disputes, or for any business, commercial, competitive, personal or for any other purpose.
4 Any information listing the names, addresses, or other identifying or contact information for T-
5 Mobile's employees shall not be used by Receiving Parties or their counsel to solicit the
6 participation of the identified individuals in any other complaint, lawsuit, or legal proceedings.
7 Receiving Parties shall not disclose any information produced in the Proceeding to persons other
8 than those specified in Paragraph 5 of this Stipulation without the prior written consent of the
9 Producing Party and a Court order compelling such production. If a Receiving Party is served, at
10 any time during or after the pendency of this matter, a subpoena or Court order seeking disclosure of
11 information produced in the Proceeding, Receiving Party shall immediately notify the Producing
12 Party and await Producing Party's written consent before disclosing any information produced by
13 that Producing Party in the Proceeding.

14 **8. Signing of Declaration of Confidentiality.**

15 Each person to whom disclosure is made pursuant to Paragraphs 5(b), 5(f) or 5(g) shall be
16 given a copy of this Stipulation and shall sign a declaration, a copy of which is attached hereto as
17 Exhibit A, prior to receipt of any Confidential Information. Such declaration shall state that the
18 Receiving Party agrees that he or she is bound by the terms of this Stipulation. Nothing contained
19 herein shall limit the duty or obligation of a party to produce information in a timely manner
20 pursuant to the Federal Rules of Civil Procedure or pursuant to any agreed extension by the opposing
21 party's counsel of record. Deponents may be shown Confidential Information during their
22 deposition, but shall not be permitted to keep copies of said Confidential Information nor any portion
23 of the deposition transcript reflecting the Confidential Information.

24 **9. Destruction of Information.**

25 At the conclusion of the Proceeding, upon written notice from the Producing Party, all
26 information covered by this Stipulation, and all copies of same, and all information or portions
27 thereof containing information derived from information covered by this Stipulation including any
28 readable reports or output from the physical medium by which Electronically Stored Information

1 was transmitted, shall be destroyed as follows:

2 a) Within sixty (60) days of the conclusion of this Proceeding, and subject to
3 Sub-paragraphs (d) and (e) below, all Confidential Information, including any and all copies,
4 abstracts, summaries, physical medium by which data was transmitted, and readable reports or
5 output from the physical medium by which data was transmitted, shall be destroyed. Upon written
6 notice from Producing Party, within sixty (60) days of the conclusion of this Proceeding, counsel
7 shall certify, in writing, that any and all such Confidential Information, including any and all copies,
8 abstracts, summaries, physical medium by which data was transmitted, and readable reports or
9 output from the physical medium by which data was transmitted, produced by the opposing party,
10 has been destroyed.

11 b) If Confidential Information is furnished to outside experts or consultants
12 pursuant to Paragraph 5(g), the attorney for the party using such expert or consultant shall have the
13 responsibility of ensuring that all such Confidential Information including any and all copies,
14 abstracts, summaries, physical medium by which data was transmitted, and readable reports or
15 output from the physical medium by which data was transmitted, is destroyed, and so certifying in
16 writing as provided in Sub-paragraph (a) above.

17 c) If “Confidential Information” or “Highly Confidential-Attorneys’ Eyes Only
18 Information” has been loaded into any review database, the attorney for the party using such
19 database shall have the responsibility of ensuring that all such “Confidential Information” and
20 “Highly Confidential-Attorneys’ Eyes Only Information” (including all associated images and native
21 files), are extracted from such databases (including any associated staging databases) and destroyed.
22 “Destroyed” shall mean deletion of information from all databases, applications and/or file systems
23 in a manner such that they are not readily accessible without the use of specialized tools or
24 techniques typically used by a forensic expert.

25 d) Counsel of record for the parties may retain copies of any part of the
26 Confidential Information and “Highly Confidential-Attorneys’ Eyes Only Information” produced by
27 others that has become part of the official record of this Proceeding as well as abstracts or
28 summaries of information that reference Confidential Information and “Highly Confidential-

1 Attorneys' Eyes Only Information" that contain counsel's mental impressions or opinions. Such
2 copies shall remain subject to the terms of this Protective Order.

3 e) The parties, counsel of record for the parties, and experts or consultants for a
4 party shall not be required to destroy any Confidential Information and "Highly Confidential-
5 Attorneys' Eyes Only Information" to the extent such information is (i) stored on media that is
6 generally considered not reasonably accessible, such as disaster recovery backup tapes, or (ii) only
7 retrievable through the use of specialized tools or techniques typically used by a forensic expert;
8 provided that to the extent any Confidential Information and "Highly Confidential-Attorneys' Eyes
9 Only Information" is not destroyed due to the foregoing reasons, such Confidential Information and
10 "Highly Confidential-Attorneys' Eyes Only Information" shall remain subject to the confidentiality
11 obligations of this Protective Order.

12 **10. Disputes Regarding Designation of Confidential Information and Highly**
13 **Confidential-Attorneys' Eyes Only Information.**

14 Where disputes arise as to the protected nature of any information, such disputes shall be
15 resolved, if possible, by agreement by and among the parties. The party challenging a
16 confidentiality designation shall initiate the dispute resolution process by providing written notice of
17 each designation it is challenging and describing the basis for each challenge. The parties and the
18 non-party who designated the information as confidential shall attempt to resolve each challenge in
19 good faith and must begin the process by conferring directly (by oral dialogue; other forms of
20 communication will not suffice) within 14 days of the date of service of notice. In conferring, the
21 challenging party must explain the basis for its belief that the confidentiality designation was not
22 proper and must give the designating party an opportunity to review the designated information, to
23 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
24 chosen designation.

25 If an agreement cannot be reached within thirty (30) days from a party's receipt of a written
26 request from the Receiving Party that certain information not be designated as "Confidential," the
27 Receiving Party may serve within forty-five (45) days from its giving of the request that certain
28 information not be designated as "Confidential" an appropriate motion requesting that certain

1 information not be designated “Confidential.” In any such dispute, the designating party shall bear
2 the burden of persuasion. All motions challenging the designation of information as “Confidential”
3 must be timely brought for hearing before the close of discovery in this matter.

4 **11. FRE 502 Privilege Protections**

5 Pursuant to FRE 502(d) and (e), the parties agree to and the Court orders protection of
6 privileged, work-product or otherwise protected Documents and Electronically Stored Information
7 against claims of waiver (including as against third parties and in other federal and state
8 proceedings) as follows:

9 (a) The disclosure or production, by a Producing Party, of Protected Information,
10 to a Receiving Party, shall in no way constitute the voluntary disclosure of such information.

11 (b) The disclosure of Protected Information in this action shall not result in the
12 waiver of any privilege, evidentiary protection or other protection associated with such information
13 as to the Receiving Party or any third parties, and shall not result in any waiver, including subject
14 matter waiver, of any kind.

15 (c) If, during the course of this Proceeding, a party determines that any
16 information produced by another party is Protected Information:

17 (i) the Receiving Party shall: (A) refrain from reading the Protected Information
18 any more closely than is necessary to ascertain that it is privileged or otherwise protected from
19 disclosure; (B) immediately notify the Producing Party in writing that it has discovered Protected
20 Information; (C) specifically identify the Protected Information by Bates Number range or hash
21 value, and, (D) within ten (10) days of discovery by the Receiving Party, destroy all copies of such
22 Protected Information, along with any notes, abstracts or compilations of the content thereof. To the
23 extent that Protected Information has been loaded into a review database under the control of the
24 Receiving Party, the Receiving Party shall have all electronic copies of the Protected Information
25 extracted from the database. Where such Protected Information cannot be destroyed or separated, it
26 shall not be reviewed, disclosed, or otherwise used by the Receiving Party. Notwithstanding, the
27 Receiving Party is under no obligation to search or review the Producing Party’s disclosures or
28 productions to identify Protected Information.

1 (ii) If the Producing Party intends to assert a claim of privilege or other protection
2 over information identified by the Receiving Party as Protected Information, the Producing Party
3 will, within ten (10) days of receiving the Receiving Party's written notification described above,
4 inform the Receiving Party of such intention in writing and shall provide the Receiving Party with a
5 log for such Protected Information that is consistent with the requirements of the Federal Rules of
6 Civil Procedure, setting forth the basis for the claim of privilege or other protection. In the event
7 that any portion of the Protected Information does not contain privileged or protected information,
8 the Producing Party shall also provide to the Receiving Party a redacted copy of the Protected
9 Information that omits the information that the Producing Party believes is subject to a claim of
10 privilege or other protection.

11 (d) If, during the course of the above-captioned proceeding (the "Proceeding"), a
12 party determines it has produced Protected Information:

13 (i) the Producing Party may notify the Receiving Party of such production in
14 writing, and demand the destruction of such information. Such notice shall be in writing, however, it
15 may be delivered orally on the record at a deposition or at a court proceeding, promptly followed up
16 in writing. The Producing Party's written notice will identify the Protected Information produced by
17 Bates Number range or hash value, the privilege or other protection claimed, and the basis for the
18 assertion of the privilege or other protection and shall provide the Receiving Party with a log for
19 such Protected Information that is consistent with the requirements of the Federal Rules of Civil
20 Procedure, setting forth the basis for the claim of privilege or other protection. In the event that any
21 portion of the identified information does not contain Protected Information, the Producing Party
22 shall also provide to the Receiving Party a redacted copy of the Protected Information that omits the
23 information that the Producing Party believes is subject to a claim of privilege or other protection.

24 (ii) The Receiving Party must, within fourteen (14) days of receiving the
25 Producing Party's written notification described above, destroy the Protected Information and any
26 copies, along with any notes, abstracts or compilations of the content thereof. To the extent that
27 Protected Information has been loaded into a review database under the control of the Receiving
28 Party, the Receiving Party shall have all electronic copies of the Protected Information extracted

1 from the database.

2 (e) To the extent that Protected Information has already been used in or described
3 in other information generated or maintained by the Receiving Party prior to the date of receipt of
4 written notice by the Producing Party as set forth in Sub-paragraphs (c)(ii) and d(i), the Receiving
5 Party shall sequester such other information until the claim has been resolved. If the Receiving
6 Party disclosed the Protected Information before receiving notice pursuant to this Paragraph, the
7 Receiving Party must take reasonable steps to retrieve the Protected Information.

8 (f) The Receiving Party's destruction of Protected Information as provided herein
9 will not act as a waiver of the Requesting Party's right to move for the production of the destroyed
10 information on the grounds that the information is not, in fact, subject to a viable claim of privilege
11 or protection. However, the Receiving Party is prohibited and estopped from arguing that:

12 (i) the disclosure or production of the Protected Information acts as a waiver of
13 an applicable privilege or evidentiary protection;

14 (ii) the disclosure of the Protected Information was not inadvertent;

15 (iii) the Producing Party did not take reasonable steps to prevent the disclosure of
16 the Protected Information; and

17 (iv) the Producing Party failed to take reasonable or timely steps to rectify the
18 error pursuant to Federal Rule of Civil Procedure 26(b)(5)(B), or otherwise.

19 (g) Either party may submit Protected Information to the Court under seal for a
20 determination of the claim of privilege or other protection. The Producing Party shall preserve the
21 Protected Information until such claim is resolved. The Receiving Party may not use the Protected
22 Information for any purpose absent an Order from this Court.

23 (h) Upon a determination by the Court that the Protected Information is protected
24 by the applicable privilege or evidentiary protection, and if the Protected Information has been
25 sequestered rather than destroyed by the Receiving Party, the Protected Information shall destroyed
26 within 10 (ten) days of the Court's Order. The Court may also order the identification by the
27 Receiving Party of Protected Information by search terms or other means.

28 (i) Nothing contained herein is intended to, or shall serve to limit a party's right

1 to conduct a review of information (including metadata where applicable), whether stored in
2 electronic, paper, or other tangible form, for relevance and responsiveness, and for the segregation of
3 privileged or otherwise protected information before such information is produced to another party.

4 **12. Further Protective Orders.**

5 Nothing in this Stipulation shall affect any party's right to seek further protective orders
6 under Rule 26(c).

7 **13. Enforcement.**

8 The provisions of this Stipulation may be enforced like any other court order.

9 **14. Filing Confidential Information.**

10 If a party intends to file Confidential Information or Highly Confidential-Attorneys' Eyes
11 Only Information with this Court that has not previously been filed with the Court, it shall first
12 notify all other parties of its intention to do so, to allow the parties to have a discussion as to whether
13 such filings with the Court shall be filed under seal. If Confidential Information or Highly
14 Confidential-Attorneys' Eyes Only Information has previously been filed with the Court, a party
15 may choose to follow the same decision that was made earlier about whether that Information should
16 be filed under seal instead of notifying all other parties. To avoid the unnecessary filing of
17 information under seal, counsel for the parties may request an agreement on the filing of such
18 information, and such agreement will not be unreasonably withheld. Nothing in this Stipulation
19 shall affect any party's right to seek to have information filed under seal, subject to the requirements
20 of Federal Rule 5.2 and Rule 141 of this Court's Local Rules. The Court also retains discretion
21 whether to afford confidential treatment to any Confidential Information or Highly Confidential-
22 Attorneys' Eyes Only Information and submitted to the Court in connection with any motion,
23 application, or proceeding that may result in an order and/or decision by the Court.

24 **15. Full Force and Effect.**

25 This Stipulation, until it is entered by the Court, and even if it is never entered by the Court,
26 shall be deemed to be an enforceable agreement between the Parties, except to the extent that it is
27 inconsistent with any Order of the Court. By operation of the parties' agreement and Court Order,
28 the parties are specifically afforded the full protections of FRE 502(d) and (e).

1 This Order will survive the termination of the Proceeding and will continue to be binding
2 upon all persons to whom Highly Confidential-Attorneys' Eyes Only Information, Confidential
3 Information, or Protected Information is produced or disclosed.

4 This Court will retain jurisdiction over all persons subject to this Order to the extent
5 necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt
6 thereof.

7
8
9 Date: 4th day of May, 2017.

10 Respectfully submitted,

11 ATTORNEYS FOR

12 Plaintiff,

13 By /s/ Gregg Lander

14 Defendant,

15 By /s/ Sophia Behnia

16
17
18 **ORDER**

19 IT IS SO ORDERED.

20 Dated: May 4, 2017

21 /s/ Jennifer L. Thurston
22 UNITED STATES MAGISTRATE JUDGE

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA

4 EMMANUEL SALGADO, on behalf of
5 himself and all others similarly situated,

6 Plaintiff,

7 v.

8 T-MOBILE USA, INC., a Delaware
9 corporation; and DOES 1 to 100, inclusive,

10 Defendant.

Case No. 1:17-cv-00339-DAD-JLT
(Kern County Superior Court Case No. BCV-
17-100243)

11 **DECLARATION AND AGREEMENT TO BE BOUND BY THE STIPULATED**
12 **CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

13
14 1. My name is _____.

15 I live at _____.

16 I am employed as _____ (state position) by
17 _____ (state name and address of
18 employer).

19 2. I am aware that a Confidentiality Stipulation and Agreement and Protective Order
20 (the "Protective Order") has been entered in the above case by the Court, and a copy thereof has
21 been given to me. I have read and understand the terms of the Protective Order. I agree to be bound
22 by the terms of the Protective Order.

23 3. I promise that information designated as "Confidential" pursuant to the Protective
24 Order in this case will be used by me only in connection with the above captioned Proceeding.

25
26 4. I agree to comply with the terms of this Order with regard to identification,
27 sequestering and destruction of Protected Information.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. I understand that any use or disclosure of information obtained by me from Confidential Information or Protected Information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt by this Court.

6. I agree to submit myself to the personal jurisdiction of the above-captioned Court in connection with any proceedings concerning the Protective Order.

(Signature of Declarant)

SUBSCRIBED AND SWORN to before me this ____ day of

_____, _____.

Notary Public