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12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF CALIFORNIA  
14

15 EDWARD BLACK,  
16 Plaintiff,  
17 v.  
18 T-MOBILE USA, INC., and Does 1 to 50,  
19 Defendant.  
20

Case No. 1:18-CV-00624-DAD-JLT

**STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER**

**(Doc. 15)**

1 Plaintiff Edward Black (“Plaintiff”) and Defendant T-Mobile USA, Inc. (“Defendant”) (each  
2 a “Party,” and collectively, “the Parties”), by and through their respective counsel, hereby stipulate  
3 and agree as follows:

4 **WHEREAS**, the Parties to this proceeding anticipate that during the course of the above-  
5 captioned litigation they will produce or provide documents and information (including electronic  
6 data) that one or more Parties contend contain trade secrets or other sensitive, private, personal,  
7 confidential, or proprietary information, including, but not limited to:

8 (a) Defendant’s business operations, including, but not limited to, information about  
9 Defendant’s employment policies, practices, programs, methods, and/or procedures; personal  
10 employee information; financial data; business strategies; pricing, products, clients, and customers;  
11 internal correspondence regarding business operations; and other information and documentation that  
12 may provide insight into the day-to-day processes and procedures utilized by Defendant; and

13 (b) Plaintiff’s or third-party private information, including employment, financial,  
14 personal, payroll, and medical information;

15 **WHEREAS**, the Parties to this proceeding have a particularized need for a court order as to  
16 each category of information listed above in order to protect Defendant’s confidential and proprietary  
17 business information and to protect private and confidential information – such as medical records,  
18 payroll records, employment files, etc. – of Plaintiff and third parties, including other T-Mobile  
19 employees;

20 **WHEREAS**, the Parties to this proceeding also have a particularized need for a court order  
21 relating to other sensitive, private, confidential, and proprietary information because the Parties expect  
22 that some or all of this information may be used in motion practice, including dispositive motion  
23 practice, and should be sealed prior to filing. A private agreement would not be sufficient to ensure  
24 that the sensitive, private, confidential, and proprietary information is protected from such disclosure;  
25 and

26 **WHEREAS**, the Parties acknowledge that this Stipulation and Order (“Order”) does not confer  
27 blanket protections on all disclosures or responses to discovery and that the protection it affords from  
28 public disclosure and use extends only to the limited information or items that are entitled to

1 confidential treatment under the applicable legal principles. The Parties further acknowledge, as set  
2 forth in Section 11.3 below, that this Order does not entitle them to file confidential information under  
3 seal; Civil Local Rules 140 and 141 set forth the procedures that must be followed and the standards  
4 that will be applied when a party seeks permission from the Court to file material under seal.

5 **THEREFORE**, the Parties seek the entry of an Order, pursuant to Federal Rule of Civil  
6 Procedure 26(c) and Local Rule 141.1(b) and (c), governing the disclosure of documents and  
7 information containing “Confidential Information” on the terms set forth herein.

8 **IT IS HEREBY AGREED, STIPULATED, AND ORDERED THAT:**

9 **1. DEFINITIONS**

10 1.1 Challenging Party: A Party or Non-Party that challenges the designation of information  
11 or items under this Order.

12 1.2 “CONFIDENTIAL” Information or Items: The Parties shall have the right to designate  
13 as “CONFIDENTIAL,” and this Order shall only apply to, any information or documents that  
14 constitute, relate to, or reflect:

15 (a) Defendant’s business operations, including, but not limited to, information about  
16 Defendant’s employment policies, practices, programs, methods, and/or procedures; personal  
17 employee information; financial data; business strategies; pricing, products, clients, and customers;  
18 internal correspondence regarding business operations; and other information and documentation that  
19 may provide insight into the day-to-day processes and procedures utilized by Defendant; or

20 (b) Plaintiff’s or third-party private information, including employment, financial,  
21 personal, payroll, and medical information.

22 1.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as well  
23 as their support staff).

24 1.4 Designating Party: A Party or Non-Party that designates information or items that it  
25 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

26 1.5 Disclosure or Discovery Material: All items or information, regardless of the medium  
27 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
28

1 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
2 discovery in this matter.

3 1.6 Expert: A person with specialized knowledge or experience in a matter pertinent to the  
4 litigation who has been retained by a Party or its/his counsel to serve as an expert witness or as a  
5 consultant in this action.

6 1.7 House Counsel: Attorneys who are employees of a party to this action. House Counsel  
7 does not include Outside Counsel of Record or any other outside counsel.

8 1.8 Non-Party: Any natural person, partnership, corporation, association, or other legal  
9 entity not named as a Party to this action.

10 1.9 Outside Counsel of Record: Attorneys who are not employees of a party to this action  
11 but are retained to represent or advise a Party to this action and have appeared in this action on behalf  
12 of that Party or are affiliated with a law firm which has appeared on behalf of that party.

13 1.10 Party: Any party to this action, including all of its officers, directors, employees,  
14 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

15 1.11 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material  
16 in this action.

17 1.12 Professional Vendors: Persons or entities that provide litigation support services (e.g.,  
18 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,  
19 or retrieving data in any form or medium) and their employees and subcontractors.

20 1.13 Protected Material: Any Disclosure or Discovery Material that is designated as  
21 “CONFIDENTIAL.”

22 1.14 Receiving Party: A Party that receives Disclosure or Discovery Material from a  
23 Producing Party.

## 24 **2. SCOPE**

25 The protections conferred by this Order cover not only Protected Material (as defined above),  
26 but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,  
27 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or  
28 presentations by Parties or their Counsel that might reveal Protected Material. However, the

1 protections conferred by this Order do not cover the following information: (a) any information that  
2 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public  
3 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of  
4 this Order, including becoming part of the public record through trial or otherwise; and (b) any  
5 information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party  
6 after the disclosure from a source who obtained the information lawfully and under no obligation of  
7 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a  
8 separate agreement or order.

9 **3. DURATION**

10 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
11 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
12 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
13 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
14 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
15 limits for filing any motions or applications for extension of time pursuant to applicable law.

16 **4. DESIGNATING PROTECTED MATERIAL**

17 4.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
18 Non-Party that designates information or items for protection under this Order must take care to limit  
19 any such designation to specific material that qualifies under the appropriate standards. The  
20 Designating Party must designate for protection only those parts of material, documents, items, or oral  
21 or written communications that qualify – so that other portions of the material, documents, items, or  
22 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
23 this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. If it comes to a Designating  
25 Party's attention that information or items that it designated for protection do not qualify for protection,  
26 that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken  
27 designation.

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1           4.2    Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
2 e.g., second paragraph of Section 4.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
3 Discovery Material that qualifies for protection under this Order must be clearly so designated before  
4 the material is disclosed or produced.

5           Designation in conformity with this Order requires:

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

11           A Party or Non-Party that makes original documents or materials available for inspection need  
12 not designate them for protection until after the inspecting Party has indicated which material it would  
13 like copied and produced. During the inspection and before the designation, all of the material made  
14 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified  
15 the documents it wants copied and produced, the Producing Party must determine which documents,  
16 or portions thereof, qualify for protection under this Order. Then, before producing the specified  
17 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains  
18 Protected Material. If only a portion or portions of the material on a page qualifies for protection, the  
19 Producing 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 deposition or in other pretrial or trial proceedings, that the  
22 Designating Party identify on the record, hearing, or other proceeding, all protected testimony. In the  
23 alternative, within 30 days after receipt of the transcript the Designating Party shall designate by page  
24 and line those portions of the testimony that are deemed to actually include Protected Material. The  
25 reporter shall be duly advised by the Designating Party to promptly conform copies in accordance with  
26 such designations by attaching a copy of requesting counsel’s letter to the transcript and making it an  
27 official part thereof. The portions so designated shall thereafter be treated as Protected Material as  
28 provided in this Order and shall be fully subject to the relevant provisions of this Order. After the

1 expiration of 30 days, all portions not so designated shall be free from the provisions of this Order,  
2 unless the Parties agree to a longer period of time.

3 (c) For information produced in some form other than documentary and for any other  
4 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
5 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion  
6 or portions of the information or item warrant protection, the Producing Party, to the extent practicable,  
7 shall identify the protected portion(s).

8 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
9 designate qualified information or items does not, standing alone, waive the Designating Party’s right  
10 to secure protection under this Order for such material. Upon timely correction of a designation, the  
11 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with  
12 the provisions of this Order.

13 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 5.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
15 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
17 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
18 confidentiality designation by electing not to mount a challenge promptly after the original designation  
19 is disclosed.

20 5.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
21 by providing written notice of each designation it is challenging and describing the basis for each  
22 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite  
23 that the challenge to confidentiality is being made in accordance with this specific paragraph of the  
24 Order. The Parties shall attempt to resolve each challenge in good faith and must begin the process by  
25 conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient)  
26 within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the  
27 basis for its belief that the confidentiality designation was not proper and must give the Designating  
28 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no

1 change in designation is offered, to explain the basis for the chosen designation. A Challenging Party  
2 may proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
3 process first or establishes that the Designating Party is unwilling to participate in the meet and confer  
4 process in a timely manner.

5       5.3     Judicial Intervention. Unless otherwise provided by an applicable order, if the Parties  
6 cannot resolve a challenge without court intervention, the Designating Party shall file and serve a  
7 motion to retain confidentiality under Local Rule 141.1 within 21 days of the initial notice of challenge  
8 or within 14 days of the Parties' agreeing that the meet and confer process will not resolve their  
9 dispute, whichever is later. Each such motion must be accompanied by a competent declaration  
10 affirming that the movant has complied with the meet and confer requirements imposed in the  
11 preceding paragraph. Failure by the Designating Party to make such a motion including the required  
12 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
13 designation for each challenged designation. Any motion brought pursuant to this provision must be  
14 accompanied by a competent declaration affirming that the movant has complied with the meet and  
15 confer requirements imposed by the preceding paragraph. The burden of persuasion in any such  
16 challenge proceeding shall be on the Designating Party.

17       All Parties shall continue to afford the material in question the level of protection to which it  
18 is entitled under the Producing Party's designation until the court rules on the challenge.

19     **6.     ACCESS TO AND USE OF PROTECTED MATERIAL**

20       6.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
21 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
23 categories of persons and under the conditions described in this Order. When the litigation has been  
24 terminated, a Receiving Party must comply with the provisions of section 12 below (FINAL  
25 DISPOSITION).

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

28



1           6.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
2 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
3 information or item designated “CONFIDENTIAL” only to:

4           (a) The Receiving Party’s Outside Counsel of Record in this action, as well as  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
6 information for this litigation;

7           (b) The officers, directors, and employees (including House Counsel) of the Receiving  
8 Party to whom disclosure is reasonably necessary for this litigation;

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

12           (d) The Court and its personnel;

13           (e) Court reporters and their staff, professional jury or trial consultants, mock jurors,  
14 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16           (f) During their depositions, witnesses in the action to whom disclosure is reasonably  
17 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
18 **unless otherwise agreed by the Designating Party or ordered by the Court.** Pages of transcribed  
19 deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound  
20 by the court reporter and may not be disclosed to anyone except as permitted under this Order; and

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

23    **7.    PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
24    **LITIGATION**

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

28           (a) Promptly notify in writing the Designating Party. Such notification shall include a

1 copy of the subpoena or court order;

2 (b) Promptly notify in writing the party who caused the subpoena or order to issue in  
3 the other litigation that some or all of the material covered by the subpoena or order is subject to this  
4 Order. Such notification shall include a copy of this Order; and

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

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

14 **8. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**  
15 **LITIGATION**

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

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

24 (1) Promptly notify in writing the requesting Party and the Non-Party that  
25 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

26 (2) Promptly provide the Non-Party with a copy of the Stipulated Protective  
27 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the  
28 information requested; and

1 (3) Make the information requested available for inspection by the Non-  
2 Party.

3 (c) If the Non-Party fails to object or seek judicial relief from this Court within 14  
4 days of receiving the notice and accompanying information, the Receiving Party may produce the  
5 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
6 seeks judicial relief, the Receiving Party shall not produce any information in its possession or control  
7 that is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>1</sup>  
8 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking  
9 protection in this court of its Protected Material.

10 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

18 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
19 **MATERIAL**

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

27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this Court.

1 the attorney-client privilege or work product protection, the Parties may incorporate their agreement  
2 in the stipulated protective order submitted to the court.

3 **11. MISCELLANEOUS**

4 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
5 its modification by the Court in the future.

6 11.2 Right to Assert Other Objections. By stipulating to the entry of this Order no Party  
7 waives any right it otherwise would have to object to disclosing or producing any information or item  
8 on any ground. Similarly, no Party waives any right to object on any ground to use in evidence of any  
9 of the material covered by this Order.

10 11.3 Filing Protected Material. Without written permission from the Designating Party or a  
11 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
12 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
13 must comply with Civil Local Rules 140 and 141. Protected Material may only be filed under seal  
14 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a  
15 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rules 140 and  
16 141 is denied by the Court, then the Receiving Party may file the information in the public record  
17 unless otherwise instructed by the Court.

18 **12. FINAL DISPOSITION**

19 Within 60 days after the final disposition of this action, as defined in Section 3, each Receiving  
20 Party must return all Protected Material to the Producing Party or destroy such material with written  
21 confirmation to the Producing Party. As used in this subdivision, "all Protected Material" includes all  
22 copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the  
23 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of  
24 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
25 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
26 and expert work product, even if such materials contain Protected Material. Any such archival copies  
27 that contain or constitute Protected Material remain subject to this Protective Order as set forth in  
28 Section 3 (DURATION).

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Dated: November 20, 2018

GANONG LAW OFFICE

/s/ Philip W. Ganong (as authorized on  
November 20, 2018)

PHILIP W. GANONG  
Attorney for Plaintiff  
EDWARD BLACK

Dated: November 20, 2018

LITTLER MENDELSON, P.C.

/s/ Rachel T. Segal

GREGORY G. ISKANDER  
RACHEL T. SEGAL  
Attorneys for Defendant  
T-MOBILE USA, INC.

**ORDER**

IT IS SO ORDERED.

Dated: November 24, 2018

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under  
penalty of perjury that I have read in its entirety and understand the Protective Order that was issued  
by the United States District Court for the Eastern District of California in the case of *Black v. T-  
Mobile USA, Inc.*, Case No. 1:18-CV-00624-DAD-JLT. I agree to comply with and to be bound by  
all the terms of this Protective Order, and I understand and acknowledge that failure to so comply  
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I  
will not disclose in any manner any information or item that is subject to this Protective Order to any  
person or entity except in strict compliance with the provisions of this Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern  
District of California for the purpose of enforcing the terms of this Protective Order, even if such  
enforcement proceedings occur after termination of this action.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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