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17 **UNITED STATES DISTRICT COURT**
 18 **EASTERN DISTRICT OF CALIFORNIA**

20 HUGO MARTINEZ, an individual,

21 Plaintiff,

22 vs.

23 O'REILLY AUTOMOTIVE
 24 STORES, INC., a Missouri
 25 corporation; and
 26 DOES 1-50, inclusive,

27 Defendants.

Case No.: 2:17-CV-00737-JAM-GGH

**STIPULATION REGARDING NEED
 FOR COURT ORDER TO COMPEL
 PRODUCTION OF PLAINTIFF'S
 PHONE RECORDS BY T-MOBILE /
 METROPCS; ORDER**

[Filed concurrently with Declaration of Hugo Martinez]

1
2 Plaintiff Hugo Martinez (“Plaintiff”) and Defendant O’Reilly Auto
3 Enterprises, LLC, erroneously sued as “O’REILLY AUTOMOTIVE STORES,
4 INC.”, (“Defendant”), agree and stipulate that the third-party T-Mobile /
5 MetroPCS should be compelled to produce phone records related to the cell phone
6 Plaintiff was using during the time period August 1, 2015, to September 30, 2015.

- 7 1. Plaintiff filed a Complaint in San Joaquin Superior Court of California,
8 alleging causes of action arising out of his employment with Defendant.
9 Defendant removed the action to Eastern District Court.
- 10 2. During Plaintiff’s employment with Defendant, Plaintiff used a cell phone
11 with the number (209) 688-3567. Plaintiff used the aforementioned cell
12 phone during the period of August 1, 2015, to September 30, 2015, which
13 was during his employment with Defendant.
- 14 3. Based on discovery in this matter, the parties have agreed that it is
15 important to secure Plaintiff’s phone records during the aforementioned
16 time period.
- 17 4. In an effort to obtain Plaintiff’s phone records, Plaintiff’s counsel sent a
18 letter to the Custodian of Records for T-Mobile / MetroPCS on October 26,
19 2017, and enclosed an authorization signed by Plaintiff to release Plaintiff’s
20 phone records to Plaintiff’s counsel. **See Exhibit A.** On November 21,
21 2017, after Plaintiff’s counsel did not receive a response from T-Mobile /
22 MetroPCS, Plaintiff’s counsel sent another letter to follow up on the same.
23 **See Exhibit B.** On December 12, 2017, again after not receiving a response
24 from T-Mobile / MetroPCS, Plaintiff’s counsel sent a third letter requesting
25 Plaintiff’s records. **See Exhibit C.**
- 26 5. Finally, after not receiving any response from T-Mobile / MetroPCS,
27 Plaintiff’s counsel served its subpoena for records on T-Mobile / MetroPCS
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- 1 on December 14, 2017. **See Exhibit D.** The subpoena requested a
- 2 production date of January 5, 2018.
- 3 6. On January 4, 2018, T-Mobile / MetroPCS sent an email notifying
- 4 Plaintiff's counsel that T-Mobile / MetroPCS was refusing to produce
- 5 responsive records to the subpoena on grounds that the "target telephone
- 6 number is associated with a CA . . . pre-paid account." **See Exhibit E.** The
- 7 notification from T-Mobile / MetroPCS also stated the following: "COURT
- 8 ORDER REQUIRED FOR RELEASE OF RECORDS." **See Exhibit E.**
- 9 7. Pursuant to T-Mobile / MetroPCS's refusal to produce records associated
- 10 with Plaintiff's phone without a court order, the parties hereby request this
- 11 Court to order T-Mobile / MetroPCS to produce Plaintiff's records.
- 12 8. Plaintiff and Defendant agree and stipulate a court order is necessary for the
- 13 parties to obtain records from T-Mobile / MetroPCS for Plaintiff's records
- 14 during his employment with Defendant. The parties have attached a
- 15 proposed order to this Stipulation.

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1 IT IS SO STIPULATED.

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3 DATED: January 30, 2018 BROCK & GONZALES, LLP

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By: /s/ Sheryl L. Maccarone

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D. AARON BROCK

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CHRISTOPHER P. BRANDES

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SHERYL L. MACCARONE

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Attorneys for Plaintiff

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11 DATED: January 23, 2018 HIGGS FLETCHER & MACK LLP

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By: /s/ Derek W. Paradis

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JAMES M. PETERSON, ESQ.

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DEREK W. PARADIS, ESQ.

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Attorneys for Defendant

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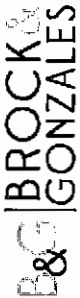
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ORDER

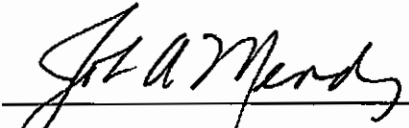
Pursuant to Plaintiff Hugo Martinez and Defendant O'Reilly Automotive Stores, Inc.'s Stipulation and for good cause shown, IT IS ORDERED:

1. Within ten days of this Order, third party T-Mobile / MetroPCS must produce to Hugo Martinez's counsel all cellular phone and text message use records for phone number (209) 688-3567 for the period from August 1, 2015, to September 30, 2015.
2. Within two days after receipt of the records from T-Mobile / MetroPCS, Plaintiff's counsel will produce all records he received from T-Mobile / MetroPCS to Defendant's counsel. Prior to the production of records to Defense counsel, Plaintiff's counsel may redact records from outside the period August 1, 2015, to September 30, 2015, or records that are unrelated to Plaintiff's employment with Defendant. If Plaintiff's counsel makes such redactions, Plaintiff's records shall produce the redacted records in a form showing the date and time of the redacted records. Plaintiff's counsel shall make no other redactions to the records produced by T-Mobile / MetroPCS.
3. Plaintiff shall serve a copy of this order to T-Mobile / MetroPCS within 24 hours of entry of this Order.

gam 4. If T-Mobile/MetroPCS objects to this Order it must file its motion to quash no later than Feb. 6, 2018.

IT IS SO ORDERED.

Dated: 1-31-2018


United States District Court Judge