

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 KENNETH HOAGLAND, individually
12 and on behalf of all others similarly
13 situated,
14 Plaintiff,
15 v.
16 AXOS BANK,
17 Defendant.

Case No.: 20-cv-807-BAS-DEB

**ORDER GRANTING UNOPPOSED
MOTION FOR ENTRY OF AGREED
AT&T PRODUCTION ORDER
[DKT. NO. 57] AND ENTERING
PRODUCTION ORDER**

18 Before the Court is Plaintiff's Unopposed Motion for Entry of Agreed AT&T
19 Production Order. Dkt. No. 57. Good cause appearing, the Court GRANTS the Motion and
20 enters the Stipulated Order to Compel Document Production as follows:

21 Plaintiff Hoagland and non-party AT&T Inc. ("AT&T") stipulate as follows:

22 1. On July 26, 2021, Plaintiff served a subpoena on AT&T (the "Subpoena").
23 Ancillary to the Subpoena, Plaintiff also provided AT&T with a list of 6,830 calls
24 ("Schedule A"), and asked AT&T to provide subscriber and user information for each
25 phone number on the date identified.

26 2. AT&T objected to the Subpoena on grounds that, among other things, it could
27 not produce information about subscribers located in California and Delaware without a
28

1 Court order, pursuant to state law, including Cal. Pub. Util. Code § 2894 and 11 Del. C.
2 § 2423.

3 3. California law permits the production of subscriber information pursuant to a
4 court order. Specifically, Cal. Pub. Util. Code § 2894 provides:

5
6 Notwithstanding subdivision (e) of Section 2891, the disclosure of any
7 information by an interexchange telephone corporation, a local exchange
8 telephone corporation, or a provider of commercial mobile radio service, as
9 defined in Section 2168, in good faith compliance with the terms of a state
10 or federal court warrant or order or administrative subpoena issued at
11 the request of a law enforcement official or other federal, state, or local
12 governmental agency for law enforcement purposes, is a complete defense
13 against any civil action brought under this chapter or any other law,
including, but not limited to, Chapter 1.5 (commencing with Section 630) of
Part 1 of Title 15 of the Penal Code, for the wrongful disclosure of that
information.

14 Cal. Pub. Util. Code § 2894(a). Federal courts have held that these provisions expressly
15 allow for production of subscriber information upon court order. *See Kaur v. City of Lodi*,
16 2016 WL 10679575, at *1 (E.D. Cal. Jan. 28, 2016) (“[I]t does not authorize [respondent]
17 to withhold documents in the face of a federal court order compelling their production.”);
18 *McArdle v. AT&T Mobility LLC*, 2010 WL 1532334, at *6 (N.D. Cal. Apr. 16, 2010)
19 (“[S]ection 2894 of the utilities code provides an exception to this rule for court orders.”).

20 4. Delaware law also expressly allows for disclosure of subscriber information
21 pursuant to a court order. The Delaware Code provides:

22
23 Except as provided in this subdivision, a provider of electronic
24 communications service or remote computing service may not disclose a
25 record or other information pertaining to a subscriber or customer of the
service to any person other than investigative or law-enforcement officer.

26 11 Del. C. § 2423(c)(2). The same section of the Delaware law goes on to say:

27
28 Nothing in this chapter may be construed as creating a cause of action against
any provider of electronic communication service or remote computing

1 service, such service's officers, employees, or agents or other specified
2 persons for providing information, facilities or assistance in accordance with
3 the terms of a court order, warrant, subpoena or certification under this
4 chapter.

5 11 Del. C. § 2423(e). Thus, the Delaware law at issue does not preclude production
6 upon entry of a Court order.

7 5. AT&T further objected that it could not produce information about
8 subscribers in Pennsylvania without a Court order and notice to the subscribers under 18
9 Pa. C.S.A. § 5742. *See also Lee v. Glob. Tel*Link Corp.*, 2017 WL 11272587, at *5-7 (C.D.
10 Cal. Dec. 6, 2017).

11 6. Through counsel, Plaintiff and AT&T reached the following agreement:
12 (a) that Plaintiff will seek an order from the Court requiring AT&T to produce the
13 information concerning subscribers located in California, Delaware, and all other states
14 except Pennsylvania in the format agreed to by their respective counsel, and (b) that AT&T
15 will not produce information regarding its Pennsylvania subscribers at this time.

16 7. AT&T will produce data responsive to the Subpoena within fourteen days
17 after a Court order permitting such is entered.

18 8. As such, Plaintiff and AT&T respectfully ask that the Court order as follows:

19 **ORDER**

20 Upon review of the foregoing stipulation, the Court finds that the stipulated relief
21 sought is due to be granted. Accordingly, it is ORDERED:

22 1. No later than fourteen calendar days after entry of this Order, AT&T shall
23 produce to Plaintiff's counsel:

24 A data compilation in *.csv format agreed to by counsel for AT&T and
25 Plaintiff, reflecting the first name, middle name, last name, email address,
26 and billing address for subscribers and users of AT&T phone services whose
27 phone number appears on Schedule A to the Subpoena (other than
28 subscribers and users located in Pennsylvania), and the dates of service for
the account.

1 2. The Subpoenaed Information shall be maintained as “confidential
2 information” in accordance with the Protective Order entered in this action, Dkt. 36 (the
3 “Protective Order”). The information may be used only for purposes of the above-
4 captioned litigation and must be destroyed in accordance with the Protective Order. Upon
5 written request from AT&T, Plaintiff shall confirm to AT&T and its counsel, in writing,
6 when the destruction of all Subpoenaed Information is/was completed.

7 **IT IS SO ORDERED.**

8 Dated: November 16, 2021

9 

10 _____
11 Honorable Daniel E. Butcher
12 United States Magistrate Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Dated: November 9, 2021

Stipulated and respectfully submitted,

2 AT&T INC.

KENNETH HOAGLAND,
Individually and on Behalf of All
Others Similarly Situated

3
4 By: s/ Emily Westridge Black

Emily Westridge Black
HAYNES AND BOONE, LLP
600 Congress Ave., Suite 1300
Austin, TX 78701
Telephone: (512) 867-8422
emily.westridgeblack@haynesboone.com

By: s/ Alexander H. Burke
Alexander H. Burke (*pro hac vice*)
BURKE LAW OFFICES, LLC
909 Davis St., Suite 500
Evanston, IL 60201
Telephone: (312) 729-5288
aburke@burkelawllc.com

9 *Counsel for AT&T*

Jeffrey S. Goldenberg (*pro hac vice*)
GOLDENBERG SCHNEIDER, L.P.A.
4445 Lake Forest Dr., Suite 490
Cincinnati, OH 45242
Telephone: (513) 345-8291
jgoldenberg@gs-legal.com

James C. Shah (SBN 260435)
Chiharu G. Sekino (SBN 306589)
MILLER SHAH LLP
1230 Columbia St., Suite 1140
San Diego, CA 92101
Telephone: (619) 235-2416
jcshah@millershah.com
cgsekino@millershah.com

Joseph M. Lyon (*pro hac vice*)
THE LYON FIRM
2754 Erie Ave.
Cincinnati, OH 45208
Telephone: (513) 381-2333
jlyon@thelyonfirm.com

Counsel for Plaintiff

1 **SIGNATURE CERTIFICATION**

2 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and
3 Procedures Manual, I hereby certify that the content of this document is acceptable to
4 Emily Westridge Black, counsel for AT&T Inc., and that I have obtained Ms. Black's
5 authorization to affix her electronic signature to this document.

6 s/ Alexander H. Burke

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28