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6 UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 METROPCS NEW YORK, LLC, a Delaware
corporation,

9 Plaintiff,

10 v.

11 35-46 BROADWAY, INC., a New York
corporation; and ABDALLAH NOFAL,
12 DAWOD NOFAL and SAED NOFAL,
individuals,

13 Defendants.
14

Case No. 17-cv-01554-RSM

PROTECTIVE ORDER

15 1. PURPOSES AND LIMITATIONS

16 Discovery in this action is likely to involve production of confidential, proprietary, or
17 private information for which special protection may be warranted.¹ Accordingly, Plaintiff
18 MetroPCS New York, LLC hereby petitions the court to enter the following Protective Order.²
19 This Order is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all
20 disclosures or responses to discovery, the protection it affords from public disclosure and use
21 extends only to the limited information or items that are entitled to confidential treatment under
22

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24 ¹ Default was entered against all Defendants on January 26, 2018, but Plaintiff has served certain discovery
requests (including third party discovery requests) to support its claims and, in particular, to determine appropriate
remedies.

25 ² Non-party TracFone Wireless, Inc. has requested entry of a protective order in connection with its production
of documents to Plaintiff. This Order is modelled on the Western District's Model Stipulated Protective Order.
26 Plaintiff does not believe this Order will be opposed by Defendants, but because the Defendants have not appeared
in this matter and have not responded to communications from Plaintiff or its counsel, Plaintiff is not able to present
27 this as a stipulated Order.

1 the applicable legal principles, and it does not presumptively entitle parties to file confidential
2 information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible things
5 produced by a party or non-party in response to discovery requests: proprietary, non-public
6 documents such as dealer or subdealer contracts or agreements; dealer applications and/or credit
7 applications; business correspondence containing commercially-sensitive information; and
8 personally identifiable information relating to dealers or subdealers.

9 3. SCOPE

10 The protections conferred by this Order cover not only confidential material (as defined
11 above), but also (1) any information copied or extracted from confidential material; (2) all
12 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
13 conversations, or presentations by parties or their counsel that might reveal confidential material.

14 However, the protections conferred by this Order do not cover information that is in the
15 public domain or becomes part of the public domain through trial or otherwise.

16 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

17 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
18 or produced by another party or by a non-party in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
20 the categories of persons and under the conditions described in this Order. Confidential material
21 must be stored and maintained by a receiving party at a location and in a secure manner that
22 ensures that access is limited to the persons authorized under this Order.

23 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the designating party,³ a receiving party may
25 disclose any confidential material only to:

26 _____
27 ³ For avoidance of doubt, “designating party” may include a non-party that is subject to discovery in this
action.

1 (a) the receiving party's counsel of record in this action, as well as employees of
2 counsel to whom it is reasonably necessary to disclose the information for this litigation;

3 (b) the officers, directors, and employees (including in house counsel) of the
4 receiving party to whom disclosure is reasonably necessary for this litigation, unless a particular
5 document or material produced is for Attorney's Eyes Only and is so designated;

6 (c) experts and consultants to whom disclosure is reasonably necessary for this
7 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (d) the court, court personnel, and court reporters and their staff;

9 (e) copy or imaging services retained by counsel to assist in the duplication of
10 confidential material, provided that counsel for the party retaining the copy or imaging service
11 instructs the service not to disclose any confidential material to third parties and to immediately
12 return all originals and copies of any confidential material;

13 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
14 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
15 A), unless otherwise agreed by the designating party or ordered by the court. Pages of
16 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
17 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
18 under this Order;

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

21 4.3 Filing Confidential Material. Before filing confidential material or discussing or
22 referencing such material in court filings, the filing party shall confer with the designating party
23 to determine whether the designating party will remove the confidential designation, whether the
24 document can be redacted, or whether a motion to seal or stipulation and proposed order is
25 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
26 standards that will be applied when a party seeks permission from the court to file material under
27 seal.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
3 or non-party that designates information or items for protection under this Order must take care
4 to limit any such designation to specific material that qualifies under the appropriate standards.
5 The designating party must designate for protection only those parts of material, documents,
6 items, or oral or written communications that qualify, so that other portions of the material,
7 documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or delay the case development process or to impose unnecessary
12 expenses and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated
14 for protection do not qualify for protection, the designating party must promptly notify all other
15 parties that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
17 (see, *e.g.*, second sentence of section 5.2(b) below), or as otherwise stipulated or ordered,
18 disclosure or discovery material that qualifies for protection under this Order must be clearly so
19 designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains
23 confidential material. If only a portion or portions of the material on a page qualifies for
24 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
25 making appropriate markings in the margins).

26 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
27 participating non-parties must identify on the record, during the deposition or other pretrial

1 proceeding, all protected testimony, without prejudice to their right to so designate other
2 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
3 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
4 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
5 confidential information at trial, the issue should be addressed during the pre-trial conference.

6 (c) Other tangible items: the producing party must affix in a prominent place on the
7 exterior of the container or containers in which the information or item is stored the word
8 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
9 the producing party, to the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the designating party’s
12 right to secure protection under this Order for such material. Upon timely correction of a
13 designation, the receiving party must make reasonable efforts to ensure that the material is
14 treated in accordance with the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
19 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the
21 original designation is disclosed.

22 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
23 regarding confidential designations without court involvement. Any motion regarding
24 confidential designations or for a protective order must include a certification, in the motion or in
25 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
26 conference with other affected parties in an effort to resolve the dispute without court action. The
27

1 certification must list the date, manner, and participants to the conference. A good faith effort to
2 confer requires a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
4 intervention, the designating party may file and serve a motion to retain confidentiality under
5 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
7 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
8 other parties) may expose the challenging party to sanctions. All parties shall continue to
9 maintain the material in question as confidential until the court rules on the challenge.

10 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
11 LITIGATION

12 If a party is served with a subpoena or a court order issued in other litigation that compels
13 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
14 party must:

15 (a) promptly notify the designating party in writing and include a copy of the
16 subpoena or court order;

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

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
21 designating party whose confidential material may be affected.

22 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
24 material to any person or in any circumstance not authorized under this Order, the receiving
25 party must immediately (a) notify in writing the designating party of the unauthorized
26 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
27 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of

1 this Order, and (d) request that such person or persons execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
4 MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of the
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
8 provision is not intended to modify whatever procedure may be established in an e-discovery
9 order or agreement that provides for production without prior privilege review. The parties agree
10 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 10. NON TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals, each receiving
13 party must return all confidential material to the producing party, including all copies, extracts
14 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
15 destruction.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
19 work product, even if such materials contain confidential material.

20 The confidentiality obligations imposed by this Order shall remain in effect until a
21 designating party agrees otherwise in writing or a court orders otherwise.

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PRESENTED BY:

DATED March 12, 2018

s/ Michael E. Kipling

Michael E. Kipling, WSBA #7677

Timothy M. Moran WSBA #24925

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Counsel for Plaintiff MetroPCS New York, LLC

1 **SO ORDERED**

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

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8 DATED: March 12, 2018

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12 **RICARDO S. MARTINEZ**
13 **CHIEF UNITED STATES DISTRICT JUDGE**

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Protective Order that was issued by
6 the United States District Court for the Western District of Washington on _____ in
7 the case of *METROPCS NEW YORK, LLC v. 35-46 BROADWAY, INC.; and ABDALLAH*
8 *NOFAL, DAWOD NOFAL and SAED NOFAL* (USDC WD-WA #17-cv-01554-RSM). I agree to
9 comply with and to be bound by all the terms of this Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment in the
11 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
12 item that is subject to this Protective Order to any person or entity except in strict compliance
13 with the provisions of this Order.

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

17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____