

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

IN RE: T-MOBILE CUSTOMER DATA)
SECURITY BREACH LITIGATION,) MDL No. 3019
)
) Master Case No. 4:21-MD-03019-BCW
ALL ACTIONS)

**ORDER GOVERNING PRODUCTION OF ELECTRONICALLY STORED
INFORMATION**

WHEREAS, the named Plaintiffs (for themselves and on behalf of the proposed classes) and Defendants T-Mobile USA, Inc. and T-Mobile US, Inc. (collectively, “T-Mobile” and with Plaintiffs, the “Parties,” or individually, a “Party”) have met and conferred on protocols for the format of the Parties’ production of hard copy documents and electronically stored information (as defined in Federal Rule of Civil Procedure 34(a)(1)(A), “ESI”) and on a plan to be followed to aid the Parties in identifying and/or culling potentially responsive documents and ESI; and

WHEREAS, the Parties have agreed that the following shall apply to all discovery of ESI and hard copy documents by the Parties in this case, unless the Parties agree in advance and in writing or if the ESI Order is modified by the Court.

WHEREAS, except as specifically set forth herein, this ESI Order does not: (a) alter or affect the applicability of the Federal Rules of Civil Procedure (“Federal Rules”) or any Local Rules of the U.S. District Courts (“Local Rules”), as applicable; (b) address, limit, determine, or affect the relevance, discoverability, or admissibility as evidence of any document or ESI, regardless of whether the document or ESI is to be preserved, is preserved, or is produced; (c) alter or affect the objections to discovery available under the Federal Rules of Civil Procedure; or (d) require the production of documents or ESI that is protected from disclosure by the attorney-client privilege, work product doctrine, or any other privilege, immunity, or protection from disclosure.

NOW THEREFORE, it is hereby STIPULATED and ORDERED:

I. GENERAL GUIDELINES

1. **General.** The proportionality standard set forth in Federal Rule of Civil Procedure 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible. The Parties further agree to meet and confer to the extent that this ESI Order imposes any undue burden or expense on a Party with respect to its response to any particular discovery request.

2. **Variations.** If any Party identifies a circumstance where application of this ESI Order is not reasonably achievable for technological or other reasons, the Parties will meet and confer in an effort to reach agreement on an appropriate deviation from this ESI Order. In the event the Parties cannot reach agreement, the matter may, consistent with L.R. 37, be submitted to the Court for determination.

3. **Preservation.** Pursuant to Federal Rule of Civil Procedure 26, the Parties shall take reasonable and proportional steps to preserve reasonably accessible documents that are relevant to the claims and defenses in the Litigation. Activities undertaken by or at the direction of counsel in compliance with the duty to preserve information are protected from disclosure and discovery under the Federal Rule of Civil Procedure 26(b)(3). Nothing in this Paragraph expand the scope of what is provided by the Federal Rules.

- a. Nothing in this ESI Order shall require the Parties to collect or produce information that is outside of the Party's possession, custody, or control, or that is not reasonably accessible because of undue burden or cost.

- b. Absent a showing of good cause by the requesting Party, the Parties shall not be required to modify procedures used by them in the ordinary course of business to back-up and archive data; provided, however, that the Parties shall preserve all discovery ESI and documents in their possession, custody, or control.
- c. Absent a showing of good cause by the requesting Party, the following categories of ESI need not be preserved:
 - i. Deleted, overwritten, slack, fragmented, or other data only accessible by forensics.
 - ii. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
 - iii. On-line access data such as temporary internet files, history, cache, cookies, and the like.
 - iv. Data in metadata fields that are frequently updated automatically, such as last-opened dates (see also Section (E)(5)).
 - v. Back-up data that is substantially duplicative of data that is more accessible elsewhere.
 - vi. Data remaining from systems no longer in use that is unintelligible on the systems in use.
 - vii. Duplicative electronic data (e.g. email, calendars, contact data, and notes) on or from mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), that is routinely saved elsewhere (such as on a server, laptop, desktop computer, or “cloud” storage).

- viii. Corrupted data or otherwise inaccessible files that cannot be recovered by the systems currently in use.
- ix. Voicemail recordings, except for those automatically forwarded to the recipient's email account.
- x. System and program files defined on the NIST list.
- xi. Encrypted data/password protected files, where the key or password cannot be ascertained absent extraordinary efforts.
- xii. Data stored on photocopiers, scanners, and fax machines.

4. **LIAISON REPRESENTATIVES.** Lead counsel will have primary responsibility for substantive negotiations about discovery matters. In addition, each Party will identify an e-discovery liaison representative that is and will be knowledgeable about, and responsible for, discussing their respective ESI. Each liaison representative will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this action. The Parties will rely on the liaison representatives, as needed, to confer about ESI and to help resolve disputes without Court intervention.

II. FORMAT OF PRODUCTIONS

The parties agree to produce documents in the following production formats:

- 5. **Electronically Stored Information (ESI)** will be produced as follows:
 - a. **Natives:** Non-privileged Audio/Video files, spreadsheets, CAD drawings, and any file that cannot be rendered to tagged image format (.TIFF) will be produced in native. Each native file will be named after its bates number and shall have an accompanying bates-stamped single placeholder TIFF saying "File Provided in Native Format" that also indicates the confidentiality

treatment of the record.

- b. **Images:** All documents (except those designated to be produced in native above) will be produced as single-page, black and white Group IV, 300 DPI .TIFF images; or single page .JPEGs for color docs along with an .OPT image cross-reference file.
- c. **Text:** Document-level extracted text files or Optical Character Recognition (“OCR”) text files (for redacted records) shall be provided for each record produced. Extracted text shall include all non-privileged content including all comments, track changes, hidden content, and/or speaker’s notes within each file. OCR text files should contain any un-redacted portions of the documents.
- d. **Data:** A standard (Concordance) delimited .DAT file with UTF-8 encoding containing paths for the native files and document-level text files, and the fields listed in Attachment A shall be provided.
- e. **Format for Production of Message-Based Applications:** If a party determines that messages from message-based applications are responsive, the entire 24-hour period for the day in which the responsive message was sent along with any relevant metadata. If there are attachments, those should be produced along with the message following the parent-child relationship captured in Paragraph 13. The producing Party is not required to search for or produce information contained within links that are included in the messages. However, if the receiving Party feels that a link to non-public sources may contain responsive information, the Parties shall meet and confer in good faith.

f. **Zero-Byte Files.** The Parties may filter out stand-alone files identified as zero-bytes in size that do not contain responsive file links or file names.

6. **Hard-copy documents:** Hard Copy documents should be scanned and produced as single-page, black and white Group IV, 300 DPI .TIFF images along with OCR text, an .OPT image cross-reference file, and a .dat load file as noted above. The .dat file should contain all available fields in the .dat load files for each scanned document to the extent captured at the time of collection. The Parties will make reasonable best efforts to ensure that hard copy documents are logically unitized when scanned. Distinct documents should not be merged into a single record, and single documents should not be split into multiple records (*i.e.*, paper documents should be logically unitized¹). In the case of an organized compilation of separate documents (for example, a binder containing several separate documents behind numbered tabs), the document behind each tab should be scanned separately, but the relationship among the documents in the compilation should be reflected in the proper coding of the beginning and ending document and attachment fields. The Parties agree not to degrade the searchability of hard copy documents as part of the document scanning or production process. Although color originals may be scanned in black and white (“B&W”), either Party may subsequently request, by Bates number(s), a replacement set of images in color or for the file in another format if that requesting Party demonstrates that the loss of the color detracts from the usability or reduces the ability to understand the information imparted in the original.

¹ Logical Unitization is the process of human review of each individual page in an image collection using logical cues to determine pages that belong together as documents. Such cues can be consecutive page numbering, report titles, similar headers and footers, and other logical indicators.

7. **Redactions.** Any redactions shall be clearly indicated on the face of the document and shall be indicated in the REDACTED field in the .dat load file. If documents that the Parties have agreed to produce in native format need to be redacted, they will either be produced in redacted TIFF format or in redacted native format using a native redaction tool created for the purpose should the Parties have access to same, at the discretion of the producing Party. Other than as permitted by this ESI Order, an order concerning confidentiality agreed to and/or entered in this Litigation, or consent of the Parties, no redactions for relevance may be made within a produced document or ESI item.
8. **Databases, Structured, Aggregated or Application Data.** To the extent that databases, structured, aggregated or application data contain responsive information, the Parties shall meet and confer to determine a reasonable and proportional method for producing responsive information from these sources.
9. **De-NISTing.** Electronic files will be De-NISTed, removing commercially available operating system and application file information contained on the current NIST file list.
10. **Deduplication.** Deduplication of ESI is expected. A producing Party shall deduplicate ESI horizontally (globally) across the population of records (based on MD5 or SHA-1 hash values at the parent document level). Attachments should not be eliminated as duplicates for purposes of production, unless the parent email and all attachments are also duplicates. The ALL CUSTODIAN metadata field shall be updated to indicate all custodians for any document that has been deduped.
11. **Email Threading.** The Parties may use analytics technology to identify email

threads and need only produce the unique most inclusive copy and related family members (including all attachments within the thread) and may exclude lesser inclusive copies.

12. **Embedded Files.** Substantive embedded object and/or files (*e.g.*, Excel spreadsheets, Word documents, audio and video files, etc.), shall be extracted, searched and produced consistent with other ESI as family groups. Embedded files should be assigned Bates numbers that directly follow the Bates numbers on the documents within which they are embedded. Non-substantive images and logos embedded in emails (*e.g.*, MS Office embedded images, email in-line images, logos, etc.) shall not be extracted during processing of files.
13. **Parent-Child Relationships.** For email families, the parent-child relationships (the association between emails and attachments) should be preserved and email attachments should be consecutively produced with the parent email record. Each document shall be produced with the production number for the first and last page of that document in the “BegBates” and “EndBates” fields of the data load file and with the “BegAttach” and “EndAttach” fields listing the production number for the first and last page in the document family.
14. **Time Zone.** To the extent reasonably practicable, ESI items shall be processed using GMT as the time zone by all Parties.
15. **Bates Numbering.** Bates numbering shall be consistent across the production, contain no special characters, and be numerically sequential within a given document. If a Bates number or set of Bates numbers is skipped, the skipped number or set of numbers should be noted with a placeholder page. Attachments to documents will be

assigned Bates numbers that directly follow the Bates numbers on the documents to which they were attached. In addition, wherever possible, each *.tiff image will have its assigned Bates number electronically “burned” onto the image.

16. **Encryption.** To maximize the security of information in transit, any media or file sharing electronic document repository on which documents are produced must be encrypted. Production deliverables provided via File Transfer Protocol (“FTP”) shall be made available on a secured FTP connection. In such cases, the Parties shall transmit the encryption key or password to a requesting Party, under separate cover, contemporaneously with sending the encrypted media, or correspondence indicating the availability of the encrypted FTP deliverables.

III. IDENTIFICATION AND COLLECTION OF DOCUMENTS AND ESI

17. **Meet and Confer.** The Parties will meet and confer in order to, where possible, reach an agreement on search methodologies with the goal of limiting the scope of review for production, minimizing the need for motion practice, and facilitating production in accordance with the deadlines set by the Court or agreed upon by the Parties. The Parties agree and understand that their respective responses are based on their knowledge and understanding as of the date of the response and that further inquiry may reveal additional information pertinent to the efficient, effective collection of potentially relevant materials. Nothing in this ESI Order shall require a Party to use certain search, culling or prioritization methodologies and nothing shall preclude a producing Party from performing a responsiveness or privilege review to determine if documents captured by search terms are in fact responsive to the requesting Party’s requests.
18. **Custodians and Storage Locations.** The Parties shall meet and confer and attempt

to reach agreement on the producing Party's custodial and non-custodial sources of information from which information will be collected for purposes of discovery.

19. **Search Terms.** If a producing Party intends to use search terms in connection with the collection and/or production of documents and ESI, including culling documents prior to reviewing the documents for relevance, the producing Party shall first confer in good faith with the requesting Party to determine the mutually agreeable search terms before the initial production of documents and ESI subject to such search terms. As part of the meet and confer process, the Parties shall exchange proposed lists of search terms with an explanation of how such terms will be applied, a list of proposed custodians, and the time period or temporal scope of documents that will be searched. The exchange of search terms will include the proposal of internal terminology or project names, where applicable. Hit reports will be provided for search terms upon request.

19. **TAR.** As part of discovery, the producing Parties agree that they may use advanced analytics (*i.e.*, technology-assisted-review, Active Learning, etc.)—separately or in addition to search terms—to help to identify responsive documents for production. If the producing Party intends to use TAR/Active Learning to identify responsive documents for production, the Parties will meet and confer and agree upon a TAR Protocol to govern the TAR process.

20. **Date Range.** The Parties shall meet and confer regarding the appropriate date range to be applied to the documents.

21. **Rolling Basis.** Documents will be produced on a rolling basis pursuant to a schedule agreed upon by the Parties and consistent with the Case Management Order. The Parties reserve the right to supplement production as necessary.

22. **Good Faith.** The Parties will act in good faith and use these procedures to identify and reduce the potential for disputes that may arise in connection with the search and/or review

methodologies selected by any producing Party.

23. **Continuing Obligations.** The Parties recognize that discovery shall be an iterative and cooperative process. The Parties will continue to meet and confer regarding any issues as necessary and appropriate. This ESI Order does not address or resolve any objections to the scope of the Parties' respective discovery requests.

24. If any disputes arise, the Parties shall meet and confer in a good faith effort to reach a mutually agreeable solution. If they cannot agree, the matter may be brought to the Court in accordance with the Court's procedure for discovery disputes.

IV. PROCESSING OF NON-PARTY DOCUMENTS

25. A Party that issues a non-Party subpoena ("Issuing Party") must include a copy of this ESI Order with the subpoena and request that the non-Party produce documents in accordance with the specifications set forth herein.

26. The Issuing Party is responsible for producing to all other Parties any document(s) obtained pursuant to a subpoena to any non-Party in the form in which the document(s) was/were produced by the non-Party. Productions by a non-Party should be produced by the Issuing Party to all other Parties within ten (10) calendar days of the non-Party's production to the Issuing Party.

27. For the avoidance of doubt, nothing in this ESI Order is intended to or should be interpreted as narrowing, expanding, or otherwise affecting the rights of the Parties or non-Parties to object to a subpoena.

V. PRIVILEGE LOGS

28. The Parties recognize that some documents may be redacted or withheld on the grounds of attorney-client privilege, work-product doctrine, common interest/ joint defense, or other recognized protections from disclosure (collectively, "privilege"). The Parties agree that

documents within responsive families withheld due to privilege should be replaced with a slipsheet that says “Document Withheld for Privilege” such that the production remains family complete. Complete families of documents withheld entirely for privilege shall not be slip-sheeted. For the period prior to August 12, 2021, the Parties will provide document-by-document privilege logs. For the period starting August 12, 2021, and continuing until the discovery end date to be negotiated by the Parties, the Parties agree that the following provisions with respect to privilege logs will apply:

- a. Defendants are not required to log privileged or work product communications created on or after August 12, 2021, and exchanged solely between Outside Counsel and In-House Counsel concerning the litigation or purportedly privileged forensic investigation.
- b. Defendants are not required to log privileged or work product communications created on or after August 12, 2021, and exchanged solely between Outside Counsel and T-Mobile employees concerning the litigation.
- c. Defendants are not required to log privileged or work product communications created on or after August 12, 2021, and exchanged between Outside Counsel, In-House Counsel, and T-Mobile employees concerning the litigation.
- d. For all other documents and communications created on or after August 12, 2021, Defendants will provide a metadata log of privileged or work product communications that includes the following fields:
 - i. Priv Number
 - ii. Priv Attachment Begin #
 - iii. Image Count

- iv. Attachment Count
 - v. Sent Date (only for emails)
 - vi. Created Date (only for non-email documents)
 - vii. Last Modified Date (only for non-email documents)
 - viii. File Extension
 - ix. Email Subject or File Name
 - x. Authors or Chat Participants, which will consist of metadata from the “Author” field in native documents, and Sent By (for emails)
 - xi. Recipients (only for emails)
 - xii. Copyees/Blind Copyees (only for emails)
 - xiii. Basis for withholding the document, such as “Attorney-Client Privilege” or “Work Product Doctrine.”
- g. If any disputes arise concerning any privilege log, the Parties shall meet and confer to try to reach a mutually agreeable solution. If they cannot agree, the matter may be brought to the Court in accordance with the Court’s procedure for discovery disputes.

29. **No Waiver of Privilege.** This ESI Protocol expressly incorporates and restates Paragraphs 30 through 33 of the Stipulated Confidentiality Order (the “Protective Order”).

VI. MISCELLANEOUS PROVISIONS

30. **Effect of Order.** The Parties’ agreement to this ESI Order is without prejudice to the right of any Party to seek an order from the Court to rescind or amend this Order for good cause shown. Nothing in this ESI Order abridges the rights of any person to seek judicial review or to pursue other appropriate judicial action with respect to any discovery ruling made by the

Court in this matter.

31. The Parties' Protective Order will govern the treatment of information warranting confidential treatment, among other things. Nothing contained herein shall contradict the Parties' rights and obligations with respect to the Protective Order.

32. **Good Faith Compliance and Conferral Obligation.** The Parties will make good faith efforts to comply with and resolve any differences concerning compliance with this ESI Order. No Party may seek relief from the Court concerning compliance with this Order unless it has first conferred with the other Parties. If the Parties cannot reach agreement, the matter may be brought to the Court in accordance with the Court's procedure for discovery disputes and L.R. 37.

IT IS SO ORDERED.

DATE: June 8, 2022

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT

Exhibit A

Field	Definition	Doc Type
SOURCE/ORGANIZATION	Name of party producing the document	All
CUSTODIAN	Name of person or other data source (non-human) from where documents/files are produced.	All
ALLCUSTODIANS	Name(s) of All Custodians associated with the record including where documents have been removed as a duplicate.	All
BEGDOC	Bates number of the first page of the document.	All
ENDDOC	Bates number of the last page of the document.	All
BEGATTACH	First Bates number of family range (i.e. Bates number of the first page of the parent e-mail)	E-mail
ENDATTACH	Last Bates number of family range (i.e. Bates number of the last page of the last attachment)	E-mail
FILESIZE	File Size	All
FILE TYPE	The file type of a document (e.g., MS Excel Spreadsheet).	All
FILE NAME	The file name of a document	E-Document
FILE EXTENSION	File extension of a document, e.g. PDF, MSG, DOCX	All
NATIVEFILELINK	For documents provided in native format only	All

Field	Definition	Doc Type
TEXTPATH	File path for OCR or Extracted Text files	All
FROM	Sender	E-mail
TO	Recipient	E-mail
CC	Additional Recipients	E-mail
BCC	Blind Additional Recipients	E-mail
SUBJECT	Subject line of e-mail	E-mail
SORT DATE/Time	Date & Time taken from (Email) Date/Time Sent, (Email) Date/Time Rcvd, or (EDocs) Date/Time Last Modified, repeated for parent document and all children items to allow for date sorting. Formatted as: mm/dd/yyyy hh:mm:ss	E-mail, E-Document
ATTACHCOUNT	Number of attachments to an e-mail	E-mail
DATE/TIME_SENT (mm/dd/yyyy hh:mm:ss AM)	Date Sent	E-mail
DATE/TIME_RCVD (mm/dd/yyyy hh:mm:ss AM)	Date Received	E-mail
E-mail Outlook Type	Type of Outlook item, e.g., e-mail, calendar item, contact, note, task	Outlook or similar system data
MD5HASHVALUE	MD5 hash value	All
TITLE	The extracted document title of a document.	E-document
AUTHOR	Author field from metadata of a native file.	E-document
DATE/TIME_CREATED (mm/dd/yyyy hh:mm:ss AM)	Creation Date & Time	E-document
LAST MODIFIED BY	Last person who modified (saved) a	E-document

Field	Definition	Doc Type
DATE/TIME_LASTMOD DD(mm/dd/yyyy hh:mm:ss AM)	Last Modified Date & Time	E-document
DocumentType	Descriptor for the type of document: “E-document” for electronic documents not attached to e-mails; “E-mail” for all e-mails; “E-attachment” for files that were attachments to e-mails; and “Physical” for hard copy physical documents that have been scanned and converted to an electronic image.	All
Importance	High Importance - indicates Priority E-mail message.	E-mail
Page Count	Page count or image count	All
ProdVol	Name of production volume that on.	All
ProdDate	Date production volume produced by producing party	All
Confidentiality	Confidentiality level if assigned pursuant to any applicable Protective Order or stipulation.	All
Redacted	“Yes” should be populated if document contains redaction. (Yes/No format)	