

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY DALE, BRETT JACKSON,
JOHNNA FOX, BENJAMIN
BORROWMAN, ANN LAMBERT,
ROBERT ANDERSON, and CHAD
HOHENBERY, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

DEUTSCHE TELEKOM AG, and
T-MOBILE US, INC.,

Defendants.

Case No. 1:22-cv-03189

Hon. Thomas M. Durkin

Hon. Jeffrey Cole

**DECLARATION OF HILL BRAKEFIELD IN SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL T-MOBILE TO USE
PLAINTIFFS' PROPOSED CUSTODIAN LIST**

I, Hill Brakefield, declare as follows:

1. I am admitted to the State Bar of Texas and the District of Columbia Bar, and I am admitted *pro hac vice* in this case. I am an associate at the law firm of Hausfeld LLP, and Counsel for Plaintiffs in the above-captioned manner. I make this declaration in support of Plaintiffs' Motion to Compel T-Mobile US, Inc. ("T-Mobile") to Use Plaintiffs' Proposed Custodian List. I have personal knowledge of the facts set forth herein, and, if called as a witness, I could and would competently testify thereto.

2. On March 18, 2024, T-Mobile served Plaintiffs with a list of proposed custodians. The proposed list included named 29 individuals and provided their job titles.

3. On May 2, 2024, Plaintiffs served on T-Mobile a list of proposed custodians. The proposed list included all 29 individuals listed in T-Mobile's March 18, 2024 proposal plus 31 additional individuals.

4. Plaintiffs met and conferred with counsel for T-Mobile regarding their competing custodian proposals on three occasions via videoconference, including on: June 10, 2024; July 18, 2024; and August 6, 2024. Plaintiffs also exchanged several letters and emails with T-Mobile regarding the custodian proposals.

5. At the meet and confer held on June 10, 2024, counsel for T-Mobile told Plaintiffs' counsel that T-Mobile was willing to add John Kain, Nestor Cano, Peter DeLuca, Mollie McDirmid, Kevin McLaughlin, Matt Staneff, Jay Bluhm, Janice Kapner, Gavin Olmstead, and Jay Miglionico to the list of custodians it proposed on March 18, 2024, which would bring the total number of custodians to 39. The parties then discussed objections T-Mobile had to the other 21 custodians listed on Plaintiffs' May 2, 2024 proposal. T-Mobile objected to multiple individuals because it described their jobs as legal roles. Plaintiffs' counsel explained that they sought discovery from these individuals because these individuals were involved in the merger, and some of them primarily worked on the lobbying and public messaging surrounding the merger. T-Mobile's counsel then agreed to discuss Plaintiffs' positions with their client and respond in writing.

6. On June 21, 2024, T-Mobile's counsel sent Plaintiffs' counsel a letter regarding Plaintiffs' May 2 correspondence and the parties' June 10 meet and confer. The letter conveyed that T-Mobile was willing to add eleven custodians to the list of custodians it proposed on March 18, 2024: John Kain, Nestor Cano, Peter DeLuca, Mollie McDirmid, Kevin McLaughlin, Matt Staneff, Jay Bluhm, Janice Kapner, Gavin Olmstead, John Stevens, and Jay Miglionico. This brought the total number of custodians to 40. The rest of the letter articulated individual objections to the remaining custodians in Plaintiffs' May 2, 2024 proposal.

7. On July 1, 2024, Plaintiffs' counsel sent T-Mobile's counsel a letter responding to the June 21, 2024 correspondence from T-Mobile's counsel. The letter conveyed that Plaintiffs would drop eight individuals from their May 2, 2024 proposal and add one custodian to bring the total number of proposed custodians to 53. Plaintiffs indicated that they would no longer seek to

include Laura Buckland as a custodian, reducing the number of custodians whose roles T-Mobile described as legal in nature from 4 to 3.

8. At the meet and confer held on July 18, 2024, the parties discussed Plaintiffs' interest in having several individuals as custodians, including the individuals whose roles T-Mobile described as legal in nature. Plaintiffs' counsel explained that they believe these individuals have relevant documents based on the documents and transcripts Plaintiffs have received thus far from the pre-merger investigations and litigation. T-Mobile's counsel stated that T-Mobile does not believe every in-house lawyer's documents are privileged, but that they believe any relevant and non-privileged documents possessed by requested lawyers would be captured in the productions of other custodians T-Mobile offered.

9. On July 22, 2024, T-Mobile's counsel sent Plaintiffs' counsel a letter regarding Plaintiffs' July 1 correspondence and the parties' July 18 meet and confer. The letter conveyed that T-Mobile was willing to add 10 more of the custodians Plaintiffs requested in their July 1 letter, bringing the total number of custodians to 50, if Plaintiffs would agree to withdraw their request to include Mark Nelson, Dave Miller, and Kathleen Ham as custodians. The rest of the letter articulated various objections to including those three "in-house attorney custodians."

10. On July 24, 2024, Plaintiffs' counsel emailed T-Mobile's counsel in response to the July 22 letter from T-Mobile's counsel. That email articulated the factual and legal bases for Plaintiffs seeking to include Mark Nelson, Dave Miller, and Kathleen Ham as custodians. It also proposed dropping three of its other previously requested custodians in exchange for including Mark Nelson, Dave Miller, and Kathleen Ham in a 50-custodian list.

11. At the meet and confer held on August 6, 2024, T-Mobile maintained its objections to including Mark Nelson, Dave Miller, and Kathleen Ham as custodians. Its position was that including these custodians would create a significant burden to review for and log privileged documents and that non-privileged documents would be duplicative of other custodians' documents. Plaintiffs offered to cut one of the in-house counsels from the custodian list, bringing the total custodians down to 49. T-Mobile rejected that offer. Plaintiffs indicated

they would be open to discussing modified privilege logging requirements for these custodians to obviate T-Mobile's privilege objections. T-Mobile also rejected that offer. Plaintiffs therefore declared an impasse.

12. Attached as Exhibit A is a chart comparing the parties' most recent custodian proposals.

13. Attached as Exhibit B is a true and correct copy of T-Mobile's March 18 Proposal for Custodian List.

14. Attached as Exhibit C is a true and correct copy of Plaintiffs' May 2 Proposal for Custodian List.

15. Attached as Exhibit D is a true and correct copy of an excerpt of a document produced by T-Mobile in this litigation beginning at Bates number TMO_Dale_00009794.

16. Attached as Exhibit E is a true and correct copy of the June 21, 2024 letter from Scott Hvidt, T-Mobile's counsel, to Hill Brakefield, Plaintiffs' counsel, regarding Plaintiffs' May 2 Proposal for Custodian List and the parties' June 10 meet and confer.

17. Attached as Exhibit F is a true and correct copy of the July 1, 2024 letter from Hill Brakefield, Plaintiffs' counsel, to Scott Hvidt, T-Mobile's counsel, regarding Scott's June 21 letter.

18. Attached as Exhibit G is a true and correct copy of the July 22, 2024 letter from Scott Hvidt, T-Mobile's counsel, to Hill Brakefield, Plaintiffs' counsel, regarding Hill's July 1, 2024 letter and the parties' July 18 meet and confer.

19. Attached as Exhibit H is a true and correct copy of the July 24, 2024 email that Hill Brakefield, Plaintiffs' counsel, sent to T-Mobile's counsel regarding Scott Hvidt's July 22, 2024 letter.

20. Attached as Exhibit I is a true and correct copy of an excerpt of a document produced by T-Mobile in this litigation beginning at Bates number TMO_Dale_00056670.

21. Attached as Exhibit J is a true and correct copy of a document produced by T-Mobile in this litigation beginning at Bates number TMO_Dale_00004768.

22. Attached as Exhibit K is a true and correct copy of a document produced by T-Mobile in this litigation beginning at Bates number TMUS_SpntMerger_T_00535437.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 28, 2024

Respectfully submitted,

/s/ **Hill Brakefield**

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*Interim Co-Lead Class Counsel for Plaintiffs and
the Proposed Class*

CERTIFICATE OF SERVICE

I, Hill Brakefield, an attorney, hereby certify that this **Declaration of Hill Brakefield** was electronically filed on August 28, 2024, and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

Respectfully submitted,

/s/ Hill Brakefield

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