

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 21-2989-MDL-ALTONAGA/Torres

IN RE:

**JANUARY 2021 SHORT SQUEEZE
TRADING LITIGATION**

This Document Relates to the Non-Federal Securities Actions

**MOTION TO ENTER PROPOSED JOINT ADDENDUM TO STIPULATED ORDER
REGARDING ESI PROTOCOL AND FORMAT OF PRODUCTIONS**

Pursuant to the Court's Order dated July 13, 2021 entering the Stipulated Order Regarding ESI Protocol and Format of Productions (the "ESI Protocol") [ECF No. 341], Plaintiffs and Defendants in the cases not governed by the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u04, et seq. (collectively, the "Parties"), by and through their undersigned counsel, hereby jointly and respectfully move for an entry of an Joint Addendum to Stipulated Order Regarding ESI Productions, attached hereto as Exhibit A (the "ESI Addendum").

The ESI Protocol provided that the Parties meet and confer concerning certain items in the ESI Protocol and to report back to the Court within thirty (30) days of the entry of the ESI Protocol. The Parties have met and conferred and, while reaching substantial agreement as to many of the issues, were unable to reach agreement as to them all. The Parties exchanged draft versions of the ESI Addendum. Through the Parties' cooperation and diligence, the remaining issues in dispute have been substantially narrowed and are set forth for the Court's guidance and resolution below. Competing provisions are identified by highlights in Exhibit A along with the Proposing Party.

A. Parameters for Custodian ESI Collection [Ex. A, Part IV]

Plaintiffs' Position.

1. Phone Records/Billing Statements (Part IV.C)

Plaintiffs propose that phone billing statements be produced for Custodians. Billing statements generally contain more than an invoice, they also show itemized call and text details for each phone number. *See, e.g.*, T-Mobile & Sprint, Monthly Statement | Sprint Support, <https://www.sprint.com/en/support/solutions/account-and-billing/understand-the-monthly-statement-page-on-sprint-com.html> (last visited Aug. 13, 2021) (indicating call detail is provided in billing statements for T-Mobile and Sprint users); Verizon, How to view & download mobile bill statements & bill history, <https://www.verizon.com/support/view-latest-bill/> (last visited Aug. 13, 2021) (Verizon bill statements show “data usage, call and text activity”) (emphasis added). Plaintiffs have reason to believe from their review of the limited documents ordered produced that many key communications occurred by telephone on or around January 28, 2021, and indeed, many of the communications thus far reviewed are relevant to the allegations in Plaintiffs’ consolidated complaints. Billing statements that include those call details are relevant and probative because it will aid the Parties in determining who called whom when on or around January 28, 2021. *See Chavez v. Mercantil Commercebank, N.A.*, Case No. 10-23244-DIV, 2011 WL 1135005, at **1-3 (S.D. Fla. Mar. 28, 2011) (ordering production of “phone bills and records” “including, but not limited to, cell phone bills and records and land-line bills and records”); *see also De La Torre v. Legal Recovery Law Office*, Case No. 12-cv-2479-LAB (DHB), 2014 WL 1279738, at **2-3 (S.D. Cal. Mar. 27, 2014) (ordering production of phone bills where complaint contains allegations of telephone communications).

2. Contact Data in Excel Format (Part IV.F)

Plaintiffs propose that contact data be exported to Excel or other spreadsheet format as agreed to by the Parties. Plaintiffs have reason to believe from their review of the limited documents previously produced that many key communications occurred on several different

platforms that may or may not export contacts into an easily readable format. Given the multitude of cloud-based collaboration platforms in use, e.g., Slack, Microsoft Teams, Google Chat, Google Hangouts, Skype, etc., email platforms and other digital messaging platforms, and their general proliferation in business environments due to the COVID-19 pandemic, contacts within those platforms should be produced in a standardized format, i.e., Excel or another mutually agreed upon format.

Defendants' Position

1. Phone Records/Billing Statements (Part IV.C)

Plaintiffs' proposal would require Defendants to agree, at this early stage in the litigation, to adopt parameters related to the production of billing statements and other phone records for all phone numbers used by all Custodians. It is premature to conclude, before discovery has even commenced, that such phone records are relevant to this litigation, let alone that they are relevant for all Custodians and for all of their phone numbers (whether used for work purposes or not). Plaintiffs' proposal also incorrectly presumes that each corporate defendant would somehow have access to and control over the personal phone records of all Custodians. Plaintiffs conceded that these records could be gathered through a request for production. To the extent Plaintiffs believe such records are relevant, they can request them as part of the discovery process and the parties can consider their relevance at that time. The limited purpose of this order is to adopt parameters for potential productions for which discovery has not yet been propounded or the relevance of the request been assessed. Plaintiffs cite two cases where the production of phone records was ordered. However, neither case stands for the proposition that a party is entitled to guarantee discovery of phone billing records in an ESI protocol before discovery has even commenced. *Chavez v. Mercantil Commercebank, N.A.* considered a motion to compel in the context of document requests during the discovery process, No. 10-23244-CIV, 2011 WL 1135005, at *1 (S.D. Fla. Mar. 28, 2011), while the order granting the motion to compel in *De La Torre v. Legal Recovery Law Office* only covered those portions of the requested phone bills that the

court considered relevant in light of the complaint, *i.e.*, conversations between Plaintiff and Defendant, and required redaction of all third party information, No. 12-CV-2579-LAB DHB, 2014 WL 1279738, at *1 (S.D. Cal. Mar. 27, 2014).

2. Contact Data in Excel Format (Part IV.F)

Plaintiffs' proposal would require Defendants to agree, at this early stage in the litigation, that they will adopt parameters related to the production of all "contacts" records associated with all Custodians' email, phone, and other messaging applications. It is premature to conclude, before discovery has even commenced, that contacts records are relevant to this litigation, let alone that they are relevant for all Custodians and for all of their phones and messaging applications (whether used for work purposes or not). To the extent Plaintiffs believe such records are relevant, they can request them as part of the discovery process and the parties can consider their relevance at that time.

Dated: August 14, 2021

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2021, I electronically filed the foregoing document with the Clerk for the United States District Court, Southern District of Florida. The electronic case filing system (CM/ECF) will send a Notice of Electronic Filing (NEF) to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

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