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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 T-MOBILE US, INC., *et al.*,
16 Plaintiffs,

17 vs.

18 WCO SPECTRUM LLC, *et al.*,
19 Defendants.

Civil Action No. 2:23-4347-DMG-E
(Hon. Dolly M. Gee)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS WCO SPECTRUM
LLC, ACADEMIA SPECTRUM LLC,
GARY WINNICK, CARL
KATERNDAHL, ANDREAS
BITZARAKIS, AND TYLER
KRATZ’S MOTION FOR
PROTECTIVE ORDER STAYING
DISCOVERY PENDING MOTION
TO DISMISS**

Complaint Filed: June 2, 2023
Hearing Date: October 13, 2023
Time: 9:30 a.m.
Courtroom: 8C

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1 Defendants WCO Spectrum, LLC, Academia Spectrum, LLC, Gary Winnick,
 2 Carl Katerndahl, Andreas Bitzarakis, and Tyler Kratz,¹ by and through their
 3 undersigned counsel, respectfully move this Court for an order staying discovery
 4 until their forthcoming motion to dismiss this case is decided.

5 I. INTRODUCTION

6 This is a business dispute. Defendant WCO is an investment company
 7 interested in purchasing FCC electromagnetic spectrum licenses currently held by
 8 non-profit educational institutions, many of which serve underrepresented minorities
 9 and first-generation students. These potential purchases constitute an existential
 10 threat to Plaintiff and telecommunications giant T-Mobile,² which—through leases
 11 for bandwidth from these educational institutions at bargain basement rates—holds
 12 a virtual monopoly in the space. T-Mobile cannot afford for these leases to pass from
 13 cash-strapped, not-for-profit schools and colleges to commercial firms that would
 14 charge T-Mobile market-rate prices (potentially *thirty times higher*) for this
 15 bandwidth when the leases expire. Nor can T-Mobile afford to purchase the licenses
 16 outright. So, T-Mobile has resorted to threats, intimidation, and—most effectively—
 17 litigation to hamstring these schools and to thwart Defendants’ transactions with the
 18 institutions.

19 While this is the first time T-Mobile has filed a complaint against Defendants
 20 in this Court, the parties are not strangers.³ This lawsuit is at least the seventh
 21 proceeding T-Mobile has brought to interfere with Defendants’ license purchases. T-
 22 Mobile’s allegations twist fair competition and shrewd investment strategy into an
 23

24 ¹ Defendants WCO Spectrum, LLC, and Academia Spectrum, LLC are referred to throughout this Memorandum as
 25 “WCO,” and “Academia” respectively. Defendants Gary Winnick, Carl Katerndahl, Andreas Bitzarakis, and Tyler
 Kratz are referred to collectively as the “Individual Defendants.”

26 ² Plaintiffs T-Mobile US, Inc., Clearwire Spectrum Holdings LLC, Clearwire Spectrum Holdings II LLC, Clearwire
 Spectrum Holdings III LLC, Fixed Wireless Holdings LLC, NSCA LLC, TDI Acquisition Sub LLC, and WBSY
 Licensing LLC are all affiliated entities, and are referred to collectively as “T-Mobile” throughout this memorandum.

27 ³ See, e.g., Linda Hardesty, *T-Mobile’s fight with WCO Spectrum gets ugly*, FIERCE WIRELESS (June 9, 2023, 12:27
 28 PM), <https://www.fiercewireless.com/wireless/t-mobiles-fight-wco-spectrum-gets-ugly> (attached as Exhibit A).

1 implausible, nonsensical, and self-defeating racketeering scheme. The claims are
2 meritless, and Defendants will soon move to dismiss them entirely. But T-Mobile’s
3 tactical and vexatious litigation pattern is designed to advance its true aims: (1) to
4 gain access to Defendants’ business strategies and trade secrets through abuse of the
5 discovery process, and (2) to protect its virtual monopoly by abusing legal process to
6 intimidate, harass, and oppress Defendants and the largely minority and
7 underprivileged educational institutions stuck under T-Mobile’s yoke.

8 By this motion, Defendants ask the Court to stay discovery until their
9 forthcoming Motion to Dismiss is briefed, argued, and decided. This is not a case
10 where a defendant seeks a discovery stay simply because a motion to dismiss exists.
11 There is good cause here. T-Mobile’s claims sound in fraud: they must be pleaded
12 with particularity under the Federal Rules of Civil Procedure. Those pleading
13 obligations are even more rigorous when a litigant tries to allege RICO claims, which
14 are sharply disfavored by federal courts across the country. That heightened pleading
15 standard exists, among other reasons, to ensure that plaintiffs cannot inflict the
16 enormous burden and expense of discovery upon defendants and the courts without
17 first showing a specific factual basis for their allegations and meeting the very high
18 pleading standards for such claims. Yet T-Mobile has not done so. This despite
19 having *already* extracted nearly twelve thousand pages of documents from
20 Defendants through its previous six lawsuits. And while armed with the account of a
21 supposed “anonymous whistleblower,” whom T-Mobile has—after nearly two
22 years—still not identified and concedes it cannot identify.

23 T-Mobile has proven its willingness to file civil actions as a pretext to seek
24 invasive corporate strategic and financial discovery from WCO six times over. All
25 the other courts faced with the question refused to allow T-Mobile’s improper and
26 abusive discovery tactics. This Court should not permit a seventh try. Defendants
27 respectfully request that the Court enter a protective order staying discovery until
28

1 their forthcoming Motion to Dismiss is decided.

2 **II. FACTUAL BACKGROUND**

3 With over 113.6 million subscribers, Plaintiff T-Mobile is one of the largest
4 providers of wireless telecommunications service in the United States. ⁴ Defendant
5 WCO is a private firm interested in investing in Educational Broadband Service
6 (“EBS”) spectrum licenses. WCO’s business sits poorly with T-Mobile, as it presents
7 an existential threat to the cellular carrier’s business model. But not through
8 racketeering, fraud, or trickery; instead, via the power of the free market and a
9 thoughtful investment strategy.

10 **A. An Existential Threat to T-Mobile’s Business**

11 In 2019, the Federal Communications Commission (“FCC”) adopted rule
12 changes which allowed—for the first time in decades—the free market sale of
13 Educational Broadband Service (“EBS”) licenses for the 2.5 GHz band of the
14 electromagnetic spectrum.⁵ These licenses, in essence, permit EBS license holders
15 to transmit signals at certain radio frequencies within their local geography.
16 Previously, licenses for the 2.5 GHz frequencies had been reserved for educational
17 purposes and awarded exclusively to Public TV stations and other nonprofit entities
18 with educational missions. The FCC eventually granted EBS license holders the right
19 to lease excess spectrum to commercial services, and the license holders started
20 leasing to cellular providers: but none more than T-Mobile.

21 T-Mobile leases EBS bandwidth from *approximately 85%* of the EBS license
22 holders. Most of T-Mobile’s lessors are schools, colleges, and public boards of
23 education. These are not powerful institutions with Harvard-sized endowments and
24

25 ⁴ See *T-Mobile Delivers Record Customer Growth, Adding an Expected Industry-Best 6.4 Million Postpaid Customers*
26 *and 2.0 Million* T-MOBILE.COM (Jan. 4, 2023), <https://www.t-mobile.com/news/business/t-mobile-preliminary-customer-results-2022> (attached as Exhibit B).

27 ⁵ See Evran Kavlak, *Public Broadcasters – Do You Hold an EBS License? It May Be Worth More Than You Think*,
28 PUBLICMEDIA.CO (Feb. 23, 2021), <https://publicmedia.co/ebs-license/#:~:text=EBS%20has%20its%20roots%20in.excess%20capacity%20to%20commercial%20services> (attached as Exhibit C).

1 legions of wealthy alumni. Instead, these are smaller non-profits, many of whom
 2 educate primarily underserved communities, minorities, and first-generation
 3 students.

4 This leased EBS bandwidth is key to T-Mobile’s strategy,⁶ and for years T-
 5 Mobile has paid a relative pittance for it.⁷ After all, since only qualifying educational
 6 institutions were permitted to own EBS licenses, and there existed only so many
 7 potential lessees for their excess bandwidth, T-Mobile could negotiate from a
 8 position of strength. So much strength, in fact, that some analysts believe T-Mobile’s
 9 spectrum leases are worth more than twice what it pays for them.⁸

10 Once the FCC’s rule change took effect, however, T-Mobile’s spectrum
 11 landlords had a potential escape: selling their EBS licenses to third parties. By selling,
 12 the license holders could monetize their slice of the 2.5GHz band for a fair market
 13 price immediately, rather than waiting on small, cut-rate lease payments trickling in
 14 from T-Mobile over time. And by buying these licenses, WCO is positioned to
 15 renegotiate for fair, market-rate prices⁹ as the existing leases expire over the coming
 16 fifteen years. Everybody wins—except T-Mobile, which loses a virtual monopoly
 17 and a competitive advantage it has exploited for decades (at the expense of non-profit
 18 schools, colleges, and universities) which T-Mobile believes makes it “the envy of
 19 [its] competition.”¹⁰

21 ⁶ See Monica Allevan, *T-Mobile claims 5G mid-band PoP star status*, FIERCE WIRELESS (Mar. 9, 2022, 4:47 PM),
 22 <https://www.fiercewireless.com/wireless/t-mobile-stokes-mid-band-5g-coverage-rivalry> (attached as Exhibit D.)

23 ⁷ T-Mobile’s lease agreements have historically seen it pay between \$.03 and \$.14 per MHz-PoP. See Linda Hardesty,
 24 *WCO Spectrum has \$1B in active offers to buy 2.5 GHz spectrum*, FIERCE WIRELESS (Jul 15, 2022, 12:00 PM),
 25 <https://www.fiercewireless.com/wireless/wco-spectrum-has-1b-active-offers-buy-25-ghz-spectrum> (attached as
 Exhibit E).

26 ⁸ See Linda Hardesty, *Could the C-band auction set the price T-Mobile will pay for EBS Licenses?*, FIERCE WIRELESS
 27 (Aug. 2, 2023, 9:42 a.m.), <https://www.fiercewireless.com/5g/could-c-band-auction-set-price-t-mobile-will-pay-eps-licenses> (attached as Exhibit F).

28 ⁹ In April 2021, the U.S. government auctioned off a similar band of spectrum for approximately \$81.11 billion, at a
 unit price of \$0.94/MHz-PoP, shattering the world record for spectrum at the time. At these prices, it could cost T-
 Mobile anywhere between \$25 and \$50 billion just to maintain its EBS licenses.

¹⁰ See Monica Allevan, *T-Mobile claims 5G mid-band PoP star status*, FIERCE WIRELESS (Mar. 9, 2022, 4:47 PM),
<https://www.fiercewireless.com/wireless/t-mobile-stokes-mid-band-5g-coverage-rivalry> (attached as Exhibit D.)

1 T-Mobile cannot tolerate WCO making competing bids for EBS licenses and
 2 has fought desperately to stop it. T-Mobile first tried market collusion,
 3 (unsuccessfully) asking WCO to lower its bid prices to educational institutions.
 4 When WCO refused to collude with T-Mobile to deny EBS license holders fair
 5 market value, T-Mobile turned to threats and intimidation. It has threatened and
 6 intimidated schools that try to deal with WCO, including attempting to block public
 7 institutions from responding to FOIA requests for WCO regarding the terms of its
 8 lease agreements (which are, in many cases, public contracts).¹¹ But T-Mobile’s
 9 most potent tactic has been litigation, strategically employed to deter WCO’s lawful
 10 dealings with the schools for their valuable EBS licenses.

11 **B. T-Mobile Weaponizes the Courts Through Strategic Litigation**

12 On May 27, 2021, TDI Acquisition Sub, LLC—a holding company subsidiary
 13 of T-Mobile—sued Albright College in the Berks County Court of Common Pleas,
 14 Pennsylvania because WCO expressed an interest in possibly purchasing Albright’s
 15 EBS license (the “Albright Case”). T-Mobile leases the EBS spectrum licensed to
 16 Albright pursuant to a written lease agreement. T-Mobile did not name WCO or any
 17 other Defendant here in the Albright Case. T-Mobile did, however, use the Albright
 18 Case to pursue extraordinarily invasive competitive research into WCO and
 19 Academia via non-party subpoenas. The issued subpoenas were broad in scope,
 20 seeking sensitive information pertinent to WCO and Academia’s business strategies
 21 that bore no relevance to the transaction with Albright College.

22 Albright College and WCO never completed a deal for Albright’s EBS license.
 23 A small liberal arts college, Albright lacked the financial resources and appetite to
 24 litigate with T-Mobile. So, Albright and WCO made binding representations to the
 25

26 ¹¹ See, e.g. Exhibit G (collecting letters sent by T-Mobile and its attorneys threatening schools with litigation and
 27 demanding their noncompliance with FOIA requests); Linda Hardesty, *T-Mobile fights hard to keep its 2.5 GHz leases*
 28 *secret*, FIERCE WIRELESS (Mar. 9, 2022, 9:27 AM), <https://www.fiercewireless.com/5g/t-mobile-fights-hard-keep-its-25-ghz-leases-secret> (attached as Exhibit H).

1 Berks County court that they would not complete a transaction, rendering the
2 Albright Case moot. Nevertheless, T-Mobile continued to press its subpoenas—
3 seeking intrusive and irrelevant discovery to a now-mooted action. It instigated
4 proceedings in Delaware and Virginia to enforce the subpoenas. WCO and Academia
5 succeeded in limiting the scope of T-Mobile’s subpoenas to only those documents
6 pertinent to the transaction underlying its cause of action: WCO’s possible purchase
7 of Albright College’s EBS License. WCO and Academia produced 11,448 pages of
8 documents concerning the potential transaction between WCO and Albright College
9 to T-Mobile.

10 While the Albright Case was pending,¹² T-Mobile’s alleged “whistleblower”
11 supposedly appeared,¹³ anonymously calling T-Mobile’s counsel and detailing
12 WCO’s supposed fraudulent “scheme.” The “whistleblower” provided no
13 corroboration, except for two documents *already produced in discovery* by WCO,
14 and a two-page “narrative” which persists in the anonymity of its criticisms. At a
15 hearing on March 21, 2022, the Berks County Court ordered T-Mobile to provide
16 copies of the alleged whistleblower documents to Albright (the only other party in
17 the case) and directed that they should also be produced to WCO (a non-party).¹⁴ T-
18 Mobile completely ignored the Berks County Court’s directive.

19 On June 1, 2022, WCO petitioned to intervene in the Berks County action,
20 which that court granted on July 11, 2022. The Berks County Court repeated its
21 directive to T-Mobile to turn over the “whistleblower” documents, and also ordered
22 T-Mobile to provide WCO (and Albright) with an unredacted copy of its Amended
23 Complaint.¹⁵ T-Mobile never did so, ignored the Court’s order, and voluntarily
24

25 ¹² T-Mobile’s complaint claims that the “whistleblower” came forward on October 25, 2021. (ECF No. 1 ¶ 48)
26 ¹³ The “whistleblower” remains anonymous to this day. (ECF No. 1 ¶ 48) (stating that the identity of the whistleblower
27 “remains unknown” to plaintiffs—nearly two years after he first came forward).
28 ¹⁴ Transcript of Hearing, 36:7-37:5, *TDI Acquisition Sub, LLC vs. Albright College*, No. 21-04881 (Ct. of C.P, Berks
29 Cty., Pa. Mar. 21, 2022) (relevant excerpts attached as Exhibit I).
30 ¹⁵ Transcript of Hr’g on WCO’s Motion to Intervene, 43:22-44:16, 45:9-45:17, *TDI Acquisition Sub, LLC vs. Albright
31 College*, No. 21-04881 (Ct. of C.P. Berks Cty., Pa. July 11, 2022) (relevant excerpts attached as Exhibit J).

1 dismissed the Albright Case after WCO’s intervention was granted. WCO has moved
2 the Berks County court to re-open the Albright Case and is seeking sanctions against
3 T-Mobile for its repeated contempt of the Berks County Court’s orders.

4 On May 6, 2022—while the Albright Action was still pending and while still
5 in contempt of the Berks County Court’s orders—T-Mobile commenced a second
6 lawsuit in Philadelphia County. But it did not file a Complaint. Instead, T-Mobile
7 petitioned the Philadelphia court to permit it pre-complaint discovery. After a lengthy
8 hearing, the Philadelphia court flatly rejected this request and entered a protective
9 order against T-Mobile.¹⁶ Unable to further pursue its invasive, anticompetitive
10 discovery through the Philadelphia lawsuit, T-Mobile dismissed it (without ever
11 filing a complaint) on May 30, 2023 (a year after it was filed, and three days before
12 it filed this lawsuit).

13 Concurrently with the Albright Case, on March 25, 2022, NSAC, LLC
14 (another subsidiary of T-Mobile) sued the School Board of St. Lucie County, Florida.
15 ¹⁷ The St. Lucie Board, like Albright College, had the temerity to notify T-Mobile
16 that it was considering a transaction with WCO for its EBS License. Already
17 entangled with T-Mobile over the Albright Case (and by this point aware that T-
18 Mobile would use the St. Lucie litigation as a pretext for further intrusive discovery),
19 WCO withdrew its offer to the St. Lucie Board, rendering that case moot.

20 On April 14, 2023, T-Mobile sued yet another educational institution that gave
21 notice of a potential transaction with WCO: Lorain County Community College
22
23

24 ¹⁶ Transcript of Hr’g on T-Mobile’s Mot. to Compel., 42:8-42:22, *T-Mobile U.S., Inc. et al. v. WCO Spectrum, LLC, et*
25 *al.*, No. 220500629 (Ct. of C.P., Philadelphia, Pa. Nov. 10, 2022) (“[I]f this case is what [T-Mobile says] it is or should
26 be, and [it] has this whistleblower who has information, then [it] should have enough information to file the complaint.
27 If [it doesn’t], then I don’t know what else to tell you... But I can tell you real clear, I am not inclined to give pre-
28 complaint discovery on this matter...I’m denying your motion for pre-complaint discovery.”) (Patrick, J.) (relevant
excerpts are attached as Exhibit K); Order Denying Mot. To Compel, 42:8-42:22, *T-Mobile U.S., Inc. et al. v. WCO*
Spectrum, LLC, et al., No. 220500629 (Ct. of C.P., Philadelphia, Pa. Nov. 10, 2022) (attached as Exhibit L).

¹⁷ See Complaint, *NSAC, LLC v. The School Board of St. Lucie County, Florida*, No. 2:22-cv-14106-AMC (S.D. Fl.
Mar. 25, 2022) (attached as Exhibit M).

1 (“LCCC”) in Elyria, Ohio.¹⁸ And, yet again, T-Mobile’s strategic litigation paid
 2 dividends. The transaction between WCO and LCCC was aborted, the case was
 3 mooted, and the parties stipulated for dismissal on June 23, 2023.

4 On June 2, 2023, T-Mobile filed its Complaint in this action. ECF No. 1. This
 5 is at least the seventh proceeding that T-Mobile has initiated over Defendants lawful
 6 transactions to attempt to purchase EBS licenses. T-Mobile has collected 11,448
 7 pages of documents from Defendants. According to the Complaint, T-Mobile has had
 8 access to a self-proclaimed “whistleblower” for nearly two years.¹⁹ Nevertheless, this
 9 is the first time T-Mobile has actually named Defendants in a complaint – even
 10 though 18 months ago it told the Berks County Court that if it were allowed to review
 11 the “whistleblower’s” documents it would promptly file suit against WCO (and assert
 12 further claims) against Albright College.²⁰ Despite having all of the same
 13 information then that it now possesses, T-Mobile did nothing – other than flagrantly
 14 ignore two separate court orders from the Berks County court.

15 **III. ARGUMENT**

16 Defendants will soon move the Court to entirely dismiss T-Mobile’s claims.
 17 But, absent a stay, that motion will not deter T-Mobile from its true objective: to
 18 thwart Defendants’ legitimate interest in EBS Spectrum Licenses from the cash-
 19 needy institutions currently in T-Mobile’s grip. While the motion is being briefed,
 20 argued, and decided, there is every reason to believe that T-Mobile will probe
 21 Defendants for competitive intelligence under the guise of broad, burdensome
 22 discovery and continue to use third party discovery to intimidate, threaten and coerce
 23 non-profit schools from even considering monetizing these valuable assets. After all,
 24 it has done so many times already. T-Mobile’s tactics thus far advance its true goal:

25 _____
 26 ¹⁸ See Complaint, *Clearwire Spectrum Holdings II, LLC vs. Lorain County Community College*, No. 1:23-cv-00752-
 JG (N.D. Ohio Apr. 14, 2023) (attached as Exhibit N).

27 ¹⁹ ECF No. 1. ¶ 48.

28 ²⁰ Transcript of Hearing, 6:20 – 7:9, *TDI Acquisition Sub, LLC vs. Albright College*, No. 21-04881 (Ct. of C.P., Berks
 Cty., Pa. Mar. 21, 2022) (attached as Exhibit I).

1 to stop Defendants from buying EBS spectrum at any cost.

2 This Court must force T-Mobile—after years of legal maneuvering, 11,448
3 pages of document discovery produced, and armed with the account of an anonymous
4 “whistleblower”—to supply at least enough facts in its Complaint to satisfy the high
5 federal pleading standards for RICO and fraud claims before allowing T-Mobile any
6 more discovery from Defendants.

7 **Good Cause Exists to Stay Discovery Until Defendants’ Motion is Decided**

8 Under Rule 26, the Court “may, for good cause, issue an order to protect a
9 party or person from annoyance, embarrassment, oppression, or undue burden or
10 expense.” Fed. R. Civ. P. 26(c). “[T]he power to stay proceedings is incidental to the
11 power inherent in every court to control the disposition of the causes on its docket
12 with economy of time and effort for itself, for counsel, and for litigants.” *Landis v.*
13 *N. Am. Co.*, 299 U.S. 248, 254 (1936). District courts have broad discretionary power
14 to control discovery and may stay discovery to “protect a party or person from
15 annoyance, embarrassment, oppression, or undue burden or expense” upon a showing
16 of good cause. Fed. R. Civ. P. 26(c)(1); *see also Kennedy v. Full Tilt Poker*, Case No.
17 2:09-cv-07964-MMM (AGRx), 2010 WL 11597364, at *2 (C.D. Cal. May 6, 2010).

18 Additionally, the Court has broad discretion to stay discovery pending the
19 outcome of a potentially dispositive motion. *See, e.g., Wenger v. Monroe*, 282 F.3d
20 1068, 1077 (9th Cir. 2002) (affirming district court’s grant of protective order staying
21 discovery until motion to dismiss was resolved); *Little v. City of Seattle*, 863 F.3d
22 681, 685 (9th Cir. 1988) (affirming stay of discovery pending resolution of summary
23 judgment motion); *U.S. ex rel Modglin v. DJO Global, Inc.*, No. CV 1207 152
24 MMMJ CGX, 2014 WL 12564275, at *2 (C.D. Cal. Feb. 20, 2014) (staying discovery
25 pending resolution of a motion to dismiss *qui tam* action sounding in fraud).

26 “In determining whether a stay is warranted, courts balance several factors,
27 including, for example: [a] the interests of the plaintiff in proceeding expeditiously
28

1 with the civil action and the potential prejudice to plaintiffs of a delay; [b] the burden
 2 on the defendants; [c] the convenience to the court; [d] the interests of persons not
 3 parties to the civil litigation; and [e] the public interest.” *Top Rank, Inc. v. Haymon*,
 4 Case No. 2:15-cv-04961-JFW (MRWx), 2015 WL 9952887, at *1 (C.D. Cal. Sep.
 5 17, 2015). Here, T-Mobile’s conduct to date, the self-defeating illogic of its claims,
 6 and the potential harm to Defendants, non-party educational institutions, the Courts,
 7 and the public interest all weigh in favor of a stay.

8 **A. T-Mobile Will Not Be Prejudiced By A Stay of Discovery**

9 T-Mobile will suffer no unfair prejudice from a stay of discovery. Even if T-
 10 Mobile’s (patently false) allegations of a convoluted racketeering enterprise are taken
 11 as true, that enterprise would inflict no ongoing harm on T-Mobile. T-Mobile alleges
 12 that WCO makes sham offers which it is incapable of consummating to EBS license
 13 holders, hoping to induce T-Mobile to exercise a contractual right of first refusal.
 14 (*See generally* ECF No. 1 ¶¶ 1-7). T-Mobile, when presented with WCO’s offer, must
 15 then decide whether to match the offer and purchase the EBS license for itself, or to
 16 decline and allow WCO to proceed with the offer. (*Id.* ¶ 1).

17 If T-Mobile is convinced as it claims that WCO’s offers are shams, then the
 18 second choice is the obvious one: T-Mobile need only decline to exercise its refusal
 19 right and allow the deal to go forward. By proceeding this way, T-Mobile *cannot*
 20 suffer any continuing harm: if the offers are, in fact, shams, WCO will not purchase
 21 the EBS licenses, and the status quo continues.

22 If the offers are legitimate (they are) and WCO ultimately purchases the EBS
 23 licenses, there is no fraud, and thus no harm to redress. Notably, T-Mobile has only
 24 permitted one WCO transaction to proceed unimpeded. In May 2022, WCO
 25 proceeded with the purchase of an EBS license from the Owasso public school
 26 district in Oklahoma, after T-Mobile declined to exercise its right of first refusal.²¹

27 _____
 28 ²¹ Mike Dano, *In Oklahoma, T-Mobile suddenly faces a new 5G spectrum landlord*, LIGHTREADING (May 18, 2022),
 BN 78120122v3 10

1 In all other cases where an EBS license holder has accepted an offer from WCO, T-
 2 Mobile has either exercised its right of first refusal or filed a lawsuit to stop the
 3 transaction.

4 Courts in this district have also recognized that it is appropriate to stay
 5 discovery in fraud cases that are, as here, subject to the heightened pleading standard
 6 of Rule 9(b). *See, e.g., U.S. ex rel Modglin v. DJO Global, Inc.*, No.
 7 CV1207152MMMJCGX, 2014 WL 12564275, at *2 (C.D. Cal. Feb. 20, 2014)
 8 (staying discovery pending resolution of a motion to dismiss *qui tam* action sounding
 9 in fraud); see also Fed. R. Civ. P. 9(b) (requiring claims sounding in fraud to be
 10 pleaded with particularity).

11 As the Ninth Circuit has instructed, Rule 9(b) serves “not only to give notice
 12 to defendants of the specific fraudulent conduct against which they must defend, *but*
 13 *also to deter the filing of complaints as a pretext for the discovery of unknown*
 14 *wrongs*, to protect defendants from the harm that comes from being subject to fraud
 15 charges, and to prohibit plaintiffs from imposing upon the court, the parties, and
 16 society enormous social and economic costs absent some factual basis.” *Bly-Magee*
 17 *v. California*, 236 F.3d 1014, 1018-19 (9th Cir. 2001) (citing *Wang v. FMC Corp.*,
 18 975 F.2d 1412, 1419 (9th Cir. 1992))(emphasis added). It is thus perfectly
 19 appropriate for the Court to stay discovery until it has had an opportunity to decide
 20 whether T-Mobile has met the heightened pleading requirements in Rule 9(b). *See,*
 21 *e.g., Modglin*, 2014 WL 12564275, at *3; *East Bay Municipal Utility Dist. v. Balfour*
 22 *Beatty Infrastructure, Inc.*, Case No. 13-cv-02032-WHO, 2013 WL 6698897, *9-10
 23 (N.D. Cal. Dec. 19 2013); *State of Calif. ex rel. Mueller v. Walgreen Corp.*, 175
 24 F.R.D. 638, 639 (N.D. Cal. 1997). T-Mobile should—at a minimum—be required to
 25 sufficiently plead its claims before it can be permitted to propound further discovery
 26

27 <https://www.lightreading.com/5g/in-oklahoma-t-mobile-suddenly-faces-new-5g-spectrum-landlord/d/d-id/777634>
 28 (attached as Exhibit O).

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1 upon Defendants.

2 T-Mobile has, thus far, shown no sign that it can support its RICO claim.
 3 According to T-Mobile’s complaint, its supposed “whistleblower” came forward on
 4 October 25, 2021: a full eighteen months before this lawsuit was filed. In that time,
 5 T-Mobile has not identified the alleged whistleblower, has failed to uncover
 6 supporting evidence from the almost 12,000 pages of sensitive internal documents
 7 already produced, and still cannot craft and plead a plausible RICO complaint. *See*
 8 *Bly-Magee*, 236 F.3d at 1019 (“Because ‘insiders privy to a fraud ... should have
 9 adequate knowledge of the wrongdoing at issue, such insiders should be able to
 10 comply with Rule 9(b).”). This factor favors staying discovery until Defendants’
 11 motion to dismiss is filed, heard, and resolved.

12 **B. T-Mobile’s Harassment of Defendants Will Continue Absent a**
 13 **Stay**

14 This is at least the seventh proceeding T-Mobile has brought to disrupt
 15 Defendants’ lawful transactions with EBS license holders in a strategic litigation
 16 campaign that has endured over two years. The first six times, T-Mobile shrewdly
 17 avoided verifying a complaint against Defendants—instead employing indirect
 18 means to pry into Defendants’ business strategies and trade secrets through third
 19 party subpoenas. Now, T-Mobile brings a spurious RICO charge, which inherently
 20 raises the specter of expensive and abusive discovery, and threatens to hamstring
 21 Defendants for months or years, all in aid of preventing Defendants’ legitimate
 22 business efforts and non-profit educational institutions’ efforts to bring needed
 23 liquidity to their schools (many of which serve minority and underserved
 24 populations) by monetizing their assets.

25 As stated by another judge from this district, “[e]ven if one ignores the *in*
 26 *terrorem* effect of spurious treble damage suits, **the danger of protracted and**
 27 **extraordinarily expensive discovery** engendered by civil RICO claims is all too

1 real.”) *PMC, Inc. v. Ferro Corp.*, 131 F.R.D. 184, 187 (C.D. Cal. 1990) (bold
 2 emphasis added, italic emphasis in original). “The need to reasonably limit the scope
 3 of discovery is acute for claims brought under the RICO statute.” *Id.* Indeed, the U.S.
 4 Supreme Court has recognized that the breath of the RICO language encourages
 5 attempts—like T-Mobile’s here—to turn business disputes into federal racketeering
 6 charges. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985).

7 T-Mobile’s efforts to disrupt WCO’s possible purchase of EBS licenses
 8 through the abuse of legal process are well-documented.²² Indeed, courts have issued
 9 vexatious litigant orders on parties for similar litigation patterns to T-Mobile’s here.
 10 *See Schneider v. Roberts*, No. CV 14-1668-UA, 2014 WL 1891416, (C.D. Cal. May
 11 9, 2014) (six total actions deemed sufficient to find the party’s filings duplicative,
 12 frivolous, and harassing); *Huggins v. Hynes*, No. SACV 02-810-DOC, Doc. 35 (five
 13 actions sufficient to deem party a vexatious litigant), *affirmed*, No. 03-55446, 117
 14 Fed.Appx. 517 (9th Cir. 2004); *Missud v. Nevada*, 861 F. Supp. 2d 1044, 1055-56
 15 (N.D. Cal. 2012) (eight actions sufficient).

16 T-Mobile has over the past two years: (1) sued at least three of its leaseholders
 17 over transactions with WCO, deeming WCO a “competitor” in each case; (2) used
 18 those lawsuits as pretexts to take discovery of WCO’s confidential business
 19 strategies; (3) served overbroad discovery upon WCO—a non-party—demanding
 20 irrelevant documents far outside the scope of the transactions T-Mobile sued over;
 21 (4) sued in two more state courts to enforce its overbroad subpoenas; (5) voluntarily
 22 withdrawn its own lawsuit rather than comply with court orders to provide reciprocal
 23 discovery to WCO and Albright College;²³ (6) filed in a sixth court for pre-complaint
 24

25 _____
 26 ²² Mike Dano, *Inside the messy world of T-Mobile’s midband 5G spectrum licenses*, LIGHTREADING (Jan. 24, 2022),
 27 <https://www.lightreading.com/5g/inside-the-messy-world-of-t-mobiles-midband-5g-spectrum-licenses/d/d-id/774745>
 (attached as Exhibit P).

28 ²³ WCO has moved to reopen the case in question to seek sanctions against T-Mobile for its repeated contempt of the
 Berks County Court’s two orders.

1 discovery; and (7) filed suit in this Court—its seventh forum in six states.²⁴ Given
 2 the noted expense of RICO discovery, T-Mobile’s conduct to date, and Rule 9(b)’s
 3 goal of protecting Defendants from spurious fraud charges, the potential (continued)
 4 burden to Defendants from discovery before the pleadings are entered and
 5 Defendants’ forthcoming motion to dismiss is resolved is tangible, imminent, and
 6 significant. This factor weighs heavily in favor of a stay.

7 C. Staying Discovery Is Convenient for the Court

8 One feature of heightened pleading for cases sounding in fraud (like T-
 9 Mobile’s RICO claims here) is to prohibit unscrupulous plaintiffs from imposing
 10 upon the Court the enormous social and economic costs of sweeping discovery
 11 without a sufficient factual basis. *Bly-Magee*, 236 F.3d at 1019. Absent a stay, T-
 12 Mobile will press on, precipitating a litany of discovery disputes and motion practice
 13 which will clog the Court’s docket and distract its attention from other legitimate,
 14 meritorious claims.

15 Staying discovery here will also create efficiencies for the Court by permitting
 16 it to orderly assess and resolve whether T-Mobile has alleged sufficient and specific
 17 enough facts to entitle it to continue its investigative activities. The drafters of the
 18 Manual for Complex Litigation encourage Courts to “[c]onsider procedures the
 19 sufficiency of the pleadings early on, before significant litigation activity
 20 commences” in civil RICO cases. MANUAL FOR COMPLEX LITIGATION (FOURTH) §
 21 35.32 (2004). The Manual specifically recommends that Courts consider “stay[ing]
 22 formal discovery pending resolution of motions challenging jurisdiction and
 23 deficiencies in the complaint.” *Id.* These strategies make sense because “[t]he

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 25 ²⁴ T-Mobile is likely counting on this Court’s statement in its Initial Standing Order advising parties “begin to conduct
 26 discovery before a scheduling order issues” to ensure Plaintiff can continue its inquests into Defendants’ business
 27 before the initial scheduling conference. But this Court has also stated that “[if]... the parties cannot mutually agree to
 28 engage in discovery before the Scheduling Conference, then they must await the Scheduling Conference and/or the
 issuance of the Court’s scheduling and Case Management Order.” *Limbu v. UST Global, Inc.*, 2017 WL 8186674, at
 *7 n.4 (C.D. Cal. Apr. 20, 2017) (Gee, J.). Defendants, naturally, do not consent to conduct discovery prior to the
 Scheduling Conference.

1 outcome of [motions pursuant to Rules 9(b) and 12] can affect the scope of the
 2 litigation by obviating discovery and other proceedings related to dismissed claims
 3 and possibly by removing the jurisdictional predicate for supplemental state law
 4 claims, allowing for their dismissal as well.” *Id.*

5 This factor favors a stay.

6 **D. Staying Discovery Will Protect Non-Profit Schools and Colleges**

7 T-Mobile’s anti-trust driven crusade against Defendants is not without
 8 substantial collateral damage: it has already used strategic suits against at least two
 9 non-profit educational institutions that had the audacity to deal with Defendants as a
 10 pretext for non-party discovery. There is no reason to believe T-Mobile will not use
 11 this case to employ the same tactic in reverse: suing Defendants here to take non-
 12 party discovery against the schools. Staying discovery until T-Mobile’s allegations
 13 have been deemed viable will protect potentially dozens of nonparties from needless
 14 expense and operational disruption.

15 Importantly, the cost to nonparty EBS license holders of spurious discovery
 16 efforts by T-Mobile under cover of an ultimately meritless lawsuit will be substantial.
 17 These are not wealthy institutions. Indeed, at least two have already given up on
 18 transactions with WCO—transactions which would have provided enormous
 19 financial infusions for these schools in serving their communities (\$16.2 million to
 20 Albright College alone, nearly a quarter of its total institutional endowment)—
 21 because they lack the resources to litigate with T-Mobile.²⁵ But by suing Defendants
 22 here and taking frenzied discovery before the Court can sufficiently evaluate its
 23 claims, T-Mobile’s efforts to bully its “captives” can continue unabated. Requiring
 24 T-Mobile to wait to take discovery until its claims are properly assessed by the Court
 25

26 _____
 27 ²⁵ As Albright College’s Counsel stated before the Berks County Court, this “is very clearly a fight between billion
 28 dollar entities, much larger scope than this poor truly innocent institution that was on the receiving end of an offer to
 buy an asset that it has.” Transcript of Hearing, 30:15-19, *TDI Acquisition Sub, LLC vs. Albright College*, No. 21-
 04881 (Ct. of C.P., Berks Cty., Pa. Mar. 21, 2022) (relevant excerpts attached as Exhibit I).

1 will spare the nonparty license holders from needless burdens and expenses that they
2 can ill afford. This factor favors staying discovery.

3 **E. Staying Discovery Will Serve the Public Interest**

4 In promulgating rule changes in 2019, the FCC made clear its intention to
5 create a free market for sales of EBS licenses. As noted in its Report and Order, the
6 Commission’s goals included “making more spectrum available for the commercial
7 marketplace.”²⁶ Throughout the rulemaking, the FCC continually emphasized that
8 its rules were intended to “allow market forces to determine [EBS spectrum’s]
9 highest and best use,” ultimately in service of the commission’s goal of “spurring
10 more efficient and effective use of the 2.5 GHz band.” T-Mobile’s strategic
11 deployment of litigation for anti-competitive means, including to lock in its virtual
12 monopoly on EBS and leases and to depress prices for the leased bandwidth by
13 keeping its educational institution lessors “captive,” runs directly counter to these
14 goals.

15 By staying discovery until Defendants’ motion is resolved, this Court will
16 ensure that—so far as T-Mobile chooses to avail itself of the legal system in its fight
17 to maintain its stranglehold on the EBS spectrum—it must do so with a legitimate,
18 sufficiently stated basis. This will, in turn, ensure that the lawful transactions of WCO
19 and the EBS license holders can continue without interference.

20 Critically, despite T-Mobile’s litigation positions in this case and at least six
21 others, T-Mobile does not—and cannot—allege that it is racketeering for WCO to do
22 business with non-profit educational institutions for their EBS license rights.
23 Inconvenient to T-Mobile, perhaps—but certainly not illegal. Indeed, T-Mobile’s
24 entire case theory relies on the notion that Defendants do not have any real interest
25 in purchasing spectrum. Permitting T-Mobile to prevent Defendants from purchasing
26 spectrum based on the theory that Defendants have no interest in purchasing spectrum

27 _____
28 ²⁶ <https://docs.fcc.gov/public/attachments/FCC-19-62A1.pdf> (Transforming the 2.5GHz Band) (Ex. P)

1 is an absurd result. Staying discovery, on the other hand, ensures that the transactions
2 can continue and, in turn, that the public’s interest in “allowing market forces to
3 determine [EBS spectrum’s] highest and best use” is effectuated. This factor favors
4 a stay.

5 **IV. CONCLUSION**

6 For the above reasons, Defendants respectfully request that this court grant
7 their motion, and enter a protective order staying all discovery in this matter until
8 Defendants’ forthcoming Motion to Dismiss is decided.

10
11 DATED: August 16, 2023

Respectfully submitted,
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A Professional Corporation

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CERTIFICATION OF MEET AND CONFER

The undersigned certifies that the parties met by video conference on August 9, 2023, thoroughly discussed each and every issue raised in this Motion, and attempted in good faith to resolve this Motion in whole or in part.

DATED: August 16, 2023

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CERTIFICATE OF WORD COUNT COMPLIANCE

The undersigned, counsel of record for Defendants WCO Spectrum LLC, Academia Spectrum LLC, Gary Winnick, Carl Katerndahl, Andreas Bitzarakis, and Tyler Kratz, certifies that this brief contains 5,757 words, which complies with the word limit of Local Civil Rule 11-6.1.

DATED: August 16, 2023

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