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8 WAL-MART STORES, INC.

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 * * *

12 CHERYL LEHMAN, individually: STEVE) CASE NO.: 2:15-cv-00098-JAD-GWF
LEHMAN, individually,)
13)
14 Plaintiffs,) STIPULATED PROTECTIVE ORDER
15 vs.)
16 WAL-MART STORES, INC., a Delaware)
corporation d/b/a/ WALMART; DOES I)
17 through X, inclusive and ROE)
CORPORATIONS I through X inclusive,)
18)
19 Defendants.)

20
21 WHEREAS, Plaintiffs CHERYL LEHMAN and STEVE LEHMAN (collectively
22 "Plaintiffs") and Defendant WAL-MART STORES, INC., ("Defendant"), which may be
23 referred to herein as the "Parties", or separately, as a "Party", are engaged in pretrial discovery
24 in the above-captioned litigation;

25 WHEREAS, certain discovery, including but not limited to documents that are
26 produced, responses to interrogatories, responses to requests for admissions, responses to

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1 subpoenas duces tecum and deposition testimony, may contain confidential, private, proprietary,
2 and/or trade secrets, or other sensitive business information; and,

3 WHEREAS, the Parties wish to provide a mechanism for the exchange of highly
4 confidential information that can only be seen by the Parties' attorneys and certain others; and,

5 WHEREAS, Rules 26(c) and 45 of the Federal Rules of Civil Procedure, NRS Chapter
6 600A, and other applicable law provide for the protection of confidential and trade secret
7 information, including the issuance of protective orders limiting the disclosure of discovered
8 information in appropriate circumstances, and Part VII, Rules 1 through 8, of the Nevada
9 Supreme Court Rules, provide for the filing under seal of confidential and trade secret
10 information;

11 NOW, THEREFORE, THIS ____ DAY OF _____, 2016, IT IS HEREBY
12 STIPULATED AND AGREED, by and between the Parties hereto, through their respective
13 undersigned attorneys, and subject to the approval of the Court, as follows:

14 1. This Confidentiality Agreement shall govern all documents, things, and
15 information produced or provided by the Parties, non-parties, and their respective
16 representatives in the above-captioned case that are designated "CONFIDENTIAL", pursuant to
17 Paragraph 2, and any copies, summaries, pleadings, transcripts, or other documents containing
18 quotations or references thereto or information contained therein. Without prejudice to the right
19 of a Party to object to the production of the following information or of a Party to seek
20 production, the information subject to such designation shall include the producing Party's;

- 21 a) Current or past business planning and financial information;
- 22 b) Operating statements or reports;
- 23 c) Trade secrets;
- 24 d) Past or current personnel or employee information;
- 25 e) Corporate financial statements;
- 26 f) Current and past marketing plans or methods;

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- 1 g) Financial information not publicly filed with any federal or state regulatory
2 authorities;
3 h) Confidential or sensitive customer information; and
4 i) Other confidential information the disclosure of which is likely to cause
5 competitive or commercial injury to the Producing Party
6 (collectively hereinafter referred to as "Confidential Information" and/or "CONFIDENTIAL".)

7 By designating a document, thing, material, testimony or other information derived
8 therefrom as "CONFIDENTIAL" under the terms of this Order, the Party making the
9 designation is certifying to the Court that there is a good faith basis both in law and in fact for
10 the designation.

11 2. Each page of each document produced pursuant to discovery in this action shall
12 bear a unique identifying. It shall be the duty of the Party or non-party who contends that
13 materials are to be treated as "CONFIDENTIAL" to mark such information with the legend
14 "CONFIDENTIAL."

15 3. Each Party that designates information or items for protection under this Order
16 must take care to limit any such designation to specific material that qualifies under the
17 appropriate standards. Each Party must take care to designate for protection only those parts of
18 material, documents, items, or oral or written communications that qualify as "Confidential
19 Information."

20 4. All "Confidential Information" produced or revealed by a Party or non-party in
21 the course of this litigation shall be used solely for the purpose of this litigation, including
22 mediation, arbitration, other settlement proceedings or negotiations or for appeal, and for no
23 other purpose, and shall not be disclosed to any person except in accordance with the terms of
24 this Protective Order.

25 5. All persons receiving or given access to "Confidential Information", in
26 accordance with the terms of this Order consent to the continuing jurisdiction of the Court for

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the purposes of enforcing this Order and remedying any violations of it.

6. Information designated as "CONFIDENTIAL" may be used only for purposes of prosecuting or defending this action, including mediation, arbitration, other settlement proceedings or negotiations or for appeal, and may not be disclosed to any person other than:

- a) The Parties' in-house counsel and paralegals, legal assistants, clerical, secretarial, and other staff employed or retained by the Parties' in-house counsel;
- b) The Parties' outside counsel and co-outside counsel, and the paralegals, legal assistants, clerical, secretarial, and other staff employed or retained by the Parties' outside counsel and co-outside counsel;
- c) The Parties and any of their officers, directors and employees who are assisting counsel in this litigation;
- d) Court Reporters and videographers while in performance of their official duties;
- e) Independent expert(s) and/or consultant(s) retained by or associated with any Party in order to assist that Party's counsel in the conduct of this litigation, but only to the extent that such disclosure is reasonably deemed necessary by such counsel for the performance of such assistance, and that such expert(s) or consultant(s) may retain "Confidential Information" only so long as is necessary for the performance of such assistance and may use such information only for providing assistance to counsel in this action; and provided that, in any event, all copies of any information designated as "CONFIDENTIAL" shall be returned by the expert or consultant to the Producing Party or destroyed not later than sixty (60) days after the termination of this litigation, whether by settlement, judgment, or appeal;
- f) This Court or a referee or any other Court-appointed person before whom or

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1 litigation, whether by settlement, judgment, or appeal.

2 10. Insofar as anyone who is not a Party produces documents to one or more of the
3 Parties, any Party can designate such documents as being "CONFIDENTIAL" within thirty (30)
4 days of that Party's receipt of such documents. To the extent that any Party is requested to
5 produce, through pretrial discovery or otherwise, "Confidential Information" of any person or
6 entity that is a non-party, this Protective Order will not be construed to require any Party to
7 disclose such Party's or non-party's "Confidential Information" in this action. However, it shall
8 be the duty of the designating Party to move for a Protective Order to prevent such disclosure.

9 11. In the event that any "Confidential Information" is used in any Court proceeding,
10 the information shall not lose its confidential status through such use, and the Party using such
11 information shall take all reasonable steps to maintain its confidentiality during such use. All
12 documents, transcripts, pleadings, motions and other materials filed or lodged with the Court
13 comprising, containing or reflecting "Confidential Information" shall be filed or lodged
14 pursuant to Nevada Supreme Court Rules, Part VII, Rule 3 and other applicable law.

15 12. Any designation of deposition testimony as "CONFIDENTIAL" shall be made at
16 the time such testimony is given or within thirty (30) days after the Parties' and/or deponent's
17 receipt of a transcript of such proceedings, whichever is later. When the transcripts of
18 testimony designated as being "CONFIDENTIAL" are prepared, the reporter shall place the
19 following legend on the cover of the transcript: "Certain portions of this transcript contain
20 Confidential Information subject to a Protective Order of the Court – these materials must be
21 filed or lodged pursuant to Nevada Supreme Court Rules, Part VII, Rules 1-8."

22 13. Except as otherwise provided for, nothing in this Order shall prevent or restrict
23 counsel for any Party in any way from inspecting, reviewing, using or disclosing any material
24 produced or provided by that Party, including "Confidential Information."

25 14. Nothing shall prevent disclosure beyond that required under this Order if the
26 producing Party consents in writing to such disclosure, or if the Court, after notice to all

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1 affected Parties, orders such disclosure and that Order is not subject to an appellate stay within
2 twenty (20) days after it is issued. Such disclosure shall not waive any rights or privileges of
3 any Party granted by this Order.

4 15. This Protective Order shall be without prejudice to the right of any Party or non-
5 party to bring before this court at any time the question of whether any particular information is
6 or is not discoverable or relevant to any issue in this case, is subject to a valid claim of attorney-
7 client privilege, work product protection, or any other privilege, or whether any particular
8 document or information should or should not be designated as "CONFIDENTIAL" in
9 accordance with the terms of this Protective Order. Neither any Party's failure to object to any
10 designation of information as being "CONFIDENTIAL", nor anything contained in this
11 Protective Order, shall be construed as a waiver of any rights and/or defenses by any Party,
12 including a claim that such information is not "CONFIDENTIAL" and/or protectable, or
13 construed in any manner as an admission by a Party that the documents and/or materials
14 subsequently designated or labeled by another Party and/or non-party as "CONFIDENTIAL" in
15 fact contains "Confidential Information."

16 16. Nothing contained in this Protective Order shall be construed to constitute a
17 waiver of a Party's right to claim, within thirty (30) days after its disclosure, that a document
18 not designated as "CONFIDENTIAL" is in fact "Confidential Information" within the terms of
19 this Protective Order, including documents produced by non-parties. No Party shall be
20 obligated to challenge the propriety of a designation of such information at the time such
21 designation is made, and a failure to make such challenge shall not preclude a subsequent
22 challenge to such designation.

23 17. If at any time a Party wishes for any reason to dispute a designation of discovery
24 material as "CONFIDENTIAL", such Party shall notify the designating Party of such dispute in
25 writing, specifying by exact document numbers the material in dispute and the precise nature of
26 the dispute with regard to each such document or other material. If the Parties are unable to

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1 amicably resolve the dispute, the proponent of confidentiality may apply by motion to the Court
2 for a ruling as to whether the designated material may, in accordance with the Nevada Supreme
3 Court Rules, Part VII, Rule 26(c) of the Federal Rules of Civil Procedure, and this Order,
4 properly be treated as "CONFIDENTIAL", provided such motion is made within thirty (30)
5 days from the date on which the Parties, after good faith attempt, cannot resolve the dispute or
6 such other time period as the Parties may agree. The designating Party shall have the burden of
7 proof on such motion to establish the propriety of its confidentiality designation.

8 18. The Parties agree that the inadvertent production of information subject to the
9 attorney-client privilege and/or work product doctrine (the "Privileged Information") shall not
10 constitute a waiver of such privilege and/or protection. Promptly upon discovery that any
11 "Privileged Information" has been produced, the Producing Party shall notify the other Party in
12 writing. Upon receipt of such notice, the Receiving Party shall not review such documents
13 further (except for the purposes of identifying them for their return to the disclosing Party
14 and/or destruction) and shall either return all copies of the same to the Producing Party or
15 destroy them. No use shall be made of such documents during depositions or at trial, nor shall
16 they be disclosed to anyone who was not given access to them prior to the request to return or
17 destroy them. The fact or circumstances of the inadvertent production may not be used by the
18 returning Party to support a motion to compel the returned documents. Nothing contained
19 herein is intended to, and/or does, constitute a waiver of any Party's right to challenge any
20 designation of "Privileged Information" and/or move to compel the production of such
21 documents.

22 19. In the event of a hearing or trial, including an appeal, in this matter at which any
23 Party or third party intends to present information or materials designated hereunder as
24 "Confidential Information", counsel for the Parties, and any third party, as applicable, will meet
25 and confer to determine what safeguards are necessary to protect against the disclosure of the
26 designated information or materials, and shall attempt to determine the least intrusive and

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1 burdensome means of protecting such materials during the proceeding. Counsel for the Parties,
2 and any third parties, as applicable, shall confer on appropriate procedures for protecting the
3 confidentiality of any documents, information and transcripts used in the course of any court
4 proceedings, and shall incorporate such procedures into the pre-trial order. In the event, the
5 Parties are not able to determine what safeguards are necessary to protect against the disclosure
6 of the designated information or materials during the proceedings, each Party reserves the right
7 to bring the issue before the trial judge for further consideration. The Parties stipulate that any
8 "CONFIDENTIAL" documents provided to the trial judge for review will be submitted under
9 seal.

10 20. If at any time any "Confidential Information" protected by this Confidentiality
11 Agreement or information produced in this litigation is subpoenaed from the Receiving Party by
12 any court, administrative or legislative body, or is requested, via formal discovery request or
13 otherwise, by any other person or entity purporting to have authority to require the production
14 of such information, the Party to whom the subpoena or other request is directed shall, within
15 three (3) business days of receipt, give the designating Party notice of said request. The Party
16 receiving notice of a pending discovery request, subpoena, or other inquiry, shall have three (3)
17 business days to, in writing, advise the Party from whom the discovery was requested of its
18 intent to protect the confidentiality of the information sought, or of its decision to allow it to be
19 disclosed. The Party objecting to the disclosure of the "Confidential Information" shall take all
20 steps it deems necessary at its own expense, including incurring and paying its own attorney's
21 fees. It is acknowledged and agreed that any violation or threatened violation of this provision
22 by any Party will cause immediate and irreparable harm entitling the other Party to obtain
23 injunctive relief, including a temporary restraining order without notice pending a hearing on an
24 application for preliminary injunction in addition to all other legal remedies available.

25 21. Nothing in this Protective Order shall be read to require a formal order of Court
26 prior to use of designated information, so long as its use is consistent with the terms of this

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1 Protective Order.

2 22. Nothing in this Protective Order is intended to and/or does amend, relieve, and/or
3 affect in any way any Party or non-party's pre-existing duties to maintain the confidentiality of
4 information that is presently or hereafter in its possession.

5 23. This Protective Order shall not prevent any Party from applying to the Court for
6 relief therefrom, or from applying to the court for further or additional protective orders.
7 Nothing herein shall prevent any Party from disclosing its own "Confidential Information" in
8 any manner that it considers appropriate.

9 24. This Order is enforceable by injunction and any violation or threatened violation
10 of this Order is enforceable by a request for injunction.

11 25. The terms of this Order shall survive and remain in effect after the termination
12 of this litigation. The Parties shall take such measures as are necessary and appropriate to
13 prevent the public disclosure of "Confidential Information", through inadvertence or otherwise,
14 after the conclusion of this litigation.



15 26. Except as otherwise may be agreed by the Parties, but not later than sixty (60)
16 days after the termination of this litigation, whether by settlement, judgment or appeal, all
17 copies of any information designated as "CONFIDENTIAL" shall be returned to the Producing
18 Party or destroyed, except for material reasonably considered by counsel to be their work
19 product. The Receiving Party shall certify in writing to the Producing Party that all such
20 information has been returned to the Producing Party or destroyed. Notwithstanding this
21 obligation, counsel of record for each Party may retain one copy of any designated materials
22 and of any pleadings filed under seal herein, and one copy of each of transcripts containing
23 designated material for their files.

24 27. The laws of the State of Nevada shall govern this Order without reference to the
25 principles of conflict of laws. The Parties hereto agree to submit any dispute or claims in any
26 way arising out of this Order to the Court presiding over the litigation if the litigation is still

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1 pending. If any portion of this agreement is deemed unenforceable, the unenforceable portion
2 shall be severed and the remainder of the Protective Order shall remain in full force and effect.
3 This Protective Order shall survive the termination of this action and the Court shall retain
4 jurisdiction following termination of the instant litigation for purpose of enforcing any
5 provisions of this Order.


6 IT SO STIPULATED

7 DATED this ___ day of May, 2016.	DATED this <u>2nd</u> day of May, 2016.
8 CHIU & ASSOCIATES	THE702FIRM #13235
9 	
10 ANDREW A. CHIU, ESQ. Nevada Bar No. 10326	MICHAEL C. KANE, ESQ. Nevada Bar No. 10096
11 LEE J. GRANT II, ESQ. Nevada Bar No. 11808	BRADLEY J. MYERS, ESQ. Nevada Bar No. 8857
12 7455 Arroyo Crossing Parkway, Suite 300	400 South 7th Street, Suite 400
13 Las Vegas, Nevada 89113	Las Vegas, NV 89101
14 <i>Attorney for Defendant</i>	<i>Attorney for Plaintiffs</i>
15 WAL-MART STORES, INC.	CHERYL LEHMAN & STEVE LEHMAN

16
17 **ORDER**

18 Based upon the foregoing, the Parties' Stipulated Confidentiality Agreement and
19 Protective Order is hereby **GRANTED**.

20 DATED this 9th day of May, 2016.

21
22 
23 GEORGE FOLEY, JR.
24 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGEMENT AND CONSENT TO JURISDICTION

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I, _____, acknowledge that I have been given a copy of and have read the foregoing Confidentiality Agreement, and I agree to be bound by its terms. I acknowledge and agree that any documents received by me in connection with this matter that have been designated as Attorney's Eyes Only Information, without limitation, those marked "CONFIDENTIAL" and any copies, excerpts, summaries, abstracts and electronic versions of such documents, shall not be disclosed to and/or discussed with anyone except as expressly provided in the Confidentiality Agreement. I consent to the jurisdiction of the United States District Court, District of Nevada for the purposes of enforcing the Confidentiality Agreement and penalizing violation thereof.

My address is _____

and my phone number is _____.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this ____ day of _____, 2016 at ____ a.m./p.m.

By: _____
SIGNATURE

NAME

TITLE

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