

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 14, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANDREA GARCIA,

Plaintiff,

v.

WALMART, INC. d/b/a WALMART
#2269; WAL-MART ASSOCIATES,
INC.; "DOE(S) 1-100" employees of
WALMART, INC. AND/OR
WALMART STORE #2269; and
"CORPORATION(S) XYZ 1-100,"
Defendants.

No. 1:23-CV-03116-MKD

ORDER GRANTING STIPULATED
PROTECTIVE ORDER

ECF No. 27

Before the Court is the parties' Stipulated Protective Order, ECF No. 27.

The Court finds good cause under Fed. R. Civ. P. 26(c) to issue an order to prevent certain categories of information produced by a party in discovery in this matter to prevent annoyance, embarrassment, oppression, or undue burden or expense.

Accordingly, **IT IS ORDERED:**

1. The parties' Stipulated Protective Order, **ECF No. 27**, is **GRANTED**.

1 **PROTECTIVE ORDER**

2 The parties have agreed to and have submitted to the Court, and for good
3 cause shown the Court hereby enters, the following Protective Order:

4 1. This Order shall govern the disclosure of materials designated as
5 Confidential Material in this litigation. Confidential Material, as used in this
6 Order, shall refer to any document or item designated as Confidential or
7 Confidential – Attorneys’ Eyes Only, including but not limited to, documents or
8 items produced during discovery, all copies thereof, and the information contained
9 in such material. Nothing in this Order shall require any party to produce any
10 specific documents or category of documents which a party deems inappropriate
11 for production.

12 **Definitions of Confidential Material**

13 2. Confidential Material, as used in this Order, consists of the following
14 materials and categories of materials:

- 15 a. Materials relating to any privileged, confidential, or nonpublic
16 information, including, but not limited to, trade secrets, research,
17 design, development, financial, technical, marketing, planning,
18 personal, or commercial information, as such terms are used in the
19 Federal Rules of Civil Procedure (Fed. R. Civ. P.) and any applicable
20 case law interpreting Fed. R. Civ. P. 26(c)(1)(G); non-public

1 compilations of retail prices; proprietary information; vendor
2 agreements; personnel files; policies and procedures not disseminated
3 to Defendant's employees; medical records and bills; bank account
4 information; private social media information; and Plaintiff's tax and
5 financial records shall be deemed Confidential.

6 b. Materials containing corporate trade secrets, nonpublic research and
7 development data, including, but not limited to, cost data, pricing
8 formulas, inventory management programs, and other sales or
9 business information not known to the public; information obtained
10 from a non-party pursuant to a non-disclosure agreement; and
11 customer-related Protected Data shall be deemed Confidential –
12 Attorneys' Eyes Only.

13 c. Protected Data shall refer to any information that a party believes in
14 good faith to be subject to federal, state or foreign data protection
15 laws or other privacy obligations. Examples of such data protection
16 laws include but are not limited to The Gramm-Leach-Bliley Act, 15
17 U.S.C. § 6801 et seq. (financial information); and The Health
18 Insurance Portability and Accountability Act and the regulations
19 thereunder, 45 CFR Part 160 and Subparts A and E of Part 164
20 (medical information). Certain Protected Data may compel

1 alternative or additional protections beyond those afforded
2 Confidential – Attorneys’ Eyes Only material, in which event the
3 parties shall meet and confer in good faith, and, if unsuccessful, shall
4 move the Court for appropriate relief.

5 The parties shall not designate as confidential information that is already public
6 knowledge.

7 3. The parties agree that such Confidential Material as described in
8 paragraph 2 should be given the protection of an order of this Court to prevent
9 injury through disclosure to persons other than those persons involved in the
10 prosecution or defense of this litigation.

11 **Procedure for Designating Information as Confidential**

12 4. To designate information as confidential, the producing party shall
13 mark Confidential Material with the legend “CONFIDENTIAL” or
14 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Parties shall submit
15 confidential discovery responses, such as answers to interrogatories or answers to
16 requests for admissions, in a separate document stamped with the appropriate
17 legend designating those responses as Confidential Material. The Receiving Party
18 may make copies of Confidential Material and such copies shall become subject to
19 the same protections as the Confidential Material from which those copies were
20 made.

1 a. Information on a disk or other electronic format (e.g., a native format
2 production) may be designated confidential by marking the storage
3 medium itself (or the native file's title) with the legend
4 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES
5 ONLY." The Receiving Party shall mark any hard-copy printouts and
6 the storage medium of any permissible copies of such electronic
7 material with the corresponding legend contained on the original and
8 such copies shall become subject to the same protections, as the
9 Confidential Material from which those copies were made.

10 b. Information disclosed at any deposition of a party taken in this action
11 may be designated by the party as confidential by indicating on the
12 record at the deposition that the information is confidential and
13 subject to the provisions of this Order. Alternatively, the party may
14 designate information disclosed at the deposition as confidential by
15 notifying the court reporter and other parties in writing, within fifteen
16 (15) business days of receipt of the transcript, of the specific pages
17 and lines of the transcript which are designated as confidential. The
18 parties may agree to a reasonable extension of the 15-business-day
19 period for designation. Designations of transcripts will apply to
20 audio, video, or other recordings of the testimony. During such 15-

1 business-day period, the entire transcript shall receive confidential
2 treatment. Upon such designation, the court reporter and each party
3 shall affix the “CONFIDENTIAL” or “CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” legend to the designated pages and
5 segregate them as appropriate.

6 5. A producing party may change the confidentiality designation of
7 materials it has produced, as follows: (1) The producing party must give the
8 receiving parties notice of the change by identifying the documents or information
9 at issue. Once notice is given, the receiving party must make good-faith efforts to
10 ensure that the documents or information are accorded treatment under the new
11 designation. (2) Within a reasonable period after giving notice, the producing
12 party must reproduce the documents or information in a format that contains the
13 new designation. (3) If such information has been disclosed to persons not
14 qualified pursuant to paragraphs 12-13 below, the party who disclosed such
15 information shall (a) take reasonable efforts to retrieve previously disclosed
16 Confidential Material; (b) advise such persons that the material is Confidential; and
17 (c) give the producing party written assurance that steps (a) and (b) have been
18 completed.

1 **Data Security**

2 6. The Parties agree to provide adequate security to protect data
3 produced by the other party(ies) or by non-parties. This includes secure data
4 storage systems, established security policies, and security training for employees,
5 contractors and experts. Adequate security also includes such measures as data
6 encryption in transit, data encryption at rest, data access controls, and physical
7 security, whether hosted/outsourced to a vendor or on premises. At a minimum,
8 any receiving party subject to the terms of this Protective Order, will provide
9 reasonable measures to protect non-client data consistent with the American Bar
10 Association Standing Committee on Ethics and Professional Responsibility,
11 Formal Opinion 477R.

12 **Clawback Provisions**

13 7. The production of privileged or work-product protected documents,
14 electronically stored information (ESI) or information, whether inadvertent or
15 otherwise, is not a waiver of the privilege or protection from discovery in this case
16 or in any other federal or state proceeding.

17 8. This Order shall be interpreted to provide the maximum protection
18 allowed by Federal Rule of Evidence (FRE) 502(d) and shall be enforceable and
19 granted full faith and credit in all other state and federal proceedings by 28 U.S.
20 Code § 1738. In the event of any subsequent conflict of law, the law that is most

1 protective of privilege and work product shall apply.

2 9. Nothing contained herein is intended to or shall serve to limit a party's
3 right to conduct a review of documents, ESI or information (including metadata)
4 for relevance, responsiveness and/or segregation of privileged and/or protected
5 information before production.

6 10. If the receiving party has reason to believe that a produced document
7 or other information may reasonably be subject to a claim of privilege, then the
8 receiving party shall immediately sequester the document or information, cease
9 using the document or information and cease using any work product containing
10 the information, and shall inform the producing party of the beginning BATES
11 number of the document or, if no BATES number is available, shall otherwise
12 inform the producing party of the information.

13 11. A producing party must give written notice to any receiving party
14 asserting a claim of privilege, work-product protection, or other ground for
15 reclaiming documents or information (a "clawback request"). After a clawback
16 request is received, the receiving party shall immediately sequester the document
17 (if not already sequestered) and shall not review or use that document, or any work
18 product containing information taken from that document, for any purpose. If a
19 party contends that privileged or work-product protected material has been
20 erroneously designated as such or that the privilege has been waived for reason(s)

1 other than inadvertent production, the party will nevertheless return the material
2 and all copies of the material to the party asserting the privilege. The parties shall
3 meet and confer regarding any clawback request. The parties reserve the right to
4 contest any determination that a document is privileged or is otherwise protected
5 from disclosure.

6 **Who May Receive Confidential Information**

7 12. *Confidential Material.* Any Confidential Material and the information
8 contained therein shall be disclosed only to the Court, its staff, in-house counsel
9 and outside counsel of record for each party, and also shall be disclosed on a need-
10 to-know basis only to the parties, counsel's staff personnel, employees of a party to
11 whom disclosure is necessary in connection with the preparation for and trial of
12 this action, authors, originators, or original recipients of the Confidential Material,
13 and any witnesses in the case (including consulting and testifying experts) as may
14 from time to time reasonably be necessary in prosecution or defense of this action.

15 13. *Confidential—Attorneys' Eyes Only Material.* Material and
16 information designated as "Confidential—Attorneys' Eyes Only" shall only be
17 disclosed to the Court, its staff, in-house and outside counsel of record for each
18 party, the secretarial, clerical, and paralegal staff of each, and consulting and
19 testifying experts retained by a party in this action.

1 14. *Restriction on Disclosure to Direct Competitors.* Notwithstanding the
2 foregoing, Confidential Material shall not be disclosed to any current or former
3 employees of, or current or former consultants, advisors, or agents of, a direct
4 competitor of any party named in the litigation. If a Receiving Party is in doubt
5 about whether a particular entity is a direct competitor of a party named in this
6 lawsuit, then before disclosing any Confidential Material to a current or former
7 employee, consultant, advisor, or agent of that entity, the Receiving Party's
8 counsel must confer with counsel for the Producing Party.

9 15. *Persons Receiving Confidential Information Must Sign Exhibit A.*
10 Counsel for each party shall advise all persons to whom Confidential Material is
11 disclosed pursuant to this Order of the existence of this Order and shall provide all
12 such persons (other than the Court and its staff) with a copy of this Order. Counsel
13 shall also require such persons to execute the Affidavit attached as *Exhibit A*, prior
14 to the disclosure of Confidential Material.

15 16. *Duties in the Event of Unauthorized Disclosures.* It shall be the
16 obligation of counsel, upon learning of any unauthorized disclosure or threatened
17 unauthorized disclosure of Confidential Information, or any other breach or
18 threatened breach of the provisions of this Order, to promptly notify counsel for
19 the Producing Party. The notification shall be supplemented with reasonable
20 details of the circumstances of the disclosure in order to permit the producing party

1 to understand and take appropriate steps. Each party and its counsel agree to take
2 reasonable and good-faith efforts to contain or limit any breach promptly upon
3 receiving notice of it, and to make reasonable and good-faith attempts to retrieve
4 any unauthorized disclosure of documents or information. This provision does not
5 limit the producing party's entitlement to damages resulting from any breach of
6 this Order.

7 **Authorized Uses of Confidential Material**

8 17. Confidential Material shall only be used for the purpose of litigating
9 the above-captioned lawsuit and may not be used in other lawsuits.

10 18. Persons having knowledge of Confidential Material and information
11 due to their participation in the conduct of this litigation shall use such knowledge
12 and information only as permitted herein, and shall not disclose such Confidential
13 Material, their contents or any portion or summary thereof to any person(s) not
14 involved in the conduct of this litigation.

15 19. If any person having access to the Confidential Material herein shall
16 violate this Order, he/she may be subject to sanctions by the Court and may be
17 liable to pay for the damages caused by his/her violation.

18 **Challenges to the Designation of Confidential Material**

19 20. Any party or interested member of the public may move the Court to
20 modify the designation of any documents or information produced in this litigation

1 (either to include additional protection with respect to confidentiality or to remove
2 a confidential designation). Before making such a motion, the party challenging
3 the Confidential designation shall notify the party who designated the material as
4 Confidential Material in writing and provide the designating party seven (7)
5 calendar days in which to consider the challenge. The parties agree that, during
6 that period, they will make a good faith effort to resolve any disputes concerning
7 the treatment of the Confidential Material. Pending resolution of any challenges to
8 the designation of documents or information, the material at issue shall continue to
9 be treated as Confidential Material until ordered otherwise by the Court. The
10 burden shall be on the party seeking to modify the designation to show that the
11 producing party's designation is inappropriate.

12 **Withholding of Information**

13 21. *Non-relevant Attachments.* The parties will not produce non-relevant
14 attachments that are attached to relevant emails. When an attachment is withheld,
15 either for privilege or non-responsiveness, the producing party shall produce a one-
16 page TIFF image (or PDF if production format dictates) in place of the withheld
17 attachment, correspondingly stating "Attachment Withheld-Privileged" or
18 "Attachment Withheld-Nonresponsive," and bearing a sequential BATES number
19 within the family BATES range. If any attachment to an email contains responsive
20 content, then the cover email shall be produced for context, regardless of the cover

1 email's responsiveness. The cover email may be redacted in part to remove
2 sensitive information, as described below.

3 22. *Redactions.* The parties may redact (1) information that is privileged
4 or protected from discovery as work product or by reason of any other applicable
5 privilege or immunity; (2) information subject to non-disclosure obligations
6 imposed by governmental authorities, law or regulation (*e.g.*, protected personal
7 information); and (3) sensitive, non-relevant information, including but not limited
8 to personally identifiable information (including social security numbers; driver's
9 license numbers; identification numbers; month and date of birth; emergency
10 contact information; banking and financial information; benefits elections; and any
11 other such information for any dependents identified in a personnel file), trade
12 secrets, or information regarding products, data, or people. Privilege redactions
13 will state, over the redacted portion, "Redacted-Privileged," and all other
14 redactions will state, "Redacted-[reason for redaction]." Redactions of emails will
15 not redact the names of recipients or the subject line of the emails, unless the
16 subject line is itself privileged or contains the sensitive information described
17 above, in which case only so much of the subject line will be redacted as may be
18 needed. The parties will produce redacted documents in TIFF format (or
19 searchable PDF if production format dictates; or in native format for file types that
20 do not convert well to TIFF/PDF, such as Excel files) with corresponding

1 searchable OCR text and the associated metadata for the document, ensuring the
2 redacted content is fully protected from disclosure.

3 **Confidential Material in Filings, Hearings, and Trial**

4 23. *Confidential Material in Filings.* Without written permission from the
5 Producing Party or court order secured after appropriate notice to all interested
6 persons, a party may not file Confidential Material in the public record in this
7 action (or in any other action, such as an appeal). A party that seeks to file under
8 seal any Confidential Material must comply with any and all local rules and
9 procedures for the Eastern District of Washington. Confidential Material may only
10 be filed under seal in a manner prescribed by the Court for such filings.

11 24. *Manner of Sealing.* In the event Confidential Materials or portions of
12 transcripts are sealed as confidential by the Court or as described in paragraph (23)
13 above, they shall be filed in an envelope bearing the following designation when
14 deposited:

15 **CONFIDENTIAL**

16 IN ACCORDANCE WITH THE PROTECTIVE ORDER
17 OF THE COURT REGARDING CONFIDENTIAL
18 MATERIALS, THE CONTENTS OF THIS ENVELOPE
19 SHALL BE TREATED AS CONFIDENTIAL AND
20 MUST NOT BE SHOWN TO A PERSON OTHER
THAN THE COURT, ATTORNEYS IN THIS CASE, OR
TO PERSONS ASSISTING THOSE ATTORNEYS.

1 If the Court permits electronic filing of Confidential Materials under seal,
2 the parties may file Confidential Material under seal electronically pursuant to the
3 Court's instructions.

4 25. *Confidential Material in Hearings and Trial.* The provisions of this
5 Order shall not affect, and this Order does not limit, the *admissibility* of
6 Confidential Material (or references to that material) as evidence at trial, or during
7 a hearing or similar proceeding in this action. Prior to using Confidential Material
8 or the information contained therein at any pre-trial hearing that is open to the
9 public, the party seeking to use the Confidential Material must give at least seven
10 (7) days advance notice to the producing party of the intent to use the Confidential
11 Material so that the producing party may seek an appropriate Court Order to
12 protect the Confidential Material.

13 In the event this case goes to trial, upon receipt of the witness and exhibit
14 list, the parties will meet and confer in an effort to reach agreement on the
15 appropriate handling of trial exhibits that contain Confidential Material. If the
16 party who designated the material as Confidential Material seeks to have
17 Confidential Material sealed at trial, the party who designated the material as
18 Confidential Material shall file a motion no later than 10 days before trial to have
19 such documents treated as "under seal."
20

1 **Continuing Effect of This Order and Duty to Destroy**

2 26. This Order shall continue to be binding throughout and after the
3 conclusion of this litigation, including all appeals. The confidentiality obligations
4 imposed by this Protective Order shall remain in effect until a designating party
5 agrees otherwise in writing or a court orders otherwise. Within thirty (30) days of
6 settlement or final adjudication, including the expiration or exhaustion of all rights
7 to appeal or petitions for extraordinary writs, each party or non-party to whom any
8 Confidential Materials were produced shall, without further request or direction
9 from the Producing Party, promptly destroy all Confidential Material, including
10 documents, items or data received including, but not limited to, copies or
11 summaries thereof, in the possession or control of any expert or employee.
12 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
13 filings, documents, depositions, and deposition exhibits.

14 **Procedure If Confidential Material Is Required to Be Produced**

15 27. If any person receiving documents covered by this Order is served
16 with a subpoena, order, interrogatory, or document or civil investigative demand
17 (collectively, a “Demand”) issued in any other action, investigation, or proceeding,
18 and such Demand seeks material that was produced or designated as Confidential
19 Material by someone other than the Receiving Party, the Receiving Party shall give
20 prompt written notice by hand or electronic transmission within five (5) business

1 days of receipt of such Demand to the party or non-party who produced or
2 designated the material as Confidential Material, and shall object to the production
3 of such materials on the grounds of the existence of this Order. At the request of
4 the party or non-party who produced or designated the material as Confidential
5 Material, the Receiving Party shall refuse to comply with the Demand unless (a)
6 ordered to do so by a court with jurisdiction over the Receiving Party; or (b)
7 released in writing by the party or non-party who designated the material as
8 Confidential Material. The burden of opposing the enforcement of the Demand
9 shall fall upon the party or non-party who produced or designated the material as
10 Confidential Material. Compliance by the Receiving Party with any order of a
11 court of competent jurisdiction, directing production of any Confidential Material,
12 shall not constitute a violation of this Order.

13 **Application of This Order to Productions by Third Parties**

14 28. This Order may be used by third parties producing documents in
15 connection with this action. Third parties may designate information as
16 Confidential or Confidential – Attorneys’ Eyes Only.

17 29. If a third party produces (or intends to produce) documents and does
18 not designate (or does not intend to designate) those documents as Confidential
19 Material, then any party to this action may seek to designate that third party’s
20 documents or categories of documents as Confidential Material. In that case, it

1 will be the burden of the party seeking protected status to move for a court order
2 designating the materials as Confidential Material after the parties confer.

3 30. In the event additional parties join or intervene in this litigation, the
4 newly joined party(ies) shall not have access to Confidential Material until its/their
5 counsel has executed and, at the request of any party, filed with the Court the
6 agreement of such party(ies) and such counsel to be fully bound by this Order.

7 31. The parties agree that nothing in this Order shall be deemed to limit
8 the extent to which counsel for the parties may advise or represent their respective
9 clients, conduct discovery, prepare for trial, present proof at trial, including any
10 document designated Confidential Material as set forth herein, or oppose the
11 production or admissibility of any information or documents which have been
12 requested.

13 32. This Order shall remain in full force and effect until such time as it is
14 modified, amended, or rescinded by the Court.

15 **Modification**

16 33. This Protective Order may be modified by the parties agreeing in
17 writing to a modification of the provisions and such modification is approved by
18 this Court, or upon either party's successful application to the Court for
19 modification.
20

1 **Remedies**

2 34. The parties expressly acknowledge and agree that all remedies under
3 Fed. R. Civ. P. 37 will be available to the Court, in its discretion, to sanction any
4 violation of this Order.

5 **Retention of Jurisdiction**

6 35. The parties agree that this Court has and retains jurisdiction during
7 this action to resolve matters relating to this Protective Order.

8 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
9 Order and provide copies to the parties.

10 DATED March 14, 2024.

11 *s/Mary K. Dimke*
12 MARY K. DIMKE
13 UNITED STATES DISTRICT JUDGE
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1 **EXHIBIT A TO PROTECTIVE ORDER**

2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON

5
6 ANDREA GARCIA,

Plaintiff,

No. 1:23-cv-03116-MKD

7 v.

8 WALMART, INC., *et al.*,

Defendants.

9 **AFFIDAVIT OF COMPLIANCE WITH PROTECTIVE ORDER**

10 1. My name is _____. I live at _____

11 _____ . I am working on behalf (or at the direction and engagement)
12 of _____.

13 2. I am aware that a Protective Order has been entered in the above-
14 captioned lawsuit. A copy of this Protective Order has been given to me, and I
15 have read and understand the provisions of same.

16 3. I acknowledge that documents and information designated as confidential
17 and/or confidential – attorneys’ eyes only pursuant to such Protective Order
18 (“Confidential Materials”) are being disclosed to me only upon the conditions that
19 I agree (a) to be subject to the jurisdiction of this Court, and (b) to comply with
20 that Order. I hereby agree to abide by such Order, subject to all penalties

1 prescribed therein, including contempt of Court, for disobedience of said Order. I
2 promise that the documents and information given confidential treatment under the
3 Protective Order entered in this case will be used by me only to assist counsel for
4 the parties in preparing for litigation of the above-captioned matter. I understand
5 that any use of such Confidential Material in any manner contrary to the provisions
6 of the Protective Order may subject me to the sanctions of this Court for contempt
7 and to liability for any damages caused by my breach of the Protective Order.

8 4. I shall not disclose nor permit to be reviewed or copied said Confidential
9 Materials, or any information derived from, by any person other than the parties
10 and counsel for the parties or members of their staff.

11 5. Within 30 days after the above-captioned lawsuit ends in a final non-
12 appealable order, I agree to destroy all Confidential Materials in my possession.

13 DATED: _____, 20_____

Signature

Printed Name

17 **Page 2**

18 **Exhibit A, Affidavit of Compliance with Protective Order**