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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARIA GUTIERREZ,  
Plaintiff,  
v.  
WAL-MART STORES, INC., and  
DOES 1-100,,  
Defendants.

Case No. 2:15-CV-03632 GW (JEMx)  
**DISCOVERY MATTER**  
**[PROPOSED] ORDER ON  
STIPULATION FOR PROTECTIVE  
ORDER**

**Recitals and Basis of Order:**

A. The parties to this action, Defendant WAL-MART STORES, INC. (“Wal-Mart” or “Defendant”) and Plaintiff MARIA GUTIERREZ (“Plaintiff”) (collectively the “Parties”) are conducting discovery, which has and may include the production of documents, the answering of interrogatories and requests for admission, the taking of testimony by oral deposition and examination, and third-party subpoenas;

B. The Parties assert that certain documents and information responsive to the discovery contain material non-public financial information, personal employment records of non-Party individuals, or other private, confidential or proprietary or trade secret information, disclosure of which might result in

1 irreparable harm to the respective Parties or third parties. Although propounding  
2 Parties may be entitled to the discovery sought, the Parties assert that any such  
3 information should remain non-public and protected;

4 C. The Parties therefore seek to reasonably limit disclosure of such non-  
5 public and protected information; and

6 D. The Parties have requested an Order based on their Stipulated  
7 Protective Order.

8 **Order:**

9 1. In this Stipulation and Protective Order, the words set forth below  
10 shall have the following meanings:

11 a. "Proceeding" means the above-entitled proceeding (Case No.  
12 2:15-CV-03632 GW (JEMx)).

13 b. "Court" means the Hon. George H. Wu, Magistrate Judge John  
14 E. McDermott, or any other judge to which this Proceeding may be assigned,  
15 including Court staff participating in such proceedings.

16 c. "Confidential" means any information which is in the  
17 possession of a Designating Party who believes in good faith that such information  
18 is entitled to confidential treatment under applicable law.

19 d. "Confidential Materials" or "Confidential Information" means  
20 any Documents, Testimony or Information as defined below designated as  
21 "Confidential" pursuant to the provisions of this Stipulation and Protective Order.

22 e. "Designating Party" means the Party that designates Materials  
23 as "Confidential."

24 f. "Disclose" or "Disclosed" or "Disclosure" means to reveal,  
25 divulge, give, or make available Materials, or any part thereof, or any information  
26 contained therein.

27 g. "Document" or "Documents" means (i) any "Writing,"  
28 "Original," and "Duplicate" as those terms are defined by Federal Rule of Evidence

1 1001, which have been produced in discovery in this Proceeding by any person, and  
2 (ii) any copies, reproductions, or summaries of all or any part of the foregoing.

3 h. "Information" means the content of Documents or Testimony.

4 i. "Testimony" means all depositions, declarations or other  
5 testimony taken or used in this Proceeding.

6 2. The entry of this Stipulation and Protective Order does not alter,  
7 waive, modify, or abridge any right, privilege or protection otherwise available to  
8 any Party with respect to the discovery of matters, including but not limited to any  
9 Party's right to assert the attorney-client privilege, the attorney work product  
10 doctrine, or other privileges, or any Party's right to contest any such assertion.

11 3. This Stipulation and Protective Order shall govern all materials  
12 deemed to be "Confidential Information." Such Confidential Information shall  
13 include the following:

14 a. Any and all Documents referring or related to confidential and  
15 proprietary human resources or business information; financial records of the  
16 Parties; compensation of Wal-Mart's current or former personnel; policies,  
17 procedures and/or training materials of Wal-Mart; and/or Wal-Mart's  
18 organizational structure, and Documents related to third parties;

19 b. Any Documents from the personnel, medical or workers'  
20 compensation file of any current or former employee or contractor, specifically  
21 excluding Documents from Plaintiffs' personnel, medical, and/or workers'  
22 compensation files;

23 c. Any Documents relating to the medical and/or health  
24 information of any of Defendant's current or former employees or contractors,  
25 specifically excluding Documents relating to the medical and/or health information  
26 of Plaintiffs;

27 d. Any portions of depositions (audio or video) where Confidential  
28 Information is disclosed or used as exhibits.

1           4. Any Documents, Testimony or Information to be designated as  
2 Confidential must be clearly so designated before the Document, Testimony or  
3 Information is Disclosed or produced. The “Confidential” designation should not  
4 obscure or interfere with the legibility of the designated Information.

5           a. For Documents (apart from transcripts of depositions or other  
6 pretrial or trial proceedings), the designation of Confidential Information produced  
7 shall be made by placing the following legend on the face of the Document and  
8 each page so designated “CONFIDENTIAL” or otherwise expressly identified as  
9 confidential. The Designating Parties will use their best efforts to limit the number  
10 of Documents designated Confidential.

11           b. For Testimony given in depositions the Designating Party may  
12 either:

- 13           i. identify on the record, before the close of the deposition,  
14 all “Confidential” Testimony, by specifying all portions  
15 of the Testimony that qualify as “Confidential;” or  
16           ii. designate the entirety of the Testimony at the deposition  
17 as “Confidential” (before the deposition is concluded)  
18 with the right to identify more specific portions of the  
19 Testimony as to which protection is sought within 30 days  
20 following receipt of the deposition transcript. In  
21 circumstances where portions of the deposition Testimony  
22 are designated for protection, the transcript pages  
23 containing “Confidential” Information may be separately  
24 bound by the court reporter, who must affix to the top of  
25 each page the legend “Confidential,” as instructed by the  
26 Designating Party.

27           c. For Information produced in some form other than Documents,  
28 and for any other tangible items, including, without limitation, compact discs or

1 DVDs, the Designating Party must affix in a prominent place on the exterior of the  
2 container or containers in which the Information or item is stored the legend  
3 “Confidential.” If only portions of the Information or item warrant protection, the  
4 Designating Party, to the extent practicable, shall identify the “Confidential”  
5 portions.

6 5. Confidential Information shall be held in confidence by each qualified  
7 recipient to whom it is disclosed, shall be used only for purposes of this action,  
8 shall not be used for any business purpose, and shall not be disclosed to any person  
9 who is not a qualified recipient. All produced Confidential Information shall be  
10 carefully maintained so as to preclude access by persons who are not qualified  
11 recipients.

12 6. Qualified recipients shall include only the following:

13 a. the Court;

14 b. (1) Attorneys of record in the Proceedings and their affiliated  
15 attorneys, paralegals, clerical and secretarial staff employed by such attorneys who  
16 are actively involved in the Proceedings and are not employees of any Party, (2) In-  
17 house counsel to the undersigned Parties and the paralegal, clerical and secretarial  
18 staff employed by such counsel. Provided, however, that each non-lawyer given  
19 access to Confidential Materials shall be advised that such Materials are being  
20 Disclosed pursuant to, and are subject to, the terms of this Stipulation and  
21 Protective Order and that they may not be Disclosed other than pursuant to its  
22 terms;

23 c. those officers, directors, partners, members, employees and  
24 agents of all non-designating Parties that counsel for such Parties deems necessary  
25 to aid counsel in the prosecution and defense of this Proceeding; provided,  
26 however, that prior to the Disclosure of Confidential Materials to any such officer,  
27 director, partner, member, employee or agent, counsel for the Party making the  
28 Disclosure shall deliver a copy of this Stipulation and Protective Order to such

1 person, shall explain that such person is bound to follow the terms of such Order,  
2 and shall secure the signature of such person on a statement in the form attached  
3 hereto as Exhibit A;

4 d. court reporters in this Proceeding (whether at depositions,  
5 hearings, or any other proceeding);

6 e. any deposition, trial or hearing witness in the Proceeding who  
7 previously has had access to the Confidential Materials, or who is currently or was  
8 previously an officer, director, partner, member, employee or agent of an entity that  
9 has had access to the Confidential Materials;

10 f. any deposition or non-trial hearing witness in the Proceeding  
11 who previously did not have access to the Confidential Materials; provided,  
12 however, that each such witness given access to Confidential Materials shall be  
13 advised that such Materials are being Disclosed pursuant to, and are subject to, the  
14 terms of this Stipulation and Protective Order and that they may not be Disclosed  
15 other than pursuant to its terms;

16 g. Persons other than legal counsel who have been retained or  
17 specially employed by a party as an expert witness for purposes of this lawsuit or to  
18 perform investigative work or fact research;

19 h. outside experts or expert consultants consulted by the  
20 undersigned Parties or their counsel in connection with the Proceeding, whether or  
21 not retained to testify at any oral hearing; provided, however, that prior to the  
22 Disclosure of Confidential Materials to any such expert or expert consultant,  
23 counsel for the Party making the Disclosure shall deliver a copy of this Stipulation  
24 and Protective Order to such person, shall explain its terms to such person, and  
25 shall secure the signature of such person on a statement in the form attached hereto  
26 as Exhibit A. It shall be the obligation of counsel, upon learning of any breach or  
27 threatened breach of this Stipulation and Protective Order by any such expert or  
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1 expert consultant, to promptly notify counsel for the Designating Party of such  
2 breach or threatened breach; and

3 i. The parties to this litigation, their officers and professional  
4 employees.

5 7. Each counsel shall be responsible for providing notice of the  
6 Protective Order and the terms therein to persons to whom they disclose  
7 Confidential Information. Persons to whom Confidential Information is shown  
8 shall be informed of the terms of this Order and advised that its breach may be  
9 punished or sanctioned as contempt of the Court. Such deponents may be shown  
10 Confidential materials during their deposition but shall not be permitted to keep  
11 copies of said Confidential materials nor any portion of the deposition transcript  
12 reflecting the Confidential Information.

13 If either party objects to the claims that information should be deemed  
14 Confidential, that party's counsel shall inform opposing counsel in writing within  
15 thirty (30) days of receipt of the Confidential materials that the information should  
16 not be so deemed, and the parties shall attempt first to dispose of such disputes in  
17 good faith and on an informal basis. If the parties are unable to resolve their  
18 dispute, the non-designating counsel may present a motion to the Court objecting to  
19 such status. The information shall continue to have Confidential status during the  
20 pendency of any such motion.

21 8. No copies of Confidential Information shall be made except by or on  
22 behalf of attorneys of record, in-house counsel or the parties in this action. Any  
23 person making copies of such information shall maintain all copies within their  
24 possession or the possession of those entitled to access to such information under  
25 the Protective Order.

26 9. All information produced in this action, whether deemed Confidential  
27 or not, shall be used only for purposes of preparing for, conducting, participating in  
28 the conduct of, and/or prosecuting and/or defending the Proceeding, and not for any

1 other purpose.

2 10. The Protective Order shall likewise govern all materials deemed  
3 “Attorneys' Eyes Only”, which materials shall include any Documents containing  
4 corporate trade secrets, nonpublic research and development data, pricing formulas,  
5 prospective inventory management programs, confidential business information not  
6 generally known to the general public, and customer-related information.

7 Qualified recipients of Documents marked "ATTORNEYS' EYES ONLY"  
8 shall include only the following: In-house counsel and law firms for each party and  
9 the secretarial, clerical and paralegal staff of each.

10 11. The inadvertent production by any of the undersigned Parties or non-  
11 Parties to the Proceedings of any Document, Testimony or Information during  
12 discovery in this Proceeding without a “Confidential” designation, shall be without  
13 prejudice to any claim that such item is “Confidential” and such Party shall not be  
14 held to have waived any rights by such inadvertent production. In the event that any  
15 Document, Testimony or Information that is subject to a “Confidential” designation  
16 is inadvertently produced without such designation, the Party that inadvertently  
17 produced the Document shall give written notice of such inadvertent production  
18 within twenty-one (21) days of discovery of the inadvertent production, together  
19 with a further copy of the subject Document, Testimony or Information designated  
20 as “Confidential” (the “Inadvertent Production Notice”). Upon receipt of such  
21 Inadvertent Production Notice, the Party that received the inadvertently produced  
22 Document, Testimony or Information shall promptly destroy the inadvertently  
23 produced Document, Testimony or Information and all copies thereof, or, at the  
24 expense of the producing Party, return such together with all copies of such  
25 Document, Testimony or Information to counsel for the producing Party and shall  
26 retain only the “Confidential” designated Materials. Should the receiving Party  
27 choose to destroy such inadvertently produced Document, Testimony or  
28 Information, the receiving Party shall notify the producing Party in writing of such



1 destruction within ten (10) days of receipt of written notice of the inadvertent  
2 production. This provision is not intended to apply to any inadvertent production of  
3 any Information protected by attorney-client or work product privileges. In the  
4 event that this provision conflicts with any applicable law regarding waiver of  
5 confidentiality through the inadvertent production of Documents, Testimony or  
6 Information, such law shall govern.

7 12. The disclosure or production of any Documents subject to a legally  
8 recognized claim of privilege (including, without limitation, the attorney-client  
9 privilege, work-product doctrine, or other applicable privilege) shall be protected  
10 and excluded from argument from any party that:

- 11 a. the disclosure was not inadvertent by the Producing Party;
- 12 b. the Producing Party did not take reasonable steps to prevent the  
13 disclosure of privileged Documents;
- 14 c. the Producing Party did not take reasonable or timely steps to  
15 rectify such Disclosure; and/or
- 16 d. such disclosure acts as a waiver of applicable privileges or  
17 protections associated with such Documents.

18 13. In the event the Parties need to file any Documents under seal in order  
19 to protect its confidentiality under this Order, the Parties will comply with the  
20 requirements of Local Rule 79-5.1 by filing an application to file the Documents  
21 under seal.

22 14. The termination of this action shall not relieve the parties and persons  
23 obligated hereunder from their responsibility to maintain the confidentiality of  
24 information designated confidential pursuant to this Stipulation and Protective  
25 Order.

26 15. Upon termination of this action by entry of a final judgment (inclusive  
27 of any appeals or petitions for review), the parties may request the return of all  
28 previously furnished Confidential Information, including any copies thereof, and

1 each person or party to whom such Confidential Information has been furnished or  
2 produced shall be obligated to return it within thirty (30) days of said request.  
3 Notwithstanding the aforementioned obligation, counsel for the parties may keep a  
4 copy of said Documents pursuant to each of his or her responsibilities under  
5 California Rules of Professional Conduct and/or legal requirements and/or  
6 obligations.

7 16. Nothing in this Order shall be construed as an admission as to the  
8 relevance, authenticity, foundation or admissibility of any Document, material,  
9 transcript, or other information.

10 17. Nothing herein shall impose any restrictions on the use or disclosure  
11 by a party of material obtained by such party independent of discovery in this  
12 action, whether or not such material is also obtained through discovery in this  
13 action, or from disclosing its own confidential material as it deems appropriate.  
14 Nothing in this Protective Order shall be deemed to restrict in any way any party's  
15 own Documents or information, or the party's attorneys with respect to that party's  
16 own Documents or information.

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18. Nothing in the Protective Order shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, a modification of this Order.

19. The Protective Order is entered pursuant to the Federal Rules of Civil Procedure.

**IT IS SO ORDERED.**

Dated: September 15, 2015



John E. McDermott  
U.S. District Court Magistrate Judge