

1 K. Tom Kohan (CA Bar No. 225420)
 KOHAN LAW FIRM
 2 515 S. Figueroa Street, Suite 1200
 3 Los Angeles, California 90071
 4 Tel: 310-349-1111
 5 Fax: 888-476-7010
 6 Email: tom@kohanlawfirm.com

7 Attorneys for Defendant

8 WALMART STORES, INC.

9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ROYAL PRINTEX, INC., a
 13 California Corporation,
 14 Plaintiff,
 15 v.
 16 WALMART STORES, INC., a
 17 California Corporation; and DOES 1
 through 10,
 18 Defendants.

Case No.: 2:16-CV-03633 –TJH-JEMx

DISCOVERY MATTER

HON. JOHN E. McDERMOTT

PROTECTIVE ORDER

[Stipulation of Parties re Protective Order Concurrently Filed Herewith]

21 1. **PURPOSES AND LIMITATIONS**

22 Disclosure and discovery activity in this action are likely to involve
 23 production of confidential, proprietary, or private information for which special
 24 protection from public disclosure and from use for any purpose other than
 25 prosecuting this matter would be warranted. Accordingly, the parties hereby
 26 stipulate to and petition this Court to enter the following Stipulated Protective
 27 Order. The parties acknowledge that this Order does not confer blanket protections
 28 on all disclosures or responses to discovery and that the protection it affords

1 extends only to the limited information or items that are entitled under the
2 applicable legal principles to treatment as confidential. The parties have agreed
3 that the terms of this Protective Order shall also apply to any future voluntary
4 disclosures of confidential, proprietary, or private information. The parties reserve
5 their rights to object to or withhold any information, including confidential,
6 proprietary, or private information, on any other applicable grounds permitted by
7 law, including third-party rights and relevancy.
8

9 2. DEFINITIONS

10 2.1 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and outside counsel (and their support
12 staff).

13 2.2 Disclosure or Discovery Material: all items or information, regardless
14 of the medium or manner generated, stored, or maintained (including, among other
15 things, testimony, transcripts, or tangible things), that are produced or generated in
16 disclosures or responses to discovery in this matter.

17 2.3 “Confidential” Information or Items: information (regardless of how
18 generated, stored, or maintained) or tangible things that qualify for protection
19 under standards developed under Fed. R. Civ. P. 26(c).

20 2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of such
21 material as consists of:

22 a) any commercially sensitive and/or confidential business or financial
23 information (including without limitation confidential nonpublic contracts,
24 profitability reports or estimates, sales reports, and sales margins) which could
25 reasonably create a competitive disadvantage if disclosed to the parties in this
26 action;
27
28

1 b) any business or financial information that is confidential, proprietary, or
2 commercially sensitive to third parties who have had business dealings with parties
3 to this action; or

4 c) any other category of material or information hereinafter given
5 Confidential status by the Court, to the extent said material could reasonably create
6 a competitive disadvantage if disclosed to the parties in this action.

7 2.5 Receiving Party: a Party that receives Disclosure or Discovery
8 Material from a Producing Party.

9 2.6 Producing Party: a Party or non-party that produces Disclosure or
10 Discovery Material in this action.

11 2.7 Designating Party: a Party or non-party that designates information or
12 items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

14 2.8 Protected Material: any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

16 2.9 Expert: a person with specialized knowledge or experience in a
17 matter pertinent to the litigation who has been retained by a Party or its counsel to
18 serve as an expert witness or as a consultant in this action. This definition includes
19 a professional jury or trial consultant retained in connection with this litigation.
20 The expert witness or consultant may not be a past or a current employee of the
21 Party (including any affiliates or related entities) adverse to the Party engaging the
22 expert witness or consultant, or someone who at the time of retention is anticipated
23 to become an employee of the Party (including any affiliates or related entities)
24 adverse to the Party engaging the expert witness or consultant. Moreover, the
25 expert witness or consultant may not be a current employee or anticipated to
26 become an employee of any entity who is a competitor of the Party adverse to the
27 Party engaging the expert witness or consultant.
28

1 2.10 Professional Vendors: persons or entities that provide litigation
2 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
3 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)
4 and their employees and subcontractors.

5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also any information copied or extracted
8 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
9 testimony, conversations, or presentations by parties or counsel to or in litigation
10 or in other settings that might reveal Protected Material.

11
12 4. DURATION

13 Even after the termination of this action, the confidentiality obligations
14 imposed by this Order shall remain in effect until a Designating Party agrees
15 otherwise in writing or a court order otherwise directs.

16
17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.
19 Each Party or non-party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. A Designating Party must take care to
22 designate for protection only those parts of material, documents, items, or oral or
23 written communications that qualify – so that other portions of the material,
24 documents, items, or communications for which protection is not warranted are not
25 swept unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified, or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber or retard the case development process,

1 or to impose unnecessary expenses and burdens on other parties), expose the
2 Designating Party to sanctions.

3 If it comes to a Party's or a non-party's attention that information or items
4 that it designated for protection do not qualify for protection at all, or do not
5 qualify for the level of protection initially asserted, that Party or non-party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
9 stipulated or ordered, material that qualifies for protection under this Order must be
10 clearly so designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (apart from transcripts of
13 depositions or other pretrial or trial proceedings), that the Producing Party affix the
14 legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" at the top or
15 bottom of each page that contains protected material.

16 A Party or non-party that makes originals or copies of documents or
17 materials available for inspection need not designate them for protection until after
18 the inspecting Party has indicated which material it intends to copy. During the
19 inspection and before the designation, all of the material made available for
20 inspection shall be deemed "ATTORNEYS' EYES ONLY." After the inspecting
21 Party has identified the documents it wants copied and produced, the Producing
22 Party must designate, either in writing or on the record (at a deposition), which
23 documents, or portions thereof, qualify for protection under this Order. Then the
24 Receiving Party must affix the "CONFIDENTIAL" or "ATTORNEYS' EYES
25 ONLY" legend at the top of each copied page that contains Protected Material. If
26 only a portion or portions of the material on a page qualifies for protection, the
27 Producing Party also must clearly identify the protected portion(s) (e.g., by making
28 appropriate markings in the margins) and must specify, for each portion, the level

1 of protection being asserted (either “CONFIDENTIAL” or “ATTORNEYS’ EYES
2 ONLY”).

3 (b) for testimony given in deposition or in other pretrial or trial
4 proceedings, that the Party or non-party offering or sponsoring the testimony
5 identify on the record, before the close of the deposition, hearing, or other
6 proceeding, all protected testimony, and further specify any portions of the
7 testimony that qualify as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”
8 When it is impractical to identify separately each portion of testimony that is
9 entitled to protection, and when it appears that substantial portions of the testimony
10 may qualify for protection, the Party or non-party that sponsors, offers, or gives the
11 testimony may invoke on the record (before the deposition or proceeding is
12 concluded) a right to have up to 20 days to identify the specific portions of the
13 testimony as to which protection is sought and to specify the level of protection
14 being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”). Only
15 those portions of the testimony that are appropriately designated for protection
16 within the 20 days shall be covered by the provisions of this Stipulated Protective
17 Order.

18 Transcript pages containing Protected Material must be separately bound by the
19 court reporter, who must affix to the top of each such page the legend
20 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed by the Party
21 or non-party offering or sponsoring the witness or presenting the testimony.

22 (c) for information produced in some form other than documentary, and
23 for any other tangible items, that the Producing Party affix in a prominent place on
24 the exterior of the container or containers in which the information or item is
25 stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only
26 portions of the information or item warrant protection, the Producing Party, to the
27 extent practicable, shall identify the protected portions, specifying whether they
28 qualify as “CONFIDENTIAL” or as “ATTORNEYS’ EYES

1 ONLY.”

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
3 failure to designate qualified information or items as “CONFIDENTIAL” or
4 “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating
5 Party’s right to secure protection under this Order for such material. If material is
6 appropriately designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES
7 ONLY” after the material was initially produced, the Receiving Party, on timely
8 notification of the designation, must make reasonable efforts to assure that the
9 material is treated in accordance with the provisions of this Order.

10
11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
13 Party’s confidentiality designation is necessary to avoid foreseeable substantial
14 unfairness, unnecessary economic burdens, or a later significant disruption or delay
15 of the litigation, a Party does not waive its right to challenge a confidentiality
16 designation by electing not to mount a challenge promptly after the original
17 designation is disclosed.

18 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
19 Designating Party’s confidentiality designation must do so in good faith and must
20 begin the process by conferring with counsel for the Designating Party in writing.
21 In conferring, the challenging Party must explain the basis for its belief that the
22 confidentiality designation was not proper and must give the Designating Party an
23 opportunity to review the designated material, to reconsider the circumstances,
24 and, if no change in designation is offered, to explain the basis for the chosen
25 designation. A challenging Party may proceed to the next stage of the challenge
26 process only if it has engaged in this meet-and-confer process first.

27 6.3 Court Intervention. A Party that elects to press a challenge to a
28

1 confidentiality designation after considering the justification offered by the
2 Designating Party may file and serve a motion that identifies the challenged
3 material and sets forth in detail the basis for the challenge. Each such motion must
4 be accompanied by a competent declaration that affirms that the movant has
5 complied with the meet-and-confer requirements imposed in the preceding
6 paragraph and that sets forth with specificity the justification for the confidentiality
7 designation that was given by the Designating Party in the meet-and-confer
8 dialogue. The parties agree that a confidentiality designation shall not create a
9 presumption in favor of such confidentiality designation, and that the Court shall
10 decide the issue as such.

11 Until the Court rules on the challenge, all parties shall continue to afford the
12 material in question the level of protection to which it is entitled under the
13 Producing Party's designation.

14 15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that
17 is disclosed or produced by another Party or by a non-party in connection with this
18 case only for prosecuting, defending, or attempting to settle this litigation. Such
19 Protected Material may be disclosed only to the categories of persons and under
20 the conditions described in this Order. When the litigation has been terminated, a
21 Receiving Party must comply with the provisions of section 11, below (FINAL
22 DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a
24 location and in a secure manner that ensures that access is limited to the persons
25 authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the Court or permitted in writing by the Designating Party, a
28 Receiving Party may disclose any information or item designated

1 “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s outside counsel, as well as employees of said
3 outside counsel to whom it is reasonably necessary to disclose the information for
4 this litigation;

5 (b) Board members, officers and directors of the Receiving Party;

6 (c) Other employees of the Receiving Party to whom disclosure is
7 reasonably necessary for this litigation and who are bound by internal
8 confidentiality obligations as part of their employment or who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (e) the Court personnel assigned to this litigation;

14 (f) court reporters, their staffs, and professional vendors to whom
15 disclosure is reasonably necessary for this litigation and who have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (g) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the “Acknowledgment and Agreement
19 to Be Bound” (Exhibit A). Pages of transcribed deposition testimony or exhibits to
20 depositions that reveal Protected Material must be separately bound by the court
21 reporter and may not be disclosed to anyone except as permitted under this
22 Stipulated Protective Order; and

23 (h) the author and recipients of the document or the original source of the
24 information.

25 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.
26 Unless otherwise ordered by the Court or permitted in writing by the Designating
27 Party, a Receiving Party may disclose any information or item designated
28 “ATTORNEYS’ EYES ONLY” only to:

1 (a) the Receiving Party's outside counsel, as well as employees of said
2 outside counsel to whom it is reasonably necessary to disclose the information for
3 this litigation;

4 (b) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this litigation and who have signed the
6 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (c) the Court personnel assigned to this litigation;

8 (d) court reporters, their staffs, and professional vendors to whom
9 disclosure is reasonably necessary for this litigation and who have signed the
10 "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

11 (e) the author and recipients of the document or the original source of the
12 information.

13 7.4 Nothing in this Order shall be read to prohibit the use of otherwise
14 Protected Material to prosecute claims against additional potential defendants
15 identified in said materials.

16
17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
18 IN OTHER LITIGATION

19 If a Receiving Party is served with a subpoena or an order issued in other
20 litigation that would compel disclosure of any Discovery Material, the Receiving
21 Party must so notify the Designating Party, in writing immediately and in no event
22 more than five business days after receiving the subpoena or order. Such
23 notification must include a copy of the subpoena or court order. The Receiving
24 Party also must immediately inform in writing the Party who caused the subpoena
25 or order to issue in the other litigation that some or all of the material covered by
26 the subpoena or order is the subject of this Protective Order. In addition, the
27 Receiving Party must deliver a copy of this Stipulated Protective Order promptly
28 to the Party in the other action that caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the
2 existence of this Protective Order and to afford the Designating Party in this case
3 an opportunity to try to protect its confidentiality interests in the court from which
4 the subpoena or order issued. The Designating Party shall bear the burdens and the
5 expenses of seeking protection in that court of its confidential material – and
6 nothing in these provisions should be construed as authorizing or encouraging a
7 Receiving Party in this action to disobey a lawful directive from another court.

8
9 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has
11 disclosed Protected Material to any person or in any circumstance not authorized
12 under this Stipulated Protective Order, the Receiving Party must immediately (a)
13 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
14 best efforts to retrieve all copies of the Protected Material, (c) inform the person or
15 persons to whom unauthorized disclosures were made of all the terms of this
16 Order, and (d) request such person or persons to execute the “Acknowledgment
17 and Agreement to Be Bound” that is attached hereto as Exhibit A.

18
19 **10. FILING PROTECTED MATERIAL**

20 Without written permission from the Designating Party, or a court order secured
21 after appropriate notice to all interested persons and after following the procedures
22 provided for in Local Rule 79-5.1, a Party may not file in the public record in this
23 action any Protected Material.

24
25 **11. FINAL DISPOSITION**

26 Unless otherwise ordered or agreed to in writing by the Producing Party, within 60
27 days after the final termination of this action, each Receiving Party must either
28 return all Protected Material to the Producing Party or certify the destruction of

1 said material. As used in this subdivision, “all Protected Material” includes all
2 copies, abstracts, compilations, summaries or any other form of reproducing or
3 capturing any of the Protected Material. Whether the Protected Material is returned
4 or destroyed, the Receiving Party must submit a written certification to the
5 Producing Party (and, if not the same person or entity, to the Designating Party) by
6 the 60-day deadline that identifies (by category, where appropriate) all the
7 Protected Material that was returned or destroyed and that affirms that the
8 Receiving Party has not retained any copies, abstracts, compilations, summaries or
9 other forms of reproducing or capturing any of the Protected Material.
10 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
11 pleadings, motion papers, transcripts, legal memoranda, correspondence or
12 attorney work product, even if such materials contain Protected Material. Any such
13 archival copies that contain or constitute Protected Material remain subject to this
14 Protective Order as set forth in Section 4 (DURATION), above.

15 16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of
18 any person to seek its modification in the future.

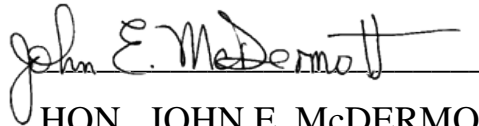
19 12.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Protective Order no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item on any ground not addressed in
22 this Stipulated Protective Order. Similarly, no Party waives any right to object on
23 any ground to use in evidence of any of the material covered by this Protective
24 Order.

25 12.3 Inadvertent Production of Privileged Documents. If a Party, through
26 inadvertence, produces any document or information that it believes is immune
27 from discovery pursuant to an attorney-client privilege, the work product privilege,
28 or any other privilege, such production shall not be deemed a waiver of any

1 privilege, and the Producing Party may give written notice to the Receiving Party
2 that the document or information produced is deemed privileged and that return of
3 the document or information is requested. Upon receipt of such notice, the
4 Receiving Party shall immediately gather the original and all copies of the
5 document or information of which the Receiving Party is aware, in addition to any
6 abstracts, summaries, or descriptions thereof, and shall immediately return the
7 original and all such copies to the Producing Party. Nothing stated herein shall
8 preclude a Party from challenging an assertion by the other Party of privilege or
9 confidentiality.

10 IT IS SO ORDERED.

11
12 Dated: December 28, 2016



HON. JOHN E. McDERMOTT

UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print full name], of
4 _____ [print full address],

5 declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Central District of California in the case of *Royal Printex, Inc. v. Walmart*
8 *Stores, Inc., et al., USDC Case No. 16-CV-03633-TJH-JEMx*, I agree to comply
9 with and to be bound by all of the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print full name] of
20 _____ [print full address
21 and telephone number] as my California agent for service of process in connection
22 with this action or any proceedings related to enforcement of this Stipulated
23 Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

28

