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 7 WAL-MART STORES, INC.

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

11 DARNELL HENLEY,

12 Plaintiff,

13 v.

14 WAL-MART STORES, INC.; DOES 1
 15 to 20,

16 Defendants.

Case No. 2:20-cv-02902 GW (ASx)

**STIPULATED PROTECTIVE
 ORDER**

Judge: Hon. George H. Wu
 Trial Date: October 13, 2020

17 1. A. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential,
 19 proprietary, or private information for which special protection from public
 20 disclosure and from use for any purpose other than prosecuting this litigation
 21 may be warranted. Accordingly, the parties hereby stipulate to and petition the
 22 Court to enter the following Stipulated Protective Order. The parties
 23 acknowledge that this Order does not confer blanket protections on all disclosures
 24 or responses to discovery and that the protection it affords from public disclosure
 25 and use extends only to the limited information or items that are entitled to
 26 confidential treatment under the applicable legal principles. The parties further
 27 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
 28 Order does not entitle them to file confidential information under seal; Civil Local

1 Rule 79-5 sets forth the procedures that must be followed and the standards that
2 will be applied when a party seeks permission from the court to file material under
3 seal.

4 B. GOOD CAUSE STATEMENT

5 This action is likely to involve trade secrets, customer and pricing lists
6 and other valuable research, development, commercial, financial, technical and/or
7 proprietary information for which special protection from public disclosure and
8 from use for any purpose other than prosecution of this action is warranted. Such
9 confidential and proprietary materials and information consist of, among other
10 things, confidential business or financial information, information regarding
11 confidential business practices, or other confidential research, development, or
12 commercial information (including information implicating privacy rights of
13 third parties), information otherwise generally unavailable to the public, or which
14 may be privileged or otherwise protected from disclosure under state or federal
15 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
16 flow of information, to facilitate the prompt resolution of disputes over
17 confidentiality of discovery materials, to adequately protect information the parties
18 are entitled to keep confidential, to ensure that the parties are permitted
19 reasonable necessary uses of such material in preparation for and in the conduct of
20 trial, to address their handling at the end of the litigation, and serve the ends of
21 justice, a protective order for such information is justified in this matter. It is the
22 intent of the parties that information will not be designated as confidential for
23 tactical reasons and that nothing be so designated without a good faith belief that
24 it has been maintained in a confidential, non-public manner, and there is good
25 cause why it should not be part of the public record of this case.

26 2. DEFINITIONS

27 2.1 Action: This pending federal law suit identified with its caption and
28 case number.

1 2.2 Challenging Party: a Party or Non-Party that challenges the
2 designation of information or items under this Order.

3 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
4 how it is generated, stored or maintained) or tangible things that qualify for
5 protection under Federal Rule of Civil Procedure 26(c), and as specified above
6 in the Good Cause Statement.

7 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
8 their support staff).

9 2.5 Designating Party: a Party or Non-Party that designates information
10 or items that it produces in disclosures or in responses to discovery as
11 “CONFIDENTIAL.”

12 2.6 Disclosure or Discovery Material: all items or information, regardless
13 of the medium or manner in which it is generated, stored, or maintained (including,
14 among other things, testimony, transcripts, and tangible things), that are produced
15 or generated in disclosures or responses to discovery in this matter.

16 2.7 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as
18 an expert witness or as a consultant in this Action.

19 2.8 House Counsel: attorneys who are employees of a party to this
20 Action. House Counsel does not include Outside Counsel of Record or any
21 other outside counsel.

22 2.9 Non-Party: any natural person, partnership, corporation, association,
23 or other legal entity not named as a Party to this action.

24 2.10 Outside Counsel of Record: attorneys who are not employees of a
25 party to this Action but are retained to represent or advise a party to this Action and
26 have appeared in this Action on behalf of that party or are affiliated with a law firm
27 which has appeared on behalf of that party, and includes support staff. This also
28 encompasses counsel that act as consultants for an attorney or law firm.

1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.” All pages impacted by this designation must be
12 marked with this designation in clear language so this designation is as conspicuous
13 as possible.

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also (1) any information copied or
19 extracted from Protected Material; (2) all copies, excerpts, summaries, or
20 compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material.

22 Any use of Protected Material at trial shall be governed by the orders of
23 the trial judge. This Order does not govern the use of Protected Material at trial.

24 4. DURATION

25 Once a case proceeds to trial, all of the information that was designated as
26 confidential or maintained pursuant to this protective order becomes public and will
27 be presumptively available to all members of the public, including the press,
28 unless compelling reasons supported by specific factual findings to proceed

1 otherwise are made to the trial judge in advance of the trial. *See Kamakana v.*
2 *City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006)
3 (distinguishing “good cause” showing for sealing documents produced in discovery
4 from “compelling reasons” standard when merits-related documents are part of
5 court record). Accordingly, the terms of this protective order do not extend beyond
6 the commencement of the trial.

7 Even after final disposition of this litigation, the confidentiality obligations
8 imposed by this Order shall remain in effect until a Designating Party agrees
9 otherwise in writing or a court order otherwise directs. Final disposition shall be
10 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
11 with or without prejudice; and (2) final judgment herein after the completion and
12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
13 including the time limits for filing any motions or applications for extension of
14 time pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection
18 under this Order must take care to limit any such designation to specific material
19 that qualifies under the appropriate standards. The Designating Party must
20 designate for protection only those parts of material, documents, items, or oral or
21 written communications that qualify so that other portions of the material,
22 documents, items, or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations
25 that are shown to be clearly unjustified or that have been made for an
26 improper purpose (e.g., to unnecessarily encumber the case development process or
27 to impose unnecessary expenses and burdens on other parties) may expose the
28 Designating Party to sanctions.

1 If it comes to a Designating Party’s attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as
6 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
7 protection under this Order must be clearly so designated before the material is
8 disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix at a minimum, the legend
13 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
14 contains protected material. If only a portion or portions of the material on a
15 page qualifies for protection, the Producing Party also must clearly identify the
16 protected portion(s) (e.g., by making appropriate markings in the margins).

17 A Party or Non-Party that makes original documents available for inspection
18 need not designate them for protection until after the inspecting Party has indicated
19 which documents it would like copied and produced. During the inspection
20 and before the designation, all of the material made available for inspection
21 shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the
22 documents it wants copied and produced, the Producing Party must determine
23 which documents, or portions thereof, qualify for protection under this Order.
24 Then, before producing the specified documents, the Producing Party must affix the
25 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
26 portion or portions of the material on a page qualifies for protection, the Producing
27 Party also must clearly identify the protected portion(s) (e.g., by making
28 appropriate markings in the margins).

1 (b) for testimony given in depositions that the Designating Party
 2 identify the Disclosure or Discovery Material on the record, before the close of the
 3 deposition all protected testimony.

4 (c) for information produced in some form other than documentary
 5 and for any other tangible items, that the Producing Party affix in a prominent place
 6 on the exterior of the container or containers in which the information is stored
 7 the legend “CONFIDENTIAL.” If only a portion or portions of the information
 8 warrants protection, the Producing Party, to the extent practicable, shall identify the
 9 protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 11 failure to designate qualified information or items does not, standing alone,
 12 waive the Designating Party’s right to secure protection under this Order for such
 13 material. Upon timely correction of a designation, the Receiving Party must make
 14 reasonable efforts to assure that the material is treated in accordance with the
 15 provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 18 designation of confidentiality at any time that is consistent with the Court’s
 19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 21 resolution process under Local Rule 37.1 et seq.

22 6.3 The burden of persuasion in any such challenge proceeding shall be
 23 on the Designating Party. Frivolous challenges, and those made for an improper
 24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
 25 parties) may expose the Challenging Party to sanctions. Unless the
 26 Designating Party has waived or withdrawn the confidentiality designation, all
 27 parties shall continue to afford the material in question the level of protection to
 28 which it is entitled under the Producing Party’s designation until the Court rules on

1 the challenge

2 7. ACCESS TO AND USE OF PROTECTED MATERIAL

3 7.1 Basic Principles. A Receiving Party may use Protected Material that
4 is disclosed or produced by another Party or by a Non-Party in connection with
5 this Action only for prosecuting, defending, or attempting to settle this Action.
6 Such Protected Material may be disclosed only to the categories of persons and
7 under the conditions described in this Order. When the Action has been terminated,
8 a Receiving Party must comply with the provisions of section 13 below (FINAL
9 DISPOSITION).

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

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
14 otherwise ordered by the court or permitted in writing by the Designating Party,
15 a Receiving Party may disclose any information or item designated
16 “CONFIDENTIAL” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this
18 Action, as well as employees of said Outside Counsel of Record to whom it is
19 reasonably necessary to disclose the information for this Action;

20 (b) the officers, directors, and employees (including House Counsel)
21 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to
23 whom disclosure is reasonably necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

27 (f) professional jury or trial consultants, mock jurors, and
28 Professional Vendors to whom disclosure is reasonably necessary for this Action

1 and who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A);

3 (g) the author or recipient of a document containing the information
4 or a custodian or other person who otherwise possessed or knew the information;

5 (h) during their depositions, witnesses ,and attorneys for witnesses, in
6 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
7 party requests that the witness sign the form attached as Exhibit 1 hereto; and
8 (2) they will not be permitted to keep any confidential information unless they sign
9 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
10 agreed by the Designating Party or ordered by the court. Pages of transcribed
11 deposition testimony or exhibits to depositions that reveal Protected Material
12 may be separately bound by the court reporter and may not be disclosed to anyone
13 except as permitted under this Stipulated Protective Order; and

14 (i) any mediator or settlement officer, and their supporting
15 personnel, mutually agreed upon by any of the parties engaged in settlement
16 discussions.

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

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this Action
21 as “CONFIDENTIAL,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such
23 notification shall include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or
25 order to issue in the other litigation that some or all of the material covered by the
26 subpoena or order is subject to this Protective Order. Such notification shall
27 include a copy of this Stipulated Protective Order; and

28 (c) cooperate with respect to all reasonable procedures sought to be

1 pursued by the Designating Party whose Protected Material may be affected.

2 If the Designating Party timely seeks a protective order, the Party served
3 with the subpoena or court order shall not produce any information designated in
4 this action as “CONFIDENTIAL” before a determination by the court from
5 which the subpoena or order issued, unless the Party has obtained the
6 Designating Party’s permission. The Designating Party shall bear the burden
7 and expense of seeking protection in that court of its confidential material and
8 nothing in these provisions should be construed as authorizing or encouraging a
9 Receiving Party in this Action to disobey a lawful directive from another court.

10 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
11 PRODUCED IN THIS LITIGATION

12 (a) The terms of this Order are applicable to information produced by a
13 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
14 produced by Non-Parties in connection with this litigation is protected by the
15 remedies and relief provided by this Order. Nothing in these provisions should
16 be construed as prohibiting a Non-Party from seeking additional protections.

17 (b) In the event that a Party is required, by a valid discovery request, to
18 produce a Non-Party’s confidential information in its possession, and the Party is
19 subject to an agreement with the Non-Party not to produce the Non-Party’s
20 confidential information, then the Party shall:

21 (1) promptly notify in writing the Requesting Party and the Non-
22 Party that some or all of the information requested is subject to a confidentiality
23 agreement with a Non-Party;

24 (2) promptly provide the Non-Party with a copy of the Stipulated
25 Protective Order in this Action, the relevant discovery request(s), and a reasonably
26 specific description of the information requested; and

27 (3) make the information requested available for inspection by the
28 Non-Party, if requested.

1 (c) If the Non-Party fails to seek a protective order from this court within
2 14 days of receiving the notice and accompanying information, the Receiving Party
3 may produce the Non-Party’s confidential information responsive to the discovery
4 request. If the Non-Party timely seeks a protective order, the Receiving Party
5 shall not produce any information in its possession or control that is subject to the
6 confidentiality agreement with the Non-Party before a determination by the
7 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
8 expense of seeking protection in this court of its Protected Material.

9 10. 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 unauthorized copies of the Protected Material, (c) inform
15 the person or persons to whom unauthorized disclosures were made of all the terms
16 of this Order, and (d) request such person or persons to execute the
17 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
18 A.

19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
20 PROTECTED MATERIAL

21 When a Producing Party gives notice to Receiving Parties that certain
22 inadvertently produced material is subject to a claim of privilege or other
23 protection, the obligations of the Receiving Parties are those set forth in Federal
24 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
25 whatever procedure may be established in an e-discovery order that provides for
26 production without prior privilege review. Pursuant to Federal Rule of Evidence
27 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
28 of a communication or information covered by the attorney-client privilege or work

1 product protection, the parties may incorporate their agreement in the stipulated
2 protective order submitted to the court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of
5 any person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of
7 this Protective Order no Party waives any right it otherwise would have to
8 object to disclosing or producing any information or item on any ground not
9 addressed in this Stipulated Protective Order. Similarly, no Party waives any
10 right to object on any ground to use in evidence of any of the material covered by
11 this Protective Order.

12 12.3 Filing Protected Material. A Party that seeks to file under seal any
13 Protected Material must comply with Civil Local Rule 79-5. Protected Material
14 may only be filed under seal pursuant to a court order authorizing the sealing of the
15 specific Protected Material at issue. If a Party's request to file Protected Material
16 under seal (via protective order motion or otherwise) is denied by the court, then the
17 Receiving Party may file the information in the public record unless otherwise
18 instructed by the court.

19 Defendant currently asserts that much of their document production from
20 their Custodian of Records/employees/agents/contractors is/are sensitive and
21 protected materials for one reason or another. The parties have met and conferred
22 on this issue. It is understood that Plaintiff does not wish to bear the burden and
23 expense of moving the court to seal documents that defendant designated as
24 Protected Material.

25 The parties agree that plaintiff should provide a reasonable five (5) day
26 notice to defendant, of the need to use, reference and file with the court, certain
27 Protected Material when filing court documents. It is agreed to by the parties, that
28 plaintiff may file motion papers or other court filings, including motion opposition

1 papers, that reference the Protected Material by its stamped Bates Numbers with
 2 pre-fix “DEF_”.

3 The burden is then on defendant to move the court to seal the specific pages
 4 of the Protected Material, whether an exhibit or otherwise. Defendant must move
 5 the court within five (5) business days to seek an order to seal the Protected
 6 Material. If and when the court order permitting the filing of the Protected Material
 7 “under seal” is issued to moving party defendant, defendant shall, no later than 72
 8 hours, file the unredacted and complete identified sensitive material or document at
 9 issue with the court under seal.

10 The intent and goal is to not reduce plaintiff’s time permitted to file or
 11 oppose motions or engage in other court filings that use and reference protected
 12 materials. The intent and goal is for plaintiff to file as complete papers as possible,
 13 which may include references to defendant’s protected material, and provide and
 14 instigate defendant to take steps to obtain an order to obtain an order that permits
 15 sealing, and then defendant *immediately* file the referenced protected materials
 16 under seal or not file them under seal, so the court may then review the alleged
 17 sensitive protected materials at issue, alongside plaintiff’s filed papers.

18 This same procedure may also work in reverse as to the two parties in this
 19 case. However, plaintiff does not foresee any claim or need to assert the existence
 20 of protected materials, at this point in time.

21 13. FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within 12
 23 months after the final disposition of the case, by way of a written request by the
 24 Designating Party, each Receiving Party must return all Protected Material to the
 25 Producing Party or destroy such material. Plaintiff shall have up to 12 months to
 26 destroy such materials from the date of request. As used in this subdivision, “all
 27 Protected Material” includes all copies, abstracts, compilations, summaries, and any
 28 other format reproducing or capturing any of the Protected Material.

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Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 and shall continue for as long as counsel preserve their files in due course at their law firm.

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated:

LAW OFFICES OF
GENE J. GOLDSMAN

By: /s/ Evan A. Blair
EVAN A. BLAIR
GENE J. GOLDSMAN
Attorneys for Plaintiff
DARNELL HENLEY

Dated:

ROPER S MAJESKI PC

By: /s/ Stephan Choo
KATHLEEN N. STRICKLAND
STEPHAN CHOO
Attorneys for Defendant
WAL-MART STORES, INC.

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ATTESTATION

In compliance with Local Rule 5-1, the filing attorney attests that he has obtained concurrence regarding the filing and contents of this document with the other signatories thereto.

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: 8/10/20

./S/ CHARLES F. EICK
CHARLES F. EICK
U.S. MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District of
California on _____, 2020, in the case of *Darnell Henley v. Wal-Mart
Stores, Inc.*, Case No. 2:20-cv-02902 GW (ASx). I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order. I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms of
this Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print or
type full name] of _____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____