

1 FordHarrison LLP
 Terry L. Higham (SBN 150726)
 2 Mohammad B. Shihabi (SBN 337819)
 3 350 South Grand Avenue, Suite 2300
 Los Angeles, CA 90071
 Tel: (213) 237-2400
 4 Fax: (213) 237-2401
 tlhigham@fordharrison.com
 5 mshihabi@fordharrison.com

6 Attorneys for Defendant
 WALMART INC.

7 BRANDON J. SWEENEY
 8 THE SWEENEY LAW FIRM
 15303 Ventura Blvd., Suite 900
 9 Sherman Oaks, California 91403
 Telephone: (818) 380-3051
 10 Facsimile: (818) 380-3001
 Email: bsweeney@thesweeneylawfirm.com

11 *Attorneys for Plaintiff*
 12 WILLIAM HENRIQUEZ

13
 14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

17 WILLIAM HENRIQUEZ, an
 Individual,

18 Plaintiff,

19 v.

20 WALMART, INC.; and DOES 1
 21 through 50, inclusive,

22 Defendants.

Case No. 5:21-cv-01820-JWH-SHK

~~PROPOSED~~ STIPULATED
 CONFIDENTIALITY ORDER

Action filed: 08/25/2021
 Date of Removal: 10/26/2021

23 The parties have agreed to and have submitted to the Court, and for good cause
 24 shown the Court hereby enters, the following Confidentiality Order:

25 1. This Order shall govern the disclosure of materials designated as
 26 Confidential Material in this litigation. Confidential Material, as used in this Order,
 27 shall refer to any document or item designated as Confidential or Highly Confidential
 28

1 – Attorneys’ Eyes Only, including but not limited to, documents or items produced
2 during discovery, all copies thereof, and the information contained in such material.
3 Nothing in this Order shall require any party to produce any specific documents or
4 category of documents which a party deems inappropriate for production.

5 **Definitions of Confidential Material**

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

8 a. Materials relating to any privileged, confidential, or
9 nonpublic information, including, but not limited to, trade
10 secrets, research, design, development, financial, technical,
11 marketing, planning, personal, or commercial information,
12 as such terms are used in the Federal Rules of Civil
13 Procedure (Fed. R. Civ.) and any applicable case law
14 interpreting Fed. R. Civ. 26(c)(1)(G); contracts; non-public
15 compilations of retail prices; proprietary information;
16 vendor agreements; personnel files; claim/litigation
17 information; and nonpublic policies and procedures shall
18 be deemed Confidential.

19 b. Materials containing corporate trade secrets, nonpublic
20 research and development data, including, but not limited
21 to, cost data, pricing formulas, inventory management
22 programs, and other sales or business information not
23 known to the public; information obtained from a non-
24 party pursuant to a non-disclosure agreement; and
25 customer-related Protected Data shall be deemed Highly
26 Confidential – Attorneys’ Eyes Only.

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

1 afforded Highly Confidential – Attorneys’ Eyes Only
2 material, in which event the parties shall meet and confer
3 in good faith, and, if unsuccessful, shall move the Court for
4 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 injury
9 through disclosure to persons other than those persons involved in the prosecution or
10 defense of this litigation.

11 **Procedure for Designating Information as Confidential**

12 4. To designate information as confidential, the producing party shall mark
13 Confidential Material with the legend “CONFIDENTIAL” or “HIGHLY
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 legend
17 designating those responses as Confidential Material. The Receiving Party may make
18 copies of Confidential Material and such copies shall become subject to the same
19 protections as the Confidential Material from which those copies were made.

20 a. Information on a disk or other electronic format (e.g., a
21 native format production) may be designated confidential
22 by marking the storage medium itself (or the native file’s
23 title) with the legend “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The
25 Receiving Party shall mark any hard-copy printouts and the
26 storage medium of any permissible copies of such
27 electronic material with the corresponding legend
28 contained on the original and such copies shall become
 subject to the same protections, as the Confidential
 Material from which those copies were made.

1 b. Information disclosed at any deposition of a party taken
2 in this action may be designated by the party as confidential
3 by indicating on the record at the deposition that the
4 information is confidential and subject to the provisions of
5 this Order. Alternatively, the party may designate
6 information disclosed at the deposition as confidential by
7 notifying the court reporter and other parties in writing,
8 within fifteen (15) business days of receipt of the transcript,
9 of the specific pages and lines of the transcript which are
10 designated as confidential. The parties may agree to a
11 reasonable extension of the 15-business-day period for
12 designation. Designations of transcripts will apply to
13 audio, video, or other recordings of the testimony. During
14 such 15-business-day period, the entire transcript shall
15 receive confidential treatment. Upon such designation, the
16 court reporter and each party shall affix the
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY” legend to the designated
19 pages and segregate them as appropriate.

20 5. A producing party may change the confidentiality designation of
21 materials it has produced, as follows: (1) The producing party must give the receiving
22 parties notice of the change by identifying the documents or information at issue.
23 Once notice is given, the receiving party must make good-faith efforts to ensure that
24 the documents or information are accorded treatment under the new designation. (2)
25 Within a reasonable period after giving notice, the producing party must reproduce
26 the documents or information in a format that contains the new designation. (3) If
27 such information has been disclosed to persons not qualified pursuant to paragraph(s)
28 (12-13) below, the party who disclosed such information shall (a) take reasonable
efforts to retrieve previously disclosed Confidential Material; (b) advise such persons
that the material is Confidential; and (c) give the producing party written assurance
that steps (a) and (b) have been completed.

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1 **Data Security**

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

11 **Clawback Provisions**

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

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

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

25 10. If the receiving party has reason to believe that a produced document or
26 other information may reasonably be subject to a claim of privilege, then the
27 receiving party shall immediately sequester the document or information, cease using
28 the document or information and cease using any work product containing the

1 information, and shall inform the producing party of the beginning BATES number
2 of the document or, if no BATES number is available, shall otherwise inform the
3 producing party of the information.

4 11. A producing party must give written notice to any receiving party
5 asserting a claim of privilege, work-product protection, or other ground for
6 reclaiming documents or information (a “clawback request”). After a clawback
7 request is received, the receiving party shall immediately sequester the document (if
8 not already sequestered) and shall not review or use that document, or any work
9 product containing information taken from that document, for any purpose. The
10 parties shall meet and confer regarding any clawback request.

11 **Who May Receive Confidential and Highly Confidential Information**

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

20 13. *Highly Confidential—Attorneys’ Eyes Only Material.* Material and
21 information designated as “Highly Confidential—Attorneys’ Eyes Only” shall only
22 be disclosed to the Court, its staff, in-house and outside counsel of record for each
23 party, the secretarial, clerical, and paralegal staff of each, and consulting and
24 testifying experts retained by a party in this action.

25 14. *Restriction on Disclosure to Direct Competitors.* Notwithstanding the
26 foregoing, Confidential Material shall not be disclosed to any current or former
27 employees of, or current or former consultants, advisors, or agents of, a direct
28 competitor of any party named in the litigation. If a Receiving Party is in doubt about

1 whether a particular entity is a direct competitor of a party named in this lawsuit, then
2 before disclosing any Confidential Material to a current or former employee,
3 consultant, advisor, or agent of that entity, the Receiving Party's counsel must confer
4 with counsel for the Producing Party.

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

11 16. *Duties in the Event of Unauthorized Disclosures.* It shall be the
12 obligation of counsel, upon learning of any unauthorized disclosure or threatened
13 unauthorized disclosure of Confidential Information, or any other breach or
14 threatened breach of the provisions of this Order, to promptly notify counsel for the
15 Producing Party. The notification shall be supplemented with reasonable details of
16 the circumstances of the disclosure in order to permit the producing party to
17 understand and take appropriate steps. Each party and its counsel agree to take
18 reasonable and good-faith efforts to contain or limit any breach promptly upon
19 receiving notice of it, and to make reasonable and good-faith attempts to retrieve any
20 unauthorized disclosure of documents or information. This provision does not limit
21 the producing party's entitlement to damages resulting from any breach of this Order.

22 **Authorized Uses of Confidential Material**

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

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

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

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

7 20. Any party or interested member of the public may move the Court to
8 modify the designation of any documents or information produced in this litigation
9 (either to include additional protection with respect to confidentiality or to remove a
10 confidential designation). Before making such a motion, the party or an interested
11 member of the public shall first attempt to resolve such dispute with the producing
12 party's counsel. Pending resolution of any challenges to the designation of
13 documents or information, the material at issue shall continue to be treated as
14 Confidential Material until ordered otherwise by the Court. The burden shall be on
15 the party seeking to modify the designation to show that the producing party's
16 designation is inappropriate.

17 **Withholding of Information**

18 21. *Non-relevant Attachments.* The parties will not produce non-relevant
19 attachments that are attached to relevant emails. When an attachment is withheld,
20 either for privilege or non-responsiveness, the producing party shall produce a one-
21 page TIFF image (or PDF if production format dictates) in place of the withheld
22 attachment, correspondingly stating "Attachment Withheld-Privileged" or
23 "Attachment Withheld-Nonresponsive", and bearing a sequential BATES number
24 within the family BATES range. If any attachment to an email contains responsive
25 content, then the cover email shall be produced for context, regardless of the cover
26 email's responsiveness. The cover email may be redacted in part to remove sensitive
27 information, as described below.

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1 22. *Redactions.* The parties may redact (1) information that is privileged or
2 protected from discovery as work product or by reason of any other applicable
3 privilege or immunity; (2) information subject to non-disclosure obligations imposed
4 by governmental authorities, law or regulation (*e.g.*, protected personal information);
5 and (3) sensitive, non-relevant information, including but not limited to personally
6 identifiable information, trade secrets, or information regarding products, data, or
7 people. Privilege redactions will state, over the redacted portion, “Redacted–
8 Privileged,” and all other redactions will state, “Redacted–Nonresponsive.”
9 Redactions of emails will not redact the names of recipients or the subject line of the
10 emails, unless the subject line is itself privileged or contains the sensitive information
11 described above, in which case only so much of the subject line will be redacted as
12 may be needed. The parties will produce redacted documents in TIFF format (or
13 searchable PDF if production format dictates; or in native format for file types that
14 do not convert well to TIFF/PDF, such as Excel files) with corresponding searchable
15 OCR text and the associated metadata for the document, ensuring the redacted
16 content is fully protected from disclosure.

17 **Confidential Material In Filings, Hearings, and Trial**

18 23. *Confidential Material in Filings.* Without written permission from the
19 Producing Party or court order secured after appropriate notice to all interested
20 persons, a party may not file Confidential Material in the public record in this action
21 (or in any other action, such as an appeal). Confidential Material may only be filed
22 under seal in a manner prescribed by the Court for such filings.

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

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CONFIDENTIAL

IN ACCORDANCE WITH THE CONFIDENTIALITY ORDER OF THE COURT, THE CONTENTS OF THIS ENVELOPE SHALL BE TREATED AS CONFIDENTIAL AND MUST NOT BE SHOWN TO A PERSON OTHER THAN THE COURT, ATTORNEYS IN THIS CASE, OR TO PERSONS ASSISTING THOSE ATTORNEYS.

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

Continuing Effect of this Order and Duty to Destroy

26. This Order shall continue to be binding throughout and after the conclusion of this litigation, including all appeals. Within thirty (30) days of settlement or final adjudication, including the expiration or exhaustion of all rights to appeal or petitions for extraordinary writs, each party or non-party to whom any materials were produced shall, without further request or direction from the Producing Party, promptly destroy all documents, items or data received including, but not limited to, copies or summaries thereof, in the possession or control of any expert or employee. This requirement to destroy includes all documents, not only those documents designated as Confidential Material. The Receiving Party shall submit a written certification to the Producing Party by the 30-day deadline that (1) confirms the destruction/deletion of all Confidential Material, including any copies

1 of Confidential Materials provided to persons required to execute Exhibit A
2 (Affidavit), and (2) affirms the Receiving Party has not retained any copies, abstracts,
3 compilations, summaries or any other format reproducing or capturing any of the
4 Confidential Material. Notwithstanding this provision, outside counsel is entitled to
5 retain an archival copy of filings, depositions, and deposition exhibits.

6 **Procedure if Confidential Material Is Required to be Produced**

7 27. If any person receiving documents covered by this Order is served with
8 a subpoena, order, interrogatory, or document or civil investigative demand
9 (collectively, a “Demand”) issued in any other action, investigation, or proceeding,
10 and such Demand seeks material that was produced or designated as Confidential
11 Material by someone other than the Receiving Party, the Receiving Party shall give
12 prompt written notice by hand or electronic transmission within five (5) business
13 days of receipt of such Demand to the party or non-party who produced or designated
14 the material as Confidential Material, and shall object to the production of such
15 materials on the grounds of the existence of this Order. At the request of the party or
16 non-party who produced or designated the material as Confidential Material, the
17 Receiving Party shall refuse to comply with the Demand unless (a) ordered to do so
18 by a court with jurisdiction over the Receiving Party; or (b) released in writing by the
19 party or non-party who designated the material as Confidential Material. The burden
20 of opposing the enforcement of the Demand shall fall upon the party or non-party
21 who produced or designated the material as Confidential Material. Compliance by
22 the Receiving Party with any order of a court of competent jurisdiction, directing
23 production of any Confidential Material, shall not constitute a violation of this Order.

24 **Application of this Order to Productions by Third Parties**

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

28 ///

1 29. If a third party produces (or intends to produce) documents and does not
2 designate (or does not intend to designate) those documents as Confidential Material,
3 then any party to this action may seek to designate that third party's documents or
4 categories of documents as Confidential Material. In that case, it will be the burden
5 of the party seeking protected status to move for a court order designating the
6 materials as Confidential Material after the parties confer.

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

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

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

19 Respectfully Stipulated and Submitted by,

20
21 Dated: May 5, 2022

By:

Brandon Sweeney

Brandon J. Sweeney

Counsel for Plaintiff

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25 Dated: May 5, 2022

By:

Terry L. Higham

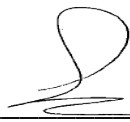
Terry L. Higham

Counsel for Defendant

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Attestation

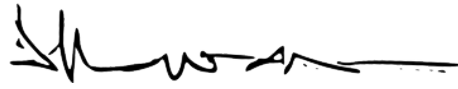
Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that Brandon Sweeney of The Sweeney Law Firm, who is counsel for Plaintiff, on whose behalf this filing is jointly submitted, has concurred in this filing content and has authorized me to file this document.

By: 
Terry L. Higham

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IT IS SO ORDERED

Dated: May 09, 2022



Hon. Magistrate Judge
Shashi H. Kewalramani

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EXHIBIT A TO CONFIDENTIALITY ORDER

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WILLIAM HENRIQUEZ, an Individual,
Plaintiff,
v.
WALMART, INC.; and DOES 1 through
50, inclusive,
Defendants.

Defendants.

Case No. 5:21-cv-01820-JWH-SHK

AFFIDAVIT OF COMPLIANCE WITH CONFIDENTIALITY ORDER

1. My name is _____. I live at _____ . I am working on behalf (or at the direction and engagement) of _____.

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

3. I acknowledge that documents and information designated as confidential and/or highly confidential pursuant to such Confidentiality Order (“Confidential Materials”) are being disclosed to me only upon the conditions that I agree (a) to be subject to the jurisdiction of this Court, and (b) to comply with that Order. I hereby agree to abide by such Order, subject to all penalties prescribed therein, including contempt of Court, for disobedience of said Order. I promise that the documents and

1 information given confidential treatment under the Confidentiality Order entered in
2 this case will be used by me only to assist counsel for the parties in preparing for
3 litigation of the above-captioned matter. I understand that any use of such
4 Confidential Material in any manner contrary to the provisions of the Confidentiality
5 Order may subject me to the sanctions of this Court for contempt and to liability for
6 any damages caused by my breach of the Confidentiality Order.
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8
9 4. I shall not disclose nor permit to be reviewed or copied said Confidential
10 Materials, or any information derived from, by any person other than the parties and
11 counsel for the parties or members of their staff.
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13 5. Within 30 days after the above-captioned lawsuit ends in a final non-
14 appealable order, I agree to destroy all Confidential Materials in my possession.
15

16
17 DATED: _____, 20____

18 _____

19 Signature

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21 _____

22 Printed Name

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24 **Page 2**
25 **Exhibit A, Affidavit of Compliance with Confidentiality Order**
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