

1 GREENBERG TRAUIG, LLP
 2 Robert J. Herrington (SBN 234417)
 herringtonr@gtlaw.com
 3 Matthew R. Gershman (SBN 253031)
 gershmanm@gtlaw.com
 4 1840 Century Park East, Suite 1900
 5 Los Angeles, CA 90067
 6 Tel: 310-586-7700; Fax: 310-586-7800
 Attorneys for Defendant Wal-Mart Associates, Inc.

8 BLUMENTHAL, NORDREHAUG & BHOWMIK
 9 Norman B. Blumenthal (SBN 068687)
 norm@bamlawlj.com
 10 Kyle R. Nordrehaug (SBN 205975)
 kyle@bamlawca.com
 11 Aparajit Bhowmik (SBN 248066)
 aj@bamlawca.com
 12 Ruchira Piya Mukherjee (SBN 274217)
 piya@bamlawca.com
 13 2255 Calle Clara
 14 La Jolla, CA 92037
 15 Tel: 858-551-1223; Fax: 858-557-1232
 16 Attorneys for Plaintiff Scott Wilson

17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 SCOTT WILSON, an individual, on behalf
 20 of himself and on behalf of all persons
 21 similarly situated,

22 Plaintiff,

23 v.

24 WAL-MART ASSOCIATES, INC., a
 corporation; and DOES 1-50, inclusive,
 25 Defendants.

Case No. 8:14-cv-1021-FMO (SPx)

[Related to EDCV12-01520 FMO (SPx)]

**STIPULATED PROTECTIVE
 ORDER**

Trial Date: Not Set
 Action Filed: May 22, 2014

[SEE CHANGE MADE BY THE
 COURT TO PARAGRAPH 21]

1 The parties have stipulated to a Protective Order as follows:

2 **A. LIMITED SCOPE OF ORDER**

3 1. In this Action, the parties expect to exchange confidential information
4 regarding their respective products that are the subject of this litigation. The parties have
5 stipulated to the entry of this protective order governing the exchange and use of
6 confidential documents and information in discovery. This Order does not govern or
7 restrict the use of any document or information (including information designated as
8 confidential under this order) at trial in any manner whatsoever. When and if the case
9 proceeds to trial, all of the documents and information to be used at trial will be
10 presumptively available to all members of the public, including the press, unless good
11 cause is shown to the district judge in advance of the trial.

12 2. Further, this Order does not affect the burden of proof that must be
13 met by a party seeking to protect confidential documents or information that is filed in
14 the court records in this case.

15 3. Nothing in this order shall impose any restrictions on the use or
16 disclosure by a party of material obtained by such party independent of discovery in this
17 action, whether or not such material is also obtained through discovery in this action, or
18 from the use or disclosure of information that is publicly known. Further, nothing in this
19 Order restricts the ability of any party to use or disclose its own confidential material as it
20 deems appropriate.

21 **B. GOOD CAUSE STATEMENT**

22 4. In discovery in this case, the parties will be required to exchange
23 commercially and competitively sensitive information, as well as confidential
24 employment information. Good cause exists for the Court to enter this Protective Order
25 because the Parties could be prejudiced by the dissemination of any confidential,
26 sensitive, and proprietary documents and trade secrets as defined in California Civil
27 Code §§ 3426, et seq. These documents include proprietary training materials,
28 proprietary programs for asset protection and security, personal and private disciplinary

1 or other records of employees, confidential financial information, and business
2 activities to which the Parties or third parties would not otherwise have access,
3 including information regarding strategies and analyses, the disclosure of which could
4 harm the businesses involved. The disclosure of this information may cause
5 competitive injury and or other harm to the Parties and/or would unnecessarily invade
6 the privacy of a third party.

7 5. This overriding interest overcomes the right the public may have to
8 access this type of information, and, given the nature of the dispute, privacy concerns of
9 employees and the competitive nature of the retail industry, there is a substantial
10 probability that the Parties' interest will be prejudiced if they are not provided the
11 protections afforded by this Order. The Parties shall use reasonable efforts to minimize
12 the amount of material designated as Confidential. Accordingly, good cause exists, and
13 the parties hereby stipulate to and petition the Court to enter the following Stipulated
14 Protective Order.

15 6. Good cause exists for the designation of information as
16 "Confidential" when the information has not been revealed to the public and the
17 information falls into one of the following categories:

- 18 (a) proprietary training materials and proprietary programs for
19 asset protection and security;
- 20 (b) personal or private information about any officer, employee or
21 other individual third party;
- 22 (c) personal and private disciplinary or other records of employees;
- 23 (d) commercially sensitive financial or business information, and
24 business activities to which the Parties or third parties would not otherwise have access,
25 the disclosure of which information would have the effect of causing harm to the
26 competitive position of the person or entity from which the information is obtained.

27 7. The parties shall use reasonable efforts to minimize the amount of
28 material designated as Confidential.

1 8. This Protective Order applies to such Confidential information
2 furnished in this litigation regardless of the form in which it is transmitted and regardless
3 whether the information is furnished by a party or third-party. Such information may be
4 contained in documents, written discovery responses, declarations, deposition testimony,
5 exhibits, and other materials or testimony provided by any party or third-party during this
6 Action. Such materials are collectively referred to as “Discovery Materials” in this
7 Protective Order.

8 **C. PROCEDURE FOR DESIGNATION**

9 9. “Designating Party” may designate Discovery Materials
10 “Confidential” meeting the standards set forth in paragraph 6 by taking the following
11 actions:

12 (a) With respect to documents, discovery responses or other
13 written materials furnished by the Designating Party in paper, as tiff images, or in any
14 other form in which it is possible to add a legend to each page, the Designating Party may
15 designate the material “Confidential” by stamping, inscribing or otherwise marking on
16 each page of a document containing Confidential Information the words
17 **“CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.”** Electronic documents
18 produced as tiff images shall be marked in accordance with this paragraph 9(a).

19 (b) With respect to Confidential Information furnished by the
20 Designating Party in a non-paper medium, e.g., video or audio tape, computer discs, CD-
21 roms, DVDs, etc., the Designating Party may designate all information therein as
22 “Confidential” by affixing the appropriate legend to the outside of the medium or
23 container.

24 10. With respect to deposition testimony or other oral testimony to be
25 recorded in a written transcript, the Designating Party may designate information as
26 Confidential by making a statement on the record to that effect during the deposition or
27 proceeding at issue or by designating such testimony as confidential within fourteen (14)
28 days of receipt of the deposition transcript. Counsel for the Designating Party shall make

1 a good faith effort to only designate as Confidential those specific portions of a
2 deposition transcript that contain Confidential Information. Deposition Exhibits that
3 have been previously designated Confidential shall retain their Confidential designation
4 and in the absence of other agreement or notification to the court reporter, all such
5 Exhibit(s) and any discussion of said Exhibit(s) during the deposition shall be treated as
6 Confidential. At the option of counsel for the witness, to be stated on the record at the
7 deposition, the entire transcript of a deposition shall be treated as Confidential until 14
8 days after receipt of the deposition transcript by counsel for the witness, after which time
9 the deposition transcript shall cease to be treated as Confidential, unless, in writing
10 before the 14 days have expired, the witness, his or her employer, or his or her counsel
11 designate portions of the deposition transcript as Confidential. In the case of non-party
12 witnesses, any party or the non-party witness, his or her employer or his or her counsel
13 may designate information revealed as Confidential, either by a statement to such effect
14 on the record in the course of the deposition, or in writing within 14 days of receipt of the
15 deposition transcript by the non-party witness' counsel. The court reporter shall
16 separately bind the designated portion of the deposition transcript and all designated
17 exhibits. The separately bound deposition material shall be marked in accordance with
18 its designation, as either "CONFIDENTIAL, SUBJECT TO A PROTECTIVE ORDER."
19 Alternatively, the Designating Party may, within a reasonable time after the deposition
20 transcript is delivered to the Designating Party, provide to all counsel written notice
21 identifying the specific portion (page and lines) that the Designating Party seeks to
22 protect, and all parties to the litigation will mark the pages with the appropriate legends.

23 **D. USE AND DISCLOSURE OF DESIGNATED MATERIAL**

24 11. Information and materials designated "Confidential" shall be used
25 only for prosecuting or defending this Action, except that a party may use its own
26 Confidential Information for whatever purposes it chooses. A party using, disseminating
27 or distributing Confidential Information for any purpose other than for use in connection
28 with this Action shall be subject to sanctions (including, without limitation, monetary,

1 evidentiary or terminating sanctions, in the Court’s discretion), as well as being
2 potentially subject to any disciplinary or other applicable legal proceedings.

3 12. Information and materials designated “**CONFIDENTIAL,**
4 **SUBJECT TO A PROTECTIVE ORDER**” may only be disclosed to the following
5 individuals:

6 (a) The recipient party and officers, directors and/or employees of
7 the recipient party who have direct responsibility for assisting such counsel in the
8 preparation and trial of the action;

9 (b) Counsel representing the parties in the Action, and paralegal
10 and clerical staff (whether employees or independent contractors) who are assisting in
11 this litigation;

12 (c) Court staff, court reporters and videographers involved in this
13 litigation;

14 (d) Independent consultants or experts retained by any party in this
15 case who are expected to testify at trial or employed by counsel in order to assist in
16 preparation for trial or for deposition, so long as they sign a statement agreeing to abide
17 by the terms of this Order, in the form set forth in Exhibit A;

18 (e) Third-party witnesses during the course of their depositions and
19 otherwise provided that (1) the third party or witness previously created, generated or
20 received the Discovery Material before the Action commenced; or (2) before disclosure
21 of the Confidential Information counsel for the parties agree the Confidential Information
22 may be shown to the deponent; or (3) the Court has determined that the Confidential
23 Information may be shown to the deponent in ruling on a party’s objection. Except for
24 when the third party or witness previously created, generated or received the Discovery
25 Material, a third party witness shall not be shown the material unless or until the witness
26 signs a statement agreeing to abide by the terms of this order, in the form set forth in
27 Exhibit A. This requirement for party agreement or Court determination does not apply
28 to expert witnesses or consultants.

1 **E. FILING OF DESIGNATED MATERIAL IN PRE-TRIAL**
2 **PROCEEDINGS**

3 17. The parties must comply with Local Rule 79-5 for filing confidential
4 information with the Court in any pre-trial proceeding in this action. If the recipient
5 party files or seeks to file with the Court material that another party has designated
6 Confidential under this Order, the recipient party shall simultaneously file an application
7 to seal the records pursuant to Local Rule 79-5 that references this Order and that
8 specifically sets forth the terms of this paragraph. Within 48 hours after service of the
9 application to seal (or within such other time as may be ordered by the Court), the
10 designating party must either: (a) inform the recipient party that it does not object to the
11 filing of the information in the public record, at which point the filing party must
12 withdraw the application; or (b) file papers in support of the application setting forth the
13 factual and legal basis for the request to seal the records. The designating party bears the
14 burden of proving that the materials meet the standards for sealing the records. In
15 meeting that burden, a party may not rely on its own designation of material as
16 “confidential” under this protective order.

17 **F. CHALLENGES TO DESIGNATION**

18 18. A party may challenge the designation of any material as Confidential
19 under this protective order under the procedures set forth in Local Rules 37-1 through 37-
20 4. If the parties are unable to resolve the issue informally pursuant to 37-1, the
21 challenging party may move for an order granting access to the information under less
22 burdensome conditions pursuant to the procedures set forth in Local Rule 37-2 through
23 37-4. In making or opposing any motion relating to the designation of confidential
24 information, the party seeking to maintain a document as confidential shall bear the
25 burden of showing specific prejudice or harm will result if no protective order is granted.

26 19. This Order is without waiver of or prejudice to, and specifically
27 reserves the rights and remedies of any party to apply to the Court for a determination,
28 for good cause shown, that: (a) persons not provided for in this Order may or may not

1 receive Confidential; or (b) this Order be modified or vacated. Any application for relief
2 pursuant to this section shall be made only after reasonable efforts to meet and confer in
3 good faith have been unsuccessful, and must comply with Local Rules 37-1 to 37-4 or
4 other applicable rule.

5 **G. SUBPOENA IN ANOTHER ACTION**

6 20. In the event any person, party or entity having possession, custody or
7 control of any Confidential Information receives a subpoena or other process or order to
8 produce the Confidential Information, that person or party shall promptly, within five (5)
9 business days:

10 (a) notify, in writing, the attorneys of record of the Designating
11 Party;

12 (b) notify, in writing, the attorneys of record, or other
13 representatives if there is no attorney of record, of all persons having an interest in
14 maintaining the confidentiality of the Confidential Information and who are known to the
15 recipient of the subpoena, process or order;

16 (c) furnish all persons notified pursuant to subsections a and b,
17 above, a copy of the subpoena or other process or order; and

18 (d) provide reasonable cooperation with respect to all procedures to
19 protect the Confidential Information undertaken by those with an interest in protecting
20 the confidentiality of the Confidential Information.

21 21. If, after receiving the notification set forth in paragraph 20, the
22 Designating Party makes no motion to quash or modify the subpoena despite a
23 reasonable opportunity to do so (or does not otherwise resolve the issue with the
24 subpoenaing party), the person, entity or party receiving the subpoena or other process or
25 order shall be entitled to comply, provided that person, party or entity has fulfilled its
26 obligations pursuant to this Order. Nothing in this Order should be construed as
27 authorizing or encouraging a party or other person or entity to disobey a lawful directive
28 from another court.

1 **H. TERM OF ORDER**

2 22. This Order does not govern or restrict the use of any document or
3 information (including information designated as confidential under this order) at trial in
4 any manner whatsoever. When and if the case proceeds to trial, all of the documents and
5 information to be used at trial will be presumptively available to all members of the
6 public, including the press, unless good cause is shown to the district judge in advance of
7 the trial.

8 23. If the action is concluded before trial is commenced, the Order shall
9 remain in full force and effect after such conclusion and the Court shall retain jurisdiction
10 to enforce its terms. In such a case, all materials, including copies, containing
11 information designated as Confidential Information shall be returned to the Producing
12 Party, or shall be disposed of in a manner assuring its confidential destruction, within the
13 following time period: Within 30 days after final termination of this Action either by
14 consensual dismissal with prejudice, after final appellate review has been obtained, or
15 after the time for appeal has lapsed without the filing of an appeal by either of the parties.
16 Each party shall provide to the Designating Party a declaration certifying compliance
17 with this paragraph.

18 24. If the action is concluded prior to the commencement of trial,
19 regardless of any other provision of this Order, one copy of all pleadings filed in the
20 Action may be retained by counsel of record for each party, and shall be sealed,
21 designated and stored as “Confidential Information Pursuant to Court Order” and shall
22 remain subject to the terms of this Order.

23 25. The designation of any information, documents, or things as
24 Confidential Information pursuant to this Protective Order shall not, in and of itself, raise
25 any inference as to the confidentiality of any information, documents, exhibits, or things
26 marked for identification purposes or introduced into evidence at the trial of this
27 litigation. Nothing in this Protective Order shall preclude any party from seeking
28 confidential treatment from the Court with respect to such information, documents,

1 exhibits, or things or from raising any available objections, including without limitation
2 objections concerning admissibility, materiality, and privilege. The parties to this
3 Protective Order expressly reserve at this time a determination as to the manner in which
4 Confidential Information may be used in an evidentiary hearing or at trial. Special
5 procedures or in camera treatment, if any, shall be determined in the future.

6 **I. NO WAIVER**

7 26. The disclosure of Confidential Information pursuant to discovery or
8 the procedures set forth in this confidentiality order shall not constitute a waiver of any
9 trade secret or any intellectual property, proprietary, privacy or other rights to or in such
10 information.

11 27. The inadvertent disclosure of information protected by the attorney-
12 client, work product, or other applicable privilege or protection in this litigation shall not
13 constitute a waiver of any valid claim of privilege. Further, failure to assert a privilege in
14 this litigation as to one document or communication shall not be deemed to constitute a
15 waiver of the privilege as to any other document or communication allegedly so
16 protected, even involving the same subject matter, unless the producing party seeks to
17 rely on the privileged material in this litigation. A party that discovers that it has
18 inadvertently produced privileged information shall promptly request its return. The
19 privileged documents together with all copies thereof shall be returned forthwith to the
20 party claiming privilege. Any notes or other work product made from the documents in
21 question shall be returned along with the documents themselves or destroyed, as
22 appropriate. The party claiming privilege shall thereafter promptly produce a privilege
23 log listing the documents in question and any other party shall thereafter have the right to
24 challenge the assertion of privilege by motion or any other appropriate means.

25 28. A party who receives apparently privileged materials from the
26 producing party, upon understanding that the document may be privileged or contain
27 confidential attorney work product, must act as follows:

- 28 (a) Cease review of the document.

1 (b) Immediately notify opposing counsel by phone and email of the
2 potentially privileged document, taking all reasonable measures to reach opposing
3 counsel. The reviewer must follow such counsel's instructions regarding the disposition
4 of the material. The reviewer must also completely refrain from using the material until
5 instruction by opposing counsel is received, which may include returning the document
6 and all copies, and removal of the document from electronic databases with confirmation
7 by the producing party.

8 (c) Until such time that the reviewer receives instructions by
9 opposing counsel, the reviewer may not share the document or its contents with other
10 persons. The reviewer may notify supervising attorneys that a potentially privileged
11 document may exist, without sharing its contents, and otherwise advise them or receive
12 advice from them regarding the circumstances.

13 (d) If the producing party claims the privilege it shall thereafter
14 promptly add the document(s) in question to its privilege log and any other party shall
15 thereafter have the right to challenge the assertion of privilege by motion or any other
16 appropriate means.

17 **J. CONTINUING JURISDICTION**

18 29. This Court shall have continuing jurisdiction to modify, enforce,
19 interpret or rescind this Protective Order, notwithstanding the termination of this action,
20 including but not limited to, issues arising out of the enforcement and interpretation of
21 Exhibit A.

22 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

23 DATED: December 23, 2014

GREENBERG TRAURIG, LLP

24 /s/ Matthew R. Gershman

25 Robert J. Herrington

26 Matthew R. Gershman

27 Attorneys for Defendant

28 Wal-Mart Associates, Inc.

1 DATED: December 23, 2014

BLUMENTHAL, NORDREHAUG &
BHOWMIK

2
3
4 /s/ Ruchira Piya Mukherjee
5 Norman B. Blumenthal
6 Kyle R. Nordrehaug
7 Aparajit Bhowmik
8 Ruchira Piya Mukherjee
9 Attorneys for Plaintiff Scott Wilson

10 *Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that Ruchira Piya*
11 *Mukherjee, on whose behalf this filing is jointly submitted, has concurred in this filing's*
12 *content and has authorized me to file this document.*

13
14 By: /s/ Matthew R. Gershman

15 The Court approves the foregoing Protective Order submitted by the parties, and
16 its terms shall govern all information disclosed and documents and data produced in this
17 Action.

18 IT IS SO ORDERED.

19
20 DATED: January 7, 2015

/s/
21 Hon. Sheri Pym
22 United States Magistrate Judge
23
24
25
26
27
28

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____, of _____, declare under penalty of
4 perjury that I have read in its entirety and understand the Stipulated Protective Order that
5 was issued by the United States District Court for the Central District of California on
6 _____, 2014 in the case of *Wilson v. Wal-Mart Associates, Inc.*, USDC
7 CENTRAL DISTRICT OF CALIFORNIA, CASE NO. 8:14-cv-1021-FMO (SPx).

8 I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order. I solemnly promise that I will not disclose in any manner any
10 information or item that is subject to this Stipulated Protective Order to any person or
11 entity except in strict compliance with the provisions of this Order. I further agree to
12 submit to the jurisdiction of the United States District Court for the Central District of
13 California for the purpose of enforcing the terms of this Stipulated Protective Order, even
14 if such enforcement proceedings occur after termination of this action.

15
16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____