

1 ROBERT J. HERRINGTON (SBN 234417)
 2 GREENBERG TRAUIG, LLP
 3 1840 Century Park East, 19th Floor
 4 Los Angeles, CA 90067
 Telephone: (310) 586-7700
 Facsimile: (310) 586-7800

5 *Attorneys for Defendants*
 6 Sam's West, Inc., Sam's East, Inc.,
 and Walmart Stores, Inc.

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 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**
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13 MORGAN CHIKOSI, individually
 14 and on behalf of all others similarly
 situated,

15 Plaintiff,

16 vs.

17 SAM'S WEST, INC.; SAM'S EAST,
 18 INC.; AND WAL-MART STORES,
 19 INC.

20 Defendants.

CASE NO. 8:15-cv-01675-AG-(JCGx)

Hon. Andrew J. Guilford

21 **STIPULATED PROTECTIVE**
 22 **ORDER**

23 Action Filed: October 19, 2015
 24 Trial Date: February 20, 2018

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 28 **STIPULATED PROTECTIVE ORDER**

1 **1. PURPOSES AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or private
3 information requiring special protection from public disclosure and from use for any
4 purpose other than this litigation. Thus, the Court enters this Protective Order. This Order
5 does not confer blanket protections on all disclosures or responses to discovery, and the
6 protection it gives from public disclosure and use extends only to the specific material
7 entitled to confidential treatment under the applicable legal principles. This Order does
8 not automatically authorize the filing under seal of material designated under this Order.
9 Instead, the parties must comply with L.R. 79-5.1 if they seek to file anything under seal.
10 This Order does not govern the use at trial of material designated under this Order.
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12 **2. DESIGNATING PROTECTED MATERIAL**

13 **2.1 Over-Designation Prohibited.** Any party or non-party who designates
14 information or items for protection under this Order as “CONFIDENTIAL,” “HIGHLY
15 CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL –
16 SOURCE CODE” (a “designator”) must only designate specific material that qualifies
17 under the appropriate standards. To the extent practicable, only those parts of documents,
18 items, or oral or written communications that require protection shall be designated.
19 Designations with a higher confidentiality level when a lower level would suffice are
20 prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified
21 designations expose the designator to sanctions, including the Court’s striking all
22 confidentiality designations made by that designator. Designation under this Order is
23 allowed only if the designation is necessary to protect material that, if disclosed to
24 persons not authorized to view it, would cause competitive or other recognized harm.
25 Material may not be designated if it has been made public, or if designation is otherwise
26 unnecessary to protect a secrecy interest. If a designator learns that information or items
27 that it designated for protection do not qualify for protection at all or do not qualify for
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1 the level of protection initially asserted, that designator must promptly notify all parties
2 that it is withdrawing the mistaken designation.

3 **2.2 Manner and Timing of Designations.** Designation under this Order requires
4 the designator to affix the applicable legend (“CONFIDENTIAL,” “HIGHLY
5 CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL –
6 SOURCE CODE”) to each page that contains protected material. For testimony given in
7 deposition or other proceeding, the designator shall specify all protected testimony and
8 the level of protection being asserted. It may make that designation during the deposition
9 or proceeding, or may invoke, on the record or by written notice to all parties on or
10 before the next business day, a right to have up to 30 days from the date of receipt of the
11 written transcript of the deposition or proceeding to make its designation.

12 **2.2.1** A party or non-party that makes original documents or materials
13 available for inspection need not designate them for protection until after the
14 inspecting party has identified which material it would like copied and produced.
15 During the inspection and before the designation, all material shall be treated as
16 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting
17 party has identified the documents it wants copied and produced, the producing
18 party must designate the documents, or portions thereof, that qualify for protection
19 under this Order.

20 **2.2.2** Parties shall give advance notice if they expect a deposition or other
21 proceeding to include designated material so that the other parties can ensure that
22 only authorized individuals are present at those proceedings when such material is
23 disclosed or used. The use of a document as an exhibit at a deposition shall not in
24 any way affect its designation. Transcripts containing designated material shall
25 have a legend on the title page noting the presence of designated material, and the
26 title page shall be followed by a list of all pages (including line numbers as
27 appropriate) that have been designated, and the level of protection being asserted.
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1 The designator shall inform the court reporter of these requirements. Any transcript
2 that is prepared before the expiration of the 21-day period for designation shall be
3 treated during that period as if it had been designated HIGHLY CONFIDENTIAL
4 – ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of the
5 21-day period, the transcript shall be treated only as actually designated.

6 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to designate does
7 not, standing alone, waive protection under this Order. Upon timely assertion or
8 correction of a designation, all recipients must make reasonable efforts to ensure that the
9 material is treated according to this Order.

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11 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 All challenges to confidentiality designations shall proceed under L.R. 37-1
13 through L.R. 37-4.

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15 **4. ACCESS TO DESIGNATED MATERIAL**

16 **4.1 Basic Principles.** A receiving party may use designated material only for this
17 litigation. Designated material may be disclosed only to the categories of persons and
18 under the conditions described in this Order.

19 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.**
20 Unless otherwise ordered by the Court or permitted in writing by the designator, a
21 receiving party may disclose any material designated CONFIDENTIAL only to:

22 **4.2.1** The receiving party's outside counsel of record in this action and
23 employees of outside counsel of record to whom disclosure is reasonably
24 necessary;

25 **4.2.2** The officers, directors, and employees of the receiving party to whom
26 disclosure is reasonably necessary, and who have signed the Agreement to Be
27 Bound (Exhibit A);

1 **4.2.3** Experts retained by the receiving party’s outside counsel of record to
2 whom disclosure is reasonably necessary, and who have signed the Agreement to
3 Be Bound (Exhibit A);

4 **4.2.4** The Court and its personnel;

5 **4.2.5** Outside court reporters and their staff, professional jury or trial
6 consultants, and professional vendors to whom disclosure is reasonably necessary,
7 and who have signed the Agreement to Be Bound (Exhibit A);

8 **4.2.6** During their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the Agreement to Be Bound (Exhibit
10 A); and

11 **4.2.7** The author or recipient of a document containing the material, or a
12 custodian or other person who otherwise possessed or knew the information.

13 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY**
14 **and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without Further**
15 **Approval.** Unless permitted in writing by the designator, a receiving party may disclose
16 material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or
17 HIGHLY CONFIDENTIAL – SOURCE CODE without further approval only to:

18 **4.3.1** The receiving party’s outside counsel of record in this action and
19 employees of outside counsel of record to whom it is reasonably necessary to
20 disclose the information;

21 **4.3.2** The Court and its personnel;

22 **4.3.3** Outside court reporters and their staff, professional jury or trial
23 consultants, and professional vendors to whom disclosure is reasonably necessary,
24 and who have signed the Agreement to Be Bound (Exhibit A); and

25 **4.3.4** The author or recipient of a document containing the material, or a
26 custodian or other person who otherwise possessed or knew the information.

1 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
2 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –**
3 **SOURCE CODE Material to In-House Counsel or Experts.** Unless agreed to in
4 writing by the designator:

5 **4.4.1** A party seeking to disclose to in-house counsel any material
6 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
7 make a written request to the designator providing the full name of the in-house
8 counsel, the city and state of such counsel’s residence, and such counsel’s current
9 and reasonably foreseeable future primary job duties and responsibilities in
10 sufficient detail to determine present or potential involvement in any competitive
11 decision-making. Inhouse counsel are not authorized to receive material designated
12 HIGHLY CONFIDENTIAL – SOURCE CODE.

13 **4.4.2** A party seeking to disclose to an expert retained by outside counsel of
14 record any information or item that has been designated HIGHLY
15 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
16 SOURCE CODE must first make a written request to the designator that (1)
17 identifies the general categories of HIGHLY CONFIDENTIAL – ATTORNEY
18 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE information that
19 the receiving party seeks permission to disclose to the expert, (2) sets forth the full
20 name of the expert and the city and state of his or her primary residence, (3)
21 attaches a copy of the expert’s current resume, (4) identifies the expert’s current
22 employer(s), (5) identifies each person or entity from whom the expert has
23 received compensation or funding for work in his or her areas of expertise
24 (including in connection with litigation) in the past five years, and (6) identifies
25 (by name and number of the case, filing date, and location of court) any litigation
26 where the expert has offered expert testimony, including by declaration, report, or
27 testimony at deposition or trial, in the past five years. If the expert believes any of
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1 this information at (4) - (6) is subject to a confidentiality obligation to a third party,
2 then the expert should provide whatever information the expert believes can be
3 disclosed without violating any confidentiality agreements, and the party seeking
4 to disclose the information to the expert shall be available to meet and confer with
5 the designator regarding any such confidentiality obligations.

6 **4.4.3** A party that makes a request and provides the information specified in
7 paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified
8 inhouse counsel or expert unless, within seven days of delivering the request, the
9 party receives a written objection from the designator providing detailed grounds
10 for the objection.

11 **4.4.4** All challenges to objections from the designator shall proceed under
12 L.R. 37-1 through L.R. 37-4.

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14 **5. SOURCE CODE**

15 **5.1 Designation of Source Code.** If production of source code is necessary, a
16 party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if it is, or
17 includes, confidential, proprietary, or trade secret source code.

18 **5.2 Location and Supervision of Inspection.** Any HIGHLY CONFIDENTIAL –
19 SOURCE CODE produced in discovery shall be made available for inspection, in a
20 format allowing it to be reasonably reviewed and searched, during normal business hours
21 or at other mutually agreeable times, at an office of the designating party’s counsel or
22 another mutually agreeable location. The source code shall be made available for
23 inspection on a secured computer in a secured room, and the inspecting party shall not
24 copy, remove, or otherwise transfer any portion of the source code onto any recordable
25 media or recordable device. The designator may visually monitor the activities of the
26 inspecting party’s representatives during any source code review, but only to ensure that
27 there is no unauthorized recording, copying, or transmission of the source code.

1 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 designated material to any person or in any circumstance not authorized under this Order,
4 it must immediately (1) notify in writing the designator of the unauthorized disclosures,
5 (2) use its best efforts to retrieve all unauthorized copies of the designated material, (3)
6 inform the person or persons to whom unauthorized disclosures were made of all the
7 terms of this Order, and (4) use reasonable efforts to have such person or persons execute
8 the Agreement to Be Bound (Exhibit A).

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10 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
11 **OTHERWISE PROTECTED MATERIAL**

12 When a producing party gives notice that certain inadvertently produced material
13 is subject to a claim of privilege or other protection, the obligations of the receiving
14 parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
15 is not intended to modify whatever procedure may be established in an e-discovery order
16 that provides for production without prior privilege review pursuant to Federal Rule of
17 Evidence 502(d) and (e).

18
19 **10. FILING UNDER SEAL**

20 Without written permission from the designator or a Court order, a party may not
21 file in the public record in this action any designated material. A party seeking to file
22 under seal any designated material must comply with L.R. 79-5.1. Filings may be made
23 under seal only pursuant to a court order authorizing the sealing of the specific material
24 at issue. The fact that a document has been designated under this Order is insufficient to
25 justify filing under seal. Instead, parties must explain the basis for confidentiality of each
26 document sought to be filed under seal. Because a party other than the designator will
27 often be seeking to file designated material, cooperation between the parties in preparing,
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1 and in reducing the number and extent of, requests for under seal filing is essential. If a
2 receiving party's request to file designated material under seal pursuant to L.R. 79-5.1 is
3 denied by the Court, then the receiving party may file the material in the public record
4 unless (1) the designator seeks reconsideration within four days of the denial, or (2) as
5 otherwise instructed by the Court.
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7 **11. FINAL DISPOSITION**

8 Within 60 days after the final disposition of this action, each party shall return all
9 designated material to the designator or destroy such material, including all copies,
10 abstracts, compilations, summaries, and any other format reproducing or capturing any
11 designated material. The receiving party must submit a written certification to the
12 designator by the 60- day deadline that (1) identifies (by category, where appropriate) all
13 the designated material that was returned or destroyed, and (2) affirms that the receiving
14 party has not retained any copies, abstracts, compilations, summaries, or any other format
15 reproducing or capturing any of the designated material. This provision shall not prevent
16 counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition,
17 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
18 expert reports, attorney work product, and consultant and expert work product, even if
19 such materials contain designated material. Any such archival copies remain subject to
20 this Order.

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

23 Dated: February 1, 2017

ABTAHI LAW GROUP PC

25 By: /s/ Ali Abtahi

26 Ali Abtahi
27 Attorneys for Plaintiff
28 Morgan Chikosi, individually, and on behalf of
all others similarly situated

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____, 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 [date] in the case of **CHIKOSI V. SAM’S WEST, ET AL., USDC CENTRAL DISTRICT OF CALIFORNIA CASE NO. 8:15-cv-01675-AG-(JCGx)**. 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 _____ of _____ 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: _____