

1 MICHAEL T. LUCEY (SBN: 099927)  
mlucey@gordonrees.com  
2 KEVIN D. WHITTAKER (SBN: 224700)  
kwhittaker@gordonrees.com  
3 GORDON & REES LLP  
275 Battery Street, Suite 2000  
4 San Francisco, CA 94111  
Telephone: (415) 986-5900  
5 Facsimile: (415) 986-8054

6 Attorneys for: Defendant  
WAL-MART STORES, INC.

7  
8 CHIJOKE O. IKONTE (SBN: 206203)  
cikonte@yahoo.com  
LAW OFFICES OF AKUDRINOBI & IKONTE  
9 3540 Wilshire Blvd, Suite 850  
Los Angeles, CA 90010  
10 Telephone: (213) 387-0869  
Facsimile: (213) 387-0969

11 Attorneys for: Plaintiff  
12 STELLA O. KAMALU

13  
14 UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION  
16

17 STELLA O KAMALU ) CASE NO. 1:13-cv-00627-SAB  
18 )  
Plaintiff, ) ORDER ON JOINT STIPULATION AND  
19 ) PROTECTIVE ORDER  
vs. )  
) (ECF No. 23)  
20 WAL-MART STORES, INC. and DOES 1 to )  
10 )  
21 )  
Defendant. )  
22 )

23 1. PURPOSES AND LIMITATIONS

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

1 disclosures or responses to discovery and that the protection it affords extends only to the limited  
2 information or items that are entitled under the applicable legal principles to treatment as  
3 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
4 Stipulated Protective Order creates no entitlement to file confidential information under seal; the  
5 Federal Rules of Civil Procedure, and other applicable rules and/or statutes set forth the  
6 procedures that must be followed and reflects the standards that will be applied when a party  
7 seeks permission from the court to file material under seal.

8 2. DEFINITIONS

9 2.1. Party: any party to this action, including all of its officers, directors, employees,  
10 consultants, retained experts, and outside counsel (and their support staff).

11 2.2. Disclosure or Discovery Material: all items or information, regardless of the  
12 medium or manner generated, stored, or maintained (including, among other things, testimony,  
13 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
14 discovery in this matter.

15 2.3. "Confidential" Information or Items: information (regardless of how generated,  
16 stored or maintained) or tangible things that qualify for protection under state or federal  
17 constitutional rights to privacy.

18 2.4. Receiving Party: a Party that receives Disclosure or Discovery Material from a  
19 Producing Party.

20 2.5. Producing Party: a Party or non-party that produces Disclosure or Discovery  
21 Material in this action.

22 2.6. Designating Party: a Party or non-party that designates information or items that  
23 it produces in disclosures or in responses to discovery as "Confidential."

24 2.7. Protected Material: any Disclosure or Discovery Material that is designated as  
25 "Confidential."

26 2.8. Counsel: Attorneys representing any party to this action whether employees of  
27 the party or retained to represent or advise the party.

28 2.9. Expert: a person with specialized knowledge or experience in a matter pertinent

1 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as  
2 a consultant in this action and who is not a past or a current employee of a Party or of a  
3 competitor of a Party's and who, at the time of retention, is not anticipated to become an  
4 employee of a Party or a competitor of a Party's. This definition includes a professional jury or  
5 trial consultant retained in connection with this litigation.

6 2.10. Professional Vendors: persons or entities that provide litigation support services  
7 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
8 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

9 3. SCOPE

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

14 4. DURATION

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

18 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

6 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order,  
7 or as otherwise stipulated or ordered, material that qualifies for protection under this Order must  
8 be clearly so designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (apart from transcripts of depositions  
11 or other pretrial or trial proceedings), that the Producing Party affix the legend  
12 "CONFIDENTIAL" at the top of each page that contains protected material. If only a portion or  
13 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
14 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

15 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
16 that the Party or non-party offering or sponsoring the testimony identify on the record, before the  
17 close of the deposition, hearing, or other proceeding, all protected testimony. When it is  
18 impractical to identify separately each portion of testimony that is entitled to protection, and  
19 when it appears that substantial portions of the testimony may qualify for protection, the Party or  
20 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the  
21 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific  
22 portions of the testimony as to which protection is sought. Only those portions of the testimony  
23 that are appropriately designated for protection within the 20 days shall be covered by the  
24 provisions of this Stipulated Protective Order.

25 Transcript pages containing Protected Material must be separately bound by the court  
26 reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" as  
27 instructed by the Party or non-party offering or sponsoring the witness or presenting the  
28 testimony.

1 (c) for information produced in some form other than documentary, and for  
2 any other tangible items, that the Producing Party affix in a prominent place on the exterior of  
3 the container or containers in which the information or item is stored the legend  
4 "CONFIDENTIAL." If only portions of the information or item warrant protection, the  
5 Producing Party, to the extent practicable, shall identify the protected portions.

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

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

26 6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
27 designation after considering the justification offered by the Designating Party may file and  
28 serve a motion in U.S District Court – Eastern District of California – Fresno Division.

1 The burden of persuasion in any such challenge proceeding shall be on the Designating  
2 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
3 question the level of protection to which it is entitled under the Producing Party's designation.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed  
6 or produced by another Party or by a non-party in connection with this case only for prosecuting,  
7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
8 to the categories of persons and under the conditions described in this Order. When the litigation  
9 has been terminated, a Receiving Party must comply with the provisions of section 11, below  
10 (FINAL DISPOSITION).

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

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

16 (a) the Receiving Party's Counsel of record in this action, as well as  
17 employees of said Counsel to whom it is reasonably necessary to disclose the information for  
18 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
19 attached hereto as Exhibit A;

20 (b) the officers, directors, and employees of the Receiving Party to whom  
21 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
22 Bound by Protective Order" (Exhibit A);

23 (c) experts (as defined in this Order) of the Receiving Party to whom  
24 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
25 Bound by Protective Order" (Exhibit A);

26 (d) the Court and its personnel;

27 (e) court reporters, their staffs, and professional vendors to whom disclosure  
28 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by

1 Protective Order" (Exhibit A);

2 (f) during their depositions, witnesses in the action to whom disclosure is  
3 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"  
4 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
5 Protected Material must be separately bound by the court reporter and may not be disclosed to  
6 anyone except as permitted under this Stipulated Protective Order.

7 (g) the author of the document or the original source of the information.

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
9 LITIGATION.

10 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
11 would compel disclosure of any information or items designated in this action as  
12 "CONFIDENTIAL" the Receiving Party must so notify the Designating Party, in writing (fax is  
13 acceptable) immediately and in no event more than three court days after receiving the subpoena  
14 or order. Such notification must include a copy of the subpoena or court order.

15 The Receiving Party also must immediately inform in writing the Party who caused the  
16 subpoena or order to issue in the other litigation that some or all the material covered by the  
17 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
18 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
19 caused the subpoena or order to issue.

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

26 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
28 Material to any person or in any circumstance not authorized under this Stipulated Protective

1 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
2 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
3 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
4 this Order, and (d) request such person or persons to execute the "Acknowledgment and  
5 Agreement to Be Bound" that is attached hereto as Exhibit A.

6 10. FILING PROTECTED MATERIAL.

7 Without written permission from the Designating Party or a court order secured after  
8 appropriate notice to all interested persons, a Party may not file in the public record in this action  
9 any Protected Material. A Party that seeks to file under seal any Protected Material must do so  
10 pursuant to the applicable provisions of the Federal Rule of Civil Procedure, and/or other  
11 applicable rules and/or statutes.

12 11. FINAL DISPOSITION.

13 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
14 after the final termination of this action, each Receiving Party must return all Protected Material  
15 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,  
16 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
17 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
18 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
19 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
20 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
21 deadline that identifies (by category, where appropriate) all the Protected Material that was  
22 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
23 abstracts, compilations, summaries or other forms of reproducing or capturing any of the  
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
25 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
26 work product, even if such materials contain Protected Material. Any such archival copies that  
27 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
28 Section 4 (DURATION), above.



1 12. MISCELLANEOUS

2 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to  
3 seek its modification by the Court in the future.

4 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective  
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
7 no Party waives any right to object on any ground to use in evidence of any of the material  
8 covered by this Protective Order.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 Dated: January 21, 2014

GORDON & REES LLP

11  
12 By: /s/ Kevin D. Whittaker  
13 KEVIN D. WHITTAKER  
14 Attorneys for Defendant  
15 WAL-MART STORES, INC.

16 Dated: February 3, 2014

LAW OFFICES OF AKUDRINOBI &  
IKONTE

17  
18 By: /s/ Chijioke O. Ikonte  
19 Chijioke O. Ikonte  
20 Attorneys for Plaintiff  
21 STELLA O KAMALU

22 **ORDER**

23 IT IS SO ORDERED.

24 Dated: February 20, 2014

25   
26 \_\_\_\_\_  
27 UNITED STATES MAGISTRATE JUDGE  
28