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19 WAL-MART ASSOCIATES, INC.

20 **UNITED STATES DISTRICT COURT**

21 **EASTERN DISTRICT OF CALIFORNIA**

22 MICHELLE HUGHES, an individual,

23 Plaintiff,

24 vs.

25 WAL-MART ASSOCIATES, INC., a Delaware
26 Corporation; and DOES 1 through 50, inclusive,

27 Defendants.

Case No. 1:23-cv-00949-JLT-BAM

~~PROPOSED~~ **AGREED
CONFIDENTIALITY ORDER**

Action Filed: May 24, 2023
Removal Filed: June 23, 2023
Trial Date: September 9, 2025

28 **AGREED CONFIDENTIALITY ORDER**

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

1. This Order shall govern the disclosure of materials designated as Confidential Material in this litigation. Confidential Material, as used in this Order, shall refer to any document or item designated as Confidential or Highly Confidential – Attorneys’ Eyes Only, including but not

1 limited to, documents or items produced during discovery, all copies thereof, and the information
2 contained in such material. Nothing in this Order shall require any party to produce any specific
3 documents or category of documents which a party deems inappropriate for production.

4 **Definitions of Confidential Material**

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

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

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

23 c. Protected Data shall refer to any information that a party believes in
24 good faith to be subject to federal, state or foreign data protection laws
25 or other privacy obligations. Examples of such data protection laws
26 include but are not limited to The Gramm-Leach-Bliley Act, 15 U.S.C.
27 § 6801 et seq. (financial information); and, The Health Insurance
28 Portability and Accountability Act and the regulations thereunder, 45

1 CFR Part 160 and Subparts A and E of Part 164 (medical information).
2 Certain Protected Data may compel alternative or additional
3 protections beyond those afforded Highly Confidential – Attorneys’
4 Eyes Only material, in which event the parties shall meet and confer
5 in good faith, and, if unsuccessful, shall move the Court for
6 appropriate relief.

7 The parties shall not designate as confidential information that is already public knowledge.

8 3. The parties agree that such Confidential Material as described in paragraph 2 should
9 be given the protection of an order of this Court to prevent injury through disclosure to persons other
10 than those persons involved in the prosecution or defense of this litigation.

11 **Procedure for Designating Information as Confidential**

12 4. To designate information as confidential, the producing party shall mark Confidential
13 Material with the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
14 EYES ONLY.” Parties shall submit confidential discovery responses, such as answers to
15 interrogatories or answers to requests for admissions, in a separate document stamped with the
16 appropriate legend designating those responses as Confidential Material. The Receiving Party may
17 make copies of Confidential Material and such copies shall become subject to the same protections
18 as the Confidential Material from which those copies were made.

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

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

17 5. A producing party may change the confidentiality designation of materials it has
18 produced, as follows: (1) The producing party must give the receiving parties notice of the change
19 by identifying the documents or information at issue. Once notice is given, the receiving party must
20 make good-faith efforts to ensure that the documents or information are accorded treatment under
21 the new designation. (2) Within a reasonable period after giving notice, the producing party must
22 reproduce the documents or information in a format that contains the new designation. (3) If such
23 information has been disclosed to persons not qualified pursuant to paragraphs 12-13 below, the
24 party who disclosed such information shall (a) take reasonable efforts to retrieve previously disclosed
25 Confidential Material; (b) advise such persons that the material is Confidential; and (c) give the
26 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 by the other
3 party(ies) or by non-parties. This includes secure data storage systems, established security policies,
4 and security training for employees, contractors and experts. Adequate security also includes such
5 measures as data encryption in transit, data encryption at rest, data access controls, and physical
6 security, whether hosted/outsourced to a vendor or on premises. At a minimum, any receiving party
7 subject to the terms of this Confidentiality Order, will provide reasonable measures to protect non-
8 client data consistent with the American Bar Association Standing Committee on Ethics and
9 Professional Responsibility, Formal Opinion 477R.

10 **Clawback Provisions**

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

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

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

21 10. If the receiving party has reason to believe that a produced document or other
22 information may reasonably be subject to a claim of privilege, then the receiving party shall
23 immediately sequester the document or information, cease using the document or information and
24 cease using any work product containing the information, and shall inform the producing party of
25 the beginning BATES number of the document or, if no BATES number is available, shall otherwise
26 inform the producing party of the information.

27 11. A producing party must give written notice to any receiving party asserting a claim
28 of privilege, work-product protection, or other ground for reclaiming documents or information (a

1 “clawback request”). After a clawback request is received, the receiving party shall immediately
2 sequester the document (if not already sequestered) and shall not review or use that document, or
3 any work product containing information taken from that document, for any purpose. The parties
4 shall meet and confer regarding any clawback request.

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

6 12. *Confidential Material.* Any Confidential Material and the information contained
7 therein shall be disclosed only to the Court, its staff, in-house counsel and counsel of record for each
8 party, the parties, and also shall be disclosed on a need-to-know basis only to, counsel’s staff
9 personnel, employees of a party to whom disclosure is necessary in connection with the preparation
10 for and trial of this action, and any witnesses in the case (including consulting and testifying experts)
11 as may from time to time reasonably be necessary in prosecution or defense of this action, and
12 including any mediators and settlement officers.

13 13. *Highly Confidential—Attorneys’ Eyes Only Material.* Material and information
14 designated as “Highly Confidential—Attorneys’ Eyes Only” shall only be disclosed to the Court, its
15 staff, in-house and outside counsel of record for each party, the secretarial, clerical, and paralegal
16 staff of each, and consulting and testifying experts retained by a party in this action, and including
17 any mediators and settlement officers.

18 14. *Restriction on Disclosure to Direct Competitors.* Notwithstanding the foregoing,
19 Confidential Material shall not be disclosed to any current or former employees of, or current or
20 former consultants, advisors, or agents of, a direct competitor of any party named in the litigation.
21 If a Receiving Party is in doubt about whether a particular entity is a direct competitor of a party
22 named in this lawsuit, then before disclosing any Confidential Material to a current or former
23 employee, consultant, advisor, or agent of that entity, the Receiving Party’s counsel must confer with
24 counsel for the Producing Party.

25 15. *Persons Receiving Confidential Information Must Sign Exhibit A.* Counsel for each
26 party shall advise all persons to whom Confidential Material is disclosed pursuant to this Order of
27 the existence of this Order and shall provide all such persons (other than the Court and its staff) with

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1 a copy of this Order. Counsel shall also require such persons to execute the Affidavit attached as
2 *Exhibit A*, prior to the disclosure of Confidential Material.

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

12 **Authorized Uses of Confidential Material**

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

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

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

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

23 20. If a Party reasonably believes that information should not be designated as
24 CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" the Party must specify to
25 the Designating Party in writing: (a) the information in issue and (b) its grounds for questioning the
26 confidentiality designation. The Designating Party must respond in writing within thirty (30)
27 calendar days, or within such additional time as is reasonable (taking into account the number of
28 documents or other information in issue) and is agreed to by counsel or as ordered by the Court. If

1 the Designating Party fails to respond in writing within thirty (30) calendar days, the information
2 will no longer be deemed as confidential.

3 If after receiving a response from the Designating Party the Non-Designating Party still does
4 not believe that information should be designated as “CONFIDENTIAL” or “CONFIDENTIAL -
5 ATTORNEYS EYES ONLY” the Non-Designating Party may file a motion with the Court to resolve
6 the dispute. Until the Court rules on the challenge, the confidentiality designation shall remain in
7 effect. The Designating Party will have the burden of maintaining the confidentiality designation.

8 **Withholding of Information**

9 21. *Non-relevant Attachments.* The parties will not produce non-relevant attachments
10 that are attached to relevant emails. When an attachment is withheld, either for privilege or non-
11 responsiveness, the producing party shall produce a one-page TIFF image (or PDF if production
12 format dictates) in place of the withheld attachment, correspondingly stating “Attachment Withheld-
13 Privileged” or “Attachment Withheld-Nonresponsive”, and bearing a sequential BATES number
14 within the family BATES range. If any attachment to an email contains responsive content, then the
15 cover email shall be produced for context, regardless of the cover email’s responsiveness. The cover
16 email may be redacted in part to remove sensitive information, as described below.

17 22. *Redactions.* The parties may redact (1) information that is privileged or protected
18 from discovery as work product or by reason of any other applicable privilege or immunity; (2)
19 information subject to non-disclosure obligations imposed by governmental authorities, law or
20 regulation (*e.g.*, protected personal information); and (3) sensitive, non-relevant information,
21 including but not limited to personally identifiable information, trade secrets, or information
22 regarding products, data, or people. Privilege redactions will state, over the redacted portion,
23 “Redacted–Privileged,” and all other redactions will state, “Redacted–Nonresponsive.” Redactions
24 of emails will not redact the names of recipients or the subject line of the emails, unless the subject
25 line is itself privileged or contains the sensitive information described above, in which case only so
26 much of the subject line will be redacted as may be needed. The parties will produce redacted
27 documents in TIFF format (or searchable PDF if production format dictates; or in native format for
28 file types that do not convert well to TIFF/PDF, such as Excel files) with corresponding searchable

1 OCR text and the associated metadata for the document, ensuring the redacted content is fully
2 protected from disclosure.

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

4 23. *Confidential Material in Filings.* Without written permission from the Producing
5 Party or court order secured after appropriate notice to all interested persons, a party may not file
6 Confidential Material in the public record in this action (or in any other action, such as an appeal).
7 A party that seeks to file under seal any Confidential Material must comply with Federal Civil Local
8 Rule 141. Confidential Material may only be filed under seal in a manner prescribed by the Court
9 for such filings.

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

13 **CONFIDENTIAL**

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

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

26 **Continuing Effect of this Order and Duty to Destroy**

27 26. This Order shall continue to be binding throughout and after the conclusion of this
28 litigation, including all appeals. Within thirty (30) days of settlement or final adjudication, including

1 the expiration or exhaustion of all rights to appeal or petitions for extraordinary writs, each party or
2 non-party to whom any materials were produced shall, without further request or direction from the
3 Producing Party, promptly destroy all documents, items or data received including, but not limited
4 to, copies or summaries thereof, in the possession or control of any expert or employee. This
5 requirement to destroy includes all documents, not only those documents designated as Confidential
6 Material. The Receiving Party shall submit a written certification to the Producing Party by the 30-
7 day deadline that (1) confirms the destruction/deletion of all Confidential Material, including any
8 copies of Confidential Materials provided to persons required to execute Exhibit A (Affidavit), and
9 (2) affirms the Receiving Party has not retained any copies, abstracts, compilations, summaries or
10 any other format reproducing or capturing any of the Confidential Material. Notwithstanding this
11 provision, outside counsel is entitled to retain an archival copy of filings, depositions, and deposition
12 exhibits.

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

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

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

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

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

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

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

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

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Respectfully stipulated to and submitted by,

DATED: February 1, 2024

JML LAW, A PROFESSIONAL LAW CORPORATION

By: /s/ Christina R. Manalo (as authorized on 2/1/2024)
Christina R. Manalo

Attorneys for Plaintiff MICHELLE HUGHES

DATED: February 1, 2024

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: /s/ Haidy M. Rivera
James T. Conley
Haidy M. Rivera

Attorneys for Defendant
WAL-MART ASSOCIATES, INC.

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EXHIBIT A TO CONFIDENTIALITY ORDER

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 information given confidential treatment under the Confidentiality Order entered in this case will be used by me only to assist counsel for the parties in preparing for litigation of the above-captioned matter. I understand that any use of such Confidential Material in any manner contrary to the provisions of the Confidentiality Order may subject me to the sanctions of this Court for contempt and to liability for any damages caused by my breach of the Confidentiality Order.

4. I shall not disclose nor permit to be reviewed or copied said Confidential Materials, or any information derived from, by any person other than the parties and counsel for the parties or members of their staff.

5. Within 30 days after the above-captioned lawsuit ends in a final non-appealable order, I agree to destroy all Confidential Materials in my possession.

DATED: _____, 202_

Signature

Printed Name

Exhibit A, Affidavit of Compliance with Confidentiality Order

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ORDER

Having considered the parties' agreed confidentiality order, and finding good cause, the Court adopts the stipulated agreed confidentiality order. (Doc. 16.)

The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents subject to the confidentiality order to be filed under seal must be accompanied by a written request which complies with Local Rule 141 prior to sealing. The party making a request to file documents under seal shall be required to show good cause for documents attached to a non-dispositive motion or compelling reasons for documents attached to a dispositive motion. *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2009). Within five (5) days of any approved document filed under seal, the party shall file a redacted copy of the sealed document. The redactions shall be narrowly tailored to protect only the information that is confidential or was deemed confidential.

Additionally, the parties shall consider resolving any dispute arising under the agreed confidentiality order according to the Court's informal discovery dispute procedure.

IT IS SO ORDERED.

Dated: February 2, 2024

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE