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15 **UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF CALIFORNIA**

Decancino v. Wal-Mart Stores, Inc., et al.,

Doc. 15

17 LUPE DECANCINO,

18 Plaintiff,

19 vs.

20 WAL-MART STORES, INC., WAL-  
21 MART ASSOCIATES, INC., and DOES  
22 1 to 10, inclusive,

23 Defendants.

Case No. 2:10-CV-02239-FCD-DAD

**STIPULATION OF CONFIDENTIALITY  
AND PROTECTIVE ORDER**

24 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff LUPE  
25 DECANCINO (hereinafter, "Plaintiff") and DEFENDANT WAL-MART STORES, INC.  
26 (hereinafter, "Defendant"), and by and between their undersigned counsel, that:

27 1. PURPOSES AND LIMITATIONS

28 Disclosure and discovery activity in this action are likely to involve production of

1 confidential, proprietary, or private information for which special protection from public  
2 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
3 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
4 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
5 all disclosures or responses to discovery and that the protection it affords from public disclosure  
6 and use extends only to the limited information or items that are entitled to confidential treatment  
7 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
8 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential  
9 information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and  
10 the standards that will be applied when a party seeks permission from the court to file material  
11 under seal.

12 2. DEFINITIONS

13 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
14 information or items under this Order.

15 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how  
16 it is generated, stored or maintained) or tangible things that qualify for protection under Federal  
17 Rule of Civil Procedure 26(c).

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House  
19 Counsel (as well as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or  
21 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

22 2.5 Disclosure or Discovery Material: all items or information, regardless of  
23 the medium or manner in which it is generated, stored, or maintained (including, among other  
24 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
25 or responses to discovery in this matter.

26 2.6 Expert: a person with specialized knowledge or experience in a matter  
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
28 witness or as a consultant in this action.

1                   2.7     House Counsel: attorneys who are employees of a party to this action.  
2     House Counsel does not include Outside Counsel of Record or any other outside counsel.

3                   2.8     Non-Party: any natural person, partnership, corporation, association, or  
4     other legal entity not named as a Party to this action.

5                   2.9     Outside Counsel of Record: attorneys who are not employees of a party to  
6     this action but are retained to represent or advise a party to this action and have appeared in this  
7     action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
8     that party.

9                   2.10    Party: any party to this action, including all of its officers, directors,  
10    employees, consultants, retained experts, and Outside Counsel of Record (and their support  
11    staffs).

12                  2.11    Producing Party: a Party or Non-Party that produces Disclosure or  
13    Discovery Material in this action.

14                  2.12    Professional Vendors: persons or entities that provide litigation support  
15    services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
16    organizing, storing, or retrieving data in any form or medium) and their employees and  
17    subcontractors.

18                  2.13    Protected Material: any Disclosure or Discovery Material that is  
19    designated as "CONFIDENTIAL."

20                  2.14    Receiving Party: a Party that receives Disclosure or Discovery Material  
21    from a Producing Party.

22                  3.     SCOPE

23                  The protections conferred by this Stipulation and Order cover not only Protected  
24    Material (as defined above), but also (1) any information copied or extracted from Protected  
25    Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
26    testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected  
27    Material. However, the protections conferred by this Stipulation and Order do not cover the  
28    following information: (a) any information that is in the public domain at the time of disclosure to

1 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party  
2 as a result of publication not involving a violation of this Order, including becoming part of the  
3 public record through trial or otherwise; and (b) any information known to the Receiving Party  
4 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
5 obtained the information lawfully and under no obligation of confidentiality to the Designating  
6 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

7 4. DURATION

8 Even after final disposition of this litigation, the confidentiality obligations  
9 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing  
10 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
11 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
12 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or  
13 reviews of this action, including the time limits for filing any motions or applications for  
14 extension of time pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
17 Party or Non-Party that designates information or items for protection under this Order must take  
18 care to limit any such designation to specific material that qualifies under the appropriate  
19 standards. The Designating Party must designate for protection only those parts of material,  
20 documents, items, or oral or written communications that qualify – so that other portions of the  
21 material, documents, items, or communications for which protection is not warranted are not  
22 swept unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
24 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
25 unnecessarily encumber or retard the case development process or to impose unnecessary  
26 expenses and burdens on other parties) expose the Designating Party to sanctions.

27 If it comes to a Designating Party's attention that information or items that it  
28 designated for protection do not qualify for protection, that Designating Party must promptly

1 notify all other Parties that it is withdrawing the mistaken designation.

2           5.2     Manner and Timing of Designations. Except as otherwise provided in this  
3 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
4 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
5 designated before the material is disclosed or produced.

6           Designation in conformity with this Order requires:

7           (a)     for information in documentary form (e.g., paper or electronic documents,  
8 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
9 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a  
10 portion or portions of the material on a page qualifies for protection, the Producing Party also  
11 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
12 margins).

13           A Party or Non-Party that makes original documents or materials available for  
14 inspection need not designate them for protection until after the inspecting Party has indicated  
15 which material it would like copied and produced. During the inspection and before the  
16 designation, all of the material made available for inspection shall be deemed  
17 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and  
18 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
19 protection under this Order. Then, before producing the specified documents, the Producing Party  
20 must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If only a  
21 portion or portions of the material on a page qualifies for protection, the Producing Party also  
22 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
23 margins).

24           (b)     for testimony given in deposition or in other pretrial or trial proceedings,  
25 that the Designating Party identify on the record, before the close of the deposition; hearing, or  
26 other proceeding, all protected testimony.

27           (c)     for information produced in some form other than documentary and for any  
28 other tangible items, that the Producing Party affix in a prominent place on the exterior of the

1 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”  
2 If only a portion or portions of the information or item warrant protection, the Producing Party, to  
3 the extent practicable, shall identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
5 to designate qualified information or items does not, standing alone, waive the Designating  
6 Party’s right to secure protection under this Order for such material. Upon timely correction of a  
7 designation, the Receiving Party must make reasonable efforts to assure that the material is  
8 treated in accordance with the provisions of this Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
11 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s  
12 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
13 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its  
14 right to challenge a confidentiality designation by electing not to mount a challenge promptly  
15 after the original designation is disclosed.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
17 resolution process by providing written notice of each designation it is challenging and describing  
18 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
19 written notice must recite that the challenge to confidentiality is being made in accordance with  
20 this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge  
21 in good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
22 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
23 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
24 designation was not proper and must give the Designating Party an opportunity to review the  
25 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
26 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
27 stage of the challenge process only if it has engaged in this meet and confer process first or  
28 establishes that the Designating Party is unwilling to participate in the meet and confer process in

1 a timely manner.

2           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
3 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
4 Civil Local Rule 215 (and in compliance with Civil Local Rule 141, if applicable) within 21 days  
5 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
6 process will not resolve their dispute, whichever is earlier. Each such motion must be  
7 accompanied by a competent declaration affirming that the movant has complied with the meet  
8 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
9 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
10 shall automatically waive the confidentiality designation for each challenged designation. In  
11 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
12 time if there is good cause for doing so, including a challenge to the designation of a deposition  
13 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
14 accompanied by a competent declaration affirming that the movant has complied with the meet  
15 and confer requirements imposed by the preceding paragraph.

16           The burden of persuasion in any such challenge proceeding shall be on the  
17 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass  
18 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
19 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
20 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
21 material in question the level of protection to which it is entitled under the Producing Party's  
22 designation until the court rules on the challenge.

23           7.     ACCESS TO AND USE OF PROTECTED MATERIAL

24           7.1     Basic Principles. A Receiving Party may use Protected Material that is  
25 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
26 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
27 disclosed only to the categories of persons and under the conditions described in this Order.

28           When the litigation has been terminated, a Receiving Party must comply with the provisions of

1 section 13 below (FINAL DISPOSITION).

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

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
7 disclose any information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
10 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
11 Bound” that is attached hereto as Exhibit A;

12 (b) the officers, directors, and employees (including House Counsel) of the  
13 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
14 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (c) Experts (as defined in this Order) of the Receiving Party to whom  
16 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
17 and Agreement to Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, mock  
20 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation  
21 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is  
23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
24 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
25 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
26 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
27 under this Stipulated Protective Order.

28 (g) the author or recipient of a document containing the information or a



1 custodian or other person who otherwise possessed or knew the information.

2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
3 OTHER LITIGATION

4 If a Party is served with a subpoena or a court order issued in other litigation that  
5 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
6 that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification shall  
8 include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to  
10 issue in the other litigation that some or all of the material covered by the subpoena or order is  
11 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
12 Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
14 the Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with the  
16 subpoena or court order shall not produce any information designated in this action as  
17 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
18 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party  
19 shall bear the burden and expense of seeking protection in that court of its confidential material –  
20 and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
21 Party in this action to disobey a lawful directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
23 IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-  
25 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-  
26 Parties in connection with this litigation is protected by the remedies and relief provided by this  
27 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
28 additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to  
2 produce a Non-Party's confidential information in its possession, and the Party is subject to an  
3 agreement with the Non-Party not to produce the Non-Party's confidential information, then the  
4 Party shall:

5 1. promptly notify in writing the Requesting Party and the  
6 Non-Party that some or all of the information requested is subject to a confidentiality agreement  
7 with a Non-Party;

8 2. promptly provide the Non-Party with a copy of the  
9 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
10 specific description of the information requested; and

11 3. make the information requested available for inspection by  
12 the Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order from this court  
14 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
15 produce the Non-Party's confidential information responsive to the discovery request. If the Non-  
16 Party timely seeks a protective order, the Receiving Party shall not produce any information in its  
17 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
18 determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall bear the  
19 burden and expense of seeking protection in this court of its Protected Material.

20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
22 Protected Material to any person or in any circumstance not authorized under this Stipulated  
23 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating  
24 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of  
25 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
26 made of all the terms of this Order, and (d) request such person or persons to execute the

27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-  
28 Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

2 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
3 PROTECTED MATERIAL

4 When a Producing Party gives notice to Receiving Parties that certain  
5 inadvertently produced material is subject to a claim of privilege or other protection, the  
6 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
7 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in  
8 an e-discovery order that provides for production without prior privilege review. Pursuant to  
9 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of  
10 disclosure of a communication or information covered by the attorney-client privilege or work  
11 product protection, the parties may incorporate their agreement in the stipulated protective order  
12 submitted to the court.

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
15 person to seek its modification by the court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
17 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
18 producing any information or item on any ground not addressed in this Stipulated Protective  
19 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
20 the material covered by this Protective Order.

21 12.3 Filing Protected Material. Without written permission from the Designating  
22 Party or a court order secured after appropriate notice to all interested persons, a Party may not  
23 file in the public record in this action any Protected Material. A Party that seeks to file under seal  
24 any Protected Material must comply with Civil Local Rule 141. Protected Material may only be  
25 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material  
26 at issue. Pursuant to Civil Local Rule 141, a sealing order will issue only upon a request  
27 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
28 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected

1 Material under seal pursuant to Civil Local Rule 141 is denied by the court, then the Receiving  
2 Party may file the information in the public record pursuant to Civil Local Rule 141 unless  
3 otherwise instructed by the court.

4 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action, as  
5 defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing  
6 Party or destroy such material. As used in this subdivision, "all Protected Material" includes all  
7 copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of  
8 the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving  
9 Party must submit a written certification to the Producing Party (and, if not the same person or  
10 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where  
11 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the  
12 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other  
13 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
14 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,  
15 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
16 reports, attorney work product, and consultant and expert work product, even if such materials  
17 contain Protected Material. Any such archival copies that contain or constitute Protected Material  
18 remain subject to this Protective Order as set forth in Section 4 (DURATION).

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 DATED: November 15, 2010 MORGAN, LEWIS & BOCKIUS LLP

21 By: /s/ Sacha M. Steenhoek  
22 L. Julius M. Turman  
23 Sacha M. Steenhoek  
Attorneys for Defendant  
WAL-MART STORES, INC.

24 DATED: November 15, 2010 McCORMAC & ASSOCIATES

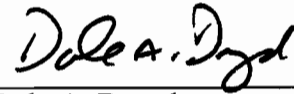
25 By: /s/ James R. Grant (as authorized on 11/15/2010)  
26 Kathleen A. McCormac  
27 James R. Grant  
Attorneys for Plaintiff  
LUPE DECANCINO

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**ORDER**

PURSUANT TO STIPULATION,<sup>2</sup> IT IS SO ORDERED.

DATED: November 16, 2010



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Dale A. Drozd  
U.S MAGISTRATE JUDGE

<sup>2</sup> The reference to Civil Local Rule 215 contained in paragraph 6.3 is deemed to be a reference to Civil Local Rule 251.

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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], 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 Eastern District of California on [date] in the case of *Lupe  
Decancino v. Wal-Mart Stores, Inc. et al.*, 2:10-CV-02239-FCD-DAD. 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 Eastern 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 \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number] 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: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]