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-DAD Schmitz v Wal-Mart Stores, Inc.

UNITED STATES DISTRICT COURT

Doc. 33

EASTERN DISTRICT OF CALIFORNIA

18 DAVE SCHMITZ and ROBIN STEWARD,
19 on behalf of themselves and all others
similarly situated,

21 Plaintiffs,

22 vs.

23 WAL-MART STORES, INC., a Delaware
24 corporation,

25 Defendant.

Case No. 11-cv-01487 LKK DAD

**AMENDED STIPULATION AND
PROTECTIVE ORDER REGARDING USE
OF CONFIDENTIAL INFORMATION**

26 IT IS HEREBY STIPULATED AND AGREED between the undersigned counsel of
27 record for the parties in the above-entitled action:

1 1. That the preparation and trial of this action may require the discovery or disclosure
2 of documents, tangible things, testimony, transcripts, information or other materials claimed by
3 one or more of the parties to this action or others to be confidential.

4 2. In order to expedite the flow of discovery materials, facilitate the prompt
5 resolution of disputes over confidentiality, adequately protect material entitled to be kept
6 confidential, and serve the ends of justice, a protective order for such information is prudent and
7 necessary. The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public disclosure and
9 use extends only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth below, that
11 this Stipulated Protective Order does not entitle them to file confidential information under seal;
12 Local Rule 141 sets forth the procedures that must be followed and the standards that will be
13 applied when a party seeks permission from the Court to file material under seal.

14 3. In the event that disputes arise between the parties with regard to the terms or
15 operation of this protective order, the parties agree to meet and confer in a good faith to attempt to
16 resolve the dispute. In the event that the parties cannot in good faith resolve any such disputes,
17 the parties agree to submit such disputes to the Court for resolution.

18 4. Any party may designate as "CONFIDENTIAL INFORMATION" (by stamping
19 the relevant page or as otherwise set forth herein) any document or response to discovery that the
20 party considers in good faith to contain secret, proprietary, private or confidential information.
21 Where a document or response consists of more than one page, the first page and each page on
22 which confidential information appears shall be so designated.

23 5. There is also a need to protect certain confidential information, which may be
24 considered especially sensitive and confidential, from disclosure to any individual party or
25 employee of an individual party because such disclosure could harm the person, business, or
26 financial interests of the party producing such information or of a non-party to this litigation.
27 Consequently, any party may designate as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
28 ONLY" (by stamping the relevant page or as otherwise set forth herein) any document or

1 response to discovery that the party considers in good faith to contain such especially sensitive
2 information. Such material may include documents previously marked and kept in the ordinary
3 course of business as “Highly Confidential,” or “Attorneys’ Eyes Only”; confidential documents
4 not otherwise exchanged or disclosed to opposing parties in Government proceedings; and
5 personal employee records that contain personally identifiable information in which the
6 individual would expect to maintain a reasonable expectation of privacy. Any party may
7 designate a document or response as ““HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
8 ONLY” in the same manner as “CONFIDENTIAL INFORMATION.” (Materials designated
9 either “CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL - ATTORNEYS’
10 EYES ONLY” shall be referred to herein as “designated confidential information.”).

11 6. In the case of information disclosed during a deposition or discovery materials
12 produced by any party before the date the Court signs this Order, the parties may designate such
13 information and discovery materials as “CONFIDENTIAL INFORMATION” or “HIGHLY
14 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” within 30 days of service on the party of the
15 signed Order by providing written notice to all parties of the relevant document numbers or other
16 identification. Until the expiration of the 30-day period to designate the deposition transcript or
17 written discovery as confidential, the parties shall treat the entire deposition transcript, deposition
18 exhibits and discovery materials as confidential. After any designation made according to the
19 procedure set forth in this paragraph, the designated documents or information shall be treated
20 according to the designation until the matter is resolved according to the procedures described in
21 paragraph 12 below, and counsel for all parties shall be responsible for marking all previously
22 unmarked copies of the designated material in their possession or control with the specified
23 designation.

24 7. Testimony during deposition may be designated “CONFIDENTIAL
25 INFORMATION” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” provided
26 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
27 close of the deposition, hearing, or other proceeding, all protected testimony. When it is
28 impractical to identify separately each portion of testimony that is entitled to protection, and when

1 it appears that substantial portions of the testimony may qualify for protection, the Party or non-
2 party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition
3 or proceeding is concluded) a right to have up to 20 days after receipt of the deposition transcript
4 to identify the specific portions of the testimony as to which protection is sought. Only those
5 portions of the testimony that are appropriately designated for protection within the 20 days shall
6 be covered by the provisions of this Stipulated Protective Order. Whenever designated
7 confidential material is to be discussed or disclosed in a deposition: (a) any person who has
8 produced or will produce such material may require the exclusion from the room of any person
9 who is not entitled to receive such material under this Order; and (b) any party who will disclose
10 material previously designated shall first exclude from the room any person who is not entitled to
11 receive such material under this Order.

12 8. Except with the prior written consent of the other parties, or upon prior order of
13 this Court obtained upon notice to opposing counsel, designated confidential information shall not
14 be disclosed to any person other than:

15 (a) counsel for the respective parties to this litigation, including in-house
16 counsel and co-counsel retained for this litigation;

17 (b) employees of such counsel;

18 (c) individual parties or officers or employees of a party, to the extent deemed
19 necessary by counsel for the prosecution or defense of this litigation, provided the document is
20 not designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY";

21 (d) consultants or expert witnesses retained for the prosecution or defense of
22 this litigation, provided that each such person shall execute a copy of the Certification annexed to
23 this Order (which shall be retained by counsel to the party so disclosing the designated
24 confidential information and made available for inspection by opposing counsel after the
25 disclosure of expert witnesses, in the case of expert witnesses who have been so designated by a
26 party, or after the termination of the action, in the case of consultants) before being shown or
27 given any designated confidential information.

28 (e) any authors or recipients of the designated confidential information;

1 (f) the Court, court personnel, and court reporters; and
2 (g) witnesses at depositions or at trial whom the propounding party has good
3 faith reason to believe are likely to have personal or expert knowledge concerning the matter
4 described in the designated confidential information being presented. A witness at deposition
5 shall sign the Certification before being shown designated confidential information. Witnesses
6 shown designated confidential information shall not be allowed to retain copies.

7 9. Any persons receiving designated confidential information shall not reveal or
8 discuss such information to or with any person who is not entitled to receive such information,
9 except as set forth herein.

10 10. A party may not file in the public record in this action any Confidential
11 Information or Highly Confidential - Attorneys' Eyes Only information without written
12 permission from the designating party or a court order secured after appropriate notice to all
13 interested persons. A party that seeks to file Confidential Information or Highly Confidential -
14 Attorneys' Eyes Only information under seal must comply with Local Rule 141. Designated
15 confidential information may only be filed under seal pursuant to a court order authorizing the
16 sealing of the specific designated confidential information at issue.

17 11. Any party may voluntarily disclose to the other without restriction any of its own
18 information designated by that party as designated confidential information, although a document
19 may lose its confidential status if it is made public.

20 12. If a party contends that any material is not entitled to confidential treatment, such
21 party may at any time give written notice to the party who designated the material. The party
22 contending that the material is entitled to confidential treatment shall have 25 days from the
23 service of such written notice to apply to the Court for an order designating the material as
24 confidential. The party seeking the order has the burden of establishing that the document is
25 entitled to protection. Any documents that are the subject of a motion filed under this paragraph
26 shall be treated as designated confidential information until the Court has ruled on the motion.

27 13. Notwithstanding any challenge to the designation, all documents and materials
28 designated as "CONFIDENTIAL INFORMATION" or "HIGHLY CONFIDENTIAL -

1 ATTORNEYS' EYES ONLY" shall be treated as such and shall be subject to the provisions
2 hereof unless and until one of the following occurs:

3 (a) the deadline for filing a motion to uphold the confidentiality of the
4 documents has expired following receipt of a written challenge under Paragraph 12 and the
5 designating party has not filed a motion with the Court to uphold the confidentiality of the
6 document ; or

7 (b) the party who claims that the material is "CONFIDENTIAL
8 INFORMATION" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" withdraws
9 such designation in writing; or

10 (c) the Court rules the material is not "CONFIDENTIAL INFORMATION" or
11 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."

12 14. Each party or non-party that designates information or items for protection under
13 this Order must take care to limit any such designation to specific material that qualifies under the
14 appropriate standards. The party designating the information or items as confidential must only
15 designate for protection those parts of the materials, documents, items, or oral or written
16 communications that qualify – so that other portions of the materials, documents, items, or
17 communications for which protection is not warranted are not swept unjustifiably within the
18 ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
20 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
21 unnecessarily encumber or retard the case development process or to impose unnecessary
22 expenses and burdens on other parties) expose the designating party to sanctions.

23 If it comes to a designating party's attention that the designated confidential information
24 does not qualify for protection, that party must promptly notify all other parties that it is
25 withdrawing the mistaken designation.

26 15. If timely corrected, an inadvertent failure to designate information or items as
27 confidential does not, standing alone, waive a party's right to secure protection under this Order
28 for such material. Upon timely correction of a designation, the receiving party must make

1 reasonable efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3 16. All provisions of this Order restricting the communication or use of
4 “CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
5 ONLY” shall continue to be binding after the conclusion of this action, unless otherwise agreed
6 or ordered. Upon conclusion of the litigation, a party in the possession of designated confidential
7 information of another party, other than that which is contained in pleadings, correspondence, and
8 deposition transcripts, shall either (a) return such documents no later than 30 days after
9 conclusion of this action to counsel for the party to whom the information belongs, or (b) upon
10 consent of the party who provided the information, destroy such documents within that time
11 period and certify in writing within 30 days that the documents have been destroyed.

12 17. Nothing herein shall be deemed to waive any applicable privilege or work-product
13 protection, or to affect the ability of a party to seek relief from an inadvertent disclosure of
14 material protected by privilege or work product protection. Any witness or other person, firm or
15 entity from which discovery is sought may be informed of and may obtain the protection of this
16 Order by written advice to the parties’ respective counsel or by oral advice at the time of any
17 deposition or similar proceeding.

18 18. The execution of this Order shall not:

19 (a) constitute waiver of any party’s right to seek from the Court at a future
20 time an order which provides greater, lesser or no restriction of access to designated confidential
21 information; or

22 (b) be construed as an admission or agreement that any document designated
23 as “CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL - ATTORNEYS’
24 EYES ONLY” is, in fact, confidential or otherwise entitled to any protective relief whatsoever.

25 19. In addition to other legal remedies, if a party granting discovery proves that the
26 other discovering party and/or the party’s counsel willfully violated the above procedures for
27 protecting the opposing party’s confidentiality of the other party’s designated confidential
28 information, then the discovering party and/or the party’s counsel may be subject to contempt

1 liability. The Court shall retain jurisdiction after termination of this action to hear any matters
2 governed by this Protective Order Regarding Use of Confidential Information.

3
4 Dated: October 21, 2011.

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12 Attorneys for *Defendant*
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14
15 Dated: October 21, 2011.

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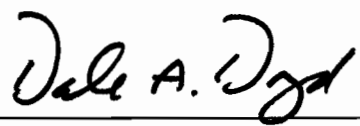
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Attorneys for Plaintiffs

It is so ordered.

DATED: 11/3/11



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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