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 8 WAL-MART STORES, INC.

9 **UNITED STATES DISTRICT COURT**
 10 **EASTERN DISTRICT OF CALIFORNIA**

11 AMY FRASER, and PAULA HAUG, on behalf
 12 of themselves and all others similarly situated,

13 Plaintiffs,

14 vs.

15 WAL-MART STORES, INC., a Delaware
 16 corporation, and DOES 1 through 50, inclusive,

17 Defendants.

Case No.: 2:13-CV-00520-TLN-DAD

**STIPULATION AND PROTECTIVE
 ORDER**

The Honorable Troy L. Nunley

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

19 **1. PURPOSES AND LIMITATIONS**

20 Disclosure and discovery activity in this action are likely to involve production of
 21 confidential, proprietary, or private information for which special protection from public disclosure
 22 and from use for any purpose other than prosecuting this litigation would be warranted.

23 Accordingly, Plaintiffs Amy Fraser and Paula Haug, on the one hand, and Defendant Wal-Mart
 24 Stores, Inc., on the other hand (collectively, the "Parties"), hereby stipulate to and petition the Court
 25 to enter the following Stipulated Protective Order. The Parties acknowledge that this Stipulated
 26 Protective Order does not confer blanket protections on all disclosures or responses to discovery and
 27 that the protection it affords extends only to the limited information or items that are entitled under
 28 the applicable legal principles to treatment as confidential. The Parties further acknowledge, as set

1 forth in Section 10 below, that this Stipulated Protective Order creates no entitlement to file
2 confidential information under seal; Civil Local Rule 141 sets forth the procedures that must be
3 followed and reflects the standards that will be applied when a party seeks permission from the
4 Court to file material under seal. In accordance with Local Rule 141.1(c), a general description of
5 the types of information eligible for protection under this Stipulated Protective Order, a showing of
6 particularized need for the protection, and a showing as to why the need for protection should be
7 addressed by a court order are set forth in Section 2.8 below.

8
9 **2. DEFINITIONS**

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

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

16 2.3 “Confidential” Information or Items: information (regardless of how
17 generated, stored or maintained) or tangible things that qualify for protection under standards
18 developed under F.R.Civ.P. 26(c).

19 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
20 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-
21 party would create a substantial risk of serious injury that could not be avoided by less restrictive
22 means.

23 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from
24 a Producing Party.

25 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
26 Material in this action.

27
28

1 2.7 Designating Party: a Party or non-party that designates information or items
2 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential
3 — Attorneys’ Eyes Only.”

4 2.8 Protected Material: any Disclosure or Discovery Material that is designated
5 as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.” In general, Protected
6 Material includes, without limitation, confidential, proprietary and competitively sensitive internal
7 operating procedures, data processing protocols, commercial agreements, customer information and
8 financial information. The protection contemplated by this Stipulated Protective Order is necessary
9 to ensure that such confidential, proprietary and competitively sensitive information is not publicly
10 disclosed by the Parties or those non-parties to whom the Parties determine it is reasonably
11 necessary to disclose the information in order to prosecute or defend this litigation, as provided in
12 Section 7 below. Due to the private, confidential and competitively sensitive nature of the
13 information that will be produced in the case, and the reasonable necessity for such information to be
14 shared with non-parties in the course of this litigation, a court order is necessary to compel
15 compliance with the protections contemplated by this Stipulated Protective Order by way of court
16 ordered sanctions or punishment in the nature of contempt.

17 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
18 retained to represent or advise a Party in this action.

19 2.10 House Counsel: attorneys who are employees of a Party.

20 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
21 their support staffs).

22 2.12 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
24 witness or as a consultant in this action and who is not a past or a current employee of a Party or of a
25 competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee
26 of a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant
27 retained in connection with this litigation.
28

1 2.13 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
3 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
4 subcontractors.

5
6 **3. SCOPE**

7 The protections conferred by this Stipulated Protective Order cover not only Protected
8 Material, but also any information copied or extracted therefrom, as well as all copies, excerpts,
9 summaries, or compilations thereof, plus testimony, conversations, or presentations by Parties or
10 Counsel to or in court or in other settings that might reveal Protected Material.

11
12 **4. DURATION**

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

16
17 **5. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
19 Party or non-party that designates information or items for protection under this Stipulated
20 Protective Order must take care to limit any such designation to specific material that qualifies under
21 the appropriate standards. A Designating Party must take care to designate for protection only those
22 parts of material, documents, items, or oral or written communications that qualify – so that other
23 portions of the material, documents, items, or communications for which protection is not warranted
24 are not swept unjustifiably within the ambit of this Stipulated Protective Order. Mass,
25 indiscriminate, or routinized designations are prohibited. If it comes to a Party’s or a non-party’s
26 attention that information or items that it designated for protection do not qualify for protection at
27 all, or do not qualify for the level of protection initially asserted, that Party or non-party must
28 promptly notify all other parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Stipulated Protective Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
3 stipulated or ordered, material that qualifies for protection under this Stipulated Protective Order
4 must be clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Stipulated Protective Order requires:

6 (a) for information in documentary form (apart from transcripts of
7 depositions or other pretrial or trial proceedings), that the Producing Party affixes the legend
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top of
9 each page that contains protected material. If only a portion or portions of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
11 by making appropriate markings in the margins) and must specify, for each portion, the level of
12 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY”).

14 A Party or non-party that makes original documents or materials available for
15 inspection need not designate them for protection until after the inspecting Party has indicated which
16 material it would like copied and produced. During the inspection and before the designation, all of
17 the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
19 copied and produced, the Producing Party must determine which documents, or portions thereof,
20 qualify for protection under this Stipulated Protective Order, then, before producing the specified
21 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains
23 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
24 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
25 markings in the margins) and must specify, for each portion, the level of protection being asserted
26 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

27 (b) for testimony given in deposition or in other pretrial or trial
28 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record,

1 before the close of the deposition, hearing, or other proceeding, all protected testimony, and further
2 specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
4 entitled to protection, and when it appears that substantial portions of the testimony may qualify for
5 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
6 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the
7 specific portions of the testimony as to which protection is sought and to specify the level of
8 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY”). Only those portions of the testimony that are appropriately designated for
10 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

11 Transcript pages containing Protected Material must be separately bound by
12 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-
14 party offering or sponsoring the witness or presenting the testimony.

15 (c) for information produced in some form other than documentary, and
16 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
17 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information
19 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
20 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’
21 Eyes Only.”

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
23 to designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
24 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under
25 this Stipulated Protective Order for such material. If material is appropriately designated as
26 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially
27 produced, the Receiving Party, on timely notification of the designation, must make reasonable
28

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

3
4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
6 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
7 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
8 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
9 after the original designation is disclosed.

10 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
11 Party's confidentiality designation must do so in good faith and must begin the process by conferring
12 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
13 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
14 that the confidentiality designation was not proper and must give the Designating Party an
15 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
16 designation is offered, to explain the basis for the chosen designation. A challenging Party may
17 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
18 process first.

19 6.3 Judicial Intervention. A Party that elects to press a challenge to a
20 confidentiality designation after considering the justification offered by the Designating Party may
21 file and serve a motion under Civil Local Rule 230 or 251 as appropriate (and in compliance with
22 Civil Local Rule 141, if applicable) that identifies the challenged material and sets forth in detail the
23 basis for the challenge. Each such motion must be accompanied by a competent declaration that
24 affirms that the movant has complied with the meet and confer requirements imposed in the
25 preceding paragraph and that sets forth with specificity the justification for the confidentiality
26 designation that was given by the Designating Party in the meet and confer dialogue.

27 The burden of persuasion in any such challenge proceeding shall be on the
28 Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the

1 material in question the level of protection to which it is entitled under the Producing Party's
2 designation.

3
4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

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

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

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

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

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

27 (d) the Court and its personnel;
28

1 (e) court reporters, their staffs, and professional vendors to whom
2 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
3 Bound by Protective Order” (Exhibit A);

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

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

10 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
11 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
12 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

18 (b) Experts (as defined in this Stipulated Protective Order) (1) to whom
19 disclosure is reasonably necessary for this litigation, (2) who have signed the “Agreement to Be
20 Bound by Protective Order” (Exhibit A);

21 (c) the Court and its personnel;

22 (d) court reporters, their staffs, and professional vendors to whom
23 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
24 Bound by Protective Order” (Exhibit A); and

25 (e) the author of the document or the original source of the information.
26
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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION.**

3 If a Receiving Party is served with a subpoena or an order issued in other litigation
4 that would compel disclosure of any information or items designated in this action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
6 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
7 and in no event more than three court days after receiving the subpoena or order. Such notification
8 must include a copy of the subpoena or court order.

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

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

20
21 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

1 **10. FILING PROTECTED MATERIAL.**

2 Without written permission from the Designating Party or a court order secured after
3 appropriate notice to all interested persons, a Party may not file in the public record in this action
4 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
5 with Civil Local Rule 141. If, however, a Designating Party files Protected Material in the public
6 record, any other Party may do so as well without written permission or order from the Court.
7

8 **11. FINAL DISPOSITION.**

9 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after
10 the final termination of this action, each Receiving Party must return all Protected Material to the
11 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
12 compilations, summaries or any other form of reproducing or capturing any of the Protected
13 Material. With permission in writing from the Designating Party, the Receiving Party may destroy
14 some or all of the Protected Material instead of returning it. Whether the Protected Material is
15 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party
16 (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that
17 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed
18 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,
19 summaries or other forms of reproducing or capturing any of the Protected Material.

20 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
21 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such
22 materials contain Protected Material. Any such archival copies that contain or constitute Protected
23 Material remain subject to this Stipulated Protective Order as set forth in Section 4 (DURATION),
24 above.
25

26 **12. MISCELLANEOUS**

27 12.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges
28 the right of any person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated
2 Protective Order no Party waives any right it otherwise would have to object to disclosing or
3 producing any information or item on any ground not addressed in this Stipulated Protective Order.
4 Similarly, no Party waives any right to object on any ground to use in evidence of any of the material
5 covered by this Stipulated Protective Order.

6
7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:**

8
9 Dated: April 24, 2012

REED SMITH LLP

10
11 /s/ Scott H. Jacobs

12 Scott H. Jacobs
13 Brandon W. Corbridge

14 Attorneys for Defendant
15 WAL-MART STORES, INC.

16
17 Dated: April 24, 2012

LINDSAY LAW CORPORATION

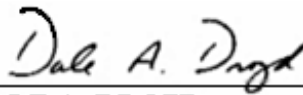
18 /s/James M. Lindsay (as authorized on April 24, 2012)

19 James M. Lindsay

20 Attorneys for Plaintiffs and the Class

21
22 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

23 Dated: April 30, 2013

24 

25 DALE A. DROZD
26 UNITED STATES MAGISTRATE JUDGE

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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 _____, 2013 in the case of *Fraser v. Wal-Mart Stores, Inc.*, Case No.: 2:13-CV-00520-TLN-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]