

1 BECKI D. GRAHAM, CA Bar No. 238010
becki.graham@ogletree.com
2 RACHEL J. MOROSKI, CA Bar No. 286805
rachel.moroski@ogletree.com
3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4 Steuart Tower, Suite 1300
One Market Plaza
5 San Francisco, CA 94105
Telephone: 415.442.4810
6 Facsimile: 415.442.4870

7 Attorneys for Defendant
WAL-MART STORES, INC.

8
9 ROMAN OTKUPMAN, CA Bar No. 249423
Roman@OLFLA.com
10 RITA LEONG, CA Bar No. 300058
Rita@OLFLA.com
11 OTKUPMAN LAW FIRM, A LAW CORPORATION
21800 Oxnard Street, Suite 1160
12 Woodland Hills, CA 91367
Telephone: (818) 293-5623
13 Facsimile: (888) 850-1310

14 Attorneys for Plaintiff
KELLY WELCH

15 **UNITED STATES DISTRICT COURT**
16 **EASTERN DISTRICT OF CALIFORNIA**
17 **SACRAMENTO DIVISION**

18
19 KELLY WELCH,

20 Plaintiff,

21 v.

22 WAL-MART STORES, INC., an Arkansas
Corporation, and DOES 1 through 100,
23 inclusive,

24 Defendant.

No. 2:16-cv-02002-MCE-DB

STIPULATED PROTECTIVE ORDER

1 WHEREAS, the parties in the above-captioned matter have agreed that these proceedings
2 may involve the discovery and use of confidential, non-public, sensitive, or proprietary business,
3 employment, tax, financial, and personally identifiable information, documents and other materials;

4 WHEREAS, the parties have agreed to produce such documents only on the agreement that
5 such “Confidential Information” including information regarding current and former Wal-Mart
6 Stores, Inc. (“Walmart” or “Defendant”) employees’ social security information, dates of birth,
7 personal banking information, medical information, and records stating the actual rates of pay at
8 Walmart, and corporate trade secrets, nonpublic research and development data, pricing formulas,
9 prospective inventory management programs, confidential business information not generally
10 known to the general public, and customer-related information, will be disclosed only as provided
11 herein;

12 WHEREAS, the parties have agreed to stipulate to protect certain confidential and
13 otherwise protected documents, data (including electronically stored information) and other
14 information, including without limitation, metadata (collectively “Documents”), against claims of
15 waiver and inadvertent production in the event they are produced during the course of this
16 litigation whether pursuant to a Court Order, a parties’ discovery request, or informal production.

17 WHEREAS, both parties may be required to produce large volumes of Documents, the
18 parties wish to comply with discovery deadlines and complete discovery as expeditiously as
19 possible, while preserving and without waiving any evidentiary protections or privileges applicable
20 to the information contained in the Documents produced, including as against third parties and
21 other proceedings, and in addition to their agreement, need the additional protections of a Court
22 Order under Federal Rule of Evidence 502(d) and (e) to do so.

23 WHEREAS, in order to comply with applicable discovery deadlines, a party may be
24 required to produce certain categories of Documents that have been subject to minimal or no
25 attorney review (the “Disclosures”). This Stipulation and Order is designed to foreclose any
26 arguments that by making such Disclosures, the disclosure or production of Documents subject to a
27 legally recognized claim of privilege, including without limitation the attorney-client privilege,
28 work-product doctrine, or other applicable privilege:

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- (a) was not inadvertent by the Producing Party;
- (b) that the Producing Party did not take reasonable steps to prevent the disclosure of privileged Documents;
- (c) that the Producing Party did not take reasonable or timely steps to rectify such Disclosure; and/or
- (d) that such Disclosure acts as a waiver of applicable privileges or protections associated with such Documents.

WHEREAS, because the purpose of this Stipulation is to protect and preserve Confidential Information and privileged Documents, the parties agree they are bound as follows from and after the date their counsel have signed it, even if such execution occurs prior to Court approval.

THEREFORE, the parties seek the entry of an Order, pursuant to Federal Rule of Civil Procedure 26(c) governing the disclosure of documents and information therein pertaining to “Confidential Information” on the terms set forth herein, as well as an Order governing the return of inadvertently produced documents and data and affording them the protections of Federal Rule of Evidence 502(d) and (e), on the terms set forth herein.

IT IS HEREBY STIPULATED AND AGREED THAT:

1. The Protective Order shall be entered pursuant to the Federal Rules of Civil Procedure and Federal Rule of Evidence 502(d) and (e).
2. The Protective Order shall govern all materials deemed to be “Confidential Information.” Such Confidential Information shall include the following:
 - (a) Any and all documents referring or related to confidential and proprietary human resources or business information; financial records of the parties; compensation of Defendant’s current or former personnel; policies, procedures or training materials of Defendant; or Defendant’s organizational structure;
 - (b) Any documents from the personnel, medical or workers’ compensation file of any current or former employee or contractor;
 - (c) Any documents relating to the medical or health information of any of Defendant’s current or former employees or contractors;
 - (d) Any portions of depositions (audio or video) where Confidential Information is disclosed or used as exhibits.

1 3. The Protective Order shall likewise govern all materials deemed “Attorneys’ Eyes
2 Only”, which materials shall include the following:

- 3 (a) Any documents containing corporate trade secrets, nonpublic research and
4 development data, pricing formulas, prospective inventory management
5 programs, confidential business information not generally known to the
6 general public, and customer-related information.

7 4. In the case of documents and the information contained therein, designation of
8 Confidential Information produced shall be made by placing the following legend on the face of
9 the document and each page so designated “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”
10 or otherwise expressly identified as confidential or attorneys’ eyes only. Defendant will use its best
11 efforts to limit the number of documents designated Confidential or Attorneys’ Eyes Only.

12 5. Except as required by law or executive order, Confidential Information shall be held
13 in confidence by each qualified recipient to whom it is disclosed, shall be used only for purposes of
14 this action, shall not be used for any business purpose, and shall not be disclosed to any person who
15 is not a qualified recipient. All produced Confidential Information shall be carefully maintained so
16 as to preclude access by persons who are not qualified recipients.

17 6. Qualified recipients of documents marked “ATTORNEYS’ EYES ONLY” shall
18 include only the following:

- 19 (a) In-house counsel and law firms for each party and the secretarial, clerical and paralegal
20 staff of each.

21 Qualified recipients of documents marked “CONFIDENTIAL” shall include only the
22 following:

- 23 (a) In-house counsel and law firms for each party and the secretarial, clerical and paralegal
24 staff of each.

- 25 (b) Deposition notaries and staff;

26 (c) Persons other than legal counsel who have been retained or specially employed by a
27 party as an expert witness for purposes of this lawsuit or to perform investigative work or fact
28 research;

- (d) Deponents during the course of their depositions or potential witnesses of this case; and

1 (e) The parties to this litigation, their officers, and professional employees.

2 7. Each counsel shall be responsible for providing notice of the Protective Order and
3 the terms therein to persons to whom they disclose “Confidential Information,” as defined by the
4 terms of the Protective Order.

5 Persons to whom Confidential Information is shown shall be informed of the terms of this
6 Order and advised that its breach may be punished or sanctioned as contempt of the Court as set
7 forth in Exhibit A hereto. Such deponents may be shown Confidential Information during their
8 deposition but shall not be permitted to keep copies of said Confidential Information nor any
9 portion of the deposition transcript reflecting the Confidential Information.

10 If either party objects to the claims that information should be deemed Confidential, that
11 party’s counsel shall inform opposing counsel in writing within thirty (30) days of receipt of the
12 Confidential Information that the information should not be so deemed, and the parties shall
13 attempt first to dispose of such disputes in good faith and on an informal basis. If the parties are
14 unable to resolve their dispute, they may present a motion to the Court objecting to such status.
15 The information shall continue to have Confidential status during the pendency of any such
16 motion.

17 8. In the event that any documents or other materials previously identified as
18 confidential are marked as exhibits or otherwise generally discussed during the taking of a
19 deposition in this action, the exhibit, and all portions of the relevant deposition transcript in which
20 the exhibit is discussed and/or referenced, shall immediately be deemed confidential, and therefore
21 subject to the terms of this Protective Order.

22 9. No copies of Confidential Information shall be made except by or on behalf of
23 attorneys of record, in-house counsel or the parties in this action. Any person making copies of
24 such information shall maintain all copies within their possession or the possession of those
25 entitled to access to such information under the Protective Order.

26 10. All information produced in this action, whether deemed Confidential or not, shall
27 be used only for purposes of this litigation and not for any other purpose.

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1 11. Whenever a party wishes to file any writing designated as Confidential with the
2 Court, the party may either (a) redact any and all information contained on any page that is marked
3 Confidential before filing said document with the Court, (b) if the party wishing to file said writing
4 is the party that originally designated the document as Confidential that party may, at their
5 discretion, redact only that information that it deems Confidential from any page that is marked
6 Confidential before filing with the Court or (c) separately file the document under seal with the
7 Court. If a party wishes to file a document that has been marked Confidential with the Court, the
8 party will follow all rules and practices followed by the Court regarding filing a document under
9 seal, including filing a motion establishing good cause for the document to be preserved under seal
10 if necessary, prior to so filing.

11 12. The termination of this action shall not relieve the parties and persons obligated
12 hereunder from their responsibility to maintain the confidentiality of information designated
13 Confidential pursuant to this Order.

14 13. Upon termination of this action by entry of a final judgment (inclusive of any
15 appeals or petitions for review), the parties may request the return of all previously furnished
16 Confidential Information, including any copies thereof, and each person or party to whom such
17 Confidential Information has been furnished or produced shall be obligated to return it within thirty
18 (30) days of said request.

19 14. Pursuant to Federal Rule of Evidence 502(d) and (e), the parties agree to and the
20 Court orders protection of privileged and otherwise protected Documents against claims of waiver
21 (including as against third parties and in other federal and state proceedings) as follows:

- 22 (a) The disclosure or production of Documents by a Producing Party subject to a
23 legally recognized claim of privilege, including without limitation the attorney-client privilege and the work-product doctrine, to a Receiving
24 Party, shall in no way constitute the voluntary disclosure of such Document.
- 25 (b) The inadvertent disclosure or production of any Document in this action
26 shall not result in the waiver of any privilege, evidentiary protection or other
27 protection associated with such Document as to the Receiving Party or any
28 third parties, and shall not result in any waiver, including subject matter
waiver, of any kind.
- (c) If, during the course of this litigation, a party determines that any Document
produced by another party is or may reasonably be subject to a legally
recognizable privilege or evidentiary protection (“Protected Document”):

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(i) the Receiving Party shall: (A) refrain from reading the Protected Document any more closely than is necessary to ascertain that it is privileged or otherwise protected from disclosure; (B) immediately notify the Producing Party in writing that it has discovered Documents believed to be privileged or protected; (C) specifically identify the Protected Documents by Bates number range or hash value, and, (D) within ten (10) days of discovery by the Receiving Party, return, sequester, or destroy all copies of such Protected Documents, along with any notes, abstracts or compilations of the content thereof. To the extent that a Protected Document has been loaded into a litigation review database under the control of the Receiving Party, the Receiving Party shall have all electronic copies of the Protected Document extracted from the database. Where such Protected Documents cannot be destroyed or separated, they shall not be reviewed, disclosed, or otherwise used by the Receiving Party. Notwithstanding, the Receiving Party is under no obligation to search or review the Producing Party's Documents to identify potentially privileged or work product Protected Documents.

(ii) If the Producing Party intends to assert a claim of privilege or other protection over Documents identified by the Receiving Party as Protected Documents, the Producing Party will, within ten (10) days of receiving the Receiving Party's written notification described above, inform the Receiving Party of such intention in writing and shall provide the Receiving Party with a log for such Protected Documents that is consistent with the requirements of the Federal Rules of Civil Procedure, setting forth the basis for the claim of privilege or other protection. In the event that any portion of a Protected Document does not contain privileged or protected information, the Producing Party shall also provide to the Receiving Party a redacted copy of the document that omits the information that the Producing Party believes is subject to a claim of privilege or other protection.

(d) If, during the course of this litigation, a party determines it has produced a Protected Document:

(i) the Producing Party may notify the Receiving Party of such inadvertent production in writing, and demand the return of such documents. Such notice shall be in writing, however, it may be delivered orally on the record at a deposition, promptly followed up in writing. The Producing Party's written notice will identify the Protected Document inadvertently produced by bates number range or hash value, the privilege or protection claimed, and the basis for the assertion of the privilege and shall provide the Receiving Party with a log for such Protected Documents that is consistent with the requirements of the Federal Rules of Civil Procedure, setting forth the basis for the claim of privilege or other protection. In the event that any portion of the Protected Document does not contain privileged or protected information, the Producing Party shall also provide to the Receiving Party a redacted copy of the Document that omits the information that the Producing Party believes is subject to a claim of privilege or other protection.

(ii) the Receiving Party must, within ten (10) days of receiving the Producing Party's written notification described above, return,

1 sequester, or destroy the Protected Document and any copies, along
2 with any notes, abstracts or compilations of the content thereof. To
3 the extent that a Protected Document has been loaded into a litigation
4 review database under the control of the Receiving Party, the
5 Receiving Party shall have all electronic copies of the Protected
6 Document extracted from the database.

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- 8 (e) To the extent that the information contained in a Protected Document has
9 already been used in or described in other documents generated or
10 maintained by the Receiving Party prior to the date of receipt of written
11 notice by the Producing Party as set forth in paragraphs (c)(ii) and (d)(i),
12 then the Receiving Party shall sequester such documents until the claim has
13 been resolved. If the Receiving Party disclosed the Protected Document
14 before being notified of its inadvertent production, it must take reasonable
15 steps to retrieve it.
- 16 (f) The Receiving Party's return, sequestering or destruction of Protected
17 Documents as provided herein will not act as a waiver of the Requesting
18 Party's right to move for the production of the returned, sequestered or
19 destroyed documents on the grounds that the documents are not, in fact,
20 subject to a viable claim of privilege or protection. However, the Receiving
21 Party is prohibited and estopped from arguing that:
- 22 (i) the disclosure or production of the Protected Documents acts as a
23 waiver of an applicable privilege or evidentiary protection;
 - 24 (ii) the disclosure of the Protected Documents was not inadvertent;
 - 25 (iii) the Producing Party did not take reasonable steps to prevent the
26 disclosure of the Protected Documents; or
 - 27 (iv) the Producing Party failed to take reasonable or timely steps to
28 rectify the error.
- (g) Either party may submit Protected Documents to the Court under seal for a
determination of the claim of privilege or other protection. The Producing
Party shall preserve the Protected Documents until such claim is resolved.
The Receiving Party may not use the Protected Documents for any purpose
absent this Court's Order.
- (h) Upon a determination by the Court that the Protected Documents are
protected by the applicable privilege or evidentiary protection, and if the
Protected Documents have been sequestered rather than returned or
destroyed by the Receiving Party, the Protected Documents shall be returned
or destroyed within 10 (ten) days of the Court's order. The Court may also
order the identification by the Receiving Party of Protected Documents by
search terms or other means.
- (i) Nothing contained herein is intended to, or shall serve to limit a party's right
to conduct a review of documents, data (including electronically stored
information) and other information, including without limitation, metadata,
for relevance, responsiveness or the segregation of privileged or protected
information before such information is produced to another party.

1 (j) By operation of the parties' agreement and Court Order, the parties are
2 specifically afforded the protections of Federal Rule of Evidence 502(d) and
3 (e).

4 15. Subject to the Federal Rules of Evidence, a stamped Confidential document and
5 other Confidential Information may be offered in evidence at trial or any court hearing, provided
6 that the proponent of the evidence gives five days' advance notice to counsel for the party or other
7 person that designated the information as Confidential. Any party may move the court for an order
8 that the evidence be received in camera or under other conditions to prevent unnecessary
9 disclosure. The court will then determine whether the proffered evidence should continue to be
10 treated as Confidential Information and, if so, what protection, if any, may be afforded to such
11 information at the trial.

12 16. If another court or an administrative agency subpoenas or orders production of
13 stamped Confidential documents which a party has obtained under the terms of this order, such
14 party shall promptly notify the party or other person who designated the document as Confidential
15 of the pendency of such subpoena or order.

16 17. Nothing in this Order shall be construed as an admission as to the relevance,
17 authenticity, foundation or admissibility of any document, material, transcript, or other
18 information.

19 18. Nothing in the Protective Order shall be deemed to preclude any party from seeking
20 and obtaining, on an appropriate showing, a modification of this Order.

21 19. Once executed by all parties, the Stipulation shall be by treated by the Parties as an
22 Order of Court until it is formally approved by the Court.

23 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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DATED: January 12, 2017

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

By: /s/ Rachel J. Moroski
Becki D. Graham
Rachel J. Moroski
Attorneys for Defendant
WAL-MART STORES, INC.

DATED: January 12, 2017

OTKUPMAN LAW FIRM
A LAW CORPORATION

By: /s/ Rita Leong
Roman Otkupman
Rita Leong

Attorneys for Plaintiff
KELLY WELCH

1 **ORDER**

2 Pursuant to the parties' January 13, 2017 stipulation, (ECF No. 10), IT IS SO ORDERED.

3 IT IS FURTHER ORDERED THAT:

4 1. Requests to seal documents shall be made by motion before the same judge who will
5 decide the matter related to that request to seal.

6 2. The designation of documents (including transcripts of testimony) as confidential
7 pursuant to this order does not automatically entitle the parties to file such a document with the
8 court under seal. Parties are advised that any request to seal documents in this district is governed
9 by Local Rule 141. In brief, Local Rule 141 provides that documents may only be sealed by a
10 written order of the court after a specific request to seal has been made. L.R. 141(a). However, a
11 mere request to seal is not enough under the local rules. In particular, Local Rule 141(b) requires
12 that "[t]he 'Request to Seal Documents' shall set forth *the statutory or other authority for sealing*,
13 the requested duration, the identity, by name or category, of persons to be permitted access to the
14 document, and all relevant information." L.R. 141(b) (emphasis added).

15 3. A request to seal material must normally meet the high threshold of showing that
16 "compelling reasons" support secrecy; however, where the material is, at most, "tangentially
17 related" to the merits of a case, the request to seal may be granted on a showing of "good cause."
18 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016); Kamakana
19 v. City and County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

20 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of
21 certain documents, at any court hearing or trial – such determinations will only be made by the
22 court at the hearing or trial, or upon an appropriate motion.

23 5. With respect to motions regarding any disputes concerning this protective order which
24 the parties cannot informally resolve, the parties shall follow the procedures outlined in Local Rule
25 251. Absent a showing of good cause, the court will not hear discovery disputes on an *ex parte*
26 basis or on shortened time.

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1 6. The parties may not modify the terms of this Protective Order without the court's
2 approval. If the parties agree to a potential modification, they shall submit a stipulation and
3 proposed order for the court's consideration.

4 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement
5 of the terms of this Protective Order after the action is terminated.

6 8. Any provision in the parties' stipulation that is in conflict with anything in this order is
7 hereby DISAPPROVED.

8 Dated: January 18, 2017

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12 _____
13 DEBORAH BARNES
14 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, Eastern District of California, Sacramento Division on _____, 2017 in the case of *Kelly Welch v. Wal-Mart Stores, Inc., et al., Case No. 2:16-cv-02002-MCE-DB*. 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, 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: _____

Signature: _____