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8 *Attorneys for Defendants Walmart Inc.*
 9 *and Wal-Mart Associates, Inc.*

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

13 HOPE KRAUSS, aka, DEONTE KRAUSS,
 14 individually and on behalf of all those
 similarly situated,

15 Plaintiff,

16 v.

17
 18 WAL-MART, INC., a Delaware corporation;
 WAL-MART ASSOCIATES, INC., a
 19 Delaware corporation; and DOES 1 through
 20 50, inclusive,

21 Defendants.

No. 2:19-cv-0838 JAM DB

**STIPULATED PROTECTIVE
 ORDER**

22
 23 1. A. PURPOSES AND LIMITATIONS

24 Discovery in this action is likely to involve production of confidential,
 25 proprietary, or private information for which special protection from public disclosure
 26 and from use for any purpose other than prosecuting this litigation may be warranted.
 27 Accordingly, the parties hereby stipulate to and petition the Court to enter the
 28 following Stipulated Protective Order (“Order”). The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to discovery
2 and that the protection it affords from public disclosure and use extends only to the
3 limited information or items that are entitled to confidential treatment under the
4 applicable legal principles. The parties further acknowledge, as set forth in Section
5 12.3, below, that this Order does not entitle them to file confidential information under
6 seal; Civil Local Rule 141 sets forth the procedures that must be followed and the
7 standards that will be applied when a party seeks permission from the court to file
8 material under seal.

9 B. GOOD CAUSE STATEMENT

10 Defendants believe and represent that this action is likely to involve commercial,
11 financial, technical and/or proprietary information for which special protection from
12 public disclosure and from use for any purpose other than prosecution of this action is
13 warranted. Such confidential and proprietary materials and information consist of,
14 among other things, confidential business or financial information, information
15 regarding confidential business practices, or other confidential research, development,
16 or commercial information (including information implicating privacy rights of third
17 parties), information otherwise generally unavailable to the public, or which may be
18 privileged or otherwise protected from disclosure under state or federal statutes, court
19 rules, case decisions, or common law. Accordingly, to expedite the flow of information,
20 to facilitate the prompt resolution of disputes over confidentiality of discovery
21 materials, to adequately protect information the parties are entitled to keep
22 confidential, to ensure that the parties are permitted reasonable necessary uses of such
23 material in preparation for and in the conduct of trial, to address their handling at the
24 end of the litigation, and serve the ends of justice, a protective order for such
25 information is justified in this matter. It is the intent of the parties that information
26 will not be designated as confidential for tactical reasons and that nothing be so
27 designated without a good faith belief that it has been maintained in a confidential,
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1 non-public manner, and there is good cause why it should not be part of the public
2 record of this case.

3 2. DEFINITIONS

4 2.1. Action: this pending federal lawsuit, entitled *Hope Krauss aka Deonte*
5 *Krauss v. Wal-Mart Stores, Inc., et al.*, Case 2:19-CV-00838-JAM-DB.

6 2.2. Challenging Party: a Party or Non-Party that challenges the designation
7 of information or items under this Order.

8 2.3. “CONFIDENTIAL” Information or Items: information (regardless of how
9 it is generated, stored or maintained) or tangible things that qualify for protection
10 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
11 Statement.

12 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
13 support staff).

14 2.5. Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

16 2.6. Disclosure or Discovery Material: all items or information, regardless of
17 the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced or
19 generated in disclosures or responses to discovery in this matter.

20 2.7. Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this Action.

23 2.8. House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.9. Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

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1 2.10. Outside Counsel of Record: attorneys who are not employees of a party to
2 this Action but are retained to represent or advise a party to this Action and have
3 appeared in this Action on behalf of that party or are affiliated with a law firm which
4 has appeared on behalf of that party, and includes support staff.

5 2.11. Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 2.12. Producing Party: a Party or Non-Party that produces a Disclosure or
9 Discovery Material in this Action.

10 2.13. Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
13 their employees and subcontractors.

14 2.14. Protected Material: any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL.”

16 2.15. Receiving Party: a Party that receives a Disclosure or Discovery Material
17 from a Producing Party.

18 3. SCOPE

19 The protections conferred by this Order cover not only Protected Material (as
20 defined above), but also (1) any information copied or extracted from Protected
21 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and
22 (3) any testimony, conversations, or presentations by Parties or their Counsel that
23 might reveal Protected Material.

24 Any use of Protected Material at trial shall be governed by the orders of the trial
25 judge. This Order does not govern the use of Protected Material at trial.

1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1. Exercise of Restraint and Care in Designating Material for Protection.

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

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

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

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

5
6 Designation in conformity with this Order requires:

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

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

25 (b) for testimony given in depositions, that the Designating Party identify
26 the Disclosure or Discovery Material on the record and, before the close of the
27 deposition, all protected testimony.

1 (c) for information produced in some form other than documentary and for
2 any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information is stored the legend
4 “CONFIDENTIAL.” If only a portion or portions of the information warrants
5 protection, the Producing Party, to the extent practicable, shall identify the protected
6 portion(s).

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

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with applicable law.

15 6.2. Meet and Confer. The Challenging Party shall initiate the challenge by
16 following the dispute resolution process under Local Rule 37.1, *et seq.*

17 6.3. The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*,
19 to harass or impose unnecessary expenses and burdens on other parties) may expose
20 the Challenging Party to sanctions. Unless the Designating Party has waived or
21 withdrawn the confidentiality designation, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the Producing
23 Party’s designation until the Court rules on the challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1. Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this
27 Action only for prosecuting, defending, or attempting to settle this Action. Such
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1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the Action has been terminated, a Receiving
3 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
11 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
12 disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this Action;

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

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses, and attorneys for witnesses, in the
26 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
27 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
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1 not be permitted to keep any confidential information unless they sign the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
3 by the Designating Party or ordered by the court. Pages of transcribed deposition
4 testimony or exhibits to depositions that reveal Protected Material may be separately
5 bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this Order; and

7 (i) any mediator or settlement officer, and their supporting personnel,
8 mutually agreed upon by any of the parties engaged in settlement discussions.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION

11 If a Party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this Action as
13 “CONFIDENTIAL,” that Party must:

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

16 (b) promptly notify in writing the party who caused the subpoena or order
17 to issue in the other litigation that some or all of the material covered by the subpoena
18 or order is subject to this Order. Such notification shall include a copy of this Order;
19 and

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

22 If the Designating Party timely seeks a protective order, the Party served with
23 the subpoena or court order shall not produce any information designated in this action
24 as “CONFIDENTIAL” before a determination by the court from which the subpoena or
25 order issued, unless the Party has obtained the Designating Party’s permission. The
26 Designating Party shall bear the burden and expense of promptly seeking protection in
27 that court of its confidential material and nothing in these provisions should be
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1 construed as authorizing or encouraging a Receiving Party in this Action to disobey a
2 lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
4 THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a
6 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
7 produced by Non-Parties in connection with this litigation is protected by the remedies
8 and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a Non-Party from seeking additional protections.

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

14 (1) promptly notify in writing the Requesting Party and the Non-Party
15 that some or all of the information requested is subject to a confidentiality agreement
16 with a Non-Party;

17 (2) promptly provide the Non-Party with a copy of this Order, the
18 relevant discovery request(s), and a reasonably specific description of the information
19 requested; and

20 (3) make the information requested available for inspection by the
21 Non-Party, if requested.

22 (c) If the Non-Party fails to seek a protective order from this court within
23 14 days of receiving the notice and accompanying information, the Receiving Party may
24 produce the Non-Party's confidential information responsive to the discovery request. If
25 the Non-Party timely seeks a protective order, the Receiving Party shall not produce
26 any information in its possession or control that is subject to the confidentiality
27 agreement with the Non-Party before a determination by the court. Absent a court
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1 order to the contrary, the Non-Party shall bear the burden and expense of promptly
2 seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL

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

24 12. MISCELLANEOUS

25 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
26 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 Order,
2 no Party waives any right it otherwise would have to object to disclosing or producing
3 any information or item on any ground not addressed in this Order. Similarly, no Party
4 waives any right to object on any ground to use in evidence of any of the material
5 covered by this Order.

6 12.3. Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 141. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material at issue. If a Party's request to file Protected Material under seal is
10 denied by the court, then the Receiving Party may file the information in the public
11 record unless otherwise instructed by the court.

12 13. FINAL DISPOSITION

13 After the final disposition of this Action, as defined in paragraph 4, within 60
14 days of a written request by the Designating Party, each Receiving Party must return
15 all Protected Material to the Producing Party or destroy such material. As used in this
16 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
17 summaries, and any other format reproducing or capturing any of the Protected
18 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
19 must submit a written certification to the Producing Party (and, if not the same person
20 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
21 category, where appropriate) all the Protected Material that was returned or destroyed
22 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
23 compilations, summaries or any other format reproducing or capturing any of the
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
25 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
27 attorney work product, and consultant and expert work product, even if such materials
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1 contain Protected Material. Any such archival copies that contain or constitute
2 Protected Material remain subject to this Order as set forth in Section 4 (DURATION).
3 Nothing in this Order shall be construed to waive or abridge any privilege or any
4 protection against the disclosure of attorney work product.

5 14. Any violation of this Order may be punished by any and all measures available
6 under law.

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1 Exhibit A

2 **Acknowledgment and Agreement to Be Bound**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Eastern
7 District of California in the case of *Hope Krauss aka Deonte Krauss v. Wal-Mart Stores,*
8 *Inc., Case 2:19-CV-00838-JAM-DB.* I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information or
12 item that is subject to this Stipulated Protective Order to any person or entity except in
13 strict compliance with the provisions of this Stipulated Protective Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Eastern District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and telephone
20 number] as my California agent for service of process in connection with this action or
21 any proceedings related to enforcement of this Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____

1
2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3 Respectfully submitted,

4 Dated: October 14, 2020

DUANE MORRIS LLP

6 By: /s/ Aaron T. Winn

7 Aaron T. Winn

8 Sarah A. Gilbert

9 Natalie F. Hrubos

Attorneys for Defendant Walmart Inc.

10 Respectfully submitted,

11 Dated: October 14, 2020

MATERN LAW GROUP, PC

13 By: /s/ Mikael H. Stahle

14 (*as authorized on 10.14.2020*)

15 Matthew J. Matern

16 Mikael H. Stahle

17 Attorneys for Plaintiff, HOPE KRAUSS,
18 aka DEONTE KRAUSS, individually and on
19 behalf of all others similarly situated

20
21 **ORDER**

22 Pursuant to the parties' stipulation, IT IS SO ORDERED.

23 IT IS FURTHER ORDERED THAT:

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

26 2. The designation of documents (including transcripts of testimony) as confidential
27 pursuant to this order does not automatically entitle the parties to file such a document with the court
28 under seal. Parties are advised that any request to seal documents in this district is governed by
Local Rule 141. In brief, Local Rule 141 provides that documents may only be sealed by a written

1 order of the court after a specific request to seal has been made. L.R. 141(a). However, a mere
2 request to seal is not enough under the local rules. In particular, Local Rule 141(b) requires that
3 “[t]he ‘Request to Seal Documents’ shall set forth the statutory or other authority for sealing, the
4 requested duration, the identity, by name or category, of persons to be permitted access to the
5 document, and all relevant information.” L.R. 141(b).

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

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

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

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

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

23 8. Any provision in the parties’ stipulation that is in conflict with anything in this order is
24 hereby DISAPPROVED.

25 DATED: October 15, 2020

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE