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12 Attorneys for WALMART INC.

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

16 DIANE L. BOYD, an individual;

17 Plaintiff,

18 vs.

19 WALMART; A Corporation Doing
Business in California; and DOES 1
20 through 50, inclusive;

21 Defendants.

Case No. 2:24-cv-00275-DJC-JDP

**STIPULATION REGARDING
PRODUCTION OF CONFIDENTIAL
DOCUMENTS AND PROPRIETARY
INFORMATION AND ORDER**

Action Filed: December 18, 2023
Trial Date: None Set

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1 IT IS HEREBY STIPULATED by and between Plaintiff BOYD (“Plaintiff”)
2 and Defendant WALMART INC. (“Defendant”) (collectively, “the Parties”), through
3 their respective attorneys of record, that a Protective Order be entered by this Court as
4 follows:

5 1. This Stipulation and Protective Order shall apply to the production and
6 exchange of all document requests and documents, interrogatories and answers to
7 interrogatories, depositions, request for admissions and responses to requests for
8 admissions, exhibits, pleadings, admission of evidence at trial, and all other
9 information exchanged and furnished in this action by the Parties that are confidential
10 and/or proprietary.

11 2. The Parties acknowledge that discovery will require disclosure of
12 information that is private, personal, privileged, confidential, proprietary, or
13 nonpublic. As a result, the Parties agree that they will be required to enter this
14 Stipulation and Protective Order (hereinafter “Order”) on the following terms to
15 ensure the continuing confidentiality of materials designated as Confidential Material
16 in this litigation. Confidential Material, as used in this Order, shall refer to any
17 document or item designated as “Confidential” or “Highly Confidential – Attorneys’
18 Eyes Only”. The Parties understand that this Order does not confer blanket protections
19 on all disclosures or responses to discovery and that the protection it affords extends
20 only to the limited information or items that are entitled under the applicable legal
21 principles to treatment as confidential. Nothing in this Order shall require any party to
22 produce any specific document or category of documents which a party deems
23 inappropriate for production.

24 **I. Definitions of Confidential Material**

25 3. Confidential Material, as used in this Order, consists of the following
26 materials and categories of materials:

27 (a) Materials relating to any privileged, confidential, or nonpublic
28 information, including, but not limited to, trade secrets, research, design,

1 development, financial, technical, marketing, planning, personal, or commercial
2 information, as such terms are used in the Federal Rules of Civil Procedure and
3 any applicable case law interpreting Federal Rule of Civil Procedure
4 26(c)(1)(G), contracts, non-public compilations of retail prices; proprietary
5 information, vendor agreements; personnel files; claim/litigation information;
6 nonpublic policies and procedures; medical records; employment offers;
7 competitive analyses, income statements; client or customer information;
8 financial records and statements; vendor agreements, along with other
9 proprietary or confidential information.

10 (b) Materials containing corporate trade secrets, nonpublic research
11 and development data, including, but not limited to, cost data, pricing formulas,
12 inventory management programs, and other sales or business information
13 known to the public; information obtained from a non-party pursuant to a non-
14 disclosure agreement; and customer-related Protected Data shall be deemed
15 “Highly Confidential – Attorneys’ Eyes Only”.

16 (c) “Protected Data” shall refer to any information that a party believes
17 in good faith to be subject to federal, state or foreign data protection laws or
18 other privacy obligations. Examples of such data protection laws include but are
19 not limited to The Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq. (financial
20 information); and, The Health Insurance Portability and Accountability Act and
21 the regulations thereunder, 45 CFR Part 160 and Subparts A and E of Part 164
22 (medical information). Certain Protected Data may compel alternative or
23 additional protections beyond those afforded “Highly Confidential – Attorneys’
24 Eyes Only” material, in which event the Parties shall meet and confer in good
25 faith, and, if unsuccessful, shall move the Court for appropriate relief.

26 4. The Parties shall not designate as confidential information that is already
27 public knowledge.

28 5. The Parties agree that such Confidential Material as described in

1 paragraph 3 above, should be given the protection of an order of this Court to prevent
2 injury through disclosure to persons other than those persons involved in the
3 prosecution or defense of this litigation. A Protective Order will serve to achieve the
4 following: expedite the flow of information, facilitate the prompt resolution of disputes
5 over confidentiality of discovery materials, adequately protect information the Parties
6 are entitled to keep confidential, ensure that the Parties are permitted reasonable
7 necessary uses of such material in preparation for and in the conduct of trial, and
8 address their handling at the end of the litigation.

9 **II. Procedure for Designating Information as Confidential**

10 6. To designate information as confidential, the producing party shall mark
11 Confidential Material with the legend “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Parties shall submit confidential
13 discovery responses, such as answers to interrogatories or answers to requests for
14 admissions, in a separate document stamped with the appropriate legend designating
15 those responses as Confidential Material. The Receiving Party may make copies of
16 Confidential Material and such copies shall become subject to the same protections as
17 the Confidential Material from which those copies were made.

18 (a) Information on a disk or other electronic format (e.g., a native format
19 production) may be designated confidential by marking the storage medium itself (or
20 the native file’s title) with the legend “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. The Receiving Party shall mark
22 any hard-copy printouts and the storage medium of any permissible copies of such
23 electronic material with the corresponding legend contained on the original and such
24 copies shall become subject to the same protections, as the Confidential Material from
25 which those copies were made.

26 (b) Information disclosed at any deposition of a party taken in this action may
27 be designated by the party as confidential by indicating on the record at the deposition
28 that the information is confidential and subject to the provisions of this Order.

1 Alternatively, the party may designate information disclosed at the deposition as
2 confidential by notifying the court reporter and other parties in writing, within fifteen
3 (15) business days of receipt of the transcript, of the specific pages and lines of the
4 transcript which are designated as confidential. The Parties may agree to a reasonable
5 extension of the 15-business-day period for designation. Designations of transcripts
6 will apply to audio, video, or other recordings of the testimony. During such 15-
7 business-day period, the entire transcript shall receive confidential treatment. Upon
8 such designation, the court reporter and each party shall affix the “CONFIDENTIAL”
9 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to the
10 designated pages and segregate them as appropriate.

11 7. A producing party may change the confidentiality designation of
12 materials it has produced, as follows: (1) The producing party must give the receiving
13 parties notice of the change by identifying the documents or information at issue. Once
14 notice is given, the receiving party must make good-faith efforts to ensure that the
15 documents or information are accorded treatment under the new designation. (2)
16 Within a reasonable period after giving notice, the producing party must reproduce the
17 documents or information in a format that contains the new designation. (3) If such
18 information has been disclosed to persons not qualified pursuant to paragraph(s) (14-
19 15) below, the party who disclosed such information shall (a) take reasonable efforts
20 to retrieve previously disclosed Confidential Material; (b) advise such persons that the
21 material is Confidential; and (c) give the producing party written assurance that steps
22 (a) and (b) have been completed.

23 **III. Data Security**

24 8. The Parties agree to provide adequate security to protect data produced
25 by the other party(ies) or by non-parties. This includes secure data storage systems,
26 established security policies, and security training for employees, contractors and
27 experts. Adequate security also includes such measures as data encryption in transit,
28 data encryption at rest, data access controls, and physical security, whether

1 hosted/outsourced to a vendor or on premises. At a minimum, any receiving party
2 subject to the terms of this Order, will provide reasonable measures to protect non-
3 client data consistent with the American Bar Association Standing Committee on
4 Ethics and Professional Responsibility, Formal Opinion 477R.

5 **IV. Clawback Provisions**

6 9. The production of privileged or work-product protected documents,
7 electronically stored information (ESI) or information, whether inadvertent or
8 otherwise, is not a waiver of the privilege or protection from discovery in this case or
9 in any other federal or state proceeding.

10 10. This Order shall be interpreted to provide the maximum protection
11 allowed by Federal Rule of Evidence (FRE) 502(d) and shall be enforceable and
12 granted full faith and credit in all other state and federal proceedings by 28 U.S. Code
13 § 1738. In the event of any subsequent conflict of law, the law that is most protective
14 of privilege and work product shall apply.

15 11. Nothing contained herein is intended to or shall serve to limit a party's
16 right to conduct a review of documents, ESI or information (including metadata) for
17 relevance, responsiveness and/or segregation of privileged and/or protected
18 information before production.

19 12. If the receiving party has reason to believe that a produced document or
20 other information may reasonably be subject to a claim of privilege, then the receiving
21 party shall immediately sequester the document or information, cease using the
22 document or information and cease using any work product containing the
23 information, and shall inform the producing party of the beginning BATES number of
24 the document or, if no BATES number is available, shall otherwise inform the
25 producing party of the information.

26 13. A producing party must give written notice to any receiving party
27 asserting a claim of privilege, work-product protection, or other ground for reclaiming
28 documents or information (a "clawback request"). After a clawback request is

1 received, the receiving party shall immediately sequester the document (if not already
2 sequestered) and shall not review or use that document, or any work product
3 containing information taken from that document, for any purpose. The Parties shall
4 meet and confer regarding any clawback request.

5 **V. Who May Receive Confidential and Highly Confidential Information**

6 14. *Confidential Material.* Any Confidential Material and the information
7 contained therein shall be disclosed only to the Court, its staff, in-house counsel and
8 outside counsel of record for each party, and also shall be disclosed on a need-to-know
9 basis only to the Parties, counsel’s staff personnel, employees of a party to whom
10 disclosure is necessary in connection with the preparation for and trial of this action,
11 and any witnesses in the case (including consulting and testifying experts) as may from
12 time to time reasonably be necessary in prosecution or defense of this action.

13 15. *Highly Confidential—Attorneys’ Eyes Only Material.* Material and
14 information designated as “Highly Confidential—Attorneys’ Eyes Only” shall only be
15 disclosed to the Court, its staff, in-house and outside counsel of record for each party,
16 the secretarial, clerical, and paralegal staff of each, and consulting and testifying
17 experts retained by a party in this action.

18 16. *Restriction on Disclosure to Direct Competitors.* Notwithstanding the
19 foregoing, Confidential Material shall not be disclosed to any current or former
20 employees of, or current or former consultants, advisors, or agents of, a direct
21 competitor of any party named in the litigation. If a Receiving Party is in doubt about
22 whether a particular entity is a direct competitor of a party named in this lawsuit, then
23 before disclosing any Confidential Material to a current or former employee,
24 consultant, advisor, or agent of that entity, the Receiving Party’s counsel must confer
25 with counsel for the Producing Party.

26 17. *Persons Receiving Confidential Information Must Sign Exhibit A.*
27 Counsel for each party shall advise all persons to whom Confidential Material is
28 disclosed pursuant to this Order of the existence of this Order and shall provide all

1 such persons (other than the Court and its staff) with a copy of this Order. Counsel
2 shall also require such persons to execute the Affidavit attached as Exhibit A, prior to
3 the disclosure of Confidential Material.

4 18. *Duties in the Event of Unauthorized Disclosures.* It shall be the
5 obligation of counsel, upon learning of any unauthorized disclosure or threatened
6 unauthorized disclosure of Confidential Information, or any other breach or threatened
7 breach of the provisions of this Order, to promptly notify counsel for the Producing
8 Party. The notification shall be supplemented with reasonable details of the
9 circumstances of the disclosure in order to permit the producing party to understand
10 and take appropriate steps. Each party and its counsel agree to take reasonable and
11 good-faith efforts to contain or limit any breach promptly upon receiving notice of it,
12 and to make reasonable and good-faith attempts to retrieve any unauthorized
13 disclosure of documents or information. This provision does not limit the producing
14 party's entitlement to damages resulting from any breach of this Order.

15 **VI. Authorized Uses of Confidential Material**

16 19. Confidential Material shall only be used for the purpose of litigating the
17 above-captioned lawsuit and may not be used in other lawsuits.

18 20. Persons having knowledge of Confidential Material and information due
19 to their participation in the conduct of this litigation shall use such knowledge and
20 information only as permitted herein, and shall not disclose such Confidential
21 Material, their contents or any portion or summary thereof to any person(s) not
22 involved in the conduct of this litigation.

23 21. If any person having access to the Confidential Material herein shall
24 violate this Order, he/she may be subject to sanctions by the Court and may be liable
25 to pay for the damages caused by his/her violation.

26 **VII. Challenges to the Designation of Confidential Material**

27 22. Any party or interested member of the public may move the Court to
28 modify the designation of any documents or information produced in this litigation

1 (either to include additional protection with respect to confidentiality or to remove a
2 confidential designation). Before making such a motion, the party or an interested
3 member of the public shall first attempt to resolve such dispute with the producing
4 party's counsel. Pending resolution of any challenges to the designation of documents
5 or information, the material at issue shall continue to be treated as Confidential
6 Material until ordered otherwise by the Court. The burden shall be on the party
7 seeking to modify the designation to show that the producing party's designation is
8 inappropriate.

9 **VIII. Withholding of Information**

10 23. *Redactions.* The Parties may redact (1) information that is privileged or
11 protected from discovery as work product or by reason of any other applicable
12 privilege or immunity; (2) information subject to non-disclosure obligations imposed
13 by governmental authorities, law or regulation (e.g., protected personal information);
14 and (3) sensitive, non-relevant information, including but not limited to personally
15 identifiable information, trade secrets, or information regarding products, data, or
16 people. Redactions of emails will not redact the names of recipients or the subject line
17 of the emails, unless the subject line is itself privileged or contains the sensitive
18 information described above, in which case only so much of the subject line will be
19 redacted as may be needed. The Parties will produce redacted documents in TIFF
20 format (or searchable PDF if production format dictates; or in native format for file
21 types that do not convert well to TIFF/PDF, such as Excel files) with corresponding
22 searchable OCR text and the associated metadata for the document, ensuring the
23 redacted content is fully protected from disclosure.

24 **IX. Confidential Material In Filings, Hearings, and Trial**

25 24. *Confidential Material in Filings.* Without written permission from the
26 Producing Party or court order secured after appropriate notice to all interested
27 persons, a party may not file Confidential Material in the public record in this action
28 (or in any other action, such as an appeal). A party that seeks to file under seal any

1 Confidential Material must first obtain a sealing order in compliance with Eastern
2 District of California Local Rule 141. Confidential Material may only be filed under
3 seal in a manner prescribed by the Court for such filings.

4 ~~25. *Manner of Sealing.* In the event Confidential Materials or portions of~~
5 ~~transcripts are sealed as confidential by the Court or as described in paragraph (24)~~
6 ~~above, they shall be filed in an envelope bearing the following designation when~~
7 ~~deposited:~~

8 **CONFIDENTIAL**

9 ~~IN ACCORDANCE WITH THE CONFIDENTIALITY ORDER OF THE~~
10 ~~COURT, THE CONTENTS OF THIS ENVELOPE SHALL BE TREATED AS~~
11 ~~CONFIDENTIAL AND MUST NOT BE SHOWN TO A PERSON OTHER THAN~~
12 ~~THE COURT, ATTORNEYS IN THIS CASE, OR TO PERSONS ASSISTING~~
13 ~~THOSE ATTORNEYS.~~

14 26. *Confidential Material in Hearings and Trial.* The provisions of this
15 Order shall not affect, and this Order does not limit, the admissibility of Confidential
16 Material (or references to that material) as evidence at trial, or during a hearing or
17 similar proceeding in this action. Prior to using Confidential Material or the
18 information contained therein at any hearing that is open to the public, the party
19 seeking to use the Confidential Material must give at least seven (7) days advance
20 notice to the producing party of the intent to use the Confidential Material so that the
21 producing party may seek an appropriate Court Order to protect the Confidential
22 Material.

23 **X. Continuing Effect of this Order and Duty to Destroy**

24 27. This Order shall continue to be binding throughout and after the
25 conclusion of this litigation, including all appeals. Within thirty (30) days of settlement
26 or final adjudication, including the expiration or exhaustion of all rights to appeal or
27 petitions for extraordinary writs, each party or non-party to whom any materials were
28 produced shall, without further request or direction from the Producing Party,

1 promptly destroy all documents, items or data received including, but not limited to,
2 copies or summaries thereof, in the possession or control of any expert or employee.
3 This requirement to destroy includes all documents, not only those documents
4 designated as Confidential Material. The Receiving Party shall submit a written
5 certification to the Producing Party by the 30-day deadline that (1) confirms the
6 destruction/deletion of all Confidential Material, including any copies of Confidential
7 Materials provided to persons required to execute Exhibit A (Affidavit), and (2)
8 affirms the Receiving Party has not retained any copies, abstracts, compilations,
9 summaries or any other format reproducing or capturing any of the Confidential
10 Material. Notwithstanding this provision, outside counsel is entitled to retain an
11 archival copy of filings, depositions, and deposition exhibits.

12 **XI. Procedure if Confidential Material is Required to be Produced**

13 28. If any person receiving documents covered by this Order is served with a
14 subpoena, order, interrogatory, document, or civil investigative demand (collectively,
15 a “Demand”) issued in any other action, investigation, or proceeding, and such
16 Demand seeks material that was produced or designated as Confidential Material by
17 someone other than the Receiving Party, the Receiving Party shall give prompt written
18 notice by hand or electronic transmission within five (5) business days of receipt of
19 such Demand to the party or non-party who produced or designated the material as
20 Confidential Material, and shall object to the production of such materials on the
21 grounds of the existence of this Order. At the request of the party or non-party who
22 produced or designated the material as Confidential Material, the Receiving Party shall
23 refuse to comply with the Demand unless (a) ordered to do so by a court with
24 jurisdiction over the Receiving Party; or (b) released in writing by the party or non-
25 party who designated the material as Confidential Material. The burden of opposing
26 the enforcement of the Demand shall fall upon the party or non-party who produced
27 or designated the material as Confidential Material. Compliance by the Receiving
28 Party with any order of a court of competent jurisdiction, directing production of any

1 Confidential Material, shall not constitute a violation of this Order.

2 **XII. Application of this Order to Productions by Third Parties**

3 29. This Order may be used by third parties producing documents in
4 connection with this action. Third parties may designate information as “Confidential”
5 or “Highly Confidential – Attorneys’ Eyes Only”.

6 30. If a third party produces (or intends to produce) documents and does not
7 designate (or does not intend to designate) those documents as Confidential Material,
8 then any party to this action may seek to designate that third party’s documents or
9 categories of documents as Confidential Material. In that case, it will be the burden
10 of the party seeking protected status to move for a court order designating the materials
11 as Confidential Material after the Parties confer.

12 31. In the event additional parties join or intervene in this litigation, the newly
13 joined party(ies) shall not have access to Confidential Material until its/their counsel
14 has executed and, at the request of any party, filed with the Court the agreement of
15 such party(ies) and such counsel to be fully bound by this Order.

16 32. The Parties agree that nothing in this Order shall be deemed to limit the
17 extent to which counsel for the Parties may advise or represent their respective clients,
18 conduct discovery, prepare for trial, present proof at trial, including any document
19 designated Confidential Material as set forth herein, or oppose the production or
20 admissibility of any information or documents which have been requested.

21 33. This Order shall remain in full force and effect until such time as it is
22 modified, amended, or rescinded by the Court.

23 **XIII. No Admissions**

24 34. Neither entering into this Stipulation for Protective Order, nor receiving
25 any documents or other information designated as “Confidential,” shall be construed
26 as an agreement or admission (1) that any document or information designated as
27 “Confidential” is in fact Confidential Information; (2) as to the correctness or truth of
28 any allegation made or position taken relative to any matter designated as

1 “Confidential”; or (3) as to the authenticity, competency, relevancy, or materiality of
2 any information or document designated as “Confidential.”

3 **XIV. Modification – Further Agreements**

4 35. Nothing contained herein shall preclude any party from seeking from the
5 Court, modification of this Stipulated Protective Order upon proper notice or shall
6 preclude the Parties from entering into other written agreements designed to protect
7 Confidential Information.

8 **XV. Counterparts**

9 36. This Stipulation for Protective Order may be executed in counterparts,
10 each of which shall be deemed an original, and which together shall constitute one
11 instrument.

12
13 **IT IS SO STIPULATED.**

14 DATED: April 15, 2024

M LAW ATTORNEYS, APC

16 By: /s/Narak Mirzaie
Narak Mirzaie

18 Attorneys for Plaintiff DIANE BOYD

19 DATED: April 15, 2024

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

21 By: /s/James T. Conley
James T. Conley
Jane A. Rothbaler

23 Attorneys for WALMART INC.


[PROPOSED] ORDER

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The Court has reviewed the Stipulation Regarding Production of Confidential Documents and Proprietary Information filed by Defendant WALMART INC., (“Defendant”) and Plaintiff DIANE L. BOYD (“Plaintiff”) (collectively “the Parties”), through their counsel of record, requesting that the Court enter an Order.

IT IS SO ORDERED.

Dated: May 8, 2024



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

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Exhibit A

**ACKNOWLEDGMENT OF RECEIPT OF PROTECTIVE ORDER
REGARDING CONFIDENTIAL INFORMATION AND AGREEMENT TO
BE BOUND THEREBY**

I hereby acknowledge receipt of and that I have read a copy of the Stipulation for Protective Order and Order (the "Order"), which I understand was made on _____, 2024, in the action entitled Diane Boyd v. Walmart Inc., et al., Case No. 2:24-cv-00275-DJC-DMC, USDC, Eastern District of California. I agree that I will be bound by the provisions of the Order with respect to any Confidential Information provided to me under the terms thereof. I agree that, if I receive any Confidential Information, I will not make any copies thereof nor disclose such Confidential Information except as permitted by the Order. I further understand that if I fail to comply with the terms of the Order, I may be subject to sanctions by the Court, and I hereby consent to personal jurisdiction in the State of California with respect to any matter relating to or arising out of the Order.

Executed this _____ day of _____ 2024, at _____

Signature

Name: _____

Affiliation: _____

Address: _____
