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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ASHLEY BRADSHAW, an
individual,

Plaintiff,

v.

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

Defendants.

CASE NO. 3:23-CV-00593-TWR-BLM

**ORDER GRANTING JOINT MOTION
FOR PROTECTIVE ORDER**

[ECF NO. 11]

Plaintiff Ashley Bradshaw (“Plaintiff”) and Defendant Wal-Mart Associates, Inc. (“Defendant”) (together, the “Parties”) have agreed to and have submitted to the Court, and for good cause shown the Court hereby enters, the following Stipulated Protective Order (“Order”):

1. This Order shall govern the disclosure of materials designated as Confidential Material in this litigation. Confidential Material, as used in this Order, shall refer to any document or item designated as Confidential or Highly Confidential – Attorneys’ Eyes Only, including but not limited to, documents or items produced during discovery, all copies thereof, and the information contained in such material. Nothing in this Order shall require any party to produce any specific documents or category of documents which a party deems inappropriate for production.

1 **Definitions of Confidential Material**

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

4
5 a. Materials relating to any privileged, confidential, or nonpublic
6 information, including, but not limited to, trade secrets, research, design,
7 development, financial, technical, marketing, planning, personal, or
8 commercial information, as such terms are used in the Federal Rules of
9 Civil Procedure (Fed. R. Civ.) and any applicable case law interpreting
Fed. R. Civ. 26(c)(1)(G); contracts; non-public compilations of retail
prices; proprietary information; vendor agreements; personnel files;
claim/litigation information; and nonpublic policies and procedures
shall be deemed Confidential.

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

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

21 The parties shall not designate as confidential information that is already public
22 knowledge.

23 3. The parties agree that such Confidential Material as described in
24 paragraph 2 should be given the protection of an order of this Court to prevent injury
25 through disclosure to persons other than those persons involved in the prosecution or
26 defense of this litigation.

1 **Procedure for Designating Information as Confidential**

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

10
11 a. Information on a disk or other electronic format (e.g., a native
12 format production) may be designated confidential by marking the
13 storage medium itself (or the native file’s title) with the legend
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
15 EYES ONLY.” The Receiving Party shall mark any hard-copy printouts
16 and the storage medium of any permissible copies of such electronic
17 material with the corresponding legend contained on the original and
18 such copies shall become subject to the same protections, as the
19 Confidential Material from which those copies were made.

20 b. Information disclosed at any deposition of a party taken in this
21 action may be designated by the party as confidential by indicating on
22 the record at the deposition that the information is confidential and
23 subject to the provisions of this Order. Alternatively, the party may
24 designate information disclosed at the deposition as confidential by
25 notifying the court reporter and other parties in writing, within fifteen
26 (15) business days of receipt of the transcript, of the specific pages and
27 lines of the transcript which are designated as confidential. The parties
28 may agree to a reasonable extension of the 15-business-day period for
designations of transcripts will apply to audio, video, or
other recordings of the testimony. During such 15-business-day period,
the entire transcript shall receive confidential treatment. Upon such
designation, the court reporter and each party shall affix the
“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
EYES ONLY” legend to the designated pages and segregate them as
appropriate.

5. A producing party may change the confidentiality designation of
materials it has produced, as follows: (1) The producing party must give the receiving
parties notice of the change by identifying the documents or information at issue.

1 Once notice is given, the receiving party must make good-faith efforts to ensure that
2 the documents or information are accorded treatment under the new designation. (2)
3 Within a reasonable period after giving notice, the producing party must reproduce
4 the documents or information in a format that contains the new designation. (3) If
5 such information has been disclosed to persons not qualified pursuant to paragraph(s)
6 (12-13) below, the party who disclosed such information shall (a) take reasonable
7 efforts to retrieve previously disclosed Confidential Material; (b) advise such persons
8 that the material is Confidential; and (c) give the producing party written assurance
9 that steps (a) and (b) have been completed.

10 **Data Security**

11 6. The Parties agree to provide adequate security to protect data produced
12 by the other party(ies) or by non-parties. This includes secure data storage systems,
13 established security policies, and security training for employees, contractors and
14 experts. Adequate security also includes such measures as data encryption in transit,
15 data encryption at rest, data access controls, and physical security, whether
16 hosted/outsourced to a vendor or on premises. At a minimum, any receiving party
17 subject to the terms of this Confidentiality Order, will provide reasonable measures
18 to protect non-client data consistent with the American Bar Association Standing
19 Committee on Ethics and Professional Responsibility, Formal Opinion 477R.

20 **Clawback Provisions**

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

25 8. This Order shall be interpreted to provide the maximum protection
26 allowed by Federal Rule of Evidence (FRE) 502(d) and shall be enforceable and
27 granted full faith and credit in all other state and federal proceedings by 28 U.S. Code
28

1 § 1738. In the event of any subsequent conflict of law, the law that is most protective
2 of privilege and work product shall apply.

3 9. Nothing contained herein is intended to or shall serve to limit a party's
4 right to conduct a review of documents, ESI or information (including metadata) for
5 relevance, responsiveness and/or segregation of privileged and/or protected
6 information before production.

7 10. If the receiving party has reason to believe that a produced document or
8 other information may reasonably be subject to a claim of privilege, then the
9 receiving party shall immediately sequester the document or information, cease using
10 the document or information and cease using any work product containing the
11 information, and shall inform the producing party of the beginning BATES number
12 of the document or, if no BATES number is available, shall otherwise inform the
13 producing party of the information.

14 11. A producing party must give written notice to any receiving party
15 asserting a claim of privilege, work-product protection, or other ground for
16 reclaiming documents or information (a "clawback request"). After a clawback
17 request is received, the receiving party shall immediately sequester the document (if
18 not already sequestered) and shall not review or use that document, or any work
19 product containing information taken from that document, for any purpose. The
20 parties shall meet and confer regarding any clawback request.

21 **Who May Receive Confidential and Highly Confidential Information**

22 12. *Confidential Material.* Any Confidential Material and the information
23 contained therein shall be disclosed only to the Court, its staff, in-house counsel and
24 outside counsel of record for each party, and also shall be disclosed on a need-to-
25 know basis only to the parties, counsel's staff personnel, employees of a party to
26 whom disclosure is necessary in connection with the preparation for and trial of this
27 action, and any witnesses in the case (including consulting and testifying experts) as
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1 may from time to time reasonably be necessary in prosecution or defense of this
2 action.

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

8 14. *Restriction on Disclosure to Direct Competitors.* Notwithstanding the
9 foregoing, Confidential Material shall not be disclosed to any current or former
10 employees of, or current or former consultants, advisors, or agents of, a direct
11 competitor of any party named in the litigation. If a Receiving Party is in doubt about
12 whether a particular entity is a direct competitor of a party named in this lawsuit, then
13 before disclosing any Confidential Material to a current or former employee,
14 consultant, advisor, or agent of that entity, the Receiving Party’s counsel must confer
15 with counsel for the Producing Party.

16 15. *Persons Receiving Confidential Information Must Sign Exhibit A.*
17 Counsel for each party shall advise all persons to whom Confidential Material is
18 disclosed pursuant to this Order of the existence of this Order and shall provide all
19 such persons (other than the Court and its staff) with a copy of this Order. Counsel
20 shall also require such persons to execute the Affidavit attached as Exhibit A, prior
21 to the disclosure of Confidential Material.

22 16. *Duties in the Event of Unauthorized Disclosures.* It shall be the
23 obligation of counsel, upon learning of any unauthorized disclosure or threatened
24 unauthorized disclosure of Confidential Information, or any other breach or
25 threatened breach of the provisions of this Order, to promptly notify counsel for the
26 Producing Party. The notification shall be supplemented with reasonable details of
27 the circumstances of the disclosure in order to permit the producing party to
28 understand and take appropriate steps. Each party and its counsel agree to take

1 reasonable and good-faith efforts to contain or limit any breach promptly upon
2 receiving notice of it, and to make reasonable and good-faith attempts to retrieve any
3 unauthorized disclosure of documents or information. This provision does not limit
4 the producing party's entitlement to damages resulting from any breach of this Order.

5 **Authorized Uses of Confidential Material**

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

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

13 19. If any person having access to the Confidential Material herein shall
14 maliciously violate this Order, he/she may be subject to sanctions by the Court and
15 may be liable to pay for the damages caused by his/her violation.

16 **Challenges to the Designation of Confidential Material**

17 20. Any party or interested member of the public may move the Court to
18 modify the designation of any documents or information produced in this litigation
19 (either to include additional protection with respect to confidentiality or to remove a
20 confidential designation). Before making such a motion, the party or an interested
21 member of the public shall first attempt to resolve such dispute with the producing
22 party's counsel. Pending resolution of any challenges to the designation of
23 documents or information, the material at issue shall continue to be treated as
24 Confidential Material until ordered otherwise by the Court. The burden shall be on
25 the party seeking to modify the designation to show that the producing party's
26 designation is inappropriate.

1 **Withholding of Information**

2 21. *Non-relevant Attachments.* The parties will not produce non-relevant
3 attachments that are attached to relevant emails. When an attachment is withheld,
4 either for privilege or non-responsiveness, the producing party shall produce a one-
5 page TIFF image (or PDF if production format dictates) in place of the withheld
6 attachment, correspondingly stating “Attachment Withheld-Privileged” or
7 “Attachment Withheld-Nonresponsive”, and bearing a sequential BATES number
8 within the family BATES range. If any attachment to an email contains responsive
9 content, then the cover email shall be produced for context, regardless of the cover
10 email’s responsiveness. The cover email may be redacted in part to remove sensitive
11 information, as described below.

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

1 25. *Confidential Material in Hearings and Trial.* The provisions of this
2 Order shall not affect, and this Order does not limit, the *admissibility* of Confidential
3 Material (or references to that material) as evidence at trial, or during a hearing or
4 similar proceeding in this action. Prior to using Confidential Material or the
5 information contained therein at any hearing that is open to the public, the party
6 seeking to use the Confidential Material must give at least five (5) days advance
7 notice to the producing party of the intent to use the Confidential Material so that the
8 producing party may seek an appropriate Court Order to protect the Confidential
9 Material.

10 **Continuing Effect of this Order and Duty to Destroy**

11 26. This Order shall continue to be binding throughout and after the
12 conclusion of this litigation, including all appeals. Within thirty (30) days of
13 settlement or final adjudication, including the expiration or exhaustion of all rights
14 to appeal or petitions for extraordinary writs, each party or non-party to whom any
15 materials were produced shall, without further request or direction from the
16 Producing Party, promptly destroy all documents, items or data received including,
17 but not limited to, copies or summaries thereof, in the possession or control of any
18 expert or employee. This requirement to destroy includes all documents, not only
19 those documents designated as Confidential Material. The Receiving Party shall
20 submit a written certification to the Producing Party by the 30-day deadline that (1)
21 confirms the destruction/deletion of all Confidential Material, including any copies
22 of Confidential Materials provided to persons required to execute Exhibit A
23 (Affidavit), and (2) affirms the Receiving Party has not retained any copies, abstracts,
24 compilations, summaries or any other format reproducing or capturing any of the
25 Confidential Material. Notwithstanding this provision, outside counsel is entitled to
26 retain an archival copy of filings, depositions, and deposition exhibits.

1 **Procedure if Confidential Material Is Required to be Produced**

2 27. If any person receiving documents covered by this Order is served with
3 a subpoena, order, interrogatory, or document or civil investigative demand
4 (collectively, a “Demand”) issued in any other action, investigation, or proceeding,
5 and such Demand seeks material that was produced or designated as Confidential
6 Material by someone other than the Receiving Party, the Receiving Party shall give
7 prompt written notice by hand or electronic transmission within five (5) business
8 days of receipt of such Demand to the party or non-party who produced or designated
9 the material as Confidential Material, and shall object to the production of such
10 materials on the grounds of the existence of this Order. At the request of the party or
11 non-party who produced or designated the material as Confidential Material, the
12 Receiving Party shall refuse to comply with the Demand unless (a) ordered to do so
13 by a court with jurisdiction over the Receiving Party; or (b) released in writing by the
14 party or non-party who designated the material as Confidential Material. The burden
15 of opposing the enforcement of the Demand shall fall upon the party or non-party
16 who produced or designated the material as Confidential Material. Compliance by
17 the Receiving Party with any order of a court of competent jurisdiction, directing
18 production of any Confidential Material, shall not constitute a violation of this Order.

19 **Application of this Order to Productions by Third Parties**

20 28. This Order may be used by third parties producing documents in
21 connection with this action. Third parties may designate information as Confidential
22 or Highly Confidential – Attorneys’ Eyes Only.

23 29. If a third party produces (or intends to produce) documents and does not
24 designate (or does not intend to designate) those documents as Confidential Material,
25 then any party to this action may seek to designate that third party’s documents or
26 categories of documents as Confidential Material. In that case, it will be the burden
27 of the party seeking protected status to move for a court order designating the
28 materials as Confidential Material after the parties confer.

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

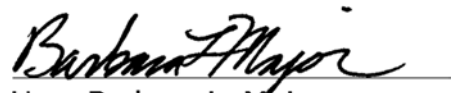
5 31. The parties agree that nothing in this Order shall be deemed to limit the
6 extent to which counsel for the parties may advise or represent their respective
7 clients, conduct discovery, prepare for trial, present proof at trial, including any
8 document designated Confidential Material as set forth herein, or oppose the
9 production or admissibility of any information or documents which have been
10 requested.

11 32. *Modification of the Order by the Court.* The Court may modify the terms
12 and conditions of the Order for good cause, or in the interest of justice, or on its own
13 order at any time during these proceedings.

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

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17 **IT IS SO ORDERED.**

18 Dated: 6/1/2023

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20 Hon. Barbara L. Major
21 United States Magistrate Judge

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EXHIBIT A TO CONFIDENTIALITY ORDER
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ASHLEY BRADSHAW, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO. 3:23-CV-00593-TWR-BLM

AFFIDAVIT OF COMPLIANCE WITH CONFIDENTIALITY ORDER

AFFIDAVIT OF COMPLIANCE WITH CONFIDENTIALITY ORDER

1. My name is _____. I live at _____
_____. I am working on behalf (or at the direction and engagement) of _____.

2. I am aware that a Confidentiality Order has been entered in the above-captioned lawsuit. A copy of this Confidentiality Order has been given to me, and I have read and understand the provisions of same.

3. I acknowledge that documents and information designated as confidential and/or highly confidential pursuant to such Confidentiality Order

1 (“Confidential Materials”) are being disclosed to me only upon the conditions that I
2 agree (a) to be subject to the jurisdiction of this Court, and (b) to comply with that
3 Order. I hereby agree to abide by such Order, subject to all penalties prescribed
4 therein, including contempt of Court, for disobedience of said Order. I promise that
5 the documents and information given confidential treatment under the
6 Confidentiality Order entered in this case will be used by me only to assist counsel
7 for the parties in preparing for litigation of the above-captioned matter. I understand
8 that any use of such Confidential Material in any manner contrary to the provisions
9 of the Confidentiality Order may subject me to the sanctions of this Court for
10 contempt and to liability for any damages caused by my breach of the Confidentiality
11 Order.

12
13 4. I shall not disclose nor permit to be reviewed or copied said Confidential
14 Materials, or any information derived from, by any person other than the parties and
15 counsel for the parties or members of their staff.

16 5. Within 30 days after the above-captioned lawsuit ends in a final non-
17 appealable order, I agree to destroy all Confidential Materials in my possession.

18
19 Dated: _____

20
21 _____
(Signature)

22 _____
(Printed Name)