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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 STIPULATED
PRODUCTION PROTOCOL**

[ECF NO. 12]

Plaintiff Ashley Bradshaw (“Plaintiff”) and Defendant Wal-Mart Associates, Inc. (“Defendant”) (together, the “Parties”) agree to the following protocol for the production of discoverable documents originating from hard copy sources and as electronically stored information (“ESI”) pursuant to the Federal Rules of Civil Procedure (Fed. R. Civ.) *and subject to the parties’ Stipulated Protective Order.*

General Provisions

1. As used herein, “Requesting Party” means the party requesting production of documents. As used herein, “Producing Party” means the party that may be producing documents in response to the request of requesting party. As used

1 herein, the words “Party” or “Parties” include the Requesting Party and the Producing
2 Party.

3 2. This Protocol applies to the ESI provisions of Fed. R. Civ. 16, 26, 33,
4 34, and 37. This Protocol also applies to Fed. R. Civ. P. 45, if agreed to by the
5 recipient of any document request issued pursuant to that rule, in all instances in
6 which the provisions of Fed R. Civ. P. 45 are the same as, or substantially similar to,
7 the provisions of Fed. R. Civ. P. 16, 26, 33, 34, and 37. Nothing contained herein
8 modifies Fed. R. Civ. 45 and, specifically, the provision of Fed. R. Civ. 45(d)(2)(B)
9 regarding the effect of a written objection to inspection or copying of any or all of
10 the designated materials or premises.

11 3. Nothing in this Protocol shall be deemed to prevent any Parties from
12 agreeing to terms different than or inconsistent with the terms of this Protocol.

13 4. Nothing in this protocol shall be deemed to constitute a waiver of any
14 objections a Producing Party may have with respect to any document request.

15 5. This ESI Protocol is consistent with Fed. R. Civ. 26(b)(1) and limits the
16 scope of discovery to any non-privileged data that is relevant to any party’s claim or
17 defense and proportional to the needs of the case, considering the importance of the
18 issues at stake in the action, the amount in controversy, the parties’ relative access to
19 relevant information, the parties’ resources, the importance of the discovery in
20 resolving the issues, and whether the burden or expense of the proposed discovery
21 outweighs its likely benefit. Nothing in this protocol shall obligate a Party to preserve
22 ESI outside the scope of permissible discovery under Fed. R. Civ. 26(b)(1).

23 **Documents from hard copy sources**

24 6. The parties will produce documents originating from hard copy sources
25 (“Hard Copy Documents”) in searchable PDF format or in Group IV single-page
26 TIFF format (black and white, 300 dpi) with corresponding searchable OCR text,
27 along with the below-listed fielded data when available. The parties will provide a
28 standardized load file compatible with Concordance and with a Bates number field

1 included in the load file to match text and fielded data with TIFF images (load file
2 may be omitted with a PDF format production). With respect to Hard Copy
3 Documents, data on the load file will include:

- 4 a. Beginning Document Bates Number
- 5 b. Ending Document Bates Number
- 6 c. Beginning Family Bates Number (begins with 1st page of parent)
- 7 d. Ending Family Bates Number
- 8 e. Custodian or Source
- 9 f. Confidentiality Designation
- 10 g. Page Count
- 11 h. Redaction (Y/N)
- 12 i. Text File Path, including filename and extension (.txt)

13 **Electronically Stored Information**

14 Discovery of ESI shall proceed as follows:

15 7. The Producing Party shall conduct a reasonable and good faith search
16 for documents and ESI that are subject to production under the Federal Rules of Civil
17 Procedure. To filter ESI for relevancy prior to review and production, a Producing
18 Party may do one or more of the following, so long as the process used meets the
19 standard of care promulgated in Fed. R. Civ. 26(g): (i) use keyword search terms that
20 it in good faith believes will capture responsive ESI and review search term hits for
21 responsiveness, (ii) limit the collection and review of ESI to the custodians the
22 Producing Party reasonably believes have unique documents responsive to the
23 document requests; (iii) limit the collection and review of ESI to a reasonable date
24 range based on the claims asserted, (iv) use technology assisted review techniques.
25 The Requesting Party may suggest keyword search terms for consideration by the
26 Producing Party. The Producing Party will include any such search terms that do not
27 create an undue burden, and shall inform the Requesting Party of objectionable
28

1 search terms and propose alternative terms that reasonably limit the documents for
2 review to a number proportional to the needs of the case.

3 8. Except as otherwise stated herein, the parties will produce documents
4 originating as ESI, or kept as such in the ordinary course, in TIFF format with
5 extracted text or searchable PDF if production format dictates, along with the below-
6 listed metadata fields when available. The parties will provide a standardized load
7 file compatible with Concordance and with a Bates number field included on the load
8 file to match text and metadata with TIFF images (load file may be omitted with a
9 PDF format production). With respect to ESI, data on the load file will include:

- 10 a. Beginning Document Bates Number
- 11 b. Ending Document Bates Number
- 12 c. Beginning Family Bates Number (begins with 1st page of parent)
- 13 d. Ending Family Bates Number
- 14 e. Custodian or Source
- 15 f. Duplicate Custodians
- 16 g. Confidentiality Designation
- 17 h. Page Count
- 18 i. Redaction (Y/N)
- 19 j. Document Date (if available)
- 20 k. File Name (including extension)
- 21 l. File Extension
- 22 m. Document Type
- 23 n. Email From
- 24 o. Email To
- 25 p. Email CC
- 26 q. Email BCC
- 27 r. Email Subject
- 28 s. Email Date Received

- 1 t. Email Time Received
- 2 u. Email Date Sent
- 3 v. Email Time Sent
- 4 w. Timezone (UTC) {consider local time zone option for “time”
- 5 fields}
- 6 x. MD5 Hash Values (or alternatively agreed upon Hash Standard)
- 7 y. Text File Path, including filename and extension (.txt)
- 8 z. Native File Path, including filename and extension

9 9. The parties may redact (1) information that is privileged or protected
10 from discovery as work product or by reason of any other applicable privilege or
11 immunity; (2) information subject to non-disclosure obligations imposed by
12 governmental authorities, law or regulation (*e.g.*, protected personal information);
13 and (3) non-relevant sensitive information, including but not limited to personally
14 identifiable information, trade secrets, or information regarding products, data, or
15 people, within documents that contain relevant information.

16 10. The parties will produce redacted documents in TIFF format with
17 corresponding searchable OCR text or in searchable PDF if production format
18 dictates; or in native format for file types that do not convert well to TIFF/PDF, such
19 as Excel files, and the associated metadata for the document, ensuring the redacted
20 content is fully protected from disclosure.

21 11. The parties will produce relevant spreadsheets (*e.g.* Microsoft Excel)
22 not requiring redaction in native format. For Excel spreadsheets requiring redaction
23 the parties shall meet and confer regarding native Excel redaction verses redaction
24 applied to converted TIFF images or in searchable PDF if production format dictates.
25 At any time, the parties may consider whether the information contained in Excel
26 spreadsheet is available and should be produced from a structured data source from
27 which the Excel spreadsheets are generated.

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1 12. The parties will produce slide shows (e.g. Microsoft PowerPoint
2 presentations) not requiring redaction in native format. Slide shows requiring
3 redaction will be produced as TIFF images with corresponding searchable OCR text
4 (or in searchable PDF if production format dictates) and the associated metadata for
5 the document, ensuring the redacted content is fully protected from disclosure.

6 13. The parties will produce in native format those documents and ESI that
7 do not convert well to TIFF images (in addition to Excel and Power Point, e.g.
8 oversized drawings, picture files, audio and video files), or will ask the receiving
9 party to meet and confer regarding a reasonable alternative form of production. The
10 parties will produce in black and white. Parties should meet and confer regarding
11 production of color images when format available.

12 14. The file name for the documents produced in native format will consist
13 of a Bates number and a confidentiality designation if available. The parties will
14 provide a corresponding placeholder TIFF image (or PDF if production format
15 dictates) for native files included in a production bearing a sequential BATES number
16 within the family BATES range.

17 15. The parties may withhold documents from production by designating
18 the documents privileged pursuant to a claim of attorney-client privilege, work
19 product protection, or other applicable privilege or immunity in accordance with the
20 applicable discovery rules *and the parties' Stipulated Protective Order*. The parties
21 will not produce non-relevant attachments that are attached to relevant emails. When
22 an attachment is withheld, either for privilege or non-responsiveness, the producing
23 party shall produce a one-page TIFF image (or PDF if production format dictates) in
24 place of the withheld attachment, correspondingly stating "Attachment Withheld-
25 Privileged" or "Attachment Withheld-Nonresponsive", and bearing a sequential
26 BATES number within the family BATES range.

27 16. The Producing Party will produce a privilege log in PDF format (or
28 Microsoft Excel) indicating the categories of documents withheld from production

1 and the basis for the claim of privilege at the time of production. Inadvertent failure
2 to log privileged documents or metadata will not result in the waiver of privilege,
3 provided that upon discovering the inadvertent omission, the Producing Party sends
4 to the Requesting Party an addendum to the appropriate privilege log explaining the
5 reason for the omission and providing the required privilege log entries for the
6 document(s).

7 17. The parties will perform de-duplication of ESI within and across
8 custodians according to MD5 or SHA-1 hash values and will produce only a single
9 copy of identical ESI. Entire document families may constitute duplicate ESI. De-
10 duplication shall not break up document families. All custodians of a de-duplicated
11 document must be identified in the “Duplicate Custodians” metadata field specified
12 in Paragraph 8. If the parties de-duplicate ESI, they shall provide custodian
13 associations in a semi-colon delimited field that includes duplicate custodian name
14 information for the duplicate custodians. An overlay data file shall be produced after
15 every rolling production to account for updated duplicate custodian information in
16 the Custodian field.

17 18. Except as otherwise allowed herein, the parties shall preserve parent-
18 child relationships (the association between an attachment and its parent document)
19 where possible. The parties will provide a Beginning Family Bates Number and
20 Ending Family Bates Number for each produced attachment in the data load file.

21 19. The parties shall assign a Bates number to individual pages of TIFF
22 documents or PDF documents and a Bates number to each document produced in
23 native format. Bates numbers shall be unique across the entire document production
24 and sequential within a given document.

25 20. The parties understand that this protocol contemplates rolling
26 productions of documents, and they acknowledge that nothing in this Order waives,
27 restricts or eliminates the parties’ respective rolling production obligations, the
28 parties’ respective supplementation obligations prescribed in applicable Local Rules

1 or the parties' "claw-back" rights and obligations pursuant to the *Stipulated*
2 *Protective Order* in this case.

3 21. If the forms of production allowed by this protocol present an undue
4 burden or cost for a Producing Party, the parties shall meet and confer to try to agree
5 on a reasonable, alternative form of production. Nothing in this protocol prohibits a
6 party from seeking relief from this protocol pursuant to the applicable discovery
7 rule(s).

8 22. When documents produced in accordance with this protocol are used in
9 any proceeding herein, including depositions, hearings, or trial, the image copy of
10 documents as described herein (Paragraphs 6, 8, 10-13) shall be the copy used unless
11 the image copy is so illegible or unwieldy to make it infeasible to use as a deposition
12 exhibit, in which case the native version may be used. If the native version is used
13 as an exhibit, the record of the deposition must identify the exhibit using its BATES
14 number, and the BATES number shall also be written on any paper or electronic copy
15 of the exhibit. The confidentiality designation of the document shall also be stated
16 on the record of the deposition and shall be written on any paper or electronic copy
17 of the exhibit. Extracted text files shall not be used in any proceeding as a substitute
18 for the image of any document. This paragraph does not apply to any summary
19 exhibits or demonstratives.

20 23. Each party will bear the costs to process and review its own documents
21 according to this protocol. Notwithstanding this paragraph, nothing in this Document
22 Production Protocol limits or prohibits a prevailing party from seeking recovery of
23 all allowable fees and costs, including attorney fees and costs, as may be permitted
24 under applicable law and as provided by the applicable local rules.

25 24. Nothing in this protocol shall be construed to affect, modify or amend
26 the parties' *Stipulated Protective Order* filed with the Court.

27 25. Nothing in this protocol shall be construed to affect the discoverability
28 or admissibility of any document or data. All objections to the discoverability or

1 admissibility of any document or data are preserved and may be asserted at any time
2 in accordance with the applicable discovery rules.

3 **Production of Databases and Other Structured Data.**

4 26. Generally, relevant ESI stored in databases should be produced in a
5 mutually agreeable data exchange format.

6 27. The Parties will meet and confer to address the production and
7 production format of any responsive data contained in a database or other structured
8 data source. If ESI in commercial or proprietary database format can be produced in
9 an already existing and reasonably available report form, the Parties will produce the
10 information in such a report form, in the reasonably usable TIFF-image format. If an
11 existing report form is not reasonably available, the Parties will meet and confer to
12 attempt to identify a mutually agreeable report form (PDF, Excel, csv).

13 28. Nothing herein shall obligate a Producing Party to custom reporting.
14 The Parties shall meet and confer to discuss the associated cost and proportionality
15 of any custom reporting.

16 **Other Data Sources**

17 29. The Parties share a desire to ensure that ESI is produced in an
18 acceptable, searchable format. The Parties recognize that certain, limited ESI may
19 not be amenable to the proposed technical specifications. The Parties will meet and
20 confer in good faith to reach agreement regarding these issues and the appropriate
21 form of production, and will seek Court intervention if necessary.

22 **Deficiency Procedure**

23 30. If the Requesting Party has good cause to believe that a Producing
24 Party's discovery efforts have been deficient, the Parties will meet and confer with
25 the goal of identifying a means by which the Producing Party can provide assurances
26 of the reasonableness of its discovery efforts.

1 information, and shall inform the producing party of the beginning BATES number
2 of the document or, if no BATES number is available, shall otherwise inform the
3 producing party of the information.

4 38. A producing party must give written notice to any receiving party
5 asserting a claim of privilege, work-product protection, or other ground for
6 reclaiming documents or information (a “clawback request”). After a clawback
7 request is received, the receiving party shall immediately sequester the document (if
8 not already sequestered) and shall not review or use that document, or any work
9 product containing information taken from that document, for any purpose. The
10 parties shall meet and confer regarding any clawback request.

11 **Final Disposition of ESI**

12 39. Within thirty (30) days of settlement or final adjudication, including the
13 expiration or exhaustion of all rights to appeal or petitions for extraordinary writs,
14 each party or non-party to whom any materials were produced shall, without further
15 request or direction from the Producing Party, promptly destroy all documents, items
16 or data received including, but not limited to, copies or summaries thereof, in the
17 possession or control of any expert or employee. The Requesting Party shall provide
18 written certification of destruction to the Producing Party no later than 30 days after
19 the termination of this matter.

20
21 **PURSUANT TO STIPULATION IT IS SO ORDERED.**

22 Dated: 6/1/2023

23 
24 Hon. Barbara L. Major
25 United States Magistrate Judge