

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 19, 2016

IN THE UNITED STATES DISTRICT COURT SEAN F. McAVOY, CLERK
FOR THE EASTERN DISTRICT OF WASHINGTON

SULEMA MARTINEZ,

Plaintiff,

v.

WAL-MART STORES, INC., a
corporation,

Defendant.

Case No. 2:16-CV-0275-SMJ

**ORDER GRANTING
STIPULATED MOTION FOR
PROTECTIVE ORDER**

Before the Court, without oral argument, is the Parties' Stipulated Motion for Protective Order, ECF No. 8. The parties in the above-captioned matter have agreed that these proceedings may involve the discovery and use of confidential, non-public, sensitive, or proprietary business, employment, tax, financial, and personally identifiable information, documents and other materials;

The parties have agreed to produce such documents only on the agreement that such "Confidential Information" including information regarding current and former Walmart Stores, Inc. employees' social security information, dates of birth, personal banking information, medical information, and records stating the actual rates of pay at Wal-Mart Stores Inc., and corporate trade secrets, nonpublic research and development data, pricing formulas, prospective inventory management programs, confidential business information not generally known to the general public, and customer-related information, will be disclosed only as provided herein;

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

7 Both parties may be required to produce large volumes of Documents, the
8 parties wish to comply with discovery deadlines and complete discovery as
9 expeditiously as possible, while preserving and without waiving any evidentiary
10 protections or privileges applicable to the information contained in the Documents
11 produced, including as against third parties and other proceedings, and in addition
12 to their agreement, need the additional protections of a Court Order under FRE 502
13 (d) and (e) to do so.

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

- 21 (a) was not inadvertent by the Producing Party;
- 22 (b) that the Producing Party did not take reasonable steps to prevent the
23 disclosure of privileged Documents;

1 (c) that the Producing Party did not take reasonable or timely steps to
2 rectify such Disclosure; and/or

3 (d) that such Disclosure acts as a waiver of applicable privileges or
4 protections associated with such Documents.

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

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

15 **IT IS HEREBY ORDERED:**

16 1. The parties Stipulated Motion for Protective Order, **ECF No. 8**, is
17 **GRANTED.**

18 **IT IS HEREBY STIPULATED AND AGREED THAT:**

19 1. The Protective Order shall be entered pursuant to the Federal Rules of
20 Civil Procedure and FRE 502 (d) and (e).

1 2. The Protective Order shall govern all materials deemed to be
2 “Confidential Information.” Such Confidential Information shall include the
3 following:

4 (a) Any and all documents referring or related to confidential and
5 proprietary human resources or business information; financial
6 records of the parties; compensation of Defendant’s current or
7 former personnel; policies, procedures or training materials of
8 Defendant; or Defendant’s organizational structure;

9 (b) Any documents from the personnel, medical or workers’
10 compensation file of any current or former employee or
11 contractor;

12 (c) Any documents relating to the medical or health information of
13 any of Defendant’s current or former employees or contractors;

14 (d) Any portions of depositions (audio or video) where
15 Confidential Information is disclosed or used as exhibits.

16 3. The Protective Order shall likewise govern all materials deemed
17 “Attorneys' Eyes Only”, which materials shall include the following:

18 (a) Any documents containing corporate trade secrets, nonpublic
19 research and development data, pricing formulas, prospective
20 inventory management programs, confidential business
21 information not generally known to the general public, and
22 customer-related information.

1 4. In the case of documents and the information contained therein,
2 designation of Confidential Information produced shall be made by placing the
3 following legend on the face of the document and each page so designated "
4 CONFIDENTIAL " or "ATTORNEYS' EYES ONLY" or otherwise expressly
5 identified as confidential or attorneys' eyes only. Defendant will use its best efforts
6 to limit the number of documents designated Confidential or Attorneys' Eyes Only.

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

13 6. Qualified recipients of documents marked "ATTORNEYS' EYES
14 ONLY" shall include only the following:

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

17 Qualified recipients of documents marked "CONFIDENTIAL" shall include
18 only the following:

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

21 (b) Deposition notaries and staff;

- 1 (c) Persons other than legal counsel who have been retained or
2 specially employed by a party as an expert witness for purposes
3 of this lawsuit or to perform investigative work or fact research;
- 4 (d) Deponents during the course of their depositions or potential
5 witnesses of this case; and
- 6 (e) The parties to this litigation, their officers, and professional
7 employees.

8 7. Each counsel shall be responsible for providing notice of the
9 Protective Order and the terms therein to persons to whom they disclose
10 "Confidential Information," as defined by the terms of the Protective Order.

11 Persons to whom Confidential Information is shown shall be informed of the
12 terms of this Order and advised that its breach may be punished or sanctioned as
13 contempt of the Court. Such deponents may be shown Confidential Information
14 during their deposition but shall not be permitted to keep copies of said
15 Confidential Information nor any portion of the deposition transcript reflecting the
16 Confidential Information.

17 If either party objects to the claims that information should be deemed
18 Confidential, that party's counsel shall inform opposing counsel in writing that the
19 information should not be so deemed, and the parties shall attempt first to dispose
20 of such disputes in good faith and on an informal basis. If the parties are unable to
21 resolve their dispute, they may present a motion to the Court objecting to such
22 status. The information shall continue to have Confidential status during the
23 pendency of any such motion.

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

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

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

15 11. Whenever a party wishes to file any writing designated as
16 Confidential with the Court, the party may either (a) redact any and all information
17 contained on any page that is marked Confidential before filing said document
18 with the Court, (b) if the party wishing to file said writing is the party that
19 originally designated the document as Confidential that party may, at their
20 discretion, redact only that information that it deems Confidential from any page
21 that is marked Confidential before filing with the Court or (c) separately file the
22 document under seal with the Court. If a party wishes to file a document that has
23 been marked Confidential with the Court, the party will follow all rules and

1 practices followed by the Court regarding filing a document under seal, including
2 filing a motion establishing good cause for the document to be preserved under
3 seal if necessary, prior to so filing.

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

7 13. At the conclusion of litigation, the Confidential Information and any
8 copies thereof shall be promptly (and in no event later than thirty (30) days after
9 entry of final judgment no longer subject to further appeal) returned to the
10 producing party or certified as destroyed, except that the parties' counsel shall be
11 permitted to retain their working files on the condition that those files will remain
12 confidential.

13 14. Pursuant to FRE 502 (d) and (e), the parties agree to and the Court
14 orders protection of privileged and otherwise protected Documents against claims
15 of waiver (including as against third parties and in other federal and state
16 proceedings) as follows:

17 (a) The disclosure or production of Documents by a Producing Party
18 subject to a legally recognized claim of privilege, including without
19 limitation the attorney-client privilege and the work-product doctrine,
20 to a Receiving Party, shall in no way constitute the voluntary
21 disclosure of such Document.

22 (b) The inadvertent disclosure or production of any Document in this
23 action shall not result in the waiver of any privilege, evidentiary

1 protection or other protection associated with such Document as to the
2 Receiving Party or any third parties, and shall not result in any waiver,
3 including subject matter waiver, of any kind.

4 (c) If, during the course of this litigation, a party determines that any
5 Document produced by another party is or may reasonably be subject
6 to a legally recognizable privilege or evidentiary protection
7 (“Protected Document”):

8 (i) the Receiving Party shall: (A) refrain from reading the
9 Protected Document any more closely than is necessary to
10 ascertain that it is privileged or otherwise protected from
11 disclosure; (B) immediately notify the Producing Party in
12 writing that it has discovered Documents believed to be
13 privileged or protected; (C) specifically identify the Protected
14 Documents by Bates number range or hash value, and, (D)
15 within ten (10) days of discovery by the Receiving Party,
16 return, sequester, or destroy all copies of such Protected
17 Documents, along with any notes, abstracts or compilations of
18 the content thereof. To the extent that a Protected Document
19 has been loaded into a litigation review database under the
20 control of the Receiving Party, the Receiving Party shall have
21 all electronic copies of the Protected Document extracted from
22 the database. Where such Protected Documents cannot be
23 destroyed or separated, they shall not be reviewed, disclosed, or

1 otherwise used by the Receiving Party. Notwithstanding, the
2 Receiving Party is under no obligation to search or review the
3 Producing Party's Documents to identify potentially privileged
4 or work product Protected Documents.

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

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

22 (i) the Producing Party may notify the Receiving Party of such
23 inadvertent production in writing, and demand the return of

1 such documents. Such notice shall be in writing, however, it
2 may be delivered orally on the record at a deposition, promptly
3 followed up in writing. The Producing Party's written notice
4 will identify the Protected Document inadvertently produced by
5 bates number range or hash value, the privilege or protection
6 claimed, and the basis for the assertion of the privilege and
7 shall provide the Receiving Party with a log for such Protected
8 Documents that is consistent with the requirements of the
9 Federal Rules of Civil Procedure, setting forth the basis for the
10 claim of privilege or other protection. In the event that any
11 portion of the Protected Document does not contain privileged
12 or protected information, the Producing Party shall also provide
13 to the Receiving Party a redacted copy of the Document that
14 omits the information that the Producing Party believes is
15 subject to a claim of privilege or other protection.

16 (ii) the Receiving Party must, within ten (10) days of receiving the
17 Producing Party's written notification described above, return,
18 sequester, or destroy the Protected Document and any copies,
19 along with any notes, abstracts or compilations of the content
20 thereof. To the extent that a Protected Document has been
21 loaded into a litigation review database under the control of the
22 Receiving Party, the Receiving Party shall have all electronic
23 copies of the Protected Document extracted from the database.

1 (e) To the extent that the information contained in a Protected Document
2 has already been used in or described in other documents generated or
3 maintained by the Receiving Party prior to the date of receipt of
4 written notice by the Producing Party as set forth in paragraphs (c)(ii)
5 and (d)(i), then the Receiving Party shall sequester such documents
6 until the claim has been resolved. If the Receiving Party disclosed the
7 Protected Document before being notified of its inadvertent
8 production, it must take reasonable steps to retrieve it.

9 (f) The Receiving Party's return, sequestering or destruction of Protected
10 Documents as provided herein will not act as a waiver of the
11 Requesting Party's right to move for the production of the returned,
12 sequestered or destroyed documents on the grounds that the
13 documents are not, in fact, subject to a viable claim of privilege or
14 protection. However, the Receiving Party is prohibited and estopped
15 from arguing that:

- 16 (i) the disclosure or production of the Protected Documents acts as
17 a waiver of an applicable privilege or evidentiary protection;
- 18 (ii) the disclosure of the Protected Documents was not inadvertent;
- 19 (iii) the Producing Party did not take reasonable steps to prevent the
20 disclosure of the Protected Documents; or
- 21 (iv) the Producing Party failed to take reasonable or timely steps to
22 rectify the error.
- 23

1 (g) Either party may submit Protected Documents to the Court under seal
2 for a determination of the claim of privilege or other protection. The
3 Producing Party shall preserve the Protected Documents until such
4 claim is resolved. The Receiving Party may not use the Protected
5 Documents for any purpose absent this Court's Order.

6 (h) Upon a determination by the Court that the Protected Documents are
7 protected by the applicable privilege or evidentiary protection, and if
8 the Protected Documents have been sequestered rather than returned
9 or destroyed by the Receiving Party, the Protected Documents shall be
10 returned or destroyed within 10 (ten) days of the Court's order. The
11 Court may also order the identification by the Receiving Party of
12 Protected Documents by search terms or other means.

13 (i) Nothing contained herein is intended to, or shall serve to limit a
14 party's right to conduct a review of documents, data (including
15 electronically stored information) and other information, including
16 without limitation, metadata, for relevance, responsiveness or the
17 segregation of privileged or protected information before such
18 information is produced to another party.

19 (j) By operation of the parties' agreement and Court Order, the parties
20 are specifically afforded the protections of FRE 502 (d) and (e).

21 15. Subject to the Rules of Evidence, a stamped Confidential document
22 and other Confidential Information may be offered in evidence at trial or any court
23 hearing, provided that the proponent of the evidence gives five days' advance

1 notice to counsel for the party or other person that designated the information as
2 Confidential. Any party may move the court for an order that the evidence be
3 received in camera or under other conditions to prevent unnecessary disclosure.
4 The court will then determine whether the proffered evidence should continue to
5 be treated as Confidential Information and, if so, what protection, if any, may be
6 afforded to such information at the trial.

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

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


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

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

20 20. Pursuant to LR 26-4(b), the parties instruct the clerk that the parties
21 themselves are not to have remote electronic access to the documents protected by
22 this Order.
23

1 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
2 and provide copies to all counsel.

3
4 DATED this 19th day of September 2016.

5 
6 _____
7 SALVADOR MENEZSA, JR.
8 United States District Court Judge