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16 **WAL-MART STORES, INC.**

17 UNITED STATES DISTRICT COURT

18 EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO

19 JOHN ELLIOTT,

20 Plaintiff,

21 vs.

22 WAL-MART STORES, INC., et al.,

23 Defendants.

CASE NO. 2:13-CV-01027-JAM-CMK

**STIPULATED PROTECTIVE ORDER AND
ORDER GRANTING
PROTECTIVE ORDER**

Complaint Filed: May 22, 2013
Trial Date: December 1, 2014

24 **IT IS HEREBY STIPULATED** by and between Plaintiff John Elliott (“Plaintiff”) and
25 Defendant Wal-Mart Stores, Inc., (“Wal-Mart” or “Defendant”) by and through their respective
26 counsel of record, that in order to facilitate the exchange of information and documents which
27 may be subject to confidentiality limitations on disclosure due to federal laws, state laws, and
28 privacy rights, the Parties stipulate as follows:

Disclosure and discovery activity in this action are likely to involve production of
confidential, proprietary, or private information for which special protection from public
disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

1 Accordingly, the Parties hereby stipulate to and petition the court to enter the following
2 Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket
3 protections on all disclosures or responses to discovery and that the protection it affords from
4 public disclosure and use extends only to the limited information or items that are entitled to
5 confidential treatment under the applicable legal principles. The parties further acknowledge
6 that this Stipulated Protective Order does not entitle them to file confidential information under
7 seal and proper procedures and protocol under Local Rules, Court Rules, and Civil Procedure
8 must be followed if and when a party seeks permission from the Court to file materials under
9 seal.

10 1. In this Stipulation and Protective Order, the words set forth below shall have the
11 following meanings:

12 a. "Proceeding" means the above-entitled proceeding, *Elliot v. Wal-Mart*
13 *Stores, Inc. et al*, Case No. 2:13-CV-01027-JAM-CMK in the above entitled Court.

14 b. "Court" means any judge to which this Proceeding may be assigned,
15 including Court staff participating in such proceedings.

16 c. "Confidential" means any information which is in the possession of a
17 Designating Party who believes in good faith that such information is entitled to confidential
18 treatment under applicable law, including but not limited to Federal Rules of Civil Procedure
19 26(c).
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21 d. "Confidential Materials" means any Documents, Testimony or
22 Information as defined below designated as "Confidential" pursuant to the provisions of this
23 Stipulation and Protective Order.

24 e. "Designating Party" means the Party that designates Materials as
25 "Confidential."
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27 f. "Disclose" or "Disclosed" or "Disclosure" means to reveal, divulge, give,
28 or make available Materials, or any part thereof, or any information contained therein.

1 g. "Documents" means (i) any "Writing," "Original," and "Duplicate" as
2 those terms are defined by California Evidence Code Sections 250, 255, and 260, which have
3 been produced in discovery in this Proceeding by any person, and (ii) any copies, reproductions,
4 or summaries of all or any part of the foregoing.

5 h. "Information" means the content of Documents or Testimony.

6 i. "Testimony" means all depositions, declarations or other testimony taken
7 or used in this Proceeding.

8 j. "Designating Party" means a Party or Non-Party that designates
9 information or items that it produces in disclosures or in responses to discovery as
10 "Confidential."

11 k. "Challenging Party" means a Party or Non-Party that challenges the
12 designation of information or items under this Order.

13 l. "Protected Material" means any Disclosure or Discovery Material that is
14 designated as "CONFIDENTIAL."

15 2. The protections conferred by this Stipulation and Order cover not only Protected
16 Material (as defined above), but also (1) any information copied or extracted from Protected
17 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
18 testimony, conversations, or presentations by the Parties or their Counsel that might reveal
19 Protected Material.
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21 3. The Designating Party shall have the right to designate as "Confidential" any
22 Documents, Testimony or Information that the Designating Party in good faith believes to
23 contain non-public information that is entitled to confidential treatment under applicable law.

24 4. The entry of this Stipulation and Protective Order does not alter, waive, modify,
25 or abridge any right, privilege or protection otherwise available to any Party with respect to the
26 discovery of matters, including but not limited to any Party's right to assert the attorney-client
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1 privilege, the attorney work product doctrine, or other privileges, or any Party's right to contest
2 any such assertion.

3 5. Any Documents, Testimony or Information to be designated as "Confidential"
4 must be clearly so designated before the Document, Testimony or Information is Disclosed or
5 produced. The parties may agree that the case name and number are to be part of the
6 "Confidential" designation. The "Confidential" designation should not obscure or interfere with
7 the legibility of the designated Information.

8 a. For Documents (apart from transcripts of depositions or other pretrial or
9 trial proceedings), the Designating Party must affix the legend "Confidential" on
10 each page of any Document containing such designated Confidential Material.

11 b. For Testimony given in depositions the Designating Party may either:

12 1. identify on the record, before the close of the deposition, all
13 "Confidential" Testimony, by specifying all portions of the
14 Testimony that qualify as "Confidential;" or

15 2. designate the entirety of the Testimony at the deposition as
16 "Confidential" (before the deposition is concluded) with the
17 right to identify more specific portions of the Testimony as to
18 which protection is sought within 30 days following receipt of
19 the deposition transcript. In circumstances where portions of
20 the deposition Testimony are designated for protection, the
21 transcript pages containing "Confidential" Information may be
22 separately bound by the court reporter, who must affix to the
23 top of each page the legend "Confidential," as instructed by the
24 Designating Party.

25 c. For Information produced in some form other than Documents, and for
26 any other tangible items, including, without limitation, compact discs or DVDs,
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1 the Designating Party must affix in a prominent place on the exterior of the
2 container or containers in which the Information or item is stored the legend
3 “Confidential.” If only portions of the Information or item warrant protection, the
4 Designating Party, to the extent practicable, shall identify the “Confidential”
5 portions.

6 6. The inadvertent production by any of the undersigned Parties or non-Parties to the
7 Proceedings of any Document, Testimony or Information during discovery in this Proceeding
8 without a “Confidential” designation, shall be without prejudice to any claim that such item is
9 “Confidential” and such Party shall not be held to have waived any rights by such inadvertent
10 production. In the event that any Document, Testimony or Information that is subject to a
11 “Confidential” designation is inadvertently produced without such designation, the Party that
12 inadvertently produced the document shall give written notice of such inadvertent production
13 within twenty (20) days of discovery of the inadvertent production, together with a further copy
14 of the subject Document, Testimony or Information designated as “Confidential” (the
15 “Inadvertent Production Notice”). Upon receipt of such Inadvertent Production Notice, the Party
16 that received the inadvertently produced Document, Testimony or Information shall promptly
17 destroy the inadvertently produced Document, Testimony or Information and all copies thereof,
18 or, at the expense of the producing Party, return such together with all copies of such Document,
19 Testimony or Information to counsel for the producing Party and shall retain only the
20 “Confidential” designated Materials. Should the receiving Party choose to destroy such
21 inadvertently produced Document, Testimony or Information, the receiving Party shall notify the
22 producing Party in writing of such destruction within ten (10) days of receipt of written notice of
23 the inadvertent production. This provision is not intended to apply to any inadvertent production
24 of any Information protected by attorney-client or work product privileges. In the event that this
25 provision conflicts with any applicable law regarding waiver of confidentiality through the
26 inadvertent production of Documents, Testimony or Information, such law shall govern.
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1 7. In the event that counsel for a Party receiving Documents, Testimony or
2 Information in discovery designated as “Confidential” objects to such designation with respect to
3 any or all of such items, said counsel shall advise counsel for the Designating Party, in writing,
4 of such objections, the specific Documents, Testimony or Information to which each objection
5 pertains, and the specific reasons and support for such objections (the “Designation Objections”).
6 Counsel for the Designating Party shall have thirty (30) days from receipt of the written
7 Designation Objections to either (a) agree in writing to de-designate Documents, Testimony or
8 Information pursuant to any or all of the Designation Objections and/or (b) file a motion with the
9 Court seeking to uphold any or all designations on Documents, Testimony or Information
10 addressed by the Designation Objections (the “Designation Motion”). Pending a resolution of
11 the Designation Motion by the Court, any and all existing designations on the Documents,
12 Testimony or Information at issue in such Motion shall remain in place. The Designating Party
13 shall have the burden on any Designation Motion of establishing the applicability of its
14 “Confidential” designation. In the event that the Designation Objections are neither timely
15 agreed to nor timely addressed in the Designation Motion, then such Documents, Testimony or
16 Information shall be de-designated in accordance with the Designation Objection applicable to
17 such material.

18 8. Access to and/or Disclosure of Confidential Materials designated as
19 “Confidential” shall be permitted only to the following persons:

- 20 a. the Court;
- 21 b. Attorneys of record in the Proceedings and their affiliated attorneys,
22 paralegals, clerical and secretarial staff employed by such attorneys who are
23 actively involved in the Proceedings and are not employees of any Party. (2) In-
24 house counsel to the undersigned Parties and the paralegal, clerical and secretarial
25 staff employed by such counsel. Provided, however, that each non-lawyer given
26 access to Confidential Materials shall be advised that such Materials are being
27 Disclosed pursuant to, and are subject to, the terms of this Stipulation and
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1 Protective Order and that they may not be Disclosed other than pursuant to its
2 terms;

3 c. those officers, directors, partners, members, employees and agents of all
4 non-designating Parties that counsel for such Parties deems necessary to aid
5 counsel in the prosecution and defense of this Proceeding; provided, however,
6 that prior to the Disclosure of Confidential Materials to any such officer, director,
7 partner, member, employee or agent, counsel for the Party making the Disclosure
8 shall deliver a copy of this Stipulation and Protective Order to such person, shall
9 explain that such person is bound to follow the terms of such Order, and shall
10 secure the signature of such person on a statement in the form attached hereto as
11 Exhibit A;

12 d. court reporters in this Proceeding (whether at depositions, hearings, or any
13 other proceeding);

14 e. any deposition, trial or hearing witness in the Proceeding who previously
15 has had access to the Confidential Materials, or who is currently or was
16 previously an officer, director, partner, member, employee or agent of an entity
17 that has had access to the Confidential Materials;

18 f. any deposition or non-trial hearing witness in the Proceeding who
19 previously did not have access to the Confidential Materials; provided, however,
20 that each such witness given access to Confidential Materials shall be advised that
21 such Materials are being Disclosed pursuant to, and are subject to, the terms of
22 this Stipulation and Protective Order and that they may not be Disclosed other
23 than pursuant to its terms;

24 g. mock jury participants, provided, however, that prior to the Disclosure of
25 Confidential Materials to any such mock jury participant, counsel for the Party
26 making the Disclosure shall deliver a copy of this Stipulation and Protective
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1 Order to such person, shall explain that such person is bound to follow the terms
2 of such Order, and shall secure the signature of such person on a statement in the
3 form attached hereto as Exhibit A.

4 h. outside experts or expert consultants consulted by the undersigned Parties
5 or their counsel in connection with the Proceeding, whether or not retained to
6 testify at any oral hearing; provided, however, that prior to the Disclosure of
7 Confidential Materials to any such expert or expert consultant, counsel for the
8 Party making the Disclosure shall deliver a copy of this Stipulation and Protective
9 Order to such person, shall explain its terms to such person, and shall secure the
10 signature of such person on a statement in the form attached hereto as Exhibit A.
11 It shall be the obligation of counsel, upon learning of any breach or threatened
12 breach of this Stipulation and Protective Order by any such expert or expert
13 consultant, to promptly notify counsel for the Designating Party of such breach or
14 threatened breach; and

15 i. any other person that the Designating Party agrees to in writing.

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17 9. Confidential Materials shall be used by the persons receiving them only for the
18 purposes of preparing for, conducting, participating in the conduct of, and/or prosecuting and/or
19 defending the Proceeding, and not for any business or other purpose whatsoever.

20 10. Any Party to the Proceeding (or other person subject to the terms of this
21 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other Parties
22 to the Proceeding, to modify or grant relief from any provision of this Stipulation and Protective
23 Order.

24 11. Entering into, agreeing to, and/or complying with the terms of this Stipulation and
25 Protective Order shall not:

26 a. operate as an admission by any person that any particular Document,
27 Testimony or Information marked "Confidential" contains or reflects trade
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1 secrets, proprietary, confidential or competitively sensitive business, commercial,
2 financial or personal information; or

3 b. prejudice in any way the right of any Party (or any other person subject to
4 the terms of this Stipulation and Protective Order):

5 1. to seek a determination by the Court of whether any particular
6 Confidential Material should be subject to protection as
7 “Confidential” under the terms of this Stipulation and Protective
8 Order; or

9 2. to seek relief from the Court on appropriate notice to all other
10 Parties to the Proceeding from any provision(s) of this Stipulation
11 and Protective Order, either generally or as to any particular
12 Document, Material or Information.
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14 12. Any Party to the Proceeding who has not executed this Stipulation and Protective
15 Order as of the time it is presented to the Court for signature may thereafter become a Party to
16 this Stipulation and Protective Order by its counsel’s signing and dating a copy thereof and filing
17 the same with the Court, and serving copies of such signed and dated copy upon the other Parties
18 to this Stipulation and Protective Order.

19 13. Any Information that may be produced by a non-Party witness in discovery in the
20 Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as
21 “Confidential” under the terms of this Stipulation and Protective Order, and any such designation
22 by a non-Party shall have the same force and effect, and create the same duties and obligations,
23 as if made by one of the undersigned Parties hereto. Any such designation shall also function as
24 a consent by such producing Party to the authority of the Court in the Proceeding to resolve and
25 conclusively determine any motion or other application made by any person or Party with respect
26 to such designation, or any other matter otherwise arising under this Stipulation and Protective
27 Order.
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1 14. If any person subject to this Stipulation and Protective Order who has custody of
2 any Confidential Materials receives a subpoena or other process (“Subpoena”) from any
3 government or other person or entity demanding production of Confidential Materials, the
4 recipient of the Subpoena shall promptly give notice of the same by electronic mail transmission,
5 followed by either express mail or overnight delivery to counsel of record for the Designating
6 Party, and shall furnish such counsel with a copy of the Subpoena. Upon receipt of this notice,
7 the Designating Party may, in its sole discretion and at its own cost, move to quash or limit the
8 Subpoena, otherwise oppose production of the Confidential Materials, and/or seek to obtain
9 confidential treatment of such Confidential Materials from the subpoenaing person or entity to
10 the fullest extent available under law. The recipient of the Subpoena may not produce any
11 Documents, Testimony or Information pursuant to the Subpoena prior to the date specified for
12 production on the Subpoena.

13 15. Nothing in this Stipulation and Protective Order shall be construed to preclude
14 either Party from asserting in good faith that certain Confidential Materials require additional
15 protection. The Parties shall meet and confer to agree upon the terms of such additional
16 protection.

17 16. If, after execution of this Stipulation and Protective Order, any Confidential
18 Materials submitted by a Designating Party under the terms of this Stipulation and Protective
19 Order is Disclosed by a non-Designating Party to any person other than in the manner authorized
20 by this Stipulation and Protective Order, the non-Designating Party responsible for the
21 Disclosure shall bring all pertinent facts relating to the Disclosure of such Confidential Materials
22 to the immediate attention of the Designating Party.

23 17. This Stipulation and Protective Order is entered into without prejudice to the right
24 of any Party to knowingly waive the applicability of this Stipulation and Protective Order to any
25 Confidential Materials designated by that Party. If the Designating Party uses Confidential
26 Materials in a non-Confidential manner, then the Designating Party shall advise that the
27 designation no longer applies.
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1 18. Without written permission from the Designating Party or a court order secured
2 after appropriate notice to all interested persons, a Party may not file in the public record in this
3 action any Protected Material. A Party that seeks to file under seal any Protected Material must
4 comply with Local Rules, Courtroom Rules, and Code of Civil Procedure. Protected Material
5 may only be filed under seal pursuant to a court order authorizing the sealing of the specific
6 Protected Material at issue.

7 19. The Parties shall meet and confer regarding the procedures for use of Confidential
8 Materials at trial and shall move the Court for entry of an appropriate order.

9 20. Nothing in this Stipulation and Protective Order shall affect the admissibility into
10 evidence of Confidential Materials, or abridge the rights of any person to seek judicial review or
11 to pursue other appropriate judicial action with respect to any ruling made by the Court
12 concerning the issue of the status of Protected Material.

13 21. This Stipulation and Protective Order shall continue to be binding after the
14 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding,
15 except that a Party may seek the written permission of the Designating Party or may move the
16 Court for relief from the provisions of this Stipulation and Protective Order. To the extent
17 permitted by law, the Court shall retain jurisdiction to enforce, modify, or reconsider this
18 Stipulation and Protective Order, even after the Proceeding is terminated.

19 22. Within thirty (30) days after the settlement or other termination of the Proceeding,
20 the undersigned Parties shall have thirty (30) days to either (a) promptly return to counsel for
21 each Designating Party all Confidential Materials and all copies thereof (except that counsel for
22 each Party may maintain in its files, in continuing compliance with the terms of this Stipulation
23 and Protective Order, all work product, and one copy of each pleading filed with the Court and
24 one copy of each deposition together with the exhibits marked at the deposition), (b) agree with
25 counsel for the Designating Party upon appropriate methods and certification of destruction or
26 other disposition of such Confidential Materials, or (c) as to any Documents, Testimony or other
27 Information not addressed by sub-paragraphs (a) and (b), file a motion seeking a Court order
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ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED.

Dated: 4/17/2014

/s/ John A. Mendez _____
John A. Mendez
United States District Court Judge

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____[NAME], _____
[POSITION AND EMPLOYER], am about to receive Confidential Materials in connection with
Elliot v. Wal-Mart Stores, Inc. et al, Case No. 2:13-CV-01027-JAM-CMK. I certify that I
understand that the Confidential Materials are provided to me subject to the terms and
restrictions of the Stipulated Protective Order filed in this Proceeding. I have been given a copy
of the Stipulated Protective Order; I have read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Stipulated Protective Order,
including any notes or other records that may be made regarding any such materials, shall not be
disclosed to anyone except as expressly permitted by the Stipulated Protective Order. I will not
copy or use, except solely for the purposes of this Proceeding, any Confidential Materials
obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by
the Court in this Proceeding. I further understand I am to retain all copies of all Confidential
Materials provided to me in a secure manner, and that all copies of such Materials are to remain
in my personal custody until termination of my participation in this Proceeding, whereupon the
copies of such Materials will be returned to counsel who provided me with such Materials.

I declare under penalty of perjury, under the laws of the United States of America and the
State of California, that the foregoing is true and correct. Executed this ___ day of _____,
20___ at _____.

BY: _____

Signature

Title

Address

City, State, Zip

Telephone Number

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of Contra Costa County. I am over the age of 18 and not a party to the within action. My business address is One Embarcadero Center, Suite 2050, San Francisco, California 94111.

On this date pursuant to the General Order on Electronic Filing of the Eastern District of California, I electronically filed the foregoing **Stipulated Protective Order and [Proposed Order] Granting Protective Order** with the clerk of the Court using the CM/ECF filing system, which will send notification of such filing(s) to the following:

John P. Briscoe MAYALL HURLEY P.C. 2453 Grand Canal Blvd., Second Floor Stockton, CA 95207-8253	<u>Attorneys for Plaintiff</u> Telephone: (209) 477-3833 Facsimile: (209) 473-4818
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 17, 2014, at San Francisco, California.

/s/Sue Anne Travers
Sue Anne Travers