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12

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15

16 TRACEY GARRETT,

17 Plaintiff,

18 v.

19 WAL-MART STORES, INC., a Delaware
20 Corporation, and DOES 1 through 60,
Inclusive,
21

22 Defendants.
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Case No. 2:15-CV-00427-JAM-AC

**JOINT STIPULATED PROTECTIVE
ORDER**

JOINT STIPULATION FOR A PROTECTIVE ORDER

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2 The parties to this action, Plaintiff Tracey Garrett (“Plaintiff”) and Defendant Wal-Mart
3 Stores, Inc. (“Walmart” or “Defendant”), by their respective counsel, hereby stipulate and request
4 that the Court enter a mutual protective order pursuant to Fed. R. Civ. P. 26 as follows:

5 WHEREAS, the parties in the above-captioned matter believe these proceedings may involve
6 the discovery and use of confidential, non-public, sensitive, or proprietary business, employment,
7 tax, financial, and personally identifiable information, documents and other materials;

8 WHEREAS, the parties have agreed to produce such documents only on the agreement that
9 such “Confidential Information” including information regarding current and former Walmart
10 employees’ social security information, dates of birth, personal banking information, medical
11 information, and records stating the actual rates of pay at Walmart, and corporate trade secrets,
12 nonpublic research and development data, pricing formulas, prospective inventory management
13 programs, confidential business information not generally known to the general public, and
14 customer-related information, will be disclosed only as provided herein;

15 WHEREAS, the parties have agreed to stipulate to protect certain confidential and otherwise
16 protected documents, data (including electronically stored information) and other information,
17 including without limitation, metadata (collectively, “Documents”), against claims of waiver and
18 inadvertent production in the event they are produced during the course of this litigation whether
19 pursuant to a Court Order, a party’s discovery request, or informal production.

20 WHEREAS, both parties may be required to produce large volumes of Documents, the
21 parties wish to comply with discovery deadlines and complete discovery as expeditiously as
22 possible, while preserving and without waiving any evidentiary protections or privileges applicable
23 to the information contained in the Documents produced, including as against third parties and other
24 proceedings, and in addition to their agreement, need the additional protections of a Court Order
25 under Fed. R. Evid. 502 (d) and (e) to do so.

26 WHEREAS, because the purpose of this Protective Order is to protect and preserve
27 Confidential Information and privileged Documents, the parties agree they are bound as follows
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1 from and after the date their counsel have signed it, even if such execution occurs prior to Court
2 approval.

3 THEREFORE, the parties seek the entry of an Order, pursuant to Federal Rule of Civil
4 Procedure 26(c) governing the disclosure of documents and information therein pertaining to
5 “Confidential Information” on the terms set forth herein, as well as an Order governing the return of
6 inadvertently produced documents and data and affording them the protections of Fed. R. Evid. 502
7 (d) and (e), on the terms set forth herein.

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

9 1. The Protective Order shall be entered pursuant to the Federal Rules of Civil
10 Procedure and Fed. R. Evid. 502 (d) and (e).

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

- 13 (a) Any and all documents referring or related to confidential and proprietary
14 human resources or business information; financial records of the parties;
15 compensation of Defendant’s current or former personnel; policies,
16 procedures or training materials of Defendant; or Defendant’s
17 organizational structure;
- 18 (b) Any documents from the personnel, medical or workers’ compensation file
19 of any current or former employee or contractor;
- 20 (c) Any documents relating to the medical or health information of any of
21 Defendant’s current or former employees or contractors;
- 22 (d) Any documents containing corporate trade secrets, nonpublic research and
23 development data, pricing formulas, prospective inventory management
24 programs, confidential business information not generally known to the
25 general public, and customer-related information;
- 26 (e) Any portions of depositions (audio or video) where Confidential
27 Information is disclosed or used as exhibits.

28 3. In the case of documents and the information contained therein, designation of
Confidential Information produced shall be made by placing the following legend on the face of the
document and each page so designated “CONFIDENTIAL” or otherwise expressly identified as
confidential. Defendant will use its best efforts to limit the number of documents designated
Confidential.

4. Except as required by law or executive order, Confidential Information shall be held

1 in confidence by each qualified recipient to whom it is disclosed, shall be used only for purposes of
2 this action, shall not be used for any business purpose, and shall not be disclosed to any person who
3 is not a qualified recipient. All produced Confidential Information shall be carefully maintained so
4 as to preclude access by persons who are not qualified recipients.

5 5. Qualified recipients shall include only the following:

- 6 (a) In-house counsel and law firms for each party and the secretarial, clerical
7 and paralegal staff of each;
- 8 (b) Deposition notaries and staff;
- 9 (c) Persons other than legal counsel who have been retained or specially
10 employed by a party as an expert witness for purposes of this lawsuit or to
11 perform investigative work or fact research;
- 12 (d) Deponents during the course of their depositions or potential witnesses of
13 this case; and
- 14 (e) The parties to this litigation, their officers, and professional employees.

15 6. Each counsel shall be responsible for providing notice of the Protective Order and the
16 terms therein to persons to whom they disclose "Confidential Information," as defined by the terms
17 of the Protective Order.

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

23 If either party objects to the claims that information should be deemed Confidential, that
24 party's counsel shall inform opposing counsel in writing within thirty (30) days of receipt of the
25 Confidential Information that the information should not be so deemed, and the parties shall attempt
26 first to dispose of such disputes in good faith and on an informal basis. If the parties are unable to
27 resolve their dispute, the party who designated the document as confidential may present a motion to
28 the Court and has the burden of proof on the confidential designation.
The information shall continue to have Confidential status during the pendency of any such motion.

7. No copies of Confidential Information shall be made except by or on behalf of

1 attorneys of record, in-house counsel or the parties in this action. Any person making copies of such
2 information shall maintain all copies within their possession or the possession of those entitled to
3 access to such information under the Protective Order.

4 8. Whenever a party wishes to file any writing designated as Confidential with the
5 Court, the party may either (a) redact any and all information contained on any page that is marked
6 Confidential before filing said document with the Court, (b) if the party wishing to file said writing
7 is the party that originally designated the document as Confidential that party may, at their
8 discretion, redact only that information that it deems Confidential from any page that is marked
9 Confidential before filing with the Court, or (c) separately file the document under seal with the
10 Court. If a party wishes to file a document that has been marked Confidential with the Court, the
11 party will follow all rules and practices followed by the Court regarding filing a document under
12 seal.

13 9. The termination of this action shall not relieve the parties and persons obligated
14 hereunder from their responsibility to maintain the confidentiality of information designated
15 Confidential pursuant to this Order.

16 10. Upon termination of this action by entry of a final judgment (inclusive of any appeals
17 or petitions for review), the parties may request the return of all previously furnished Confidential
18 Information, including any copies thereof, and each person or party to whom such Confidential
19 Information has been furnished or produced shall be obligated to return it within thirty (30) days of
20 said request. Irrespective of this provision, counsel of record is permitted to keep a copy of its entire
21 litigation file, including confidential documents, and will continue to maintain its confidentiality.

22 11. Pursuant to Fed. R. Evid. 502 (d) and (e), the parties agree to and the Court orders
23 protection of privileged and otherwise protected Documents against claims of waiver (including as
24 against third parties and in other federal and state proceedings) as follows:

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

(b) The inadvertent disclosure or production of any Document in this action

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

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

9 (i) the Receiving Party shall: (A) refrain from reading the Protected
10 Document any more closely than is necessary to ascertain that it is
11 privileged or otherwise protected from disclosure; (B)
12 immediately notify the Producing Party in writing that it has
13 discovered Documents believed to be privileged or protected; (C)
14 specifically identify the Protected Documents by Bates number
15 range or hash value, and, (D) within ten (10) days of discovery by
16 the Receiving Party, return, sequester, or destroy all copies of
17 such Protected Documents, along with any notes, abstracts or
18 compilations of the content thereof. To the extent that a Protected
19 Document has been loaded into a litigation review database under
20 the control of the Receiving Party, the Receiving Party shall have
21 all electronic copies of the Protected Document extracted from the
22 database. Where such Protected Documents cannot be destroyed
23 or separated, they shall not be reviewed, disclosed, or otherwise
24 used by the Receiving Party. Notwithstanding, the Receiving
25 Party is under no obligation to search or review the Producing
26 Party’s Documents to identify potentially privileged or work
27 product Protected Documents.

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

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

- 1 (i) the Producing Party may notify the Receiving Party of such
2 inadvertent production in writing, and demand the return of such
3 documents. Such notice shall be in writing, however, it may be
4 delivered orally on the record at a deposition, promptly followed
5 up in writing. The Producing Party's written notice will identify
6 the Protected Document inadvertently produced by bates number
7 range or hash value, the privilege or protection claimed, and the
8 basis for the assertion of the privilege and shall provide the
9 Receiving Party with a log for such Protected Documents that is
10 consistent with the requirements of the Federal Rules of Civil
11 Procedure, setting forth the basis for the claim of privilege or
12 other protection. In the event that any portion of the Protected
13 Document does not contain privileged or protected information,
14 the Producing Party shall also provide to the Receiving Party a
15 redacted copy of the Document that omits the information that the
16 Producing Party believes is subject to a claim of privilege or other
17 protection.
- 18 (ii) The Receiving Party must, within ten (10) days of receiving the
19 Producing Party's written notification described above, return,
20 sequester, or destroy the Protected Document and any copies,
21 along with any notes, abstracts or compilations of the content
22 thereof. To the extent that a Protected Document has been loaded
23 into a litigation review database under the control of the
24 Receiving Party, the Receiving Party shall have all electronic
25 copies of the Protected Document extracted from the database.
- 26 (e) To the extent that the information contained in a Protected Document has
27 already been used in or described in other documents generated or
28 maintained by the Receiving Party prior to the date of receipt of written
notice by the Producing Party as set forth in paragraphs (c)(ii) and (d)(i),
then the Receiving Party shall sequester such documents until the claim has
been resolved. If the Receiving Party disclosed the Protected Document
before being notified of its inadvertent production, it must take reasonable
steps to retrieve it.
- (f) The Receiving Party's return, sequestering or destruction of Protected
Documents as provided herein will not act as a waiver of the Requesting
Party's right to move for the production of the returned, sequestered or
destroyed documents on the grounds that the documents are not, in fact,
subject to a viable claim of privilege or protection. However, the
Receiving Party is prohibited and estopped from arguing that:
- (i) the disclosure or production of the Protected Documents acts as a
waiver of an applicable privilege or evidentiary protection;
- (ii) the disclosure of the Protected Documents was not inadvertent;
- (iii) the Producing Party did not take reasonable steps to prevent the
disclosure of the Protected Documents; or

1 (iv) the Producing Party failed to take reasonable or timely steps to
2 rectify the error.

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

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

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

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

23 12. Subject to the Federal Rules of Evidence, a stamped Confidential document and other
24 Confidential Information may be offered in evidence at trial or any court hearing. Any party may
25 move the court for an order that the evidence be received in camera or under other conditions to
26 prevent unnecessary disclosure. The court will then determine whether the proffered evidence
27 should continue to be treated as Confidential Information and, if so, what protection, if any, may be
28 afforded to such information at the trial.

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

17 14. The Protective Order shall likewise govern all materials deemed "Attorneys' Eyes
18 Only", which materials shall include the following:

19 Any documents containing corporate trade secrets, nonpublic research and development data,

1 pricing formulas, prospective inventory management programs, confidential business information
2 not generally known to the general public, and customer-related information. Qualified recipients of
3 documents marked "ATTORNEYS' EYES ONLY" shall include only the following: In-house
4 counsel and law firms for each party and the secretarial, clerical and paralegal staff of each.

5 15. Nothing in this Protective Order shall be construed as an admission as to the
6 relevance, authenticity, foundation or admissibility of any document, material, transcript, or other
7 information.

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

10 17. Once executed by all parties, the Protective Order shall be by treated by the parties as
11 an Order of Court until it is formally approved by the Court.

12 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

13 Dated: August 17, 2015

14
15 /s/ Tarun Mehta
16 TARUN MEHTA
17 LITTLER MENDELSON, P.C.
Attorneys for Defendant
WAL-MART STORES, INC.

18 Dated: August 17, 2015

19
20 /s/ Lauren J. Morrison
21 Douglas N. Silverstein, Esq.
22 Lauren J. Morrison, Esq.
23 KESLUK, SILVERSTEIN, & JACOB, P.C.
Attorneys for Plaintiff
TRACEY GARRETT

24 **SO ORDERED** this 17th day of August 2015.

25
26 /s/ John A. Mendez
27 Honorable John A. Mendez
28 United States District Court Judge