

EXHIBIT 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

WALMART STORES, INC.

and

Case 21-CA-150416

**ORGANIZATION UNITED FOR RESPECT AT
WALMART (OUR WALMART)**

ORDER¹

The Employer's petition to revoke subpoena duces tecum B-1-OPMCGH is denied.² The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena.³ See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² In reviewing the petition to revoke, we have considered the subpoena in light of the clarifications set forth in the parties' briefs. In particular, with respect to subpoena paragraph 12, which requests "[d]ocuments showing any stores operated by the Employer nationwide that have been permanently closed by the new executive team including documents showing the date of the closure and reason for the closure, during the period of July 1, 2014, through the present date," we note that the Region states in its opposition brief that it is seeking "records of such closures" that the Employer "would have maintained ... in the ordinary course of its business." We interpret this statement as clarifying that the Region is not seeking documents that "only tangentially relate to store closure" as asserted by the Employer.

³ With respect to subpoena paragraphs 13 and 15, we find that the General Counsel's request for the documents described therein does not violate the protective order issued in Case 16-CA-096240. Accordingly, we deny the Employer's request that the attorneys in Region 21 or any subsequent Regions be prohibited from using the requested documents at any time in this or any related proceeding. The General Counsel shall again enter into a protective order with the Employer covering the documents in this proceeding, if the Employer so requests. See, e.g., *EEOC v. Morgan Stanley & Co., Inc.*, 132 F.Supp.2d 146, 160 (S.D.N.Y. 2000).

Dated, Washington, D.C. February 10, 2016

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

EXHIBIT 2

Janicik, Douglas

From: Parker, Lindsay <Lindsay.Parker@nlrb.gov>
Sent: Monday, February 29, 2016 9:37 AM
To: Janicik, Douglas; Hernandez, Irma
Cc: Wheeless, Steven; Feldman, Alan
Subject: RE: Walmart/Pico

Dear Doug:

Sorry for the delay in getting back to you. We actually tried to send you an e-mail on Friday in response but our server was down and the e-mail never sent.

Thanks for your e-mail. The Region has met and discussed the questions and concerns that you raised in that e-mail and we respond as follows.

As for the confidentiality agreement that you proposed, the Region is unwilling and has no obligation, under the Board's Order or otherwise, to enter into any such agreement. As we have explained before, the Agency's longstanding policy during the investigatory phase of our proceedings is to maintain the confidentiality of all the evidence we gather. In this regard, the evidence we collect is maintained in confidential case files visible only to employees on the General Counsel's side of the Agency. We do not give the public access to the documents we gather during our investigations. Accordingly the documents that you present to us pursuant to our investigative subpoenas are already under the protection of the Agency's confidentiality policies. Should this matter proceed to a formal hearing, at which point transcripts and exhibits could be accessible to the public, then at that point a protective order assuring the confidentiality of those documents will be an option to your client.

In response to the 108 pages of the privilege log and the fact that thus far your client has only turned over a handful of e-mail communications somewhat responsive to our subpoena requests, the Region finds it highly improbable that the vast majority of the communications responsive to our requests fall within the category of truly privileged documents. We ask that you carefully review the documents listed on your privilege log and determine whether those documents are truly privileged. If your client continues to claim that the vast majority of responsive documents are privileged, then we will need to raise this matter with a district court judge in subpoena enforcement proceedings and ask that the judge determine whether or not each of these documents actually fall under the attorney-client privilege.

With regard to paragraphs 9 and 12 of our subpoena, you are correct that you have already provided sufficient documents responsive to those requests and we are no longer seeking documents in response to those paragraphs of the subpoena.

Finally, with respect to your last request for suggested query terms, we appreciate your concerns and would suggest the following search query terms:

- Union
- UFCW
- Strike
- Walk Out
- Demonstration
- Rally
- Protest
- Black Friday
- Work Stoppage

- Delegation
- Cheerleader
- Naysayer
- Fairweather Fan
- Casual Fan
- Tuned Out
- OUR WALMART

In summary, the Region needs sufficient documents to make a determination in this matter. We have been seeking these documents from your client for nearly a year at this point. We ask that you please cooperate with the investigation and the Board's order and turn over the documents that we have requested by Monday, March 7, 2016. We would like to avoid subpoena enforcement proceedings in this matter but if we still don't have responsive documents by the deadline listed above, we will be pursuing subpoena enforcement. As always Irma and I will also make ourselves available by phone if you have any questions.

Sincerely,

Lindsay R. Parker
Field Attorney
National Labor Relations Board, Region 21
888 S. Figueroa Street, Ninth Floor
Los Angeles, California 90017
Dir.: (213) 894-5224
Fax: (213) 894-2778

From: Janicik, Douglas [mailto:DJanicik@steptoe.com]
Sent: Thursday, February 18, 2016 3:28 PM
To: Hernandez, Irma <Irma.Hernandez@nlrb.gov>; Parker, Lindsay <Lindsay.Parker@nlrb.gov>
Cc: Wheeless, Steven <SWheelless@steptoe.com>; Feldman, Alan <AFeldman@steptoe.com>
Subject: Walmart/Pico

Hello Lindsay/Irma: Thank you for your e-mail on the order on Walmart's Petition to Revoke. Having reviewed the order, we thought we'd touch base with you on a few issues. For starters, attached is a privilege log for the executive team e-mails that we have pulled and reviewed to date. To the extent we go back and pull additional e-mails (as I explain below), we reserve the right to supplement this privilege log with additional entries.

Also attached is the latest version of a confidentiality agreement that we sent over to you for consideration (this one allows the Region to use confidential documents in any case in which Walmart is a party). In line with the Board's instructions in its order, we propose that this agreement govern the proceedings in this case. Please take a look and let us know if this agreement is acceptable to the Region. If you have any proposed revisions, we'd be happy to consider them.

Regarding a response to subpoena request nos. 9 and 12 (relating to the dates individuals were "installed to" the executive team and stores permanently closed by the executive team), we previously produced certain documents after conferring with you on the potential breadth of those requests. Can you confirm that those documents are sufficient for those two requests? We assume that is the case since we have not heard anything more from the Region on this issue.

Regarding an additional e-mail review, Walmart will go back and pull executive team e-mails for the time period between the Region's issuance of its initial subpoena and its issuance of a replacement subpoena. As you may recall, we extracted executive team e-mails upon receiving that initial subpoena, and objected to going back and doing a second extraction because the Region decided to withdraw its first subpoena. In light of the Board's order, though, Walmart will

do that second extraction (through the date of the replacement subpoena), and, as Walmart did with the first batch of e-mails, review for items concerning the decision to close the Five Stores.

Before doing that, however, we would like to discuss the scope of the Region's request for e-mails concerning "other protected concerted activity" (PCA). (This way, we can try to avoid piecemeal extractions.) Walmart has already searched the executive team's e-mails for items relating to associate involvement with OURWalmart (for the specified time period). If we go broader than that, without any search parameters, it seems a trained labor lawyer would have to review all of the executive team's e-mails—which, given the time frame, could easily total tens of thousands of e-mails—for any embedded information about PCA or any nuances that suggest possible PCA. And then, additional investigation may be required to confirm that a particular e-mail does in fact reflect PCA. We assume that the Region does not want a massive dump of tens of thousands of e-mails on a litany of associate issues that have no bearing on the store closure issues. Are there certain search terms you could propose that will hone in on the documents you consider important for your investigation? Or, we'd be happy to put together a list of search terms if you could provide some parameters to what you are looking for.

Perhaps we can set up a call to discuss these items once you've had a chance to consider these issues. Many thanks for your time.

Best,
Doug J.

EXHIBIT 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

WAL-MART STORES, INC.

Respondent,	Case 16-CA-096240
	16-CA-105873
and	16-CA-108394
	16-CA-113087
THE ORGANIZATION UNITED FOR RESPECT	16-CA-122578
AT WALMART (OURWALMART),	16-CA-124099
	21-CA-105401
Charging Party.	26-CA-093558
	13-CA-107343

PROTECTIVE ORDER I

In this consolidated matter, the Counsel for General Counsel and United Food and Commercial Workers International Union subpoenaed substantial quantities of Electronically Stored Information and other documents from the Respondent Walmart for production in a short time frame. Walmart states that its anticipated document production exceeds 100,000 pages of documents and includes personnel documents with employee social security numbers, birth dates, personal phone numbers, home addresses, and the like, which Walmart could not redact, document by document, without requiring substantial additional time and expense for processing. Walmart also reports that the production contains commercially sensitive information -- created solely for Walmart's business purposes -- which competitors could use to their financial advantage or Walmart's disadvantage.

Accordingly, the undersigned Administrative Law Judge finds that, for good cause shown, a Protective Order should be issued to protect and control the production and use of confidential personnel information and Respondent's confidential and commercially-sensitive business information throughout and after the completion of this action. Therefore, the United Food and Commercial Workers International Union (a real-party-in-interest, by stipulation), Charging Party OUR Walmart (OWM) (collectively, UFCW/OWM), and Counsel for General

Formal Papers

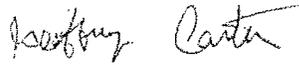
(ii)

Counsel, and their staff, representatives, principals, attorneys, agents, and witnesses shall comply with the following:

1. Documents produced by Respondent to the CGC or UFCW/OWM that are marked or designated "Confidential" shall only be used for purposes directly related to this proceeding and related pending "Local" cases involving the same parties and shall be disclosed only to the undersigned and the court reporter, the CGC, UFCW/OWM, and their staff, and witnesses who are testifying under oath and actually testifying about Confidential Information.
2. All witnesses who are shown such Confidential Information during their testimony are and will be ordered by the undersigned ALJ at the end of their testimony to maintain such information in confidence and to not disclose or use the contents of such Confidential Information outside their testimony in this proceeding.
3. Confidential Information produced by Respondent shall be secured and maintained by the CGC and UFCW/OWM in a manner so as to avoid disclosure or dissemination of its contents to any person not identified in this Order or in a manner not specifically authorized by this Order.
4. The CGC and UFCW/OWM shall not disclose or ask a testifying witness to disclose Confidential Information from a document marked "Confidential" without first notifying the undersigned for a possible order to excuse members of the public, depending on the circumstances.
5. Respondent may move to place any Confidential Information (either documents or testimony) under seal at the time presented at trial, if extraordinary circumstances warrant such a request. Additionally, after consultation with Respondent's counsel, the CGC or UFCW/OWM may, if necessary, move to eliminate the confidentiality designation from a specific document, subject to Respondent's burden to establish confidentiality.
6. This Order shall continue to be binding throughout and after the final disposition of this action. All Confidential Information shall be used only for the prosecution and/or defense of this action. Within thirty days (30) after receiving notice of a ruling by the undersigned, the CGC and UFCW/OWM shall return all Confidential Information (including all copies, summaries, and

excerpts) to Respondent's Counsel, except Confidential Information Exhibits admitted by the undersigned into evidence in this matter. The UFCW/OWM shall return all Confidential Information Exhibits to Respondent's counsel with thirty (30) days after the exhaustion of all appeals, if any. The CGC shall return all Confidential Information Exhibits to Respondent's counsel with thirty (30) days after the exhaustion of all appeals, if any, except to the extent NLRB Rules & Regulations or General Counsel directives require different treatment.

Ordered this 1st day of MAY, 2014



Administrative Law Judge Geoffrey Carter

EXHIBIT 4

Janicik, Douglas

From: Parker, Lindsay <Lindsay.Parker@nlrb.gov>
Sent: Thursday, January 14, 2016 10:44 PM
To: Janicik, Douglas; Hernandez, Irma
Cc: Wheelless, Steven; Feldman, Alan
Subject: Re: Pico/Walmart

Dear Doug:

We discussed this most recent proposal with Regional management but the Region is not willing to enter into this agreement largely for the reasons that we have stated previously. At this point we will just wait for the Board to rule and proceed from there. If you have any questions feel free to contact us.

Sincerely,

Lindsay Parker

From: Janicik, Douglas <DJanicik@steptoe.com>
Sent: Friday, January 8, 2016 11:15:04 AM
To: Hernandez, Irma; Parker, Lindsay
Cc: Wheelless, Steven; Feldman, Alan
Subject: Pico/Walmart

Hello Irma and Lindsay: Attached is a revised confidentiality agreement for your consideration, in the hopes that we may be able to resolve the parties' ongoing issues with confidentiality. Specifically, this proposed agreement would permit the Region to use confidential records produced in this case in other cases in which Walmart is a named Respondent; the prohibition on use in other cases would pertain to cases in which Walmart is not a party. The confidentiality agreement, however, would not apply to the 2 documents at issue in Walmart's Motion to Enforce Protective Order in the IWS case, which is pending before the Board.

This seems to us to be a reasonable compromise, as it is hard to imagine what interest the Region would have in using Walmart's confidential documents in cases in which Walmart is not a party.

Let us know if this agreement is acceptable. Thanks, and have a nice weekend.

Best,
Doug J.

EXHIBIT 5

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

WAL-MART STORES, INC.

Respondent,

**Case 16-CA-096240
16-CA-105873
16-CA-108394
16-CA-113087
16-CA-122578
16-CA-124099
21-CA-105401
26-CA-093558
13-CA-107343**

and

**THE ORGANIZATION UNITED FOR RESPECT
AT WALMART (OURWALMART),**

Charging Party.

**RESPONDENT WAL-MART STORES, INC.'S
MOTION TO ENFORCE PROTECTIVE ORDER AGAINST OURWALMART/UFCW**

FOR

**GEOFFREY CARTER, ADMINISTRATIVE LAW JUDGE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

The United Food and Commercial Workers International Union and its subsidiary OUR Walmart appear to have knowingly and intentionally violated Your Honor's Protective Order in the above-referenced case. Walmart asks you to (a) enter a cease-and-desist order, and, (b) absent some exculpatory explanation from the UFCW/OWM, order the UFCW/OWM to return all copies of the improperly disclosed Confidential documents to Walmart with an order precluding the UFCW/OWM from using, referencing, or relying on such documents in its post-hearing briefing or in any related-case.

On November 24, 2015, *Bloomberg Businessweek* published a lengthy article about Walmart and OURWalmart. [Tab A.] Leading up to the publication of that article, OURWalmart/UFCW knowingly and intentionally provided to the *Bloomberg Businessweek* reporter numerous documents produced by Walmart in the above-captioned litigation. [Tab A (“OUR Walmart... provided the documents to *Bloomberg Businessweek* after the judge concluded the case in mid-October.”).] At least two of those documents given by OURWalmart to the reporter are clearly marked Confidential and therefore subject to Your Honor's Protective Order, making the disclosure to the reporter a serious violation of Your Honor's Order.

First, Your Honor admitted a document entitled “Labor Relations Blitz/Black Friday 2012” as Charging Party EX 10, which Walmart marked and produced as Confidential. [Tab B.] In her article, the reporter cited text directly from that exhibit. [Compare Tab A (“work stoppages, mic checks, 1 post of a human chain, social media calls for boycotts and Sponsor a Striker for Black Friday food card program.”) and Tab B (“Work stoppages... Mic checks... 1 post of a human chain... Social media calls for boycotts... ‘Sponsor a Striker for Black Friday’ food card program.”).]

Second, Your Honor admitted a document entitled “U.S. Field HR Leadership Meeting – April 16, 2013” as GC EX 102. [Tab C.] The slides from that exhibit are clearly labeled as “Confidential.” In her article, the reporter cited information directly from GC EX 102. [Compare Tab A (“When global security heard that members of the Occupy movement might join the protests at corporate headquarters, they began working with the FBI Joint Terrorism Task Forces.”) and Tab C (“Shareholder’s Meeting – June 2-7, 2013... GISAT partnering with FBI/Joint Terrorism Taskforce on Occupy.”).] Further, the reporter confirmed to Walmart via e-mail that OURWalmart provided her the “Labor Relations Blitz/Black Friday 2012 Plan” and “US Field HR Leadership Meeting held in April 16, 2013” documents. [Tab D.] There is no dispute regarding how the reporter came to possess those Confidential documents.

Walmart requests that Your Honor enforce the Protective Order, which OURWalmart/UFCW appears to have intentionally ignored. Your Protective Order specifically states that “All Confidential Information shall be used only for the prosecution and/or defense of this action.” [Tab E.] Furthermore, the Protective Order “shall continue to be binding throughout and after the final disposition of this action.” [*Id.*]

OURWalmart and the UFCW violated the Protective Order when OURWalmart intentionally disclosed documents marked and designated confidential to the reporter. *See In re Biovail Corporation Securities Litigation*, 247 F.R.D. 69, 70 (S.D.N.Y. 2007) (party “obviously violated” a protective order where it disclosed confidential documents outside the context of the subject litigation). The Protective Order applies to prevent both the UFCW and OURWalmart from disclosing Confidential documents. [Tab E (“Confidential Information produced by Respondent shall be secured and maintained by the CGC and UFCW/OWM in a manner so as to avoid disclosure or dissemination of its contents to any person not identified in this Order or in a

manner not specifically authorized by this Order.”.)] The UFCW owns and controls OURWalmart as a matter of law, and therefore the UFCW necessarily bears responsibility for OURWalmart’s disclosure of the Confidential documents. [Tab F (“The UFCW has a subsidiary organization maintained in Washington DC named the Organization United For Respect at Walmart...”)]

OURWalmart/UFCW’s breach of the Protective Order comes hard on the heels of the CGC’s similar use of Confidential documents for purposes unrelated to this case. Walmart does not know if OURWalmart/UFCW conferred with the CGC before disclosing the Confidential documents to the reporter. Additionally, Walmart does not know if OURWalmart/UFCW further violated the protective order by providing additional Confidential documents to the *Bloomberg Business* reporter. Although the reporter informed Walmart that she received certain documents from OURWalmart/UFCW, she did not identify all documents received or provide the documents themselves to Walmart. In the article, the reporter described some of those documents in generic terms, and thus Walmart does not know if those documents are also Confidential. [Tab D (“emails about the Ride for Respect from Walmart...”)]

OURWalmart/UFCW’s disclosure of Confidential documents to *Bloomberg Business* ignores the plain language of Your Honor’s Protective Order. Ignoring your Order undermines the process by which parties to NRLB litigation cooperatively coordinate on Protective Orders without having to resort to the time-consuming and wasteful process of going to the federal courts for subpoena enforcement or the entry of protective orders. Based on the foregoing, Walmart requests that Your Honor enter the attached Order enforcing your Protective Order. [Tab G.]

Respectfully submitted this 9th day of December, 2015.

s/ Steven D. Wheelless

Steven D. Wheelless

Alan Bayless Feldman

STEPTOE & JOHNSON LLP

201 East Washington Street, Suite 1600

Phoenix, AZ 85004-2382

Attorneys for Wal-Mart Stores, Inc.

swheelless@steptoe.com

afeldman@steptoe.com

The foregoing filed electronically
this 9th day of December, 2015,
with the Division of Judges of the
National Labor Relations Board

ORIGINAL of the foregoing sent
via Federal Express this
9th day of December, 2015, to:

Honorable Geoffrey Carter
Division of Judges
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Copy of the foregoing sent
via Federal Express this
9th day of December, to:

Roberto Perez, Counsel for the General Counsel
David Foley, Counsel for the General Counsel
National Labor Relations Board
Region 16
819 Taylor Street, Room 8A24
Fort Worth, TX 76111-5906
roberto.perez@nlrb.gov
david.foley@nlrb.gov

Deborah Gaydos, Counsel
Joey Hipolito, Counsel
The Organization United for Respect (OUR Walmart)/UFCW
1775 K Street, NW
Washington, DC 20006-1521
dgaydos@ufcw.org
jhipolito@ufcw.org

s/ Elizabeth Alvarado _____

EXHIBIT 6

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

WALMART STORES, INC.

and

Cases	
	16-CA-096240
	16-CA-105873
	16-CA-108394
	16-CA-113087
	16-CA-122578
	16-CA-124099
	21-CA-105401
	26-CA-093558
	13-CA-107343

THE ORGANIZATION UNITED FOR
RESPECT AT WALMART (OUR
WALMART)

**ORDER GRANTING DECEMBER 9, 2015 MOTION TO ENFORCE
PROTECTIVE ORDER**

Background

On December 9, 2015, Walmart Stores, Inc. (Walmart) filed a motion to enforce the protective order in the case captioned above. In support of its motion, Walmart asserted that OUR Walmart and the UFCW (collectively, Charging Party) violated the protective order in this case by disclosing at least two confidential documents (Charging Party Exhibit 10 and General Counsel Exhibit 102) to a *Bloomberg Businessweek* journalist.

On December 23, 2015, the Charging Party filed its response to Walmart's December 9 motion.¹ The Charging Party did not deny Walmart's allegation that the Charging Party disclosed the two in question to a journalist, but asserted that (a) the documents were not in fact confidential; and (b) the documents are no longer subject to the protective order because they were admitted into the public record at an NLRB hearing and were not placed under seal.

¹ The General Counsel also filed a response to Walmart's motion, but did not take a position on Walmart's assertion that the Charging Party disclosed confidential documents in violation of the protective order.

Analysis

At the beginning of trial, the parties worked collectively to negotiate the terms of the protective order that I issued in this case. Each of the parties, including the Charging Party, agreed to the terms of the protective order. (See Transcript (Tr.) at 12-13; General Counsel Exhibit (Exh.) 1(ii).) I am inclined to hold the Charging Party to its agreement, barring some extenuating circumstances that may dictate otherwise.

Having reviewed the Charging Party's response to Walmart's motion to enforce the protective order, I do not see a basis to excuse the Charging Party from complying with the terms of the protective order that it agreed to. The Charging Party's argument that Charging Party Exhibit 10 and General Counsel Exhibit 102 are not in fact confidential is without merit. Both of those documents are marked as confidential, and to the extent that the Charging Party believed that the confidential labels were not warranted, the Charging Party should have raised that issue during trial (as called for in paragraph 5 of the protective order) when it or another party offered the exhibit into evidence. The Charging Party did not do so (see Tr. 5225-5226 (discussing General Counsel Exh. 102); Tr. 5284-5285 (discussing Charging Party Exh. 10)), and thus waived any objections that it might have raised about whether the exhibits were properly marked as confidential.

I also find that the Charging Party fails with its argument that the documents were no longer subject to the protective order once they were admitted into the record at trial (and not placed under seal). The protective order that the Charging Party agreed to does not contain such an exception, and to the contrary, states explicitly that throughout and after the final disposition of this case, any documents marked or designated as confidential "shall be disclosed only to the [ALJ] and the court reporter, the CGC, UFCW/[Our Walmart], and their staff, and witnesses who are testifying under oath . . . about Confidential Information." Based on the protective order, and in the absence of any contemporaneous objection by the Charging Party to the protective order applying to Charging Party Exhibit 10 and General Counsel Exhibit 102, Walmart reasonably expected that confidential documents would retain that status even if admitted into the evidentiary record during trial.² Compare *United Parcel Service*, 304 NLRB 693, 694 (1991) (finding that since the ALJ did not adequately extend the protective order beyond the date of his decision on the merits of the case, an attorney did not violate the protective order when he obtained a copy of a confidential document after the ALJ issued his decision and the case file was transferred to the Board's records unit).

² The cases that the Charging Party cited do not undermine my conclusion. (See Charging Party Response to Motion at 4-7 (discussing *Poliquin v. Garden Way, Inc.*, 989 F.2d 527 (1st Cir. 1993) and *Littlejohn v. Bic Corp.*, 851 F.2d 673 (1988)). Neither *Poliquin* nor *Littlejohn* involved a protective order with language that is comparable to the one in this case, much less an agreement to the protective order language that is comparable to the Charging Party's agreement here. See *Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 529 (1st Cir. 1993) (noting that the plaintiff, who was seeking to disclose materials that the defendant deemed confidential, objected to the terms of the protective order that the court issued); *Littlejohn v. Bic Corp.*, 851 F.2d 673, 676 (1988) (discussing a protective order that did not address whether confidential documents admitted into evidence at trial would remain confidential).

In sum, even though Walmart did not place the confidential documents under seal, the Charging Party was nonetheless bound to comply with the (non)disclosure terms of the protective order that it agreed to. The Charging Party violated the explicit terms protective order when it disclosed Charging Party Exhibit 10 and General Counsel Exhibit 102 to a journalist despite the fact that Walmart designated those two exhibits as confidential.

Remedy

In light of the violations of the protective order that I have found herein, I hereby direct the Charging Party to do the following:

1. Comply with the terms of the protective order in this case, including the terms of the protective order that identify the individuals and entities to whom documents that have been designated or marked as confidential documents may be disclosed; and
2. Prepare and file a document, **on or before January 22, 2016** (with courtesy copies provided to me and counsel for all parties) that: (a) lists each entity or individual to which the Charging Party has disclosed documents that are designated or marked as confidential documents in this case (including *Bloomberg Businessweek*, and excluding entities or individuals to whom disclosure is permitted under the terms of the protective order); and (b) for each such entity or individual listed in section (a), identifies (by exhibit number if available, or alternatively by document title and Bates number) the confidential documents that were disclosed.

IT IS SO ORDERED.³

Dated: January 15, 2016
Washington, D.C.



Geoffrey Carter
Administrative Law Judge

³ The parties should consult my final decision in this case to ascertain whether I set forth additional instructions or guidelines regarding how documents covered by the protective orders in this case shall be handled.