

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD, REGION 20**

WAL-MART STORES, INC.

And

THE ORGANIZATION UNITED FOR RESPECT AT WALMART,	Cases 12-CA-121109 12-CA-124847 16-CA-124905 20-CA-126824
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And

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION AND ORGANIZATION UNITED FOR RESPECT AT WALMART	20-CA-138553 32-CA-153782
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**WALMART’S PARTIAL MOTION TO DISMISS
“UNKNOWN EMPLOYEES” ALLEGATION/REMEDY REQUEST**

Introduction

In ¶ 7(e) of the First-Amended Consolidated Complaint (“FAC”), the Counsel for General Counsel alleges that Walmart “issued unexcused absences to employees who engaged in [strikes] (some of whom are known to the General Counsel . . . and *some of whom are unknown . . .*.)” At page 21 of the FAC, the CGC “seeks remedial relief for all employees, known *and unknown* to the General Counsel, who received unexcused absences for participating in the protected strikes listed above.” (Emphasis added.) In the CGC’s Opposition to Walmart’s Petition to Revoke or Modify the CGC’s subpoena duces tecum, the CGC describes such unknown employees as “potential discriminatees” and acknowledges that information about such potential discriminatees is “relevant to Respondent’s intermittent work stoppage defense.” The CGC also says that information about the potential discriminatees is relevant to the CGC’s nationwide remedy request.

But the CGC cannot obtain a remedy for such “unknown” individuals in any putative compliance proceeding because – as the CGC acknowledges – the merits of this case turn largely on the intricacies of the intermittent work stoppage doctrine, including the individual and varying actions and intentions of individual alleged or potential discriminatees. Those individual and varying inquiries preclude the CGC from meeting the Board’s “defined and easily identified class” standard for any such “unknown” alleged discriminatees as a matter of law. And that result works no injustice. The Region investigated this case for nearly two years. If it wanted to pursue claims for additional potential alleged discriminatees, the Region had ample opportunity. It chose not to. Given the complex, nuanced, and particularized nature of this case, the CGC cannot now simply add an unknown number of additional potential discriminatees (at least 195 according to the CGC) with a one sentence “unknown employees” allegation in the FAC.

Walmart requests that the Board (or ALJ Sotolongo) dismiss the “unknown employees” allegation and remedy request for failure to state a claim as a matter of law.

Procedural Background

The FAC alleges that Walmart administered some attendance-related action “because [an alleged discriminatee] engaged in the [strike] conduct described above” [See, e.g., ¶¶ 8(f), 10(d), 11(d), 13(d), etc. (emphasis added).] In the CGC’s subpoena duces tecum (SDT), the CGC defines the “stores at issue” and “alleged discriminatees” as including approximately 40 stores and “numerous” associates (Walmart’s term for employees) unrelated to any alleged discriminatee named in the Complaint. [See SDT ¶¶ 12, 14, Tab A.] In the CGC’s Opposition to Walmart’s Petition to Revoke or Modify

(“Opp.”), the CGC refers to such “unknown” employees as “numerous discriminatees” (p.14) and “potential discriminatees that are not currently known to the General Counsel.” [Opp. 36, 38, 40, 42, 44, Tab B.] The CGC acknowledges at page 16 of the Opposition that the CGC actually *does* know the identity of nearly 200 such “potential discriminatees”; explaining that “the General Counsel has agreed to provide Respondent with a list of [195] employees the General Counsel believes participated in the strikes at issue to facilitate its search for records for the unfair labor practice hearing.” [See CGC cover email and list, Tab C.]

The CGC claims that information about “unknown” (but actually known) “potential discriminatees” is relevant because: (1) “This case does not involve a typical union organizing campaign where employees are seeking representation from a single union. Rather, it is a nationwide corporate campaign seeking to promote change at Walmart without a representational objective. It involves not only a traditional union (UFCW), but also a grassroots organization comprised of Respondent’s employees and other interested parties (OURWalmart)” [Opp. 15]; (2) “Again, the Complaint alleges that there are potential discriminatees not known to the General Counsel but likely known by Respondent, and therefore the request is not limited to the defined ‘alleged discriminatees.’ The requested records are again relevant to show that the strikes were not designed to harass Respondent, a massive corporation with hundreds of stores and millions of employees, into a state of confusion, an element of its intermittent work stoppage defense” [Opp. 36]; (3) “Production should not be limited to alleged discriminatees, as the Complaint alleges that there are likely more discriminatees not

currently known to the General Counsel, but known to Respondent. Subsection (e) is again relevant to Respondent’s intermittent work stoppage defense.” [Opp. 38, 44, 46 - 47.]

The CGC further asserts that information about purportedly unknown potential discriminatees is relevant to support the CGC’s request for a nationwide remedy. In the CGC’s SDT ¶¶ 5, 6, 7, the CGC broadly requests “attendance tracking information” including for numerous stores and associates not identified in the FAC. In the CGC’s response to Walmart’s objection to the scope of those requests, the CGC states that such information “is further relevant to support the General Counsel’s argument that the strikes were not designed to ‘harass the company into a state of confusion,’ one of the elements of Respondent’s legal defense that the strikes were unprotected intermittent work stoppages. . . . It also supports the General Counsel’s request for a broad Order, to the extent the attendance system and policies apply nationwide. . . . The General Counsel’s definitions of ‘Stores at Issue’ and ‘Alleged Discriminatees’ [to include unknown potential discriminatees] are relevant and appropriate.” [Opp. 26-28.]

Then, despite the CGC’s assertion that “unknown” potential discriminatees are relevant to the merits of the claims in this case, the CGC tries to dodge responsibility for actually proving those claims, noting simply that “[s]hould the General Counsel prevail on the merits, it will request during the compliance stage that Respondent conduct a search for [purportedly unknown] employees who provided strike notices and received unexcused absences for going on strike.” [Opp. 15.] That attempt to shortcut due process fails under well-established Board law.

Argument

I. THE BOARD RECOGNIZES THE DUE PROCESS PROBLEMS ARISING FROM CLAIMS FOR “UNKNOWN” EMPLOYEES.

As a general proposition, the Board does not allow the CGC to seek a remedy for unidentified employees in compliance as a matter of basic due process. For example, in *American Postal Workers*, 250 NLRB 761 (1980), a union “caused the Company to discriminate with regard to employment conditions” against employees who refused to join the union. *Id.* at 765. The Board approved of a remedy for employees for whom there was “evidence in the record . . . [of] lost benefits as a result of Respondent’s unlawful policy.” *Id.* at 761 n.1. However, the Board rejected “the General Counsel’s contention that ‘other employees’ should be included in the make-whole remedy”; holding that “the inclusion of a remedy for employees who were not named in the complaint and whose status was not litigated at the hearing is in the instant case contrary to established Board precedent and enables the General Counsel to engage in an unwarranted fishing expedition at the compliance stage of the proceeding.” *Id.*

Similarly, in *H. & F. Binch Co.*, 188 NLRB 720, 722 (1971), *enfd.* 456 F.2d 357 (2d Cir. 1972), the Board adopted the ALJ’s findings that the employer violated the Act by failing to reinstate identified economic strikers who offered to return to work and whom the employer had not permanently replaced. But the Board rejected the Trial Examiner’s suggestion that “his remedial order may properly encompass an unspecified number of individuals not named in the complaint, but who may, in the course of

compliance proceedings, be found to occupy the same status as the employees so specifically named.” *Id.* at 726. “[T]he General Counsel chose to complain only about Respondent’s failure to reinstate 34 named strikers, and we believe that, in the interest of fairness, the remedy must be limited accordingly.” *Id.*

II. THE BOARD ALLOWS RELIEF FOR UNKNOWN EMPLOYEES ONLY IN VERY NARROW CIRCUMSTANCES.

“The Board has [nevertheless] ordered remedial relief to unnamed individuals similarly situated to discriminatees in a *limited* number of cases in which it found sufficient evidence to establish widespread discrimination against a *defined and easily identified class*,” where “unnamed discriminatees could be easily identified by a *single, readily ascertainable, and definitive* trait, most often the absence of membership in a particular labor organization. The line for determining who is in or out of such a class is *crisp and clear*.” *Heavy and Highway Construction Workers Local Union No. 158*, 280 NLRB 1100, 1101 (1986) (emphasis added).

In that case, unhappy union members (“dissidents”) filed an unfair labor practice charge against their leaders related to job referrals, and the Region issued a Complaint alleging that the union leaders “discriminatorily refused to refer nine named individuals and ‘other employees’ because of their intraunion politics and protected concerted activities.” *Id.* The Board agreed with the ALJ’s finding of unlawful discrimination “with respect to the named individuals who have been discriminated against,” but rejected the ALJ’s proposed remedy for “other unnamed individuals [who] may have suffered similar discrimination . . . by reason of their intra-union political or concerted activity.” *Id.* The

Board rejected that proposed remedy because the CGC failed to establish a “defined and easily identified class” of discriminatees that “could be easily identified by a single, readily ascertainable, and definitive trait,” such that “determining who is in or out of such a class is crisp and clear.” *Id.* The Board explained: “In general, dissidents are defined by the course of action they choose. These actions vary in kind and degree, as well as impact, and these variables, rather than any single objective measure, determine the response of the affected party. For these reasons, we find intraunion political dissidents do not form a definite group, identifiable by a single characteristic which easily separates them from others. In the absence of such a quantifiable characteristic, we are unable to find that the discriminatees in this case constitute a class or that discrimination on a classwide basis occurred.” *Id.*

Similarly, in *Communications Workers of America (AT&T Midwest and The Ohio Bell Telephone Co.)*, 359 NLRB No. 131 (2013), the Board dealt with a situation where an employee alleged that the union interfered with her NLRA rights and those of others similarly situated (but unnamed) by requiring would-be *Beck* objectors to assert their objection annually. *Id.* at *1. The Board agreed as to the individual named in the Complaint and agreed that no remedy could run to unnamed other employees. The Board explained: “[T]he Board extends remedies to individuals not named in the complaint only when the General Counsel has proven unlawful conduct against a defined and easily identifiable class of similarly situated employees. See *California Saw & Knife Works*, supra, 320 NLRB at 254. No such class exists here because it is impossible to determine whether employees who failed to renew their objections intended a continuing objection

or simply changed their minds about remaining objectors. See *Electrical Workers Local 357 (Newtron Heat Trace)*, 343 NLRB 1486, 1488 (2004) (declining to award relief to unnamed discriminatees where the determination would depend primarily on ‘a putative discriminatee’s state of mind’), review dismissed sub nom. *Cieklinski v. NLRB*, 224 Fed.Appx. 727 (9th Cir. 2007), cert. denied 552 U.S. 951 (2007).” *Id.* at *3 n.7 (emphasis added).

Likewise, in *Newtron Heat Trace*, the Board affirmed the ALJ’s finding that the Respondent union violated the Act by restraining and coercing three members of a sister union (“travelers”) into surrendering job referrals to the union’s members. 343 NLRB 1486, 1486 (2004). However, the Board rejected the ALJ’s proposal to extend remedial relief to other unnamed sister union members to be identified in “the compliance stage of this matter.” *Id.* The Board explained: “Where affected persons remain unidentified at the conclusion of the unfair labor practice hearing, the Board sometimes requires the respondent to make them whole, deferring their identification to compliance proceedings. However, the Board will order the respondent to make whole such unidentified persons only where they constitute a ‘defined and easily identified class.’ *Electrical Workers Local 48 (Oregon-Columbia NECA)*, 342 NLRB 101, 110 (2004).” *Id.* (emphasis added). The Board found “that there is no ‘defined and easily identified class’ sufficient to warrant a broader make-whole order” because to establish liability in the first instance “a traveler had to (1) know of the coercive conduct, (2) decline a referral after learning of the coercive conduct, and (3) be motivated by the coercive conduct. Although the record establishes that the named discriminatees met all three of these requirements, there is no

evidence that any other traveler met any of them. Indeed, with regard to whether a traveler's decision to decline a referral was motivated by the coercive conduct, the evidence affirmatively shows that travelers regularly declined referrals in favor of local members even in the absence of coercive conduct. In short, there is no crisp, clean line of demarcation separating the coerced from the uncoerced among the travelers who declined referrals in favor of local members. The fact that the class definition is not a 'single, readily ascertainable, and definitive trait' or a 'single objective measure' argues against providing a make-whole remedy for the unidentified travelers. *Laborers Local 158 (Contractors of Pennsylvania)*, *supra*, 280 NLRB at 1101. For these reasons, we find that the unidentified travelers who may have lost job opportunities as a result of the Respondent's coercive conduct do not constitute a 'defined and easily identified class.'" *Id.* at 1486-87.

III. THE CGC CANNOT MEET THE BOARD'S "DEFINED AND EASILY IDENTIFIED CLASS" STANDARD HERE AS A MATTER OF LAW.

As described above, the CGC acknowledges that this is not "a typical" case, but, instead, involves "a nationwide corporate campaign seeking to promote change at Walmart without a representational objective. It involves not only a traditional union (UFCW), but also a grassroots organization comprised of Respondent's employees and other interested parties (OURWalmart)." Further, the CGC acknowledges that the main "attendance policy" issue in the case turns on the application of the United States Supreme Court's and the Board's intermittent work stoppage doctrine to the facts of this case. That doctrine is anything but "crisp and clear."

To determine the complex IWS issues in this case, the ALJ will necessarily need to address a host of particularized and individual-specific questions. For example:

- Were the acknowledged work stoppages in this case (and the many that came before in 2012 and 2013) part of a coordinated plan or scheme of repeated striking for a common plan or purpose?
- What were the relative roles of the UFCW, OURWalmart, and individual alleged or potential discriminatees in conceiving, planning, coordinating, conducting, and participating in the series of strikes?
- Did the individual alleged or potential discriminatee actually engage in a work stoppage (Employed? Leave work?)?
- If so, how many strikes did each alleged or potential discriminatee participate in?
- For each:
 - Did the individual alleged or potential discriminatee know about an overall plan/scheme?
 - What was the individual alleged or potential discriminatee's understanding of the intent of the overall plan/scheme?
 - Did the individual alleged or potential discriminatee demonstrate his or her intent to participate in the coordinated plan/scheme?
 - Did the individual alleged or potential discriminatee withhold his or her labor for a protected reason?
 - Did the individual alleged or potential discriminatee withhold his or her labor for a concerted reason?
 - When did the individual alleged or potential discriminatee leave and when did he or she come back (*i.e.*, what was the duration and frequency of the work stoppage(s) during each work stoppage "cycle")?
 - Did the individual alleged or potential discriminatee give notice to the Company about the work stoppage?

- When did the individual alleged or potential discriminatee give such notice, if any, relative to any application of the attendance policy?
- Did the Company take any attendance-related action against each individual alleged or potential discriminatee?
- If so, did the individual alleged or potential discriminatee engage in protected activity that Walmart knew about for which Walmart had animus and, if so, would Walmart have taken the same action anyway?
- Did the individual alleged or potential discriminatee make an unconditional offer to return to work after an earlier strike that was part of the same plan/scheme?

As noted above, the CGC asserts that Walmart must also establish “disruption,”

which necessarily begs the following individual-specific questions:

- Did the individual alleged or potential discriminatee’s absence disrupt operations in each one’s respective department at each affected store?
- Did the individual alleged or potential discriminatee help conceive, plan, coordinate, conduct, and/or participate in contemporaneous and strike-related demonstrations that disrupted store operations?

See, e.g., Swope Ridge Geriatric Center, 350 NLRB 64, 68 & n.8 (2007); *National Steel & Shipbuilding Co.*, 324 NLRB 499, 523-24 (1997); *New Fairview Hall Convalescent Home*, 206 NLRB 688, 747 (1973); *Polytech, Inc.*, 195 NLRB 695, 696 (1972); *Pacific Telephone and Telegraph Co.*, 107 NLRB 1547, 1549 (1954); *Honolulu Rapid Transit Co., Limited*, 110 NLRB 1806, 1807-11 (1954); *NLRB v. Blades Manufacturing Corp.*, 344 F.2d 998, 1005 (8th Cir. 1965).

Then, of course, the CGC cannot rely on the mere existence of *potential* alleged discriminatees to support the CGC’s nationwide remedy request at the merits stage

because there would be no determination that any of the *potential* discriminatees were *actual* discriminatees. The CGC puts the cart before the horse.

Thus, under the authority cited above, the CGC cannot – as a matter of law – establish a “defined and easily identified class” of discriminatees that “could be easily identified by a single, readily ascertainable, and definitive trait,” such that “determining who is in or out of such a class is crisp and clear.” As described above, there are many, varying factors – including some that are impossible to determine without an inquiry into the alleged or potential discriminatee’s motives, state of mind, or intent – that must be addressed and answered for each individual for whom relief is sought. Here, unlike “standard” or “typical” cases, the alleged or potential discriminatees are largely “defined by the course of action they cho[]se,” as it relates to the IWS doctrine, and such actions “vary in kind and degree, as well as impact, and these variables, rather than any single objective measure, determine the response of the affected party.”

Accordingly, the CGC suggestion that the ALJ can define a class of alleged discriminatees as simply those “employees who provided [inadmissible hearsay] strike notices and received unexcused absences for going on strike [a fact impossible to determine simply from an ‘occurrence’ report]” might be stretched to cover a “typical” case, but the CGC admits – as the CGC must – that this case is anything but typical.

Conclusion

Walmart respectfully requests that the Board (or ALJ Sotolongo) dismiss the “unknown employee” allegation and related remedy request for the foregoing reasons.¹

Respectfully submitted this 22nd day of December, 2016.

STEPTOE & JOHNSON LLP

By /s/ Alan Bayless Feldman

Steven D. Wheelless
Alan Bayless Feldman
201 E. Washington Street, Suite 1600
Phoenix, Arizona 85004-2382

Attorneys for Wal-Mart Stores, Inc.

¹ Walmart does not dispute that the CGC gives notice in the FAC of the CGC’s intent to seek relief for unnamed associates. Thus, should the Board/ALJ not dismiss the “unknown employees” allegation and remedy request, Walmart will necessarily defend against the embedded “defined and easily identified class” and discrimination allegations as well as the nationwide remedy request related to known “unknown employees.” *See, e.g., International Brotherhood of Boilermakers*, 253 NLRB 747, 747 (1980), *enfd.* 676 F.2d 687 (3rd. Cir. 1982) (“The amended charges and consolidated complaint in this proceeding allege that ‘employees who are not members’ and ‘applicants for employment who were not members,’ respectively, suffered discrimination. Thus, contrary to Respondent’s claim, these documents put Respondent on notice that nonmember applicants in general, and not merely the Charging Parties, were alleged to have suffered discrimination. Further, the nature of the evidence adduced at the hearing, which was held over a 2-month span, again put Respondent on notice that the General Counsel was alleging that Respondent’s referral system was structured so that it inherently favored members over nonmembers who sought referral through Respondent’s hiring hall. Throughout the hearing, Respondent had every opportunity to address the allegations that the structure of its referral system resulted in discriminatory treatment of nonmember applicants generally.”).

ORIGINAL of the foregoing efiled with
the Executive Secretary of the National
Labor Relations Board this 22nd day of
December, 2016, to:

Gary Shinnars
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

COPIES of the foregoing sent via email
this 22nd day of December, 2016 to:

Joseph F. Frankl, Regional Director
Jill Coffman, Regional Attorney
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/s/ Elizabeth Alvarado

TAB A



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlr.gov
Telephone: (415)356-5130
Fax: (415)356-5156

Agent's Direct Dial: (628) 221-8836

November 9, 2016

Wal-Mart Stores, Inc.
Attn: Custodian of Records
702 SW 8th St.
Bentonville, AR 72716

Re: Wal-Mart Stores, Inc.
Case 12-CA-121109, et al.

Dear Custodian of Records:

On November 1, 2016, the Region issued to you subpoena duces tecum B-1-U4SCW5, which inadvertently omitted Respondent's contact information. Enclosed is a subpoena duces tecum that is identical to the aforementioned subpoena and includes Respondent's contact information. The enclosed subpoena duces tecum has been served on you requiring production of certain items in connection with the hearing in the above matter that is scheduled for 9:00 AM on January 30, 2017 at E.V.S. Robbins Courtroom 901 Market St, Suite 306 SAN FRANCISCO, CA. Please be prepared to testify regarding the search for and production of the requested documents, if necessary.

If you have any questions, please contact Respondent's attorneys, Steven D. Wheelless and/or Alan Bayless Feldman of Steptoe & Johnson, LLP.

Very truly yours,

/s/ Jason Wong

JASON P. WONG
Field Attorney

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

To WAL-MART STORES, INC., ATTN: CUSTODIAN OF RECORDS
702 SW 8th ST., BENTONVILLE, AR 72716

As requested by JASON P. WONG, Counsel for General Counsel

whose address is 901 Market Street, Suite 400, San Francisco, CA 94103-1738
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
 of the National Labor Relations Board

at E.V.S. Robbins Courtroom, 901 MARKET ST, STE 306

in the City of SAN FRANCISCO, CA

on Monday, January 30, 2017 at 9:00 AM or any adjourned

or rescheduled date to testify in Wal-Mart Stores, Inc.
12-CA-121109, et al.
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-U8CNN5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at San Francisco, CA

Dated: November 09, 2016



Paul H. Rouse
 Chairman, National Labor Relations Board

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

**ATTACHMENT
DEFINITIONS AND INSTRUCTIONS**

1. **"Document"** or **"Documents"** means all written, recorded, and graphic materials and all electronic data of every kind in the possession, custody, or control of the Respondent. The term "documents" includes electronic correspondence, drafts of documents, metadata, embedded, hidden, and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems, and all duplicates of documents (whether or not identical) in the files of or in the files maintained on behalf of all directors, officers, managers, or other supervisory employees, duplicates of documents in all other files that are not identical duplicates of the originals, and duplicates of documents for which the originals are not in the possession, custody, or control of the Respondent. The term "documents" includes spreadsheets, as well as underlying cell formulae and other codes, electronic mail messages and other documents and data stored in, or accessible through, computer or other information retrieval systems, such as personal computers, portable computers, workstations, minicomputers, personal data assistants, archival voice storage systems, group and collaborative tools, electronic messaging devices, portable or removable storage media, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of online or offline storage, whether on or off company premises. Unless otherwise specified, the term "documents" excludes bills of lading, invoices in nonelectronic form, purchase orders, customs declarations, and other similar documents of a purely transactional nature unless specifically requested and also excludes architectural plans and engineering blueprints.
2. "Related to" or "showing" means concerning, referring to, reflecting, supporting, prepared in connection with, used in preparation for, pertaining to, having any relationship to, evidencing or constituting evidence of, or being in any way legally, logically, or factually connected with the matter discussed, in whole or in part.
3. "Correspondence" includes, but is not limited to, written, electronic, or oral letters, memoranda, notes, recordings of telephone conversations or personal conversations, reports, e-mail, and interoffice communications.
4. "Communications" means any oral or written exchange of words, speeches, correspondence of any nature, thoughts or ideas to another person(s), whether person-to-person, in a group, by telephone, letter, facsimile transmission, e-mail, text message or by any other process, verbal, written, electronic, or otherwise.
5. "Knowledge" includes first-hand information and any information derived from any source, including through hearsay.
6. "Respondent" refers to Wal-Mart and all of its subsidiaries, including, but not limited to, Wal-Mart Stores, Inc., Walmart Associates, Wal-Mart Stores East, L.P., Sam's West, Inc., Sam's East, Inc., Sam's Real Estate Business Trust, Walmart.com USA, LLC, Wal-Mart Property Company, and Wal-Mart Real Estate Business Trust.

7. "OUR Walmart" refers to the Organization United for Respect at Walmart.
8. "UFCW" refers to the United Food & Commercial Workers International Union, AFL-CIO, and all of its locals and subsidiaries.
9. "Strike" or "strikes" for the purposes of this subpoena only shall refer to a concerted refusal in the course of employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services. As defined herein, "strike" or "strikes" is intended to encompass any concerted employee work stoppage, including, but not limited to, employee work stoppages that Respondent may contend constitute unprotected intermittent work stoppages or strikes, hit-and-run work stoppages or strikes and/or one-shift work stoppages or strikes.
10. "Discipline" or "disciplinary" means any form of documented personal discussion, coaching, reprimand, warning (written or verbal), "Decision Day/D-Day," suspension, termination, exit interviews for terminations, or other form of discipline or punishment issued to an employee.
11. "Respondent's facilities" means all of Respondent's facilities in the United States.
12. "The stores at issue" refers to the following stores: 2110 (Paramount, CA), 3086 (Los Angeles, CA), 2401 (Duarte, CA), 2989 (Fremont, CA), 3133 (La Puente, CA), 1805 (La Quinta, CA), 2960 (Los Angeles, CA), 2119 (Milpitas, CA), 2280 (Mountain View, CA), 1832 (Palm Springs, CA), 2886 (Pico Rivera, CA), 2418 (Placerville, CA), 5154 (Rosemead, CA), 2735 (Sacramento, CA), 5434 (San Leandro, CA), 2948 (Santa Fe Springs, CA), 2031 (Union City, CA), 5334 (Aurora, CA), 2752 (Commerce City, CO), 0771 (Merritt Island, FL), 3311 (Miami Gardens, FL), 3397 (Miami Gardens, FL), 3235 (North Miami Beach, FL), 1960 (Tampa, FL), 5036 (Tampa, FL), 5132 (Winter Springs, FL), 5965 (Chicago, IL), 5645 (Chicago, IL), 5781 (Chicago, IL), 5485 (Evergreen Park, IL), 5404 (Holbrook, IL), 2828 (Milwaukee, WI), 1102 (Baker, LA), 3288 (Baton Rouge, LA), 0386 (Jennings, LA), 2642 (Apple Valley, MN), 5625 (Brooklyn Center, MN), 2175 (Branson West, MO), 1521 (Cincinnati, OH), 2447 (Cincinnati, OH), 4609 (Cincinnati, OH), 1504 (Dayton, OH), 3783 (Dayton, OH), 1772 (Klamath Falls, OR), 2059 (Greensburg, PA), 5416 (Arlington, TX), 896 (Grand Prairie, TX), 2571 (Federal Way, WA), 2596 (Mt. Vernon, WA), 2594 (Seattle, WA), 5129 (Landover Hills, MD), 1985 (Laurel, MD), 1430 (Oshkosh, WI), 5331 (Phoenix, AZ), 2291 (Chula Vista, CA), 6616 (Fullerton, CA), 4488 (Marina, CA), 1747 (Perris, CA), 5154 (Rosemead, CA), 3617 (Orlando, FL), 968 (Winter Haven, FL), 3601 (Crestwood, IL), 1167 (Kenosha, WI), 2668 (Sturtevant, WI), 469 (Lake Charles, LA), 5278 (Chicopee, MA), 2683 (Hadley, MA), 2174 (Westfield, MA), 1875 (Severn, MD), and 821 (Clovis, NM).
13. "The markets, regions and districts at issue" refers to markets, regions and districts which encompass the stores at issue.
14. "Alleged discriminatees" or "each alleged discriminatee" refers to employees (a.k.a associates) Adela Antunez, Meiasha Bradley, Angelo Escano, Qulima Knapp, Maria Ledezma, Jimmy Lozano, Michael Ortiz, Michael Randall, Nancy Reynolds, Delfina Alfonso, Claudia Arroyo, Phil Bekech, Graciela Blancas, Candy Breckling, Candy Bridgers,

Rosalinda Buscit, Evelin Cruz, Edward Daguioan, Cantare Davunt, Emily Dehart, Aubrietia Edick, Angelo Escano, Tyfanni Faulkner, Matt Gauer, Charmaine Givens-Thomas, LindaHaluska, Dorothy Halvorson, Chris Haros, Shannon Henderson, Jessica Holstein, Margaret Hooten, Kianna Howard, Linda Jackson, Maria Jefferson, Megan Jenkins, Marie Kanger-Born, Maria Ledezma, Allison Livengood, Young Manley, Pamela Marley, Victoria Martinez, Daniel Miller, Tim Montague, Paula Nez, Victoria Nogueta, Ismael Nunez, Mark Olean, Shantell Pearson, Zandi Queener, Nancy Reynolds, Jessica Sanchez, Conrado Santiago, Denise Schortgen, Martha Sellers, Tatiana Simmons, Lyle Skeen, Janet Sparks, Maria Sumagaysay, Jared Surdam, Tristin Weaver, Jennifer Whitley, Nefertira Wilbert, Jessica Williams, Montreissa Williams, Christina Wilson, Charles Wolford.

15. "Complaint" refers to the First Amended Consolidated Complaint that issued in this proceeding on November 1, 2016, and/or any subsequent amendments to said Complaint.
16. Whenever used in this subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to parties shall be deemed to include any and all of their owners, officers, agents and representatives; the masculine shall be deemed to include the feminine and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and" and vice versa; and each of the words "each," "any," "every," and "all" shall be deemed to include each of the other words.
17. Documents produced shall be complete and, unless privileged, unredacted, submitted as found in the company's files (e.g., documents that in their original condition were stapled, clipped, or otherwise fastened together, or maintained in separate file folders, shall be produced in such form). Documents submitted shall be produced in the order in which they appear in the company's files and shall not be shuffled or otherwise rearranged.
18. This subpoena is intended to cover all documents that are in the possession, custody, or control of Respondent, its present or former managers, supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with, Respondent, or its parent corporations, subsidiaries, or other related companies and agencies.
19. If any of the requested documents cannot be produced in full, then they should be produced to the extent possible, with specification as to Respondent's reasons for the inability to produce the remainder, stating whatever information, knowledge or belief Respondent has concerning the unproduced portion.
20. If any document responsive to any request herein was, but no longer is, in your possession, custody or control, identify the document (stating its date, author, subject, recipients and intended recipients); explain the circumstances by which the document ceased to be in your possession, custody or control, and identify (stating the person's name, employer title, business address and telephone number, and home address and telephone number) all

persons known or believed to have the document or a copy thereof in their possession, custody or control.

21. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons, identify the document (stating its date, author, addressee(s), recipients and intended recipients, title and subject matter); explain the circumstances surrounding the destruction, discarding or disposal of the documents, including the timing of the destruction, discharging or disposal of the document, and identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.
22. All documents produced pursuant to this subpoena are to be organized by the numbered subpoena paragraph or paragraphs and subparagraphs to which each document or set of documents is responsive, clearly identify all subpoena paragraphs to which the documents are responsive, be segregated by store, and otherwise be produced as kept in the usual course of business.
23. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The NLRB considers "reasonably usable" productions of ESI to consist of ESI rendered to TIFF or PDF format (discussed below), accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Concordance or a similar review platform). Unless otherwise agreed, the load file should contain: a unique identifier (i.e., Bates number) for each item, custodian, source device, source and folder path, production path, modified date, modified time, to, from, cc, bcc, date sent, time sent, subject, date received, time received and attachment information (i.e., attachment names and separate fields listing the beginning and ending bates ranges of attachments). Where available, message ID and thread ID should also be produced. The General Counsel is open to discussing alternative forms of production, and can provide additional load file specifications upon request.
24. All images, paper documents scanned to images, or rendered ESI, shall be produced as 300 dpi single-page TIFF files, CCITT Group IV (2D Compression). Documents should be uniquely and sequentially Bates numbered with an endorsement burned into each image. All TIFF file names shall include the unique Bates number burned into the image. Each Bates number shall be a standard length, include leading zeros in the number, and be unique for each produced page. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed "as kept in the ordinary course of business" state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.
25. All hidden text (e.g. track changes, hidden columns, mark-ups, notes) shall be expanded and rendered in the image file. For files that cannot be expanded the native files shall be produced with the image file. All non-graphic embedded objects (Word documents, Excel spreadsheets, .wav files, etc.) that are found within a file shall be extracted and

produced. For purposes of production the embedded files shall be treated as attachments to the original file, with the parent/child relationship preserved.

26. Respondent shall identify, collect, and produce any and all data which is responsive to this subpoena which may be stored in audio or video recordings, cell phone/PDA/Blackberry/smart phone data, tablet data, voicemail messaging data, instant messaging, text messaging, conference call data, video/audio conferencing (e.g. GoTo Meeting, WebEx), and related/similar technologies. However, such data, logs, metadata or other related files, as well as other less common but similar data types, shall be produced after consultation with and written consent of the General Counsel about the format for the production of such data. Prior to any production of responsive data from Social Media (e.g., Twitter, Facebook, Google+, LinkedIn, etc.) Respondent shall first discuss with the General Counsel the potential export formats before collecting the information.
27. De-duplication of exact copies within a custodian's data may be performed, but all "filepaths" must be provided for each duplicate document. Respondent shall not use any other procedure to cull, filter, group, separate or de-duplicate, etc. (i.e., reduce the volume of) responsive material before discussing with and obtaining the written approval of the General Counsel.
28. If Respondent uses or intends to use software or technology to identify or eliminate potentially responsive documents and information produced in response to this subpoena, including but not limited to search terms, predictive coding, near-deduplication, deduplication, and email threading, Respondent must provide a detailed description of the method(s) used to conduct all or any part of the search. If search terms will be used, in whole or in part, to identify documents and information that are responsive to this subpoena, provide the following: (1) a list of the proposed search terms; (2) a word dictionary or tally list of all the terms that appear in the collection and the frequency with which the terms appear in the collection (both the total number of appearances and the number of documents in which each word appears); (3) a glossary of company (including any code words related to the underlying issues); (4) a description of the search methodology (including the planned use of stem searches and combination (or Boolean) searches); and (5) a description of the applications that will be used to execute the search.
29. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that has not been provided.
30. This subpoena does not seek documents or communications (or portions of such matters) that Respondent concludes must be withheld because they are covered by the attorney-client

privilege or work product doctrine. For any document withheld on a claim of privilege and/or under the work-product doctrine, identify the date, author, recipients, title, general nature of the document of communication, privilege claimed, and the factual or other basis for Respondent's belief that all the necessary elements for the privilege or protection applies. If any of the requested documents in whole or in part are not produced because they are deemed subject to such protections, the description of the nature of the document not produced or disclosed should be such that, without revealing information itself privileged or protected, will enable the assessment of the applicability of the privilege or protection.

31. Unless otherwise stated, each item requested in this subpoena covers the period of time from **January 1, 2013, to the date of testimony** in the instant case(s). This period is sometimes referred to in the subpoena as the "relevant period." The subpoena requests are continuing in nature and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.
32. This subpoena does not seek medical information, tax information, banking information, social security numbers, home addresses, or home phone numbers, which should be redacted from all documents produced.

DOCUMENTS TO BE PRODUCED

1. Organizational charts for each of the stores at issue.
2. To the extent not produced in response to Request No. 1, for each of the stores at issue, documents that describe the top-to-bottom hierarchy and structure of Respondent's staffing composition.
3. Employee handbooks applicable to Respondent's employees employed at the stores at issue.
4. To the extent not included in the employee handbooks, documents applicable to Respondent's employees employed at the stores at issue that describe Respondent's policies, procedures, and practices related to:
 - a. The discipline of employees, including but not limited to, progressive discipline, disciplinary policy documents provided to employees, disciplinary policy documents and guidelines provided to managers, and documents explaining the Employer's disciplinary tracking computer systems, and the effective dates;
 - b. Attendance and punctuality;
 - c. Covering absences;
 - d. Hazardous materials;
 - e. Off-duty employee access to Respondent's facilities;
 - f. Dress codes and the wearing of buttons or stickers;
 - g. Open door meetings;
 - h. Inappropriate or unprofessional behavior
 - i. Poor customer service
 - j. Labor relations or unionization;
 - k. Strikes and other forms of work stoppages; and
 - l. Any other policies or practices which Respondent asserts served as a basis for disciplining and discharging the following employees:
 - i. Victoria Martinez [Store No. 2886-Pico Rivera]

- ii. Evelin Cruz [Store No. 2886-Pico Rivera]; and
 - iii. Cantare Davunt [Store 2642; Apple Valley].
5. For each of the stores at issue, documents describing Respondent's attendance tracking computer systems and alert systems applicable to Respondent's employees.
 6. For each of the stores at issue, documents describing Respondent's work scheduling system(s), including, but not limited to, the SMART system, labor guidelines, and formulas and metrics applicable to Respondent's employees.
 7. For each of the stores at issue, documents describing Respondent's absence call-in procedures, including but not limited to, utilization of the Associate Information Line and/or an absence call-in phone line, Interactive Voice Response (IVR) Systems and/or an automated computer system, confirmation code numbers, instructions as to choice of codes, instructions on what to do when no manager answers, instruction on documenting the Daily Associate Attendance Call-In Logs and leaving-work-notice policies, and the effective dates, applicable to Respondent's employees.
 8. For each of the stores at issue, copies of all videos, pamphlets, training material, slide shows, and other displays shown to employees which reference unions, UFCW, or OUR Walmart.
 9. For each of the stores at issue, all notices, letters, or other documented communication Respondent received from its employees reflecting their intent to participate in the following strikes:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.
 10. To the extent not provided in response to Request No. 9, for each of the stores at issue, all notices, letters, newspaper articles, internet postings, labor relations reports, hotline reports, emails, communications with UFCW or OUR Walmart, and other documents Respondent obtained in advance of the following strikes that indicated that the following strikes were being planned, accompanied by documents showing the date on which the documents were obtained:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

11. To the extent not provided in response to Request Nos. 9 or 10, for the stores at issue, all lists of employees respondent knew or suspected were planning to or did go on strike during the following strikes:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

12. For each of the stores at issue, all communications, memoranda, and other documents relating instructions to managers, supervisors, or agents regarding how to respond to strikes, how to treat strike-related absences, or how to communicate with employees regarding strikes, including, but not limited to playbooks, potential demonstration checklists, labor relations manager's toolboxes, labor relations bulletins, labor relations training modules and videos, facility manager instructions, talking points, associate opinion survey results, unresolved people issues assessments, employee engagement campaigns, and reports concerning the monitoring of OUR Walmart activity and employee participation.

13. All notes, instructions, memoranda, statements, or other documents that Respondent issued to or read to its employees regarding employee participation in the following strikes, including but not limited to "Talking Points," accompanied by the dates on which the documents were issued or read:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

14. Documents showing the total number of Respondent's stores that were operating in the United States during the following strikes:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

15. Documents showing the total number of employees employed by Respondent in the United States during the following strikes:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);

- c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

16. For each of the stores at issue, documents showing the total number of Respondent's employees who were employed at each store during the strikes on the following dates, segregated by store:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

17. For each of the stores at issue, documents showing the total number of Respondent's employees who were scheduled to work at each store during the strikes on the following dates, segregated by store:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

18. For each of the stores at issue, documents showing the issuance of unexcused absences to Respondent's employees who were scheduled to work but did not report to work during the strikes on the following dates, segregated by store:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

19. For each of the stores at issue, all documents showing Respondent's efforts, whether successful or not, to find coverage for employees who were scheduled to work but did not report to work during the strikes on the following dates, segregated by store:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

20. For each of the stores at issue, all documents reflecting Respondent's assessment of the potential or actual impact on its operations caused by the absence of striking employees during the following strikes, segregated by store;
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

21. To the extent not provided in response to Request No. 20, all journalism or media pieces, including recorded interviews, given by representatives authorized to speak on behalf of Respondent regarding the following strikes, segregated by store:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

22. For each of the stores at issue, all notes, emails, memoranda, reports, or other documents reflecting the date and substance of meetings or other discussions Respondent had with its employees who were issued unexcused absences during the following strikes regarding those unexcused absences, segregated by store:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);
 - c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

23. Notes, reports, memoranda, emails, communications, or other documents recording, reflecting or summarizing the substance of any conversation between managers and employees about strikes or strike-related absences, segregated by store.

24. For each of the stores at issue, records of personal discussions, warnings, coachings, terminations, or other documents showing the issuance of any level of discipline to employees based in whole or part on, or reference in anyway, unexcused absences they received during the following strikes, accompanied by any records of discussions with each said employee related to such discipline and all other recorded discipline issued to each said employee for any reason during the relevant period, segregated by store and individual:
 - a. November 19 - 28, 2013 (Black Friday 2013 Strike);
 - b. May 29 – June 9, 2014 (June 2014 Strike);

- c. November 11 – 14, 2014 (LA Sit In);
 - d. November 24 – 29, 2014 (Black Friday 2014 Strike); and
 - e. Any other dates on which Respondent contends its employees were on strike.

25. The complete personnel files for each of the following individuals, including but not limited to, all data collected by Respondent regarding each employee, dates of employment, job description and general job duties, performance evaluations, personal discussion logs, memorialized conversations, disciplinary records, written coachings, written warnings, termination or separation documents, exit interviews, Associate Attendance Reports, correspondence by managers or agents concerning the employee, promotions and transfers, all red book investigations involving the employee, records of all open door policy requests by the employee, and records of social media activity of the employee (excluding personal information identified above in Definition 33):
 - a. Evelin Cruz [Store 2886: Pico Rivera, CA];
 - b. Victoria Martinez [Store 2886: Pico Rivera, CA]; and
 - c. Cantare Davunt [Store 2642; Apple Valley, MN].

26. To the extent not included in their personnel files, all documents created by, considered, or relied upon by Respondent in disciplining or terminating the following employees, including but not limited to all video footage, witness reports, notes, notices, instructions, email messages, text messages, correspondence, and investigatory reports:
 - a. Evelin Cruz [Store 2886: Pico Rivera, CA];
 - b. Victoria Martinez [Store 2886: Pico Rivera, CA]; and
 - c. Cantare Davunt [Store 2642; Apple Valley, MN].

27. Records of all notes, emails, memorialized conversations, or other communications sent to or from Respondent's Labor Relations staff that reference the discipline or terminations of the following employees of Respondent:
 - a. Evelin Cruz [Store 2886: Pico Rivera, CA];
 - b. Victoria Martinez [Store 2886: Pico Rivera, CA]; and
 - c. Cantare Davunt [Store 2642; Apple Valley, MN].

28. For the stores at issue, notes, reports, emails, memoranda, audio or video recordings, photographs, or other documents reflecting Respondent's observations, belief, perceptions, or suspicions regarding the following employees' involvement in union activities generally or their specific involvement or affiliation with UFCW or OUR Walmart:
 - a. Evelin Cruz [Store 2886: Pico Rivera, CA];
 - b. Victoria Martinez [Store 2886: Pico Rivera, CA]; and

- c. Cantare Davunt [Store 2642; Apple Valley, MN].
29. For the stores at issue, documents showing all discipline and/or terminations Respondent issued to its employees other than Evelin Cruz, Victoria Martinez, or Cantare Davunt for alleged violations of the following or similar policies, and all other disciplinary records for each said employee, segregated by store and employee:
 - a. Hazardous materials;
 - b. Off-duty employee access;
 - c. Dress codes and the wearing of buttons or stickers;
 - d. Open door meetings;
 - e. Inappropriate or unprofessional behavior;
 - f. Poor customer service;
 - g. Other policies that served as a basis, in whole or part, for the termination of Evelin Cruz;
 - h. Other policies that served as a basis, in whole or part, for the termination of Victoria Martinez; and
 - i. Other policies that served as a basis, in whole or part, for the termination of Cantare Davunt.
 30. For Store No. 2886 (Pico Rivera, California), documents provided by Respondent to Victoria Martinez or Evelin Cruz regarding their duties and tasks during the conversion of the photo lab from a wet lab to a dry lab about August 2014.
 31. For Store No. 2886 (Pico Rivera, California), documents submitted by Victoria Martinez or Evelin Cruz to Respondent regarding their duties and tasks during the conversion of the photo lab from a wet lab to a dry lab about August 2014.
 32. Documents submitted by Respondent to unemployment benefit agencies in response to unemployment claims made by Pamela Marley, Kianna Howard, Victoria Martinez, Evelin Cruz, Victoria Nogueta, Lyle Skeen, Jared Surdam, Cantare Davunt, and Jessica Holstein.
 33. Video footage, photographs, notes, reports, memoranda, or other documents depicting or describing the demonstrations and/or picketing that occurred at or near Store 2642 (Apple Valley, Minnesota) about the following dates:
 - d. June 4, 2014; and
 - e. Dates in August 2014 that are known to Respondent but unknown to the General Counsel.
 34. Maps or diagrams showing the layout of Store 2642 (Apple Valley, Minnesota) and its exterior parking lot.

35. Video footage, photographs, notes, reports, memoranda, or other documents depicting or describing the demonstrations and/or picketing that occurred at or near Store 821 (Clovis, New Mexico) on May 31, 2014.
36. Maps or diagrams showing the layout of Store 821 (Clovis, New Mexico) and its exterior parking lot.
37. For stores 2668 (Sturtevant, Wisconsin) and 2642 (Apple Valley, Minnesota), documents showing:
 - a. All communications, memoranda, emails, notes, reports, and other documents regarding Respondent's employees wearing stickers or insignia during the period from October 1, 2014, to November 30, 2014; and
 - b. All disciplines and terminations issued to employees for violating its employee dress code or other policies regarding what employees can wear at work, including each employee's name, nature of their violation, and the level of discipline they received.
38. For Store 1805 (La Quinta, California), video footage, photographs, notes, reports, memoranda, or other documents depicting or describing the presence of Respondent's then-employee Graciela Blancas [Store 1805 (La Quinta, California)] and any other individuals who accompanied her when Blancas delivered a petition requesting her personnel file to Manager Christy Wolff on a date between August 1, 2014, and September 30, 2014, that is known to Respondent but unknown to the General Counsel, including, but not limited to, photographs taken on a mobile phone by a manager or assistant manager named Maria (Last Name Unknown) or Co-Manager Mariel Gonzalez.
39. Video footage, photographs, notes, reports, memoranda, or other documents depicting or describing the presence of Respondent's former employee Graciela Blancas and any other individuals who accompanied her at Store 1805 (La Quinta, California) about October 16, 2014, including, but not limited to, photographs or video recorded by Co-Managers Theresa Palmer and Maria Gonzalez or Assistant Manager Rose Sunstrong.
40. For store 1805 (La Quinta, California), documents identifying the name and title of all managers and supervisors who worked at the store during the time period from August 1, 2014 to September 30, 2014.
41. For store 1805 (La Quinta, California), headshots or other photographs of all managers and supervisors who worked at the store during the time period from August 1, 2014 to September 30, 2014.

42. The complete personnel files of the individuals listed below who are alleged in the Complaint as supervisors and/or agents of Respondent, including, but not limited to, documents showing dates of employment, job titles, dates of job titles, job descriptions, job duties, corrective action or discipline (and all documents showing the reasons for corrective action or discipline) that they either received or issued, and performance evaluations (excluding personal information identified above in Definition 33):
 - a. Karen Campos's (Store 2886 – Pico Rivera);
 - b. All other individuals alleged in the Complaint as supervisors and/or agents of Respondent that Respondent denies are supervisors and/or agents of Respondent.

43. To the extent not included in their personnel files, documents that indicate or reflect the signatures, initials, involvement, recommendations, or other participation by the individuals referenced above in Request No. 42 in the following employment actions concerning employees at the stores at issue:
 - a. Hiring
 - b. Transferring
 - c. Suspending
 - d. Laying off
 - e. Recalling
 - f. Promoting
 - g. Discharging
 - h. Assigning work
 - i. Rewarding
 - j. Disciplining
 - k. Scheduling
 - l. Approving or denying requests for time off
 - m. Assigning overtime
 - n. Adjusting grievances
 - o. Directing work
 - p. Evaluating employee performance

44. **In lieu of the items specified in Request Nos. 2, 5-7, 14-17, and 40**, a written summary, signed and sworn to by an officer of Respondent, compiled from the subpoenaed documents containing all the information called for in those paragraphs may be furnished, provided that all records called for by those paragraphs and all others used in the compilation of the summary are made available to an agent of the National Labor Relations Board for the purpose of checking the accuracy of the summary, sufficiently in advance of the hearing to enable the accuracy to be verified.

**IN LIEU OF PROVIDING THE RECORDS AND DOCUMENTS REQUESTED ABOVE,
PROVIDED NOTICE IS RECEIVED BY COUNSEL FOR THE GENERAL COUNSEL**

Subpoena Duces Tecum No. B-1-U8CNN5
Wal-Mart Stores, Inc.
12-CA-12109, et al.

NO LATER THAN December 1, 2016, RESPONDENT MAY MAKE THE RECORDS AND DOCUMENTS REQUESTED HEREIN AVAILABLE BY DELIVERY TO NATIONAL LABOR RELATIONS BOARD, REGION 20, ATTN: JASON WONG, 901 MARKET STREET, STE. 400, SAN FRANCISCO, CALIFORNIA 94103, NO LATER THAN December 23, 2016. PROVIDED FURTHER, THAT SUCH RECORDS AND DOCUMENTS REQUESTED HEREIN WILL NOT BE REQUIRED TO BE PRODUCED AT THE HEARING IN THIS MATTER IF RESPONDENT AND COUNSEL FOR THE GENERAL COUNSEL ARRIVE AT A STIPULATION WITH REGARD TO THE INFORMATION CONTAINED THEREIN AND SUCH STIPULATION IS RECEIVED IN EVIDENCE BY THE ADMINISTRATIVE LAW JUDGE HEARING THIS MATTER.

**CLAIMS FOR WITNESS ATTENDANCE FEES, TRAVEL, AND
MISCELLANEOUS EXPENSES**

PART I - ATTENDANCE CERTIFICATION

1. General Information

a. Witness Name Wal-Mart Custodian of Records c. Social Security No. _____
 b. Witness Address d. Case Name Wal-Mart Stores, Inc.
 Street 702 SW 8th St. e. Case Number 12-CA-121109, et al
 City Bentonville State AR Zip 72716

2. Travel and Attendance Information

a. Dates of Travel From Residence to Case Location: From _____ To _____
 b. Dates of Travel From Case Location to Residence: From _____ To _____
 c. Dates of Attendance: From _____ To _____

3. NLRB Certification

I certify that the witness named above attended in the case or matter indicated and is entitled to the statutory allowances for attendance and travel.

 (Signature) (Title) (Date)

PART II - WITNESS CLAIM FOR FEES AND ALLOWANCES

	Rate	No. of Days	Amount Claimed	Totals
1. Attendance Fees				
a. Fact, Pretrial Conference & Detained Witness				
Total Attendance Fees..				
2. Mileage Allowance <i>Indicate type of privately owned vehicle:</i>				
<input type="checkbox"/> (auto) <input type="checkbox"/> (motorcycle) <input type="checkbox"/> (airplane)	Rate	No. of Miles	Amount Claimed	
a. From Residence to Case Location (and Return)				
b. From Hotel/Motel to Court (or Court to Hotel/Motel)				
Total Mileage Allowance..				
3. Subsistence Per Diem Rate: _____				
a. Meals				
b. Lodging (Receipt Required)				
Total Subsistence Allowance..				
4. Miscellaneous Allowance (See Item 8 Below)				
a. Common Carrier			Amount Claimed	
b. Parking Fees, Tolls, Taxi Fares				
Total Miscellaneous Allowances..				
5. Total Amount Claimed (items 1-4, Part II)..				
6. Less Outstanding Check or Cash Advances..				
7. Net Amount Claimed by Witness..				
8. Use this space to itemize your expenses from Item 4, Part II above. <i>Receipts are required for all common carrier, and for all other single items in excess of \$75.00.</i>				

9. Witness Certification

I certify that the above data is correct and that payment has not been received, and that at the time of travel and attendance I (was) (was not) a U.S. Government employee and I (was) (was not) a citizen of the United States. (If not a citizen, present your Alien Registration Record with this form.) Common carrier cost (was) (was not) paid by NLRB.

 (Signature) (Date)

(You must complete Part III on reverse side)

PART III - RECEIVING PAYMENT

Under the Debt Collection Improvement Act of 1996 (reference Public Law 104-134, Section 31001 (X)), the NLRB is required to pay a witness by Electronic Funds Transfer (EFT), which is a direct deposit to your bank, credit union, savings and loan, or other financial institution. The only exception is if you do not have an account with a financial institution. Failure to provide this information may delay or prevent receipt of your claim.

Please provide either a voided check, a deposit ticket (if the routing number is the same as on your check), or fill in the following information:

SSN: _____

ACCOUNT HOLDER: _____

BANK NAME: _____

9 DIGIT ROUTING NUMBER: _____

ACCOUNT NUMBER: _____

TYPE OF ACCOUNT: CHECKING OR SAVINGS

SIGNATURE: _____

When your claim is processed the direct deposit will be reflected on your bank statement with a reference to NLRB Treas 349.

OR

If you do not have an account with a financial institution sign the following statement.

I certify that I do not have an account with a financial institution or an authorized payment agent.

SIGNATURE: _____

Your payment will be mailed to the address shown in Part I.

TAB B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

WAL-MART STORES, INC.

and

THE ORGANIZATION
UNITED FOR RESPECT AT WALMART
(OUR WALMART)

Cases 12-CA-121109
12-CA-124847
16-CA-124905
20-CA-126824

and

UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL
UNION, AFL-CIO AND THE ORGANIZATION
UNITED FOR RESPECT AT WALMART
(OUR WALMART)

20-CA-138553
32-CA-153782

**GENERAL COUNSEL’S OPPOSITION TO WALMART STORES, INC.’S
PETITION TO REVOKE OR MODIFY THE
GENERAL COUNSEL’S SUBPOENA DUCES TECUM B-1–U8CNN5**

Comes now the General Counsel and submits this Opposition to the Respondent’s Petition to Revoke (PRV) Subpoena Duces Tecum No. B-1-U8CNN5 (the Subpoena) under Section 102.31(b) of the Rules and Regulations of the National Labor Relations Board (Board Rules). For the reasons set forth below, starting with Respondent’s general objections before addressing its specific objections, the General Counsel asserts that Respondent’s arguments are without merit and the Petition to Revoke or Modify the Subpoena should be denied.

I. RESPONDENT’S GENERAL OBJECTIONS LACK MERIT (PRV §§ I, II, and VI)

A. The Subpoena Requests Are Specific, Narrowly Tailored, and Seek Relevant Evidence

Subpoenaed information should be produced if it relates to any matter in question, or if it can provide background information or lead to other evidence potentially relevant to an allegation in the complaint. Board Rules, Section 102.31(b); *Perdue Farms*, 323 NLRB 345, 348 (1997), *affd.* in relevant part 144 F.3d 830, 833-34 (D.C. Cir. 1998) (the information needs only to be “reasonably relevant”). Relevance is a fairly low threshold showing in a Board subpoena enforcement context. In *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943), the Supreme Court held that subpoenaed information must be produced so long as it is “not plainly incompetent or irrelevant to any lawful purpose” Revocation will be denied “unless it is palpable that the evidence sought can have no possible bearing on the issues.” *Steamship Co. v. China Union Lines*, 123 F. Supp. 802 (S.D.N.Y.). Moreover, subpoenas that are issued to obtain information concerning a respondent’s defenses are not overly broad or irrelevant. See *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d at 1008-1009 (9th Cir. 1996). “A subpoena is proper even when it is designed to produce material

concerning a defense that may never arise.” (quoting *NLRB v. North American Van Lines, Inc.*, 611 F. Supp. 760, 765 (N.D. Ind 1985).

Here, each of the requested documents is relevant to a claim or defense at issue, and is narrowly tailored to obtain specific probative evidence. Respondent’s General Objections alleging the Subpoena requests are generally vague, overbroad, and irrelevant should be rejected.

B. Respondent Has Not Shown Production to be Unduly Burdensome

A party seeking to revoke or modify a subpoena duces tecum because it is unduly burdensome has the burden of establishing that the subpoena is burdensome to the extent that compliance "would seriously disrupt normal business operations." *EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 477 (4th Cir. 1986), cert. denied, 479 U.S. 815 (1986); see also *EEOC v. Citicorp Diners Club, Inc.*, 985 F.2d 1036, 1040 (10th Cir. 1993). Put another way, the objecting party must show that the subpoena is unreasonable or oppressive on the person objecting to the subpoena. *Sullivan v. Dickson*, 283 F.2d 725 (9th Cir. 1960), cert. denied, 366 U.S. 951 (1961); *In re Yassai*, 225 B.R. 478, 483-84 (Bankr. C.D. Cal. 1998). That burden is a heavy one. *In re Yassai*, 225 B.R. at 484. Respondent may not refuse to provide relevant information merely because compliance may require the production of thousands of documents. *NLRB v. Carolina Food Processors*, 152 LRRM 2015 (4th Cir. 1996); *NLRB v. GHR Energy Corp.*, 707 F.2d 110, 113-114, 113 LRRM 3415, 3418 (5th Cir. 1982); see also *NLRB v. Line*, 50 F.3d 311, 149 LRRM 2017, 2020 (5th Cir. 1995) (subpoena seeking five years of business records held not to be overbroad). On the contrary, it may be presumed that an entity that maintains a large volume of records is sufficiently equipped to locate and produce them. *NLRB v. United Aircraft Corporation, et al.*, 200 F.Supp. 48, 51-52 (D.C. Conn. 1961), affd., 300 F.2d 442 (2nd Cir. 1962).

Accordingly, Respondent has not met its heavy burden of showing the Subpoena is

unreasonably or unduly burdensome, particularly here where Respondent received the subpoena on November 14, 2016, over two-and-a-half months in advance of the January 31, 2017, trial date. Given the magnitude of Respondent's business enterprise and the number of employees it employs, having the resources to undertake the search within the remaining weeks should not be unduly burdensome, and it should be ordered to produce the requested documents. That said, the General Counsel is working with Respondent to allow for the rolling production of some of the requested documents that go beyond the allegations pertaining to strike-related absences, specifically the independent 8(a)(1) allegations involving threats, interrogation, surveillance, denied access, union insignia, and discharges for reasons other than the strike-related absences, to the extent that they involve stores or employees outside of Northern California and require hearing in those locales on later dates. Respondent should be ordered to produce all other requests, most significantly those pertaining to strike-related absences by the start of the hearing on January 31, 2017.

C. The Subpoena Does Not Seek to Disclose Confidential or Proprietary Information

Respondent objects that the Subpoena seeks the production of confidential or proprietary information pertaining to its operations and personnel records. To the extent that any of the requested documents contain confidential or proprietary information, Respondent should provide a privilege log describing those documents and the nature of the privilege and produce all other documents. The General Counsel is more than willing to discuss an appropriate redaction plan or protective order for documents contained in such a privilege log. In fact, in paragraph 32 of the Subpoena's Definitions and Instruction, the Subpoena instructs Respondent to redact medical, tax, banking, social security, home address, and home phone number information likely to be found in personnel records. Somewhat ironically, Respondent asserts this instruction is unduly burdensome, at least as it pertains to employee records (*see* Section IV(K) of its Petition to Revoke), while

simultaneously arguing that it should be permitted to redact “any privileged or non-responsive but highly confidential or sensitive proprietary information” before producing any documents (*see* Section IV(G) of its Petition to Revoke).

To the extent Respondent claims documents are protected from disclosure under state privacy or other laws, those claims should be rejected, as evidence that is otherwise admissible is not rendered inadmissible in Board proceedings because it is privileged under state law. *See R. Sabee Co.*, 351 NLRB 1350, 1350 n. 3 (2007) (judge properly accepted into evidence statements made during state court injunction proceeding and related court-ordered mediation for state law claims, despite claim of privilege under Wisconsin law); *North Carolina License Plate Agency # 18*, 346 NLRB 293, 294 n. 5 (2006), *enf'd* 243 Fed. Appx. 771 (4th Cir. 2007) (evidence from a state unemployment commission, which was privileged under state law, was nevertheless admissible in Board proceeding). Generally, an employer has no standing to assert constitutional privacy rights of its employees in a Board proceeding. *See NLRB v. North American Van Lines, Inc.*, 611 F. Supp. 760, 766 (N.D. Ind 1985); *See also NLRB v. Q-T Shoe Manufacturing Co.*, 409 F.2d 1250 (3rd Cir. 1969). Courts have similarly rejected employee privacy claims raised by parties seeking to avoid responsibility for complying with a Board subpoena. *See British Auto Parts v. NLRB*, 405 F.2d 1182 (9th Cir. 1968), *cert. denied* 394 U.S. 1012 (1969); *NLRB v. Wyman-Gordon Co.*, 270 F.Supp. 280, 284 (D.C. Mass. 1967), *aff'd* 394 U.S. 759 (1969). To the extent that the Employer seeks to vindicate the rights of its employees, it is not its place to do so. *Brooks v. NLRB*, 348 U.S. 96, 103 (1954).

D. The Subpoena Does Not Seek Information Covered by the Attorney-Client Privilege or the Attorney Work Product Doctrine

The General Counsel does not seek information falling under either privilege, but does seek a privilege log for any such privilege claim, as set forth in paragraph 30 of the Subpoena’s “Definition

and Instructions.” Respondent should be ordered to produce all responsive documents and the requested privilege log for documents it claims are subject to the attorney-client privilege or the attorney work product doctrine.

II. RESPONDENT’S ARGUMENT THAT SOME OF THE REQUESTS ARE BASED ON ALLEGATIONS THAT WERE NOT INCLUDED IN – AND THAT DO NOT CLOSELY RELATE TO – ANY FILED CHARGE LACKS MERIT. (PRV § III)

Respondent asserts in its PRV that it will file a Motion to Dismiss in this matter, alleging that the following allegations in the Complaint are not contained in the Charging Party’s filed Charges, nor do they closely relate to those Charges:

Complaint Allegation	Complaint Paragraph	Resp. PRV Paragraph
Discipline	21(c), 21(e)	V(Q), V(R), V(S), V(T)
Discharge	14(c), 14(d), 15(c), 15(d)	V(Q), V(R), V(S), V(T), V(Y)
Threats	12(a), 12(b)	III
Interrogation	17(d), 26	III
Surveillance	9(a), 9(b)	V(W), V(X), V(Y)
Denial of Access	27(a), 27(b)	V(U)
Prohibiting stickers regarding working conditions	25, 27(c)	V(V)
Prohibiting handbilling, chanting, and speaking to customers during protected strikes	24	V(U)

Respondent argues that the Board therefore lacks jurisdiction to rule on those allegations, and it should not have to produce any documents that may relate to them. As set forth below, the Complaint allegations that Respondent claims are outside the scope of the Charges are all encompassed by the language in those Charges. Further, even if those allegations were not specifically covered by the language in the Charges (they are), those allegations are closely related to the allegations raised in the Charges. Therefore, Respondent’s assertion lacks merit and

its request to strike should be denied.¹

A. The Language of the Charges Covers All Complaint Allegations

Contrary to the Respondent’s argument, the language of the first-amended charge in 20-CA-138553 covers all the allegations pled in the Amended Consolidated Complaint. It alleges that Respondent violated Section 8(a)(1) of the Act by *retaliating* against employees because they engaged in unfair labor practice strikes. [Emphasis added.] The first-amended charge does not simply allege that Respondent unlawfully issued unexcused absences to employees who missed work to participate in protected strikes. The term “retaliating” encompasses not only the issuance of unexcused absences to employees for participating in protected strikes, but also includes the various retaliatory actions Respondent committed against employees due to their participation in protected strikes: 1) disciplining (Complaint ¶¶21(c), 21(e)) and discharging employees (Complaint ¶¶14(c), 14(d), 15(c), 15(d)); 2) threatening (Complaint ¶¶12(a), 12(b)) and interrogating employees (Complaint ¶¶17(d), 26)); 3) interfering with employees’ strike activity (Complaint ¶24); 4) engaging in surveillance of employees’ protected activity (Complaint ¶¶9(a), 9(b)); 5) prohibiting employees from wearing union insignia (Complaint ¶¶25, 27(c)); and 6) denying employees access to its stores (Complaint ¶¶27(a), 27(b)).

Also, the charges listed below that were consolidated with charge 20-CA-138553 further cover the Complaint allegations that Respondent claims falls outside the scope Charges:

Charge	Alleges
12-CA-121209	Respondent interfered with employees’ rights to distribute handbills outside its store and access its stores.
1 st Amended Charge in 20-CA-126824	Respondent created an impression of surveillance, and threatened and interrogated employees, and discharged an employee for their protected concerted activities.

¹ On December 14, 2016, Respondent did file the promised Partial Motion to Dismiss, elaborating upon its related arguments here. The General Counsel intends to file an Opposition to more fully address the Partial Motion to Dismiss and to elaborate on its related arguments here.

1 st Amended Charge in 16-CA-124905	Respondent created impression of surveillance, and interrogated employees.
--	--

As the language in the first-amended charge of 20-CA-138553 encompasses all of those allegations, as does the language in the consolidated charges referenced above, Respondent’s argument lacks merit, and it should be ordered to produce the requested documents.

B. The Allegations are Closely Related to the Allegations in the Filed Charges

Even if the filed charges did not encompass some of the Complaint allegations (they do), the allegations that Respondent claims are outside the scope of the Charges are closely related to the Charges, satisfying the standards laid out in *Redd-I, Inc.*, 290 NLRB 1115, 1116 (1988).

1. The “Closely Related” Test

The Supreme Court has held that “a complaint may encompass any matter sufficiently related to or growing out of conduct alleged in a charge. *NLRB v. Fant Milling Co.*, 360 U.S. 301, 309 (1959); *National Licorice Co. v. NLRB*, 309 U.S. 350, 369 (1940).” The Board established a framework to analyze such issues by setting out the “closely related” test in *Redd-I, Inc.*, 290 NLRB 1115, 1116 (1988). The Board then decided that the same “closely related” test should apply when the General Counsel adds uncharged allegations to a complaint. *Nickles Bakery of Indiana*, 296 NLRB 927, 927-928 (1989). Under *Redd-I*, the Board considers the following: (1) whether the otherwise untimely allegation is of the same class as that of the timely filed charge, i.e., whether the allegations involve the same legal theory and usually the same section of the Act; (2) whether the otherwise untimely allegation arises from the same factual situation or sequence of events as the allegation in the timely charge, i.e., whether the allegations involve similar conduct, usually during the same time period, and with a similar object; and (3) whether a respondent would raise the same or similar defenses to both allegations. *Id.* at 1118; see also *Carey Salt Co.*, 360 NLRB No. 38, slip

op. at 6 (2014); *Alternative Energy Applications, Inc. & David Rivera-Chapman*, 361 NLRB No. 139 (2014).

Additionally, the Board found that the second prong of the *Redd-I* test is satisfied when the two sets of allegations demonstrate similar conduct, usually during the same time period with a similar object, or there is a causal nexus between the allegations and they are part of a chain or progression of events, or they are part of an overall plan to undermine union activity. *Wal-Mart Stores, Inc.*, 364 NLRB No. 118 (2016) (affirming the judge’s finding that an unpled allegation was closely related to the allegations in the filed charge), citing *SKC Electric, Inc.*, 350 NLRB 857, 858 (2007); *See. Carney Hospital*, 350 NLRB 627 (2007). In *Carney Hospital*, the Board found that, standing alone, “chronological coincidence during a union’s campaign does not warrant the implication that all challenged employer actions are related to one another as part of a planned response to that campaign.” *Id.* at 630. However, the Board agreed that “a sufficient factual relationship can be established by showing that the timely and untimely alleged employer actions are ‘part of an overall employer plan to undermine the union activity.’” *Id.* Finally, if allegations are demonstrably part of an employer’s organized plan to resist union organization, then they are closely related. *Id.* (internal citations omitted).

The Board noted in *Redd-I* that “it is not the function of the charge, however, to give notice to a respondent of the specific claims made against him. Rather, that is the function of the complaint. Denial of due process is usually claimed in cases when the complaint has *never* been amended to include allegations that have been litigated and found to be violations.” *Id.* at 1116-17 (emphasis in original). Finally, the Board stated the policy reason for its jurisdictional test is that, “Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which

Congress has imposed upon it. There can be no justification for confining such an inquiry to the precise particularizations of a charge.” *Id.* at 1117-18.

2. The “Closely Related” Test Is Satisfied

The Complaint allegations that Respondent claims are outside the scope of the filed charges are closely related to the allegations raised in those charges. First, all Complaint allegations are of the same class because they involve the same section of the Act (8(a)(1)) and involve the same legal theory – that Respondent’s actions amounted to unlawful interference, restraint, or coercion of employees because of their union activities.

Second, the misconduct alleged in the Complaint was part of Respondent’s overall plan to undermine employees’ protected concerted activity, including their strike activity, and relate to or grow out of Respondent’s reaction to the employees’ participation with the United Food & Commercial Workers International Union, AFL-CIO (the Union or UFCW) and The Organization United for Respect at Walmart (OUR Walmart) (collectively referred to as the Charging Parties). Respondent issued unexcused absences to employees for participating in protected strikes and informed many employees that their strike participation was not protected in an attempt to thwart and attack employees’ protected activity and participation with UFCW and OUR Walmart. Respondent furthered its attempts to stifle employees’ protected activity when it discharged and disciplined employees; threatened and interrogated employees; engaged in surveillance of employees; prohibited employees from wearing stickers dealing with their working conditions; interfered with employees’ strike activity; and denied employees access to its stores, as alleged in the Complaint. Respondent took these actions in direct response to the strikes at issue. For example, Respondent issued discipline to employees (Complaint ¶¶21(c), 21(e)) and discharged employees (Complaint ¶¶14(c), 14(d), 15(c), 15(d), 21(d), and 21(e)), in part, to retaliate

against employees for participating in the strikes. Respondent denied employees access to its stores as they attempted to deliver their strike notices to management (Complaint ¶27(a)). Respondent interrogated employees (Complaint ¶26) about when they were going on strike and threatened employees with reprisal (Complaint ¶12) if they went on strike. Respondent asked employees if they requested documents related to their strike absence for the UFCW and OUR Walmart (¶17(d)). Respondent restricted employees' protected activity while they were participating in a strike at its store (Complaint ¶24).

Respondent committed the unlawful acts pled in the Complaint during the same time period of when employees participated in protected strikes supported by UFCW and OUR Walmart. Respondent's illegal exploits were part of a common course of action that Respondent undertook after making the corporate-wide decision to issue unexcused absences to employees for engaging in strikes. Respondent sought to send a message to employees that it would not tolerate their protected activity and there was a price to be paid for partaking in strikes against its stores and participating with UFCW and OUR Walmart. The Complaint does not rely upon pre-printed "other acts" language as discussed by the Board in *Nickles Bakery of Indiana*, 296 NLRB 927, 928 (1989). Consistent with the Board's decision in *Carney Hospital*, the acts alleged in the Complaint here are part of Respondent's overall plan to undermine employees' protected concerted activity and participation with UFCW and OUR Walmart.

Third, Respondent would raise the same or similar defenses to the Complaint allegations it claims are outside the scope of the Charges as it would to the allegations raised in those Charges. The investigating Region presented all Complaint allegations to Respondent during the investigation of the Charges and requested Respondent to submit evidence in response to those allegations. Respondent responded to those allegations through numerous extensive position

statements that included voluminous exhibits. Thus, Respondent was put on full notice of all Complaint allegations and responded thoroughly to those allegations. *Compare Regional Construction Corp.*, 333 NLRB 313, 313 FN 1 (2001) (respondent's response to the charging party's charge revealed that the respondent knew precisely what the charging party had alleged in its charge) *with NC-DSH, LLP d/b/a Desert Springs Hospital Medical Center*, 363 NLRB No. 185 (2016) (allegations were not closely related because there was no evidence that the respondent was provided with any specifics of the unpled allegations against them).

Moreover, Respondent argues that it issued employees unexcused absences for reasons unrelated to their protected concerted activity and participation with UFCW and OUR Walmart. Respondent will make the same argument when it defends against the allegations that it discharged and disciplined employees; threatened and interrogated employees; engaged in surveillance of employees; prohibited employees from wearing union insignia; interfered with employees' strike activity; and denied employees access to its stores. Respondent's defense to most, if not all, of the Complaint allegations will be based on the premise that it took actions against employees for reasons unrelated to their protected activity and participation with UFCW and OUR Walmart.

III. RESPONDENT'S OBJECTIONS TO THE SUBPOENA DEFINITIONS AND INSTRUCTIONS LACK MERIT. (PRV §§ III(A)-(K))

Respondent's objections to and/or requests for relief from the Subpoena's Definitions and Instructions are copied below, followed by the General Counsel's responses thereto.

A. Definition of "Document" or "Documents": Paragraph 1.

Requested Relief: Walmart requests a modification to the definition of "document" to remove the unnecessary need for Walmart to collect scores of PDAs from across the country and

engage in extensive attempts to retrieve archived, off-line, and inaccessible data or information. Walmart asks for relief from this request unless or until information comes to light that would suggest such a massive undertaking would be appropriate in this very limited and straightforward case. [Case citations omitted]. In Cases 16-CA-096240, et al., the parties agreed upon a set list of custodians and search terms to satisfy the CGC's request. Walmart proposes to do the same here.

General Counsel's Response: The General Counsel agrees to the Requested Relief.

B. Definition of "Communications"; Paragraph 4.

Requested Relief: Walmart asks the Board to revoke this request to the extent it calls for Walmart to somehow produce oral communications not reflected in documents. Walmart will produce any communications contained in documents responsive to the SDT's requests, as modified.

General Counsel's Response: The General Counsel agrees to the Requested Relief.

C. Definition of "Respondent"; Paragraph 6.

Requested Relief: Walmart requests that the definition of "Respondent" be modified to reference the Respondent, Wal-Mart Stores, Inc. In Cases 16-CA-096240, et al., the parties agreed to that definition, subject to any evidence that another entity possessed responsive documents.

General Counsel's Response: The General Counsel agrees to Respondent's Requested Relief.

D. Definition of "OUR Walmart"; Paragraph 7.

Requested Relief: Absent clarification from the CGC, Walmart asks that the definition of "OUR Walmart" be clarified to refer to the UFCW subsidiary and not the split-off organization purportedly now co-directed by former UFCW employees Dan Schlademan and Andrea Dehlendorf.

General Counsel's Response: The General Counsel agrees to Respondent's Requested Relief.

E. Definition of "The stores at issue": Paragraph 12.

Walmart Objection: This definition is substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. The definition lists numerous Walmart Stores not specifically included in the Complaint, never identified during the investigation of any Charge, and which have no connection whatsoever to any specific allegation or alleged discriminatee named in the Complaint. *See EEOC v. Royal Caribbean Cruises, Ltd.*, 771 F.3d 757, 762 (11th Cir. 2014) (denying enforcement of subpoena seeking companywide employee data as such data was not relevant to claim at issue and imposed undue burden on company).

Requested Relief: Walmart asks that the "stores at issue" definition be modified per subpoena request number as described below in Walmart's objections to the specific CGC document requests.

General Counsel's Response: As discussed above in Section II, *supra*, Respondent's argument that certain allegations in the Complaint are not encompassed by the charges lack merit and should be rejected. The General Counsel otherwise agrees to Respondent's proposed limitations, so long as it provides an appropriate privilege log. The General Counsel does not agree to limit the definition of "Stores at Issue" for purposes of the subpoena. In subparagraph 7(e) of the Complaint, the General Counsel alleges numerous discriminatees, "some of whom are known to the General Counsel at this time (see paragraphs 8, 10, 11, 13 — 23, 28 and 29) and some of whom are unknown to the General Counsel but are more particularly known to Respondent." In that vein, in the request for remedial relief section of the Complaint at p. 21, "the General Counsel also seeks

remedial relief for all employees, known and unknown to the General Counsel, who received unexcused absences for participating in the protected strikes listed above.” This case does not involve a typical union organizing campaign where employees are seeking representation from a single union. Rather, it is a nationwide corporate campaign seeking to promote change at Walmart without a representational objective. It involves not only a traditional union (UFCW), but also a grassroots organization comprised of Respondent’s employees and other interested parties (OUR Walmart). Therefore, it is highly likely that a number of Respondent’s employees from various stores participated in one or more of the alleged protected strikes, and therefore likely received unexcused absences and/or discipline for participating in those strikes, similar to the employees named in the Complaint who were subjected to Respondent’s corporate-wide campaign of treating strike absences as unexcused. It is highly likely that a number of the employees not specifically named in the Complaint who participated in the strikes provided Respondent notice of their intent to participate in the strikes and did engage in the strikes, but failed to notify the Charging Parties that they did so. Therefore, Respondent is likely to have better records of its employees who notified it of their intent to strike and received unexcused absences for doing so.

To that end, for purposes of this unfair labor practice hearing, the General Counsel has limited the scope of the Subpoena to Respondent’s stores from which the General Counsel believes employees went on strike, and therefore most likely received unexcused absences for doing so. Should the General Counsel prevail on the merits, it will request during the compliance stage that Respondent conduct a search for employees who provided strike notices and received unexcused absences for going on strike.

Therefore, Respondent should be ordered to comply with the limited definition of the “Stores at Issue” in the Subpoena (not all requests are limited to the “Stores at Issue,” as discussed below,

where pertinent). Based on discussions with Respondent's counsel, the General Counsel has agreed to provide Respondent with a list of employees the General Counsel believes participated in the strikes at issue to facilitate its search for records for the unfair labor practice hearing.

F. Definition of "Alleged discriminatees" or "each alleged discriminatee:"Paragraph 14.

Requested Relief: Walmart asks that the definition be modified to include only the following alleged discriminatees specifically identified in the Complaint: Meiasa Bradley, Angelo Escano, Qulima Knapp, Maria Ledezma, Jimmy Lozano, Michael Ortiz, Michael Randall, Nancy Reynolds, Delfina Alonso, Claudia Arroyo, Phil Bekech, Graciela Blancas, Candy Breckling, Candy Bridgers, Rosalinda Buscit, Evelin Cruz, Edward. Daguioan, Cantare Davunt, Emily Dehart, Aubrietia Edick, Tyfani Faulkner, Matt Gauer, Linda Haluska, Dorothy Halvorson, Chris Haros, Shannon Henderson, Jessica Holstein, Margaret Hooten, Kiana Howard, Linda Jackson, Maria Jefferson, Megan Jenkins, Marie Kanger-Born, Allison Livengood, Young Manley, Pamela Marley, Victoria Martinez, Daniel Miller, Tim Montague, Paula Nez, Victoria Nogueta, Ismael Nunez, Mark Olean, Shantell Pearson, Zandi Queener, Conrado Santiago, Denise Schortgen, Martha Sellers, Tatiana Simmons, Lyle Skeen, Janet Sparks, Maria Sumagaysay, Jared Surdam, Tristin Weaver, Jennifer Whitley, Nefertira Wilbert, Jessica Williams, Montreissa Williams, Christina Wilson, Charles Wolford.

General Counsel's Response: The General Counsel generally agrees to Respondent's Requested Relief, with the exception that Charmaine Givens-Thomas, Shantell Pearson, and Jessica Sanchez should remain included, as they are involved in allegations in the Complaint, even if not named in the Complaint. The General Counsel further accepts Respondent's assertion that "Denise Schortgen" is actually "Jennifer Schortgen." After discussions with Respondent's counsel, the General Counsel has provided Respondent with a list of other employees (and their corresponding

stores) that the General Counsel believes participated in one or more of the strikes and therefore may have received unexcused absences and/or discipline, in whole or in part, for participating in the strikes, in order to facilitate its search for responsive documents regarding discriminatees not known to the General Counsel but more particularly known to Respondent.

G. Instruction to produce “complete” documents; Paragraph 17.

Requested Relief: Walmart asks that the instruction be modified to permit Walmart to redact any privileged or non-responsive but highly confidential or sensitive proprietary information contained in otherwise responsive-but-not-privileged documents before producing the documents. Absent that relief, Walmart will necessarily place such documents on a privilege or pending-Protective-Order log. In addition, Walmart asks that this instruction be modified to permit Walmart to produce documents without staples, paper clips, and file folders. Walmart will endeavor to produce documents that contain multiple pages together or as one electronic document, such that the CGC can discern what pages go together.

General Counsel’s Response: The General Counsel agrees to Respondent’s Requested Relief, subject to its provision of a privilege or Protective-Order log for documents it does not produce in their entirety. The General Counsel notes that Respondent’s request to redact here appears to be at least somewhat at odds with Respondent’s request that it be relieved from redacting certain records as instructed by paragraph 32 of the Subpoena’s Definitions and Instructions, as discussed below in subparagraph III(k).

H. Instructions To Produce Documents Not In Walmart’s Possession; Paragraphs 18-21.

Requested Relief: Walmart cannot produce documents it does not possess. Further, Walmart does not and cannot control former agents or those “indirectly” related to the company. Therefore, Walmart requests the instruction be modified to call for documents within Walmart’s

possession, custody, or control, or to refer to the production of any existing document that lists such “transferred” or “destroyed” documents related to the requested documents. [Case citations omitted]. In Cases 16-CA-096240, et al., the ALJ and parties agreed that Walmart need only produce documents in its control, custody, or possession.

General Counsel’s Response: The General Counsel agrees to Respondent’s Requested Relief.

I. Instruction to Produce Documents Relating to ESI; Paragraphs 23-28.²

Requested Relief [for instruction 25]: In its current form, this instruction requires Walmart to spend a disproportionate amount of time and resources to create a code to retrieve documents that add little to no value to the issues in this case. Therefore, Walmart requests this instruction be modified to pertain to relevant specific documents requested by the CGC on a case-by-case basis after review of the initial production. *See Kentucky Speedway, LLC v. NASCAR*, 2006 WL 5097354, *8-9 (E.D. Ky. 2006) (Plaintiff did not make any showing of a particularized need for the metadata, but leaving open the possibility production of metadata on a case-by-case basis: “Responding to a request for additional information concerning specific documents would be far less burdensome to defendant and far more likely to produce relevant information.”); *Dahl v. Bain Capital Partners, LLC*, 655 F.Supp.2d 146, 150 (2009) (“Rather than a sweeping request for metadata, the Shareholders should tailor their requests to specific word documents, specific emails or specific sets of email, an arrangement that, according to their memorandum, suits the PE Firms. This more focused approach will, the court hopes, reduce the parties’ costs and work.”). In Cases 16-CA-096240, et al., the parties agreed to that modification.

General Counsel’s Response: The General Counsel agrees to Respondent’s Request for

² Respondent did not specifically object to Request Nos. 23 or 24.

Relief.

Requested Relief [for instruction 26]: This instruction raises similar concerns as those in Paragraph 1. Walmart asks that this instruction be modified to allow Walmart to search for and produce responsive data from its servers that transmit data from its relevant managers' cell phones and laptops, as opposed to disrupting business operations and expending great resources traveling around the country to collect hardware devices that will likely only lead to massive amounts of irrelevant information. Additionally, Walmart requests the instruction to produce data from its managers' social media accounts be revoked as Walmart has no legal or ethical right to engage in such activities. In Cases 16-CA-096240, et al., the parties agreed to those modifications.

General Counsel's Response: The General Counsel agrees to Respondent's Request for Relief.

Requested Relief [for Instruction 27]: Similar to Instruction 25, this instruction requires Walmart to spend a disproportionate amount of time and resources to create a code to retrieve documents that add little to no value to the issues in this case. Consequently, Walmart requests this instruction be modified to require Walmart to provide the CGC the identity of any de-duped ("suppressed") document custodian, and then, produce -- if appropriate -- more detailed "filepath" information on a case-by-case basis as requested by CGC. *See Kentucky Speedway, LLC v*, 2006 WL 5097354, at *8-9; *Dahl*, 655 F.Supp.2d at 150. In Cases 16-CA-096240, et al., the parties agreed to that modification. Walmart further requests that e-mails be produced in "threaded" format, thereby removing lower, duplicate emails in an email chain, resulting in only the final, complete version of the chain, including attachments to every email in the chain.

General Counsel's Response: The General Counsel agrees to Respondent's Request for

Relief.

Requested Relief [for Instruction 28]: As stated above, this instruction calls on Walmart to create a proposal relating to search terms and custodians. Walmart intends to present the following query string and custodian-search proposal to the CGC:

- “Organization United for Respect at Walmart” OR “OURWalmart” OR “OUR Walmart” OR “OUR Wal-Mart”
- “United Food and Commercial Workers Union” OR “UFCW”
- “Black Friday”
- “intermittent work stoppage” OR “IWS” OR “strike” OR “walk out” “return to work”
- “Shareholders”
- “Los Angeles Sit In” OR “Los Angeles Sit-In” OR “LA Sit In” OR LA Sit-In” OR “Sit In” OR “Sit-In”
- “unexcused absence”
- “unauthorized absence”
- “conditional absence”

Walmart also proposes to run an ESI search using each of the alleged discriminatees’ names (first within two words of last). In Cases 16-CA-096240, et al., the parties agreed to this search regarding the alleged discriminatees. With respect to the initial custodian search, we propose to search for ESI (using the above-referenced Query String) from the computers of members of Walmart’s Labor Team. Doing so presents a number of advantages. First, Walmart previously imaged the Labor Team’s ESI covering June 2012 through September 2013, which was used for collecting similar requested documents in Cases 16-CA-096240, et al. Currently, the NLRB’s “relevant period” is January 1, 2013 to the date of testimony; thus, it is likely that potentially responsive documents exist in that database. Second, as it did through September 2013, Walmart continued to empower its Labor Team to coordinate and communicate with all the Walmart stakeholders at each level – from Store to Home Office – about the UFCW’s Making Change at Walmart Campaign to include its on-site Actions (aka demonstrations), which

include the work stoppage activity at issue in this case that occurred in November 2013, June 2014, and November 2014. Accordingly, Walmart has similarly imaged the Labor Team's computers for the period of time covering those work stoppages. Consequently, Walmart believes that virtually all communications and documents related to the IWS issues in this case will be captured in the ESI from the Labor Team as it relates to the allegations here from 2013 and 2014 (as well as some potentially responsive information from early 2015). For example, an email from a store manager about "strike" activity (if it exists) would be sent in the first instance to the Labor Team and, perhaps, copied to higher levels of operational management. As a matter of standard organizational reporting, Walmart expects store managers to report "labor" activity to the Labor Team. Third, doing the requested ESI search in the existing Labor Team records would get the NLRB the overwhelming majority of responsive documents by January 30, 2017.

In contrast, if Walmart has to capture and image other, tangential computer databases, we are looking at approximately four to five weeks to (a) coordinate the interruption of service to the computer and its users; (b) write code to image the particular computer; (c) run initial searches; (d) do initial quality checks on results; (e) iterate quality check corrections (if any); (f) run final production searches; and (g) execute the de-duplication initial and quality control check processes. After all that is done, Walmart must then begin the (human being) document review process for actual relevance, privilege, proprietary data, HIPAA information, etc. (we will likely need to coordinate a Protective Order to protect sensitive/confidential information). That process takes a significant amount of time; very roughly about one hour per 100 short documents (maybe four weeks for a team of reviewers). For example, based on the document collection process in Cases 16-CA-096240, et al., we estimate we will have to review approximately 90,000 documents for just the proposed ESI search (many of which may be non-responsive). If we need to,

we will calculate the cost, but it will be in the scores of thousands of dollars.

With all that as background, we propose to run the Query String in the Labor Team ESI. Should the NLRB's review of the responsive documents establish the need for queries in the ESI of other custodians, we can pursue that request at that time. However, again, given the straightforward – and largely undisputed – facts of the case – Walmart views this proposal as a very reasonable approach to getting the CGC the overwhelming majority of all responsive documents on the timeline requested while minimizing the unnecessary and unwarranted burden and expense on Walmart of searching for needles in haystacks that may not even exist.

General Counsel's Response: The General Counsel agrees to the Requested Relief, subject to the parties' agreement that the Relevant Period for the search should be from January 1, 2013, through November 9, 2016 (*see* Section III(J), *infra*), Your Honor's ruling on the definition of "Alleged Discriminatees" (*see* Section III(F), *supra*), and the parties' agreement to otherwise limit the search to the following search terms:

- "Organization United for Respect at Walmart" OR "OURWalmart" OR "OUR Walmart" OR "OUR Wal-Mart"
- "United Food and Commercial Workers Union" OR "UFCW"
- "intermittent work stoppage" OR "IWS" OR "strike" OR "walk out" OR "return to work" OR "demonstration"
- "Los Angeles Sit In" OR "Los Angeles Sit-In" OR "LA Sit In" OR "LA Sit-In" OR "Sit In" OR "Sit-In"

J. Definition of "Relevant Period": Paragraph 31.

Requested Relief: Without modification, the definition in Paragraph 31 relating to the "relevant period," results in the unduly burdensome and expensive production of tens of thousands of irrelevant documents and materials. See *Carle Clinic Ass'n*, 192 NLRB 152, ft. 3 (1971) (Board affirmed the Regional Directors' Decision, which included revoking the subpoena that requested annual reports, employees' information guides, and financial statements going

back five years as the requests were irrelevant to the underlying fundamental issue); *Beta Steel Corp.*, 326 NLRB 1267 (1998) (Board adopted the ALJ’s findings requiring the employer to produce records from only one year as opposed to the five years requested in the subpoena); *Stevens v. National R.R. Passenger Corp.*, 2007 WL 1830869, *4 (D.D.C. 2007) (Court granted a non-party’s motion to quash that “because the events occurred more than two years ago, [the company] would incur significant time and expense to dig up telephonic and electronic mail contacts and attendance records”). Accordingly, Walmart asks that the “relevant period” definition be modified per subpoena request number as described below in Walmart’s objections to the specific CGC document requests.

General Counsel’s Response: The parties have agreed to the following definition of “Relevant Period:” January 1, 2013, through November 9, 2016.

K. Instruction to Redact Documents; Paragraph 32.

Requested Relief: Walmart requests this instruction to be modified to require Walmart to redact information only from personnel files, and that the burden to redact additional information be placed on any party seeking to place a document into evidence. *See* Fed. R. Civ. P. 5.2(a) (placing the burden for redacting personally identifying information on the party filing the document with the court).

General Counsel’s Response: The General Counsel agrees to the Request for Relief.

IV. RESPONDENT’S SPECIFIC OBJECTIONS TO THE SUBPOENA REQUESTS LACK MERIT. (PRV § III)

A. Requests 1 and 2 (Organizational charts and staffing hierarchy for the stores at issue)

Requested Relief: Walmart asks that Requests 1 and 2 be modified to seek only organizational hierarchy documents, to the extent any exists, from stores where the specific alleged discriminatees were employed during the time frame of the allegation specific to that

particular alleged discriminatee. Walmart also asks that Requests 1 and 2 be modified to request documents that show the managerial hierarchy from the Store Manager position down at each particular store.

General Counsel Response: The requested documents are relevant to show Respondents chain of command and where the alleged supervisors and agents fall within that chain of command, and to show the centralized control Respondent asserts over its stores and its uniform policies with respect to attendance, discipline, and information sharing regarding employees engaging in strikes or other protected, concerted activities. They also support the General Counsel’s request for a broad order in the case, to the extent they show a shared managerial authority and chain-of-command. Respondent has not shown it will be unduly burdensome to provide the requested information. *See* Section I(B), *supra*. The General Counsel’s definitions of “Stores at Issue” and “Alleged Discriminatees” are relevant and appropriate. *See* Sections III(E) and (F), *supra*.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties’ agreement with respect to the definition of “Relevant Time Period” articulated above in Section III(J), *supra*. As stated in Request 44, the General Counsel is willing to accept a signed and sworn summary in response to those requests, subject to the provisions in Request 44.

B. Requests 3 and 4 (Employee handbooks and specific policies applicable to employees)

Walmart Objection: Request 3 is substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding as it calls for every possible policy/procedure/practice document related to employees, when, as Request 4 tacitly acknowledges, the only employee policy/procedure/practice documents at issue in this case are those identified in Request 4, with the exception of

4(f), 4(g), 4(j), and 4(l) (to the extent 4(l) relates to allegations outside the scope of any charge). Walmart objects to Requests 4(f), 4(g), and 4(j) because documents that describe those policies/procedures/practices (i.e., dress code, open door meetings, and labor relations or unionization) are not reasonably intended to result in the production of documents relevant to the disputed issues involved in this proceeding.

Requested Relief: Walmart asks that Requests 3 and 4 be modified to refer to the production of relevant policies only, such as those policies pertaining to (1) disciplinary policies; (2) attendance and punctuality; (3) covering absences; (4) hazardous materials; (5) off-duty employee access to Walmart's facilities; (6) inappropriate or unprofessional behavior; (7) poor customer service; (8) strikes and other forms of work stoppages. The CGC's request in its current form is significantly overbroad and this modification will limit the production of vastly irrelevant information and documents. *Compare Lowe v. Vadlamudi*, 2012 WL 3887177, *3 (E.D. Mich. 2012) (Request for policies, procedures, and guidelines connected with the provisions of medical care and specialty care at correctional facilities relevant to the underlying issue in the case of whether the facilities handled the plaintiff's medical needs properly).

General Counsel Response: Employee handbooks (Request 3), if they exist, are likely to include many of the policies at issue. The requested policies in 4(f) (dress codes and the wearing of buttons or stickers) are relevant to the allegation that Respondent prohibited employees from wearing union insignia (Complaint Paragraph 25). The requested policies in 4(g) (Open door meetings) are relevant to the allegation that Respondent disciplined employees in part because they requested to attend open door meetings in concert with other employees (Complaint ¶ 21). The requested policies in 4(j) (Labor relations or unionization) are relevant to show Respondent's coordinated efforts to obtain knowledge of its employees' union and protected concerted activities

and animus towards those activities, which is relevant to many of the discipline allegations and support the allegations that Respondent engaged in surveillance, interrogation, threats, denial of access, and related allegations alleged throughout the Complaint, and to support the General Counsel's request for a broad order in the case to the extent the policies at issue pertained to all of Respondent's stores. The requested policies in 4(l) (other policies that served as a basis for disciplining employees Martinez, Cruz, and Davunt) are relevant to Respondent's defense that it would have disciplined the named employees absent their protected, concerted activities. *See* Complaint ¶¶ 14, 15, and 21. Respondent does not dispute the relevance of the other subrequests in Request 4. Respondent has failed to show that the requests are unduly burdensome. *See* Section I(B), *supra*. The General Counsel's definitions of "Stores at Issue" and "Alleged Discriminatees" are relevant and appropriate. *See* Sections III(E) and (F), *supra*.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties' agreement with respect to the definition of "Relevant Time Period" articulated above in Section III(J), *supra*.

C. Requests 5, 6, and 7 (attendance tracking information).

Walmart Objection: Walmart objects to Requests 5-7 to the extent they seek documents "describing" Walmart's "attendance tracking computer systems and alert systems," "work scheduling system(s)," "SMART system," "formulas and metrics," "Interactive Voice Response (IVR) Systems and/or automated computer system," and "confirmation code numbers." Such requests are overbroad, unduly burdensome, not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding, and require Walmart to disclose confidential, proprietary information. As an example, requests 5-7 seek various proprietary instruction manuals, if they even exist, which cannot shed any light on the issues in this case. For example, the "SMART" system provides draft working schedules several weeks in

advance, which are then adjusted by managers based on associate day-to-day comings and goings – none of which is relevant to whether an employee’s absences were part of a protected or unprotected work stoppage – the central issue in this matter.

Walmart further objects that Requests 5-7 are overbroad and unduly burdensome because the requests seek production of documents from stores not identified in the Complaint and from stores beyond those where the alleged discriminatees worked during the pertinent time periods.

Requested Relief: Walmart asks that Requests 5-7 be revoked to the extent those requests require Walmart to produce irrelevant documents explaining the above referenced computer systems. [Case citations omitted]. Walmart further asks that Requests 5-7 be modified to interpret the term “employees” to mean those alleged discriminatees named in the Complaint and listed by Walmart in its requested relief as to Definitions and Instructions 14. Walmart further asks that Requests 5-7 be modified to apply to only stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee. As for any confidential or proprietary documents, Walmart will only produce such documents subject to a suitable protective order.

General Counsel’s Response: The requested documents are relevant to show how Respondent’s attendance policy functioned generally, how it obtained knowledge that the employees intended to engage in the strikes at issue in the Complaint, and how it applied that policy to issue unexcused absences to employees who engaged in strikes. It is further relevant to support the General Counsel’s argument that the strikes were not designed to “harass the company into a state of confusion,” one of the elements of Respondent’s legal defense that the strikes were unprotected intermittent work stoppages. *See United States Service Industries*, 315 NLRB 285, 285-86 (1994) (where no evidence that there was strategy to harass the company into a state of

confusion, “mere fact that some employees may have struck more than once [as part of a nationwide campaign] does not render their conduct intermittent striking”); *WestPac Electric*, 321 NLRB 1322, 1360 (1996) (strikes were not part of “‘hit and run’ tactics intended to ‘harass the company into a state of confusion’”). It also supports the General Counsel’s request for a broad Order, to the extent the attendance system and policies apply nationwide. Respondent has failed to show that the requests are unduly burdensome. *See* Section I(B), *supra*. The General Counsel’s definitions of “Stores at Issue” and “Alleged Discriminatees” are relevant and appropriate. *See* Sections III(E) and (F), *supra*.

As stated in Request 44, the General Counsel is willing to accept a signed and sworn summary in response to those requests, subject to the provisions in Request 44. Respondent should be ordered to produce the requested documents without further modification, consistent with the parties’ agreement with respect to the definition of “Relevant Time Period” articulated above in Section III(J), *supra*, along with an appropriate privilege log for documents withheld as privileged.

D. Request 8 (videos, pamphlets, training material, slideshows, and other displays shown to employees which reference unions, UFCW, or OUR Walmart).

Walmart Objection: Walmart objects to Request 8 as overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. In particular, the documents requested are not relevant to whether an employee’s absences were part of a protected or unprotected work stoppage – the central issue in this matter. Also, the terms “employees” and “stores at issue” are vague, substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding.

Requested Relief: Walmart asks that Request 8 be stricken in its entirety. Barring that requested relief, Walmart asks that Request 8 be modified to clarify that “employees” means

those alleged discriminatees named in the Complaint and listed by Walmart in its requested relief as to Definitions and Instruction ¶ 14. Walmart also asks that Request 8 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee.

General Counsel's Response: As with other requests, the requested documents are relevant to show Respondent's coordinated efforts to obtain knowledge of its employees' union and protected concerted activities and animus towards those activities, which is relevant to many of the discipline allegations and support the allegations that Respondent engaged in surveillance, interrogation, threats, denial of access, and related allegations alleged throughout the Complaint, and to support the General Counsel's request for a broad order in the case, to the extent the requested documents pertain to Respondent's stores nationwide. Respondent has failed to show that the requests are unduly burdensome. *See* Section I(B), *supra*. The General Counsel's definitions of "Stores at Issue" and "Alleged Discriminatees" are relevant and appropriate. *See* Sections III(E) and (F), *supra*.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties' agreement with respect to the definition of "Relevant Time Period" articulated above in Section III(J), *supra*.

- E. **Requests 9, 10, and 11** (strike notifications, lists of employees known or suspected to have intended to strike, etc.).

Walmart Objection: Walmart objects to Requests 9, 10, and 11 as substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding, and requires Walmart to disclose confidential and/or proprietary information. To the extent the CGC seeks such documents to show the impact and disruption (or lack thereof) regarding the pertinent work stoppages, as a matter of law, impact and disruption are not factors used to assess whether a

work stoppage is protected or unprotected activity. [A]lso, as used in Requests 9 and 11, the term “employees” is vague, substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. Additionally, Sub-request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at Sub requests (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges). [Case citations omitted.]

Walmart also objects to producing any documents listed in Request 10 subject to attorney-client privilege.

Requested Relief: Without waiving its objections, Walmart will produce responsive, non-privileged, documents, to the extent they exist, based on the work stoppages listed in (a)-(d). As for any confidential or proprietary documents, Walmart will only produce such documents subject to a suitable protective order.

General Counsel’s Response: The requested documents are relevant to show Respondent’s actual knowledge of its employees’ union and protected concerted activities, as well as its coordinated efforts to obtain that knowledge, which in turn supports the General Counsel’s arguments that the resulting unexcused absences and/or discipline Respondent issued its employees were unlawful. The requested documents are also relevant, including but not limited to subrequests (e) (“Any other dates on which Respondent contends its employees were on strike”), to show that the strikes were not designed to “harass the company into a state of confusion,” one of the elements of Respondent’s legal defense that the strikes were unprotected intermittent work stoppages. *See United States Service Industries* and *WestPac Electric, supra*. They are also relevant to show that a broad order is necessary to remedy Respondent’s unfair labor practices. Respondent has failed to show that the requests are unduly burdensome. *See Section I(B), supra*. The General Counsel’s definition of

“Stores at Issue” is relevant and appropriate. *See* Section III(E), *supra*. The request is not limited to “Alleged Discriminatees,” and should apply to all employees at the stores at issue, who were likely involved or affected whether they participated in the strikes or not.

Respondent should be ordered to produce the requested documents without modification, consistent with the parties’ agreement with respect to the definition of “Relevant Time Period” articulated above in Section III(J), *supra*.

- F. **Request 12** (instructions to managers, supervisors, and agents regarding how to respond to strikes, how to treat strike-related absences, or otherwise communicate with employees regarding strikes).

Walmart Objection: As Walmart explained in its objections to Definitions and Instructions ¶ 12, the term “stores at issue” is substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. Request 12 is also vague and overbroad as to the term “including, but not limited to,” and it is not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. In particular, many of the types of documents identified in Request 12 have nothing to do with instructions that Walmart gave to managers, supervisors, or agents “regarding how to respond to strikes, how to treat strike-related absences, or how to communicate with employees regarding strikes.” Walmart also objects to the extent this request purports to require the production of privileged documents.

Requested Relief: Walmart asks that Request 12 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee as it relates to the work stoppages in November 2013, June 2014, and November 2014. Without waiving its objections, Walmart will provide documents containing instructions to statutory supervisors at the stores where the alleged discriminatees were employed during the work stoppages in November 2013, June 2014, and

November 2013, regarding how to respond to strikes, how to treat strike-related absences, or how to communicate with employees regarding strikes at the stores, to the extent any such documents exist.

General Counsel's Response: The relevance of the request is patently clear, and goes to the heart of the Complaint allegations that Respondent engaged in a corporate-wide campaign of treating strikes as unexcused absences, disciplining strikers, interrogating, threatening, surveilling, denying access to strikers, and prohibiting employees from wearing union insignia, all in order to discourage employees from engaging in strikes. It also supports the General Counsel's argument that a broad order is necessary to remedy the unfair labor practices. Respondent has failed to show that the requests are unduly burdensome. *See* Section I(B), *supra*. The General Counsel's definition of "Stores at Issue" is relevant and appropriate. *See* Section III(E), *supra*. The request is not limited to "Alleged Discriminatees" and should apply to all employees at the stores at issue who were likely affected, whether they participated in the strikes or not.

Respondent should be ordered to produce the requested documents without modification, consistent with the parties' agreement with respect to the definition of "Relevant Time Period" articulated above in Section III(J), *supra*.

G. Request 13 (statements or instructions issued or read to employees regarding strikes)

Walmart Objection: Request 13 is vague and overbroad as to the term "employees" and as to which stores are subject to that request. Sub-request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges).

Requested Relief: Walmart asks that Request 13 be modified to interpret the term "employees" to mean those alleged discriminatees named in the Complaint and listed by Walmart

in its requested relief as to Definitions and Instructions ¶ 14. Walmart also asks that Request 13 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee as it relates to the work stoppages listed at (a)-(d). Without waiving its objections, Walmart will provide documents, including Talking Points” that it issued to or read to the alleged discriminatees related to the work stoppages in (a)-(d).

General Counsel’s Response: As noted above, the relevance of the request is patently clear, and goes to the heart of the Complaint allegations that Respondent engaged in a corporate-wide campaign of treating strikes as unexcused absences, disciplining strikers, interrogating, threatening, surveilling, denying access to strikers, and prohibiting employees from wearing union insignia, all in order to discourage employees from engaging in strikes. Again, subrequest (e) (“Any other dates on which Respondent contends its employees were on strike”) is relevant to Respondent’s legal defense that the strikes were unprotected intermittent work stoppages. . *See United States Service Industries and WestPac Electric, supra.*

The requested documents support the General Counsel’s argument that a broad order is necessary to remedy the unfair labor practices. Respondent has failed to show that the requests are unduly burdensome. *See* Section I(B), *supra*. The General Counsel’s definition of “Stores at Issue” is relevant and appropriate. *See* Section III(E), *supra*. The request is not limited to “Alleged Discriminatees” and should apply to all employees at the stores at issue who were likely affected, whether they participated in the strikes or not.

Respondent should be ordered to produce the requested documents without modification, consistent with the parties’ agreement with respect to the definition of “Relevant Time Period” articulated above in Section III(J), *supra*.

H. Requests 14 and 15 (total number of stores and employees in the United States at the time of the strikes)

Walmart Objection: Requests 14 and 15 are substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. To the extent the CGC seeks such documents to show the impact and disruption (or lack thereof) regarding the pertinent work stoppages, as a matter of law, impact and disruption are not factors used to assess whether a work stoppage is protected or unprotected activity. Second, Request 14 is vague as to the term “stores.” Does that include Sam’s Clubs? Neighborhood Markets? Neither type of facility is at issue in this proceeding. Request 15 is unduly burdensome as the number of Walmart employees fluctuates on a daily basis. Sub-request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges).

Requested Relief: Walmart asks that Requests 14 and 15 be stricken in their entirety because those requests are not relevant to the issues in this case. Barring that requested relief, Walmart asks that the term “stores” as used in Request 14 be defined as meaning Walmart’s retail stores (and not including Sam’s Clubs or Neighborhood Markets), and that Walmart be permitted to provide an estimate of the number of employees during the listed work stoppages at Sub-requests (a)-(d).

General Counsel’s Response: The requests are relevant to support the General Counsel’s argument that the strikes were not designed to “harass the company into a state of confusion,” one of the elements of Respondent’s legal defense that the strikes were unprotected intermittent work stoppages. *See United States Service Industries and WestPac Electric, supra.* The request is not limited to the stores at issue because the General Counsel wants to provide context for its argument

that the strikes involved a proportionately small number of stores and employees, and thus are distinguishable from cases where the Board has found work stoppages were unlawful intermittent work stoppages because they were designed to harass the company into a state of confusion, an element of one of Respondent's defenses. *See Id.* The General Counsel has agreed to limit the definition of "Respondent" as requested by Respondent, whereby it agreed to remove the various "Sam's Club" entities. *See Section III(c), supra.* The General Counsel does not know the intricacies of how Respondent names or classifies its various "stores" or how they are distinguishable from each other. Respondent is free to argue that certain stores are not useful comparators, but it should provide the requested information. Further, in Subpoena Request No. 44, the General Counsel has given Respondent the option of providing a summary in response to the requests, subject to the provisions of Request No. 44. Again, with respect to subrequest (e) ("Any other dates on which Respondent contends its employees were on strike"), the request is relevant to Respondent's legal defense that the strikes were unprotected intermittent work stoppages. Respondent has failed to show that the requests are unduly burdensome. *See Section I(B), supra.*

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties' agreement with respect to the definition of "Relevant Time Period" articulated above in Section III(J), *supra.*

I. Requests 16 and 17 (total number of employees at the stores at issue at the time of the strikes)

Walmart Objection: Requests 16 and 17 are substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. As explained above, to the extent the CGC seeks such documents to show the impact and disruption (or lack thereof) regarding the pertinent work stoppages, as a

matter of law, impact and disruption are not factors used to assess whether a work stoppage is protected or unprotected activity. Requests 16 and 17 are also overbroad and unduly burdensome to the extent they seek employee census data from stores not specifically alleged in the Complaint. Additionally, not every “store at issue” (as currently defined by the CGC) had associates participate in every work stoppage listed in Sub-requests (a)-(d). Sub- request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges).

Requested Relief: Walmart asks that Requests 16 and 17 be stricken in their entirety. Barring that requested relief, Walmart asks that Requests 16 and 17 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminate as it relates to the work stoppages listed at (a)-(d).

General Counsel’s Response: As noted above, the “stores at issue,” as defined in the Subpoena, are stores from which the General Counsel has reason to believe employees went on strike. Section III(e), *supra*. Again, the Complaint alleges that there are potential discriminatees not known to the General Counsel but likely known by Respondent, and therefore the request is not limited to the defined “alleged discriminatees.” The requested records are again relevant to show that the strikes were not designed to harass Respondent, a massive corporation with hundreds of stores and millions of employees, into a state of confusion, an element of its intermittent work stoppage defense. Subrequest (e) similarly goes to that defense. Respondent has failed to show that the requests are unduly burdensome. *See* Section I(B), *supra*.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties’ agreement with respect to the definition of “Relevant Time

Period” articulated above in Section III(J), *supra*.

J. Request 18 (unexcused absences issued to employees at the stores at issue who were scheduled to but did not report to work during the strikes).

Walmart Objection: Request 18 is substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding to the extent it seeks documents from stores not specifically alleged in the Complaint. Also, the term “employees” is vague, substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. As written, Request 18 potentially includes employees who did not participate in any work stoppage but were absent from work during the relevant work stoppage dates due to unrelated reasons (sick, abandoned job, etc.). As explained above, to the extent the CGC seeks such documents to show the impact and disruption (or lack thereof) regarding the pertinent work stoppages, as a matter of law, impact and disruption are not factors used to assess whether a work stoppage is protected or unprotected activity. Moreover, the Complaint contains no disparate treatment allegation regarding the issuance of unexcused absences to the alleged discriminatees; thus, information about other employees’ unexcused absences is irrelevant. Sub-request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges).

Requested Relief: Walmart asks that Request 18 be modified to define “employees” as those alleged discriminatees named in the Complaint and listed by Walmart in its requested relief as to Definitions and Instruction ¶ 14. Walmart also asks that Request 18 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee as it relates to the work stoppages

listed at (a)-(d). Without waiving its objections, Walmart will provide attendance records that show the issuance of unexcused absences, if any exist, to the alleged discriminatees during the time period of the work stoppages listed at (a)-(d).

General Counsel's Response: In light of Respondent's representation that some employees may have received unexcused absences for calling in sick or other reasons unrelated to the strike, the General Counsel agrees that production can be limited to *all* employees at the stores at issue about whom Respondent received notification of their intent to strike. Production should not be limited to alleged discriminatees, as the Complaint alleges that there are likely more discriminatees not currently known to the General Counsel, but known to Respondent. Subsection (e) is again relevant to Respondent's intermittent work stoppage defense, and also to identifying some of the other potential discriminatees that are not currently known to the General Counsel. Respondent has failed to show that the requests are unduly burdensome. *See* Section I(B), *supra*. The General Counsel's definition of "Stores at Issue" is relevant and appropriate. *See* Section III(E), *supra*.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties' agreement with respect to the definition of "Relevant Time Period" articulated above in Section III(J), *supra*.

K. Request 19 (documents showing Respondent's efforts to find coverage for striking employees at the stores at issue).

Walmart Objection: Request 19 is substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. As explained above, to the extent the CGC seeks such documents to show the impact and disruption (or lack thereof) regarding the pertinent work stoppages, as a matter of law, impact and disruption are not factors used to assess whether a work stoppage is protected or unprotected activity. Also, the term "employees" is vague, substantially overbroad, unduly

burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. As written, Request 19 potentially includes employees who did not participate in any work stoppage but were absent from work during the relevant work stoppage dates due to unrelated reasons (sick, abandoned job, etc.). Request 19 is substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding to the extent it seeks documents from stores not specifically alleged in the Complaint. Sub-request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges).

Requested Relief: Walmart asks that Request 19 be stricken in its entirety. Barring that requested relief, Walmart asks that Request 19 be modified to clarify that “employees” means those alleged discriminatees named in the Complaint and listed by Walmart in its requested relief as to Definitions and Instruction ¶ 14. Walmart also asks that Request 19 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee as it relates to the work stoppages listed at (a)-(d).

General Counsel’s Response: Identical to its response to Request 18, *supra*.

- L. Request 20** (Respondent’s assessments of potential or actual impact on operations caused by the absence of striking employees).

Walmart Objection: Request 20 is substantially overbroad, unduly burdensome and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. As explained above, to the extent the CGC seeks such documents to show the impact and disruption (or lack thereof) of the pertinent work stoppages, as a matter of law, impact and disruption are not factors used to assess whether a work stoppage is protected or

unprotected activity. Request 20 is also substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding to the extent it seeks documents from stores not specifically alleged in the Complaint. Sub-request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges).

Requested Relief: Walmart asks that Request 20 be stricken in its entirety. Barring that requested relief, Walmart asks that Request 20 be modified to clarify that “employees” means those alleged discriminatees named in the Complaint and listed by Walmart in its requested relief as to Definitions and Instruction ¶ 14. Walmart also asks that Request 20 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee as it relates to the work stoppages listed at (a)-(d).

General Counsel’s Response: The requested documents are relevant to support the General Counsel’s argument that the strikes were not designed to “harass the company into a state of confusion,” one of the elements of Respondent’s legal defense that the strikes were unprotected intermittent work stoppages. *See United States Service Industries and WestPac Electric, supra.* Subsection (e) is again relevant to Respondent’s intermittent work stoppage defense, and also to identifying some of the other potential discriminatees that are not currently known to the General Counsel. Respondent has failed to show that the requests are unduly burdensome. *See Section I(B), supra.* The General Counsel’s definitions of “Stores at Issue” and “Alleged Discriminatees” are relevant and appropriate. *See Sections III(E) and (F), supra.*

Respondent should be ordered to produce the requested documents without modification,

consistent with the parties' agreement with respect to the definition of "Relevant Time Period" articulated above in Section III(J), *supra*.

- M. Request 21** (journalism or media pieces describing Respondent's assessment of impact of strikes to extent not provided in response to Request No. 20).

Walmart Objection: Request 21 is substantially overbroad, unduly burdensome and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. In particular, what a Walmart authorized representative may have said to the press/media has no bearing on whether an alleged discriminatee's participation in one of the work stoppages listed in (a)-(d) is protected or unprotected activity and whether Walmart lawfully issued unexcused absences to the alleged discriminatee based on that activity. Additionally, the terms "authorized to speak," "journalism or media pieces," and "store" are vague. Request 21 is also substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding to the extent it seeks documents from stores not specifically alleged in the Complaint. Sub-request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges).

Requested Relief: Walmart asks Request 21 be stricken in its entirety. Barring that requested relief, Walmart asks that Request 21 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee as it relates to the work stoppages listed at (a)-(d). Walmart also asks that Request 21 be modified to define "authorized to speak" to mean Walmart representatives that Walmart specifically authorized and provided to the press/media to talk about the work stoppages listed in (a)-(d) on behalf of the Company. Walmart asks that "journalism

or media pieces” be defined to mean third-party created newspaper or online news articles. Walmart will provide only those documents within Walmart’s possession/custody/ control as defined by the federal rules.

General Counsel’s Response: The requested documents are relevant to support the General Counsel’s argument that the strikes were not designed to “harass the company into a state of confusion,” one of the elements of Respondent’s legal defense that the strikes were unprotected intermittent work stoppages. *See United States Service Industries and WestPac Electric, supra.* The requested documents are also relevant to show Respondent’s coordinated efforts to obtain knowledge of its employees’ union and protected concerted activities and animus towards those activities, which is relevant to many of the discipline allegations and support the allegations that Respondent engaged in surveillance, interrogation, threats, denial of access, and related allegations alleged throughout the Complaint. They are further relevant to support the General Counsel’s request for a broad order in the case to the extent the requested documents pertained to all of Respondent’s stores. Subsection (e) is again relevant to Respondent’s intermittent work stoppage defense, and also to identifying some of the other potential discriminatees that are not currently known to the General Counsel. Respondent has failed to show that the requests are unduly burdensome. *See Section I(B), supra.* The General Counsel’s definitions of “Stores at Issue” and “Alleged Discriminatees” are relevant and appropriate. *See Sections III(E) and (F), supra.*

The General Counsel accepts Respondent’s proposal to define “authorized to speak” to mean Walmart representatives that Walmart specifically authorized and provided to the press/media to talk about the work stoppages listed in (a)-(d), *as well as (e)*, on behalf of the Company. The General Counsel does not accept Respondent’s proposal to define “journalism or media pieces” to mean third-party created newspaper or online news articles, as the definition

should also include, but not be limited to, journalism or media pieces created by Respondent, such as press releases, newsletters, internet postings, social media postings on accounts specifically authorized by Respondent, and the like.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties' agreement with respect to the definition of "Relevant Time Period" articulated above in Section III(J), *supra*.

N. **Request 22** (records of discussions with employees issued unexcused absences related to strikes).

Walmart Objection: Request 22 is vague and overbroad as to the phrase "employees who were issued unexcused absences during the following strikes regarding those unexcused absences." As discussed above, Walmart issued unexcused absences to associates who did not participate in any work stoppage but were absent from work during the relevant work stoppage dates due to unrelated reasons (sick, abandoned job, etc.). Request 22 is also substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding to the extent it seeks documents from stores not specifically alleged in the Complaint. Sub-request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges).

Requested Relief: Walmart asks that Request 22 be modified to define the term "employees" to mean those alleged discriminatees named in the Complaint and listed by Walmart in its requested relief as to Definitions and Instructions ¶ 14. Walmart also asks that Request 22 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee as it relates to the work stoppages listed at (a)-(d). Without waiving its objections, Walmart will provide

documents regarding meetings that management had with the alleged discriminatees who were issued unexcused absences in accordance with the Company's attendance policy for failing to work scheduled shifts during the work stoppages listed at (a)-(d).

General Counsel's Response: In light of Respondent's representation that some employees may have received unexcused absences for calling in sick or other reasons unrelated to the strike, the General Counsel agrees that production can be limited to *all* employees at the stores at issue about whom Respondent received notification of their intent to strike. However, production should not be limited to alleged discriminatees, as the Complaint alleges that there are likely more discriminatees not currently known to the General Counsel, but known to Respondent. Subsection (e) is again relevant to Respondent's intermittent work stoppage defense, and also to identifying some of the other potential discriminatees that are not currently known to the General Counsel. The General Counsel's definition of "Stores at Issue" is relevant and appropriate. *See* Section III(E), *supra*.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties' agreement with respect to the definition of "Relevant Time Period" articulated above in Section III(J), *supra*.

- O. Request 23** (records of conversations between managers and employee regarding strikes or strike-related absences).

Walmart Objection: Request 23 is substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding as it seeks documents potentially from Walmart's 5000+ stores involving over 1.4 million+ associates, who have nothing to do whatsoever with the specific allegations in the Complaint. Moreover the terms "employees," "any conversations," and "store" are vague.

Requested Relief: Walmart asks that Request 23 be modified to define the term "employees" to mean those alleged discriminatees named in the Complaint and listed by

Walmart in its requested relief as to Definitions and Instructions ¶ 14. Walmart also asks that Request 23 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee as it relates to the work stoppages listed at (a)-(d).

General Counsel's Response: As with other requests, the requested documents are relevant to show Respondent's coordinated efforts to obtain knowledge of its employees' union and protected concerted activities and animus towards those activities, which is relevant to many of the discipline allegations and support the allegations that Respondent engaged in surveillance, interrogation, threats, denial of access, and related allegations alleged throughout the Complaint, and to support the General Counsel's request for a broad order in the case to the extent the requested documents pertained to all of Respondent's stores. Respondent has failed to show that the requests are unduly burdensome. *See* Section I(B), *supra*. The General Counsel's definitions of "Stores at Issue" and "Alleged Discriminatees" are relevant and appropriate. *See* Sections III(E) and (F), *supra*.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties' agreement with respect to the definition of "Relevant Time Period articulated above in Section III(J), *supra*.

- P. Request 24** (records of discipline based in whole or part on unexcused absences for strikers).

Walmart Objection: Request 24 is substantially overbroad, unduly burdensome and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding and is vague as to the term "employee." As discussed above, Walmart issued unexcused absences to associates who did not participate in any work stoppage but were absent from work during the relevant work stoppage dates due to unrelated reasons (sick, abandoned job, etc.), and may have issued discipline to those associates irrelevant to the issues in this

proceeding. Request 24 is also vague as to “any level of discipline based in whole or in part on... unexcused absences.” To the extent Walmart issued personal discussions, those are not a “level of discipline.” Moreover, Request 24 is substantially overbroad, unduly burdensome, and not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding to the extent it seeks documents from stores not specifically alleged in the Complaint. Sub-request (e) is also substantially overbroad, irrelevant, and unduly burdensome because the work stoppages listed at (a)-(d) are the only work stoppages identified in the Complaint (as well as the operative Charges).

Requested Relief: Walmart asks that Request 24 be modified to define the term “employees” to mean those alleged discriminatees named in the Complaint and listed by Walmart in its requested relief as to Definitions and Instructions ¶ 14. Walmart also asks that Request 24 be modified to apply to only the stores where the alleged discriminatees were employed during the time frame of the allegation specific to that particular alleged discriminatee as it relates to the work stoppages listed at (a)-(d). Without waiving its objections, Walmart will provide written personal discussions, written coachings, and exit interview forms that Walmart issued to the alleged discriminatees based in whole or in part on any unexcused absences they may have had during the work stoppage dates listed at (a)-(d) and will provide other disciplinary documents issued to the alleged discriminatees.

General Counsel’s Response: In light of Respondent’s representation that some employees may have received unexcused absences for calling in sick or other reasons unrelated to the strike, the General Counsel agrees that production can be limited to *all* employees at the stores at issue about whom Respondent received notification of their intent to strike. Production should not be limited to alleged discriminatees, as the Complaint alleges that there are likely more discriminatees not

currently known to the General Counsel, but known to Respondent. Further, Respondents' personal discussions lay a foundation for future discipline, and therefore are considered a form of discipline by the Board, as found in Judge Geoffrey Carter's recent decision in the precursor to this case. *See Walmart Stores, Inc.*, JD-03-16, slip op. at 64-65 (January 21, 2016)(exceptions pending), citing *Alter Care of Wadsworth Center for Rehabilitation*, 355 NLRB 565, 565–566 (2010); *Oak Park Nursing Care Center*, 351 NLRB 27, 28 (2007); *Promedica Health Systems*, 343 NLRB 1351, 1351 (2004), enfd. in pertinent part 206 Fed. Appx. 405 (6th Cir. 2006), cert denied 127 S. Ct. 2033 (2007). *Good Hope Refineries*, 245 NLRB 380, 384 (1979), enfd. 620 F.2d 57 (5th Cir. 1980), cert. denied 449 US 1012 (1980).

Respondent has failed to show that the requests are unduly burdensome. *See* Section I(B), *supra*. The General Counsel's definition of "Stores at Issue" is relevant and appropriate. *See* Section III(E), *supra*.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties' agreement with respect to the definition of "Relevant Time Period" articulated above in Section III(J), *supra*.

Q. **Request 25** (personnel files for three specific discriminatees for whom the reasons for termination are in dispute).

Walmart Objection: Walmart objects to the production of documents in response to Request 25 as it relates to allegations outside the scope of any Charge as discussed in Section III. Request 25 is also vague and overbroad as to the term "personnel file" because the list of documents that follows assumes that all of those documents are part of a "personnel file." Many of those documents are not part of a personnel file.

Requested Relief: As discussed in section III, Walmart asks that it not be required to produce documents relating to this request, subject to the Board's ruling on its forthcoming

Motion to Dismiss. Barring that requested relief, Walmart will provide the requested personnel files and provide separately the additional requested documents, to the extent they exist. Walmart also asks that Request 25 be modified so that Walmart will provide red book investigations only where the employee was the subject or the complainant of the investigation, and with redactions to protect privacy and proprietary confidential information. Walmart further asks that Request 25 be modified to require Walmart produce only those social media documents in its possession, custody, or control.

General Counsel's Response: As discussed above in Section II, *supra*, Respondent's argument that certain allegations in the Complaint are not encompassed by the Charges lacks merit and should be rejected. The General Counsel otherwise agrees to Respondent's proposed limitations, so long as it provides an appropriate privilege log.

R. Request 26 (disciplinary and investigatory records not found in personnel files produced in response to Request 25).

Walmart Objection: Walmart objects to the production of documents in response to Request 26 as it relates to allegations outside the scope of any Charge as discussed in Section III. Walmart further objects to Request 26 to the extent it seeks text messages. Walmart will certainly search for and produce responsive data from its own servers that transmit data from manager cell phones, but it does not believe it is necessary – absent a showing of extraordinary need – to collect managers' cell phones to search through untold irrelevant "local" data storage for a needle in a haystack.

Requested Relief: As discussed in section III, Walmart asks that it not be required to produce documents relating to this request, subject to the Board's ruling on its forthcoming Motion to Dismiss. Barring that requested relief, Walmart asks that Request 26 be modified to allow Walmart to search for and produce responsive data from its servers that transmit data from

its relevant managers' cell phones. In Cases 16-CA-096240, the parties agreed to that modification.

General Counsel's Response: As discussed above in Section II, *supra*, Respondent's argument that certain allegations in the Complaint are not encompassed by the Charges lacks merit and should be rejected. The General Counsel otherwise agrees to Respondent's proposed limitations.

- S. **Requests 27-28** (communications involving Respondent's Labor Relations staff that reference the known or suspected union activities or affiliation with UFCW or OUR Walmart of three specific discriminatees for whom the reasons for termination are in dispute, and any references to their discipline or discharge).

Walmart Objection: Walmart objects to the production of documents in response to Requests 27 and 28 as they relate to allegations outside the scope of any Charge as discussed in Section III. Walmart further objects to Request 28 as to the term "stores at issue" because the only stores pertinent to Cruz and Martinez is Store 2886 and to Davunt is Store 2642. Walmart also objects to the extent these requests purport to require the production of privileged documents.

Requested Relief: As discussed in section III, Walmart asks that it not be required to produce documents relating to these requests, subject to the Board's ruling on its forthcoming Motion to Dismiss. Barring that requested relief, Walmart, without waiving its objections, will produce responsive documents to the extent they are not privileged as related to Cruz and Martinez from Store 2886 and Davunt from Store 2642.

General Counsel's Response: As discussed above in Section II, *supra*, Respondent's argument that certain allegations in the Complaint are not encompassed by the Charges lacks merit and should be rejected. The General Counsel otherwise agrees to Respondent's proposed

limitations, subject to the provision of an appropriate privilege log.

T. Request 29 (comparator disciplines for Cruz, Martinez, and Davunt).

Walmart Objection: Walmart objects to the production of documents in response to Request 29 as it relates to allegations outside the scope of any Charge as discussed in Section III. Furthermore, Request 29 is overbroad and unduly burdensome because certain policies (dress codes and open door) did not serve as the basis for any of Cruz's, Martinez's or Davunt's discipline and/or discharge. Walmart also objects to the term "stores at issue" because only two stores (Store 2886 and Store 2642) are pertinent with respect to comparator discipline related to Cruz, Martinez, and Davunt.

Requested Relief: As discussed in section III, Walmart asks that it not be required to produce documents relating to this request, subject to the Board's ruling on its forthcoming Motion to Dismiss. Barring that requested relief, Walmart asks that Request 29 be modified to require Walmart only provide comparator disciplinary documents for associates at Store 2886 who received similar discipline as Cruz and Martinez and comparator disciplinary documents for associates at Store 2642 who received similar discipline as Davunt. To the extent Walmart relied on comparator discipline from other stores as part of the disciplinary process specific to Cruz, Martinez, or Davunt, Walmart will also provide those comparator disciplinary documents.

General Counsel's Response: As discussed above in Section II, *supra*, Respondent's argument that certain allegations in the Complaint are not encompassed by the Charges lacks merit and should be rejected. Further, following discussions with Respondent's counsel, and the General Counsel agrees to remove subrequests (b), (c), and (d) from the request based on Respondent's representation that the named discriminatees were not disciplined pursuant to those policies and subject to Respondent's agreement that it will not contend that those policies served as a basis for

disciplining the named discriminatees. The General Counsel further agrees to limit the scope of the search to stores in the same “Region” as the Pico Rivera store [Store 2886] and to subrequests (a), (g), and (h) for employees Cruz and Martinez, and to limit the scope of the search to stores in the same region as the Apple Valley store [Store 2642] and to subrequests (e), (f), and (i) for employee Davunt, provided that Respondent agrees that it will not present evidence of similar discipline beyond that scope in its defense.

Respondent should be ordered to produce the requested documents without further modification, consistent with the parties’ agreement with respect to the definition of “Relevant Time Period” articulated above in Section III(J), *supra*.

- U. **Requests 33, 34, 35, and 36** (video, maps, and other records pertaining to demonstrations and picketing at the Apple Valley and Clovis stores).

Walmart Objection: Walmart objects to the production of documents in response to Requests 33 through 36 as they relate to allegations outside the scope of any Charge as discussed in Section III.

Requested Relief: Walmart asks that Requests 33, 34, 35, and 36 be stricken in their entirety, subject to the Board’s ruling on its forthcoming Motion to Dismiss.

General Counsel’s Response: As discussed above in Section II, *supra*, Respondent’s argument that certain allegations in the Complaint are not encompassed by the Charges lacks merit and should be rejected. Respondent should be ordered to produce the requested documents without modification, consistent with the parties’ agreement with respect to the definition of “Relevant Time Period” articulated above in Section III(J), *supra*.

- V. **Request 37** (records pertaining to employees’ wearing stickers or insignia and any related discipline at the Sturtevant and Apple Valley stores).

Walmart Objection: Walmart objects to the production of documents in response to Request 37 as it relates to allegations outside the scope of any Charge as discussed in Section III.

Moreover, Request 37 is not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding. Walmart did not issue any discipline to any alleged discriminatees at the two referenced stores based on the dress code policy.

Requested Relief: Walmart asks that Request 37 be stricken in its entirety, subject to the Board's ruling on its forthcoming Motion to Dismiss.

General Counsel's Response: As discussed above in Section II, *supra*, Respondent's argument that certain allegations in the Complaint are not encompassed by the Charges lacks merit and should be rejected. The records requested in 37(a) relate to the allegations in the Complaint that Respondent prohibited employees at the Sturtevant [Store 2668] and Apple Valley [Store 2642] stores from wearing union insignia. *See* Complaint ¶¶ 26 and 27(c). The General Counsel agrees to withdraw request 37(b). Respondent should be ordered to produce the requested documents without further modification.

- W. Requests 38 and 39** (video and records of employees delivering petition at the La Quinta store between August 1, 2014, and September 30, 2014; and of employees engaged in other protected, concerted activities about October 16, 2014).

Walmart Objection: Walmart objects to the production of documents in response to Requests 38 and 39 as they relate to allegations outside the scope of any Charge as discussed in Section III. Walmart also objects to Requests 38 and 39 because it does not know the identity of "Maria (Last Name Unknown)," and, therefore cannot provide any responsive documents.

Requested Relief: Walmart asks that Requests 38 and 39 be stricken in their entirety subject to the Board's ruling on its forthcoming Motion to Dismiss and because it does not know the identity of "Maria (Last Name Unknown)."

General Counsel's Response: As discussed above in Section II, *supra*, Respondent's argument that certain allegations in the Complaint are not encompassed by the Charges lacks merit and should be rejected. Respondent should be ordered to search for such records involving any

supervisor, manager, or agent named “Maria” and Mariel Gonzalez (who may be one and the same). The General Counsel agrees that the search may be limited to documents that were created during the period from August 1, 2014, through October 30, 2014.

- X. Requests 40 and 41** (names, titles, headshots, or other photographs of all managers and supervisors at the La Quinta store between August 1, 2014, and September 14, 2014).

Walmart Objection: Walmart objects to the production of documents in response to Requests 40-41 as they relate to allegations outside the scope of any Charge as discussed in Section III. Walmart further objects that Requests 40 and 41 are vague as to the term “managers and supervisors.” Walmart also objects to providing headshots or other photographs of all managers and supervisors who worked at the store during the time period from August 1, 2014 to September 30, 2014, as unduly burdensome, not reasonably intended to result in the production of documents relevant to disputed issues involved in this proceeding, and which may be an invasion of privacy as it relates to both statutory supervisors and employees. Nor should Walmart be required to create or take headshots or photographs in 2016 for alleged events that took place in 2014.

Requested Relief: As discussed in section III, Walmart asks that it not be required to produce documents relating to this request, subject to the Board’s ruling on its forthcoming Motion to Dismiss. Barring that requested relief, and without waiving its objections, Walmart will read Requests 40 and 41 to refer to 2(11) statutory supervisors, and will provide a list of those 2(11) managers/supervisors who worked at Store 1805 during August 1, 2014 to September 30, 2014. However, Walmart will not provide headshots or photographs as requested.

General Counsel’s Response: As discussed above in Section II, *supra*, Respondent’s argument that certain allegations in the Complaint are not encompassed by the Charges lacks merit and should be rejected. The requested records are directly related to the surveillance allegations in ¶

9 of the Complaint, and could be used to help General Counsel witnesses identify the alleged supervisors or managers that allegedly engaged in surveillance, particularly the requested photographs. Respondent should be ordered to produce the records, without modification (obviously to the extent that they exist).

- Y. Requests 42 and 43** (personnel files and records of supervisory actions of individuals alleged in the Complaint that Respondent denies are statutory supervisors or agents [Karen Campos, Pico Rivera Store 2886 and Maria (Last Name Unknown), La Quinta Store 1805]).

Walmart Objection: Walmart objects to the production of documents in response to Requests 42 and 43 as they relate to allegations outside the scope of any Charge as discussed in Section III. Further, Walmart does not know who “Maria (last name unknown)” is and so objects to this request to the extent it requires Walmart to produce the personnel file of an unidentified manager.

Requested Relief: As discussed in section III, Walmart asks that it not be required to produce documents relating to this request, subject to the Board’s ruling on its forthcoming Motion to Dismiss. Barring that requested relief, Walmart asks that Requests 42 and 43 be modified to exclude any managers whom Walmart cannot identify.

General Counsel’s Response: As discussed above in Section II, *supra*, Respondent’s argument that certain allegations in the Complaint are not encompassed by the Charges lacks merit and should be rejected. The General Counsel agrees that Respondent’s search for supervisory records for Maria (Last Name Unknown) be limited to statutory supervisors or agents who were employed by or performed work at the La Quinta store during the time period from August 1, 2014, to September 30, 2014, including, but not limited to, members of Respondent’s Labor Team.

V. CONCLUSION.

For all the reasons stated above, the General Counsel respectfully requests that the ALJ

deny Respondent's Petition to Revoke the Subpoena to the extent it is inconsistent with the modifications agreed to herein.

RESPECTFULLY SUBMITTED this 16th day of December, 2016.

/s/ Matt Peterson

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San Francisco, California 94103-1735

TAB C

From: Wong, Jason P <Jason.Wong@nlrb.gov>
Sent: Thursday, December 08, 2016 5:10 PM
To: Feldman, Alan
Cc: Peterson, Matt
Subject: Wal-Mart - List of additional employees who participated in the strikes
Attachments: List of Additional employees who participated in the strikes - sent to Employer.xlsx

Alan:

As we discussed today, please see the attached spreadsheet listing the additional employees/alleged discriminatees who participated in the strikes. Please call either me or Matt if you have any questions. Thanks. J

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List of Additional employees who participated in the strikes - sent to Employer.xlsx
Nov. 29, 2013 (BF)

City, State	Store#	#Locations	Associates
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NO ADDITIONAL KNOWN AD's AT THIS TIME

List of Additional employees who participated in the strikes - sent to Employer.xlsx
 May 29 - Jun. 9, 2014

Store#	City, State	#Locations	Associates
2401	Duarte, CA	1	Anthony Goytia Nora Flegenheimer Richard Reynoso
2989	Fremont, CA	1	Clarita Calsio Joanna Lopez Maria Sumagaysay Pauline Rivera
3133	La Puente, CA	1	Alberto Costa
2960	Los Angeles, CA	1	Daniel Coles II Magdalena Garza Rhonda Gooden Zenell Hanley
2119	Milpitas, CA	1	Alberto Legaspi Ceceilia Cabrera Eduardo Daguioan Encarnacio Joson Oscar Biala Rosalinda "Shirly" Bucsit Rosalinda Russell
2280	Moutain View, CA	1	Bernardo Bernardo Julian Malapit
1832	Palm Springs, CA	1	Maria Lupita Martinez
2110	Paramount, CA	1	Darius Poston
2886	Pico Rivera, CA	1	Adriana Rubalcava Alyssa Esparza Belen Haros Carolyn Barlage Clara Buenrostro Cynthia Calistro Vasquez Erikka Ortiz Hernan Berrios Jennifer Mills Maria Camarena Olga Saitschenko Rose Mary Martinez Venanzi Luna Vicky Preciado Victoria Zepeda Garcia
5154	Rosemead, CA	1	Mary Ann Moreno Virgina Freeman
2735	Sacramento, CA	1	Shannon Henderson
5434	San Leandro, CA	1	Cecilia Gurule Darryl Randle
2948	Santa Fe Springs, CA	1	Tony DeBelles
2031	Union City, CA	1	Harley Dean Jamal Muhammed Virginia Cua

List of Additional employees who participated in the strikes - sent to Employer.xlsx
May 29 - Jun. 9, 2014

5334 Aurora, CA	1 Brbara Gertz
2752 Commerce City, CO	1 Lashanda Myrick
3311 Miami Gardens, FL	1 Andre Prevot Gerard Princivil Marie-Ange Michel Roseline A. Joseph
3397 Miami Gardens, FL	1 Osvaldo Alonso
3235 North Miami Beach, FL	1 Paul Toussaint Pierre Francois Marsin
1960 Tampa, FL	1 Michael Ortiz
5036 Tampa, FL	1 Charles Burchett Jaime Martinez
5132 Winter Springs, FL	1 Nayibe Ortiz
5965 Chicago, IL	1 Linda Jackson Nathaniel Williams
5645 Chicago, IL	1 Randell Lewis Richard Wilson
5781 Chicago, IL	1 Anthony Wilson Benet Holmes Ronnie Vandell
5485 Evergreen Park, IL	1 Charmaine Givens-Thomas
2828 Milwaukee, WI	1 Angel Perkins Dearlo Berkhalter Geotis Garrett Isaiah Bryant Kenneth Gosseck
1102 Baker, LA	1 Janet Sparks Wanda Banks
3288 Baton Rouge, LA	1 Gerald Arhutbnot
386 Jennings, LA	1 Jeffery Owens
5625 Brooklyn Center, MN	1 Moronica Owens Sheena Kennedy
2175 Branson West, MO	1 Michelle Johnson
1521 Cincinnati, OH	1 Courtney Moore
2447 Cincinnati, OH	1 Terry Foster
4609 Cincinnati, OH	1 Ahkeyya Blair Antonio Bomer Cynthia Brown- Elliott Evan Chrusciel Jamaad Reed Shantel Davis
1504 Dayton, OH	1 Andrea Dutton
3783 Dayton, OH	1 Amber Holsing Jan Bennett Ricki Hahn Tina Vanwey
2059 Greensburg, PA	1 Tristean Weaver

5416 Arlington, TX	1 Diana Richardson Diana Tigon Kevin Jones LaSharia Owens Monica Hilliard Shomari Lewis
896 Grand Prairie, TX	1 Arnold Cortez Courtney Reed Jimmy Carter Oscar Velasquez Qulima Knapp
2571 Federal Way, WA	1 Colleen Stark Patricia A. Scott Patricia Locks
2596 Mt. Vernon, WA	1 Debra Williams Patricia Mannion
5129 Landover Hills, MD	1 Isaiah Beamon
1985 Laurel, MD	1 Candis Riggins Cynthia Murray Elmer Lopez Jr. Eveline G. Ayivor Juan Morales Laura Battles Leyvonne Stepherson Rebecca Higson Ronee Hinton Tyrone Jackson Zacola Simpson
1430 Oshkosh, WI	1 Allison Livengood

List of Additional employees who participated in the strikes - sent to Employer.xlsx
 Nov. 24-29, 2014

Store#	City, State	#Locations	Associates
5331	Phoenix, AZ	1	Sandra O'Donnell Sandra Sok
2291	Chula Vista, CA	1	Armando Valenzuela
2401	Duarte, CA	1	George Woodley Nora Flegenheimer Oscar Beltran Richard Reynoso Salomon Fuentes
6616	Fullerton, CA	1	Sandra Jensen
1805	La Quinta, CA	1	Delfina Alfonso Guadalupe (Lupita Resendiz Maria Dolores Ledezma
2960	Los Angeles, CA	1	Daniel Coles II Denise Correa Diamond Kemezy Priscilla Quildon Rhonda Gooden
4488	Marina, CA	1	Tamika Mcnair
2119	Milpitas, CA	1	Loung Dung Ton Oscar Biala
2280	Mountain View, CA	1	Carmelita Ros Julian Malapit
1747	Perris, CA	1	Alejandra Venegas
2886	Pico Rivera, CA	1	Adriana Rubalcava Ana Nigo Belen Haros Carolyn Barlage Clara Buenrostro Cynthia Calistro Vasquez Hernan Berrios Mae Pruitt Maria Camarena Monique Velasquez Olga Saitschenko Venanzi Luna Vicky Preciado Victoria Zepeda Garcia
2418	Placerville, CA	1	Candy Breckling Margaret Hooten
5154	Rosemead, CA	1	Anthony Rodriguez Daria Armenta Gary Trager Mary Ann Moreno Virginia Freeman
2031	Union City, CA	1	Nicole Wagner Virginia Cua
5334	Aurora, CO	1	Barbara Gertz
771	Merritt Island, FL	1	Emily Wells

Nov. 24-29, 2014

3311 Miami Gardens, FL	1 Andrelie Prevot Gerard Princivil Marie-Ange Michel Roseline A. Joseph Saint-Gerard Dorilus
3397 Miami Gardens, FL	1 Gina Alexis Osvaldo Alonso Toussaint Charpentier
3235 North Miami Beach, FL	1 Jean-vaviel Georges Marie Bernadette Jean paul toussaint Pierre Francois Marsin
3617 Orlando, FL	1 Alicia Lugo Caroline Bacay
1960 Tampa, FL	1 Sonia Wheeler William Carrero
968 Winter Haven, FL	1 Iva Pietro
5132 Winter Springs, FL	1 Nayibe Ortiz
5645 Chicago, IL	1 Randell Lewis
5781 Chicago, IL	1 Anthony Wilson Donna Cannon Rayshaun Scott Robert Yarbrough Ronnie Vandell
1167 Kenosha, WI	1 Mary Pat Tifft
2828 Milwaukee, WI	1 Geotis Garrett Kenneth Gosseck
2668 Sturtevant, WI	1 Chudney Murry
1102 Baker, Louisiana	1 Ana Throckmorton Dietrich Fisher Wanda Banks
386 Jennings, LA	1 Daniel Miller
469 Lake Charles, LA	1 Dwana Canady Esther Herring Lydia Lindsey
5278 Chicopee, MA	1 Aubretia Edick
2683 Hadley, MA	1 Daniel Tolan Kerry Brown
5129 Landover Hills, MD	1 Isaiah Beamon
1875 Severn, MD	1 Zachary Blume
1985 Laurel, MD	1 Barbara Elliott Cynthia Murray Elmer Lopez Jr. Eveline G. Ayivor Mariah Reese Michael Mensah Ronee Hinton

	Tyrone Jackson
	william smith
	Zacola Simpson
2642 Apple Valley, MN	1 Elizabeth (Lisa) Austin
	Jordan Berg
	kelsey laMott
2175 Branson West, MO	1 Debra Smith
	Michelle Johnson
	Polly Naviaux
3749 Cincinnati, OH	1 Sophonisba Jamal
4609 Cincinnati, OH	1 Alexis Byrd
	Antonio Bomer
	Clarence Stewart
	Mary Westbrook
3783 Dayton, OH	1 Amber Holsing
	Jan Bennett
	Kelly Sallee
	Ricki Hahn
	Scott Stringer
	Tina Vanwey
3571 Middletown, OH	1 Christian Lancaster
1772 Klamath falls, OR	1 brien mcgill
2059 Greensburg, PA	1 Richard Stickel
1792 St. Marys, PA	1 Mary Lou Geyer
5416 Arlington, TX	1 Diana Tigon
	Shantell Green
471 Dallas, TX	1 lola Carr
5823 Dallas, TX	1 J. Collins
896 Grand Prairie, TX	1 Arnold Cortez
	Deborah Tallie
	Gloria Valadez
	Jose Ramos
	Julia Hernandez
	Oscar Velasquez
	Qulima Knapp
	Rita Collins
	Rosa Villa
2258 Alexandria, VA	1 Fatmata Jabbie
	Samantha Francis
1773 Newport News, VA	1 Charles Brown
	Jason Goodson
	John Blair
2596 Mt. Vernon, WA	1 Debra Williams
5941 Washington, D.C.	1 Charlette Alspon
	Glova Scott
	Melinda Gaino
5968 Washington, D.C.	1 Ned Measel

1430 Oshkosh, WI

1 Mary Schaeffer
