

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**WAL-MART STORES, INC.**

**PLAINTIFF/  
COUNTER-DEFENDANT**

**v.**

**NO. 5:14-CV-5262**

**CUKER INTERACTIVE, LLC**

**DEFENDANT/  
COUNTER-PLAINTIFF**

**ORDER ON ALEX ALEXANDER (5/21/2015) DEPOSITION TESTIMONY**

Now before the Court is the Parties' **Joint Motion to Exclude Deposition Testimony of ALEX ALEXANDER (5/21/15) (Doc. 342)**. Mr. Alexander was employed by Wal-Mart during the project as ASDA's Director of Multi-Channel Technology. Having read the "color-coded" passages of the deposition transcript submitted to chambers, and having been advised by the parties' objections and responses to certain deposition testimony, the Court finds that the Joint Motion (**Doc. 342**) is **GRANTED IN PART AND DENIED IN PART**. The Court's rulings on the Parties' respective line item objections are as follows:

**DOC. 342**

<b>Obj.</b>	<b>Excerpt</b>	<b>Page and Line</b>	<b>Ruling</b>	<b>Additional Explanation</b>
1	9	P12:8–P13:14	Overruled	The witness is not interpreting the scope of the contract. The point of the testimony is to explain that Wal-Mart sued because it contends that Cuker breached its promises [contained in the contract].
2	9 & 10	P13:13–P13:14 P13:24–P14:5	Overruled	Witness testifying to an admission by Cuker of an anticipatory repudiation of the contract. The excerpt does not run afoul of Rule 408, because it does not reference Cuker's offer of compromise.



Obj.	Excerpt	Page and Line	Ruling	Additional Explanation
5	17	P67:20–P68:16	Overruled	Relevant and probative of breach.
6	18	P71:15–P71:22	Overruled	Relevant and probative of breach. (But the Court has not been provided with a copy of Exhibit 6 that was marked at this point in the deposition—and the Court makes no rulings as to its admissibility).
7	20	P74:3–P74:9	Overruled	The Court understands the temporal context here to be May 2014—when Atalla supposedly made a “non-negotiable” demand for \$300,000 in extra compensation. The 408 objection is overruled because (1) this testimony in no way references the written offer of compromise (that would follow in July) that the Court has previously excluded and (2) nothing about Atalla’s alleged statement suggests that it was intended for the purpose of <i>compromising</i> a disputed claim. The testimony is also relevant and probative on the issues of breach and unjust enrichment.
8	24	P113:1–P115:14 P116:11–P119:16	Overruled	This testimony is relevant and probative of Cuker’s trade secrets claim. That said, Cuker designated the same or substantially similar testimony with regard to Alexander’s May 20 deposition, and Cuker is advised to not burden the record with cumulative testimony from the same witness.
9	28	P143:6–P146:21	Sustained	Rules 401 and 403.

IT IS SO ORDERED this 8<sup>th</sup> day of April, 2017.

  
 TIMOTHY L. BROOKS  
 UNITED STATES DISTRICT JUDGE