

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

**LONDON LUXURY, LLC**

**PLAINTIFF/COUNTER-DEFENDANT**

**V.**

**CASE NO. 5:22-CV-5059**

**WALMART, INC.**

**DEFENDANT/COUNTER-PLAINTIFF**

**ORDER**

Before the Court are the parties' objections to certain excerpts of the deposition testimony of Moshe Abehsera. Mr. Abehsera is a former employee of London Luxury who was employed there for approximately ten years. During the relevant period, Mr. Abehsera served as London Luxury's Chief Commercial Officer. In relation to the nitrile glove program with Walmart, Mr. Abehsera's responsibilities included developing relationships with suppliers and coordinating tasks across London Luxury's teams on logistics, planning, and compliance.

The parties identified certain excerpts, or "Excerpt Designation Numbers," from Mr. Abehsera's videotaped deposition to be presented to the jury in lieu of live testimony. Each party then noted its respective objections and responses to one another's designations. Below is a chart stating the Court's rulings on each objection. The Joint Motion to Exclude Deposition Testimony of Moshe Abehsera (Doc. 389) is therefore **GRANTED IN PART AND DENIED IN PART** as follows:<sup>1</sup>

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<sup>1</sup> In many instances, the parties have objected to a question and answer in the context of showing the witness an exhibit. The Court does not know whether a given exhibit will be in evidence when the proposed deposition testimony is presented to the jury. It is possible that the Court's rulings here might be different based on whether the exhibit at issue is or is not in evidence.

MOSHE ABEHSERA					
Excerpt No.	Objecting Party	From	To	Basis	Court's Ruling on the Objection
18	London Luxury	29:8	31:05	Lacks foundation Assumes facts not in evidence (29:08- 29:18) FRE 701 FRE 403	<b>OVERRULED</b> as to 29:08–29:13;  <b>SUSTAINED</b> as to 29:14–31:05 (FRE 602, 403)
19 20	Walmart	31:06	31:19	Non-Responsive Answer; Wasting Time (FRE 611(a)); Testimony not a complete question and answer; Relevance (FRE 401, FRE 402)	<b>OVERRULED</b>
24	London Luxury	39:4	39:19	Vague FRE 403	<b>OVERRULED</b>
31	Walmart	48:13	49:13	Non-Responsive Answer; Wasting Time (FRE 611(a)); Foundation / No Personal Knowledge (FRE 104(b) and FRE 602)	<b>SUSTAINED</b> (Non-responsive)
32	Walmart	50:19	52:08	Vague Lacks Foundation	<b>OVERRULED</b> as to 50:19–51:10 (through “. . . at the time.”);  <b>SUSTAINED</b> as to 51:10–52:08 (starting with “I know . . .”) (Non-responsive)
33	London Luxury	53:25	54:16	Vague Lacks Foundation	<b>OVERRULED</b>

35	London Luxury	59:20	63:19	FRE 403 (61:07-63:19) FRE 802 (61:07-63:19)	<b>OVERRULED</b> as to 61:07–63:19 (The testimony is allowed to give context to the sourcing problems encountered by London Luxury and to explain London Luxury’s course of conduct in dealing with those problems. The testimony is not received to prove the literal truth of any specific fact.)
37	Walmart	67:14	68:23	Non-Responsive Answer; Wasting Time (FRE 611(a))	<b>OVERRULED</b> as to 67:14–67:20 (through “I can’t recall that.”);  <b>SUSTAINED</b> as to 67:20–68:23 (starting with “All I recall is . . .”) (Non responsive)
39	Walmart	75:02	75:21	Non-Responsive Answer; Wasting Time (FRE 611(a))	<b>OVERRULED</b> as to 75:02–75:09 (through “. . . that we were engaged with.”);  <b>SUSTAINED</b> as to 75:09 –75:21 (starting with “From . . .”) (Non-responsive)

41	London Luxury	78:04	78:08	Asked and answered	<b>OVERRULED</b>
53	London Luxury	97:9	98:12	Vague (97:17-98:12) Lacks personal knowledge (97:17- 98:12) FRE 403 FRE 802	<b>OVERRULED</b> as to 97:09–97:16 (FRE 701);  <b>SUSTAINED</b> as to 97:17–98:03 (FRE 602);  <b>OVERRULED</b> as to 98:04–98:12 (The testimony gives industry context to explain London Luxury’s course of action. The testimony is not received to prove the truth of any particular instance.)
74	London Luxury	128:15	129:10	Assumes facts not in evidence (129:06- 129:10) FRE 403	<b>OVERRULED</b>
86	London Luxury	141:8	142:12	Vague (141:16-142:12) FRE 403 (141:16- 142:12) Assumes facts not in evidence (141:16- 142:12)	<b>OVERRULED</b>
87	London Luxury	142:20	143:7	FRE 403	<b>OVERRULED</b>
88	London Luxury	143:12	144:22	Vague (143:12-144:10) Compound (143:12- 144:10) FRE 403 (143:12- 144:16)	<b>OVERRULED</b>

91	London Luxury	146:9	147:4	Vague FRE 403 Calls for legal conclusion	<b>OVERRULED</b> as to 146:09–147:03 (through “You don’t give money.”);  <b>SUSTAINED</b> as to 147:03– 147:04 (starting with “Like, I . . .”) (Improper opinion testimony)
92	London Luxury	147:18	148:8	Vague FRE 403 Assumes facts not in evidence	<b>OVERRULED</b>
96	London Luxury	155:3	155:24	FRE 403 Asked and answered	<b>OVERRULED</b>
106	London Luxury	172:10	174:7	Vague FRE 403 FRE 608	<b>OVERRULED</b> as to 172:10–174:07 (This is proper opinion testimony that Walmart is using to attack Mr. Jason’s character for truthfulness (i.e., “honesty”). FRE 405(a); FRE 608(a).)
106A	Walmart	174:08	175:11	Reputation or Opinion Evidence (FRE 608(a)); Relevance (FRE 401 and 402)	<b>OVERRULED</b> (Since Walmart attacked Mr. Jason’s character for (un) truthfulness, it is proper under FRE 608(a) to

					allow London Luxury to present opinion and/or reputation testimony of Mr. Jason's good character for truthfulness.)
109	London Luxury	179:3	179:11	Vague FRE 403	<b>OVERRULED</b>
119	London Luxury	199:14	200:13	Vague Lacks foundation	<b>OVERRULED</b>
129	London Luxury	206:18	208:12	FRE 802 (207:16-208:12)	<b>OVERRULED</b> (Ms. Laas's statements, as an agent of London Luxury, are not hearsay if offered by Walmart. FRE 801(d)(2)(D))
132	Walmart	210:07	214:08	210:7-211:21 - Non-Responsive Answer 211:22-212:7 - No Objection 212:8-214:8 - Non-Responsive Answer; Wasting Time (FRE 611(a)); Foundation / No Personal Knowledge (FRE 104(b) and FRE 602)	<b>OVERRULED</b> as to 210:07–211:21;  <b>SUSTAINED</b> as to 212:08–214:08 (The testimony becomes non-responsive to the question (“When was the reset?”) at the point where the witness states, “But what I can tell you . . .”, and then testifies in a narrative format for 50 lines of transcript.)

142	London Luxury	224:10	226:12	FRE 802	<b>OVERRULED</b> (The Court understands Ms. Laas to be a sourcing agent for London Luxury re: nitrile gloves. Thus, her statements are not hearsay. FRE 801(d)(2)(D).)
146	London Luxury	232:9	233:18	Vague Misstates the exhibit	<b>OVERRULED</b>
148	London Luxury	234:12	235:5	Vague Argumentative	<b>OVERRULED</b>
148A	London Luxury	235:6	235:20	Vague (235:10-235:20) Argumentative (235:10-235:20) Calls for speculation (235:10-235:20)	<b>OVERRULED</b>
149	Walmart	235:21	236:09	Testimony not a complete question and answer	<b>OVERRULED</b>
152	Walmart	237:08	241:11	237:8-239:18 - No objection 239:19-241:11 - Non-Responsive Answer; Wasting Time (FRE 611(a))	<b>OVERRULED</b>
155	London Luxury	243:17	246:23	Vague (246:09-246:23) Calls for legal conclusion (246:09-246:23) FRE 802 (244:06-246:08) FRE 403	<b>OVERRULED</b> (The statements of Ms. Laas, as sourcing agent for London Luxury, are not hearsay. FRE

					801(d)(2)(D). And while her statements may be prejudicial to London Luxury, they are not unfairly prejudicial, so the Rule 403 objection is overruled, as well.)
161	London Luxury	254:9	254:18	Vague Lacks Foundation FRE 403	<b>OVERRULED</b>
167 168	London Luxury	257:25 258:15	258:13 258:23	Vague (258:09-258:23) Lacks foundation (258:08-258:23) FRE 403	<b>OVERRULED</b>
169 170	London Luxury	259:6 159:16	259:11 260:3	Vague Lacks foundation Asked and answered	<b>OVERRULED</b>
174	London Luxury	264:16	264:21	Attachment missing from exhibit	<b>OVERRULED</b> (With that said, LL has preserved the right to seek to have the attachment admitted at trial. But at this point, the Court does not have enough information to make a Rule 106 ruling.)

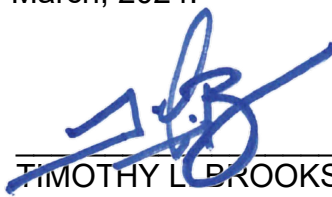


192	Walmart	286:09	287:24	286:9-286:20 - No Objection 286:21-287:19 - Non-Responsive Answer 287:20-287:24 - No Objection	<b>OVERRULED</b> as to 286:21–287:03 (through “Careglove and Mercator.”) (as this testimony is deemed responsive);  <b>SUSTAINED</b> as to 287:03–287:19 (starting with “And there . . .”) (as this testimony is deemed non-responsive)
196 197	London Luxury	290:18 291:10	291:6 291:17	Vague (290:18-291:06; 291:10-291:17) Asked and answered (290:18-291:06) Misstates facts (291:10-291:06) Assumes facts not in evidence (291:10-291:17) FRE 403	<b>SUSTAINED</b> as to 290:18–291:06 (Non-responsive);  <b>OVERRULED</b> as to 291:10–291:17
199A	Walmart	293:15	294:17	Non-Responsive Answer; Wasting Time (FRE 611(a)); Testimony not a complete question and answer; Foundation / No Personal Knowledge (FRE 104(b) and FRE 602	<b>OVERRULED</b> as to 293:15–293:24;  <b>SUSTAINED</b> as to 293:25–294:17 (Non-responsive)
202	Walmart	295:12	297:19	295:12-296:12 - No Objection 296:13-297:19 - Non-Responsive Answer; Wasting Time (FRE 611(a))	<b>SUSTAINED</b> as to 296:13–297:19 (Non-responsive)

203	London Luxury	297:20	298:15	Vague (297:25-298:07) Assumes facts not in evidence (298:08- 298:15)	<b>OVERRULED</b>
205	London Luxury	299:16	300:9	Asked and answered FRE 403	<b>OVERRULED</b> as to 299:16–299:20 (through “all the documents.”);  <b>SUSTAINED</b> as to 299:20–300:09 (starting with “You’re looking in ...” ) (FRE 403)
208	Walmart	302:24	304:16	203:24-303:11 - No Objection 303:12-304:16 - Non- Responsive Answer; Wasting Time (FRE 611(a))	<b>SUSTAINED</b> as to 303:12–304:16 (Non-responsive)
210	Walmart	313:08	316:26	313:8-313:13 - No Objection 313:14-316:25 - Non- Responsive Answer; Wasting Time (FRE 611(a))	<b>OVERRULED</b> with one exception: 313:14–316:26 is responsive to WM’s question, “What happened?” However, the Court will <b>exclude</b> 314:20– 314:25 as non- responsive and per Rule 403.
212	London Luxury	319:21	320:15	Asked and answered (319:21-320:03) FRE 403	<b>OVERRULED</b>
214	London Luxury	325:14	326:5	Lacks foundation (325:25-236:05)	<b>OVERRULED</b>

215	London Luxury	326:8	326:24	Vague Misstates facts Assumes facts not in evidence	<b>OVERRULED</b>
217	Walmart	327:05	328:08	Non-Responsive Answer	<b>OVERRULED</b> as to 327:05–327:12 (This is a proper question and a responsive answer.);  <b>SUSTAINED</b> as to 327:13–328:08 (Non-responsive)
218	London Luxury	328:9	328:13	Vague Lacks foundation	<b>OVERRULED</b>
220	London Luxury	333:2	333:19	Vague (333:07-333:12) Lacks foundation (333:07-333:12)	<b>OVERRULED</b>
221	London Luxury	333:24	336:19	Misstates the exhibit (335:09-336:19) FRE 403	<b>OVERRULED</b>
222	London Luxury	337:9	338:6	Vague (337:22-228-06) Lacks foundation (337:22-338:06) Assumes facts not in evidence	<b>SUSTAINED</b> (FRE 602)

**IT IS SO ORDERED** on this 24th day of March, 2024.



TIMOTHY L. BROOKS  
UNITED STATES DISTRICT JUDGE