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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SHARIDAN STILES, et al.,

No. 2:14-CV-1637-JAM-CMK

Plaintiffs,

vs.

ORDER

WAL MART STORES, INC., et al.,

Defendants.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is defendants' motion to dismiss (Doc. 25). The parties appeared before the undersigned in Redding, California, on October 8, 2014, at 10:00 a.m. Plaintiff appeared pro se. Mark Kremer, Esq., appeared for defendants.

Good cause appearing therefor, the court will allow the parties to submit supplemental briefing. Specifically, plaintiff may submit a supplemental opposition to defendants' motion addressing how the amended complaint pleads facts sufficient to state claims under each of her asserted federal legal theories, or how such facts could be pleaded by further amending the complaint. Plaintiff's amended complaint asserts the following federal claims: (1) Lanham Act violations; (2) trademark infringement; and (3) anti-trust violations. In her

1 supplemental opposition, plaintiff should address what factual allegations have been made, or
2 can be made in amendment, that address each element of each of these theories. In an effort to
3 focus plaintiff's supplemental briefing, the court will below outline each legal theory set forth by
4 plaintiff.

5 Lanham Act – Under § 43(a) of the Lanham Act, a plaintiff may recover under
6 two bases of liability – false association through the wrongful use of another's distinctive word,
7 term, name, symbol, or device, § 43(a)(1)(A), and false advertising, § 43(a)(1)(B). See Waits v.
8 Frito-Lay, Inc., 978 F.2d 1093, 1108 (9th Cir. 1992). Plaintiff does not specify which theory she
9 is pursuing. A claim of false association includes the following elements: (1) the defendant uses
10 a word, term, name, symbol, or device, or any combination thereof, (2) on or in connection with
11 goods or services, (3) in a manner that is likely to cause confusion as to source, sponsorship, or
12 association. See 15 U.S.C. § 1125(a)(1)(A). A claim of false advertising includes the following
13 elements: (1) the defendant made false statements of fact about its own product in
14 advertisements, (2) which actually deceived or have the tendency to deceive a substantial
15 segment of their audience, (3) such deception being likely to influence the purchasing decision,
16 (4) the defendant caused its falsely advertised product to enter interstate commerce, and (5) the
17 plaintiff has been or is likely to be injured by diversion of sales to defendant or by harm to its
18 goodwill. See 15 U.S.C. § 1125(a)(1)(B); see also Cook, Perkiss & Liehe, Inc. v. Norther
19 California Collection Service, Inc., 911 F.2d 242 (9th Cir. 1990).

20 Trademark Infringement – To state a claim for trademark infringement, plaintiff
21 must allege: (1) she owns a valid trademark, (2) which is registered with the United States Patent
22 and Trademark Office (“USPTO”), and (3) the defendant has used a confusingly similar mark in
23 commerce. See 15 U.S.C. § 1114.

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1 Anti-Trust Claims – Plaintiff alleges violations of both the Sherman Act, 15
2 U.S.C. § 1, and the Clayton Act, 15 U.S.C. § 14. A violation of the Sherman Act requires the
3 following elements: (1) the existence of a contract, combination, or conspiracy, (2) that
4 unreasonably restrains trade, and (3) affects interstate or foreign commerce. See 15 U.S.C. § 1.
5 Independent action by a single entity cannot give rise to a Sherman Act violation. See
6 Copperworld Corp. v. Independent Tube Corp., 467 U.S. 752 (1984). Under the Clayton Act, it
7 is unlawful to engage in exclusive dealing where the effect may be to substantially lessen
8 competition or create a monopoly. See 15 U.S.C. § 14. Exclusive dealing involves “. . . an
9 agreement between a vendor and a buyer that prevents the buyer from purchasing a given good
10 from any other vendor.” See Allied Orthopedic Appliances, Inc. v. Tyco Health Care Grp., LP,
11 592 F.3d 991, 996 (9th Cir. 2010).

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. Plaintiff may file a supplemental opposition to defendants’ motion within
14 30 days of the date of this order;

15 2. Defendants may file a supplemental reply within 10 days after service of
16 plaintiff’s supplemental opposition, if any;

17 3. Upon completion of supplemental briefing, or expiration of the time to file
18 supplemental briefing, the matter will stand submitted without further oral argument; and

19 4. The scheduling conference set in this matter for November 19, 2014, at
20 10:00 a.m. is vacated pending final resolution of defendants’ motion to dismiss.

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22 DATED: October 10, 2014

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24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
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