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

SHARIDAN STILES, et al.,

Plaintiffs,

v.

WALMART, INC., et al.,

Defendants.

No. 2:14-CV-2234-MCE-DMC

ORDER

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AND RELATED COUNTER-ACTIONS

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Plaintiffs, who are proceeding with retained counsel, bring this civil action alleging intellectual property and antitrust claims. Pending before the court are the following four discovery motions:

Motions Filed by Plaintiffs

- ECF No. 324      Motion to compel defendant American International Industries, Inc., (AI) to provide further responses to requests for production, set two.
- ECF No. 334      Motion to compel deposition testimony from Walmart’s Rule 30(b)(6) witness.

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1 Walmart's Motion to Enforce the Court's Order Regarding Depositions and  
2 for a Protective Order (ECF No. 332)

3 Walmart seeks an order to enforce the court's January 17, 2020, order permitting  
4 plaintiffs to take the depositions of up to 18 specified individuals. In particular, Walmart seeks a  
5 protective order precluding plaintiffs from taking the depositions of Jeanne Helfrich and Robin  
6 Foshee. See ECF No. 342, pg. 3 (joint statement).

7 The Parties' Cross-Motions Regarding Plaintiff's Notice of Deposition of  
8 Walmart's Rule 30(b)(6) Witness (ECF Nos. 334 and 336)

9 Plaintiffs seek an order compelling Walmart to produce its Rule 30(b)(6)  
10 witness(es) to testify on five disputed topics. See ECF No. 352, pgs. 8-9 (joint statement).  
11 Walmart seeks a protective order precluding such deposition testimony. See id.

12  
13 **II. DISCUSSION**

14 **A. Plaintiffs' Motion to Compel Defendant AI to Provide Further Responses to**  
15 **Requests for Production, Set Two (ECF No. 324)**

16 As AI notes in the joint statement, plaintiffs' motion is untimely. On May 20,  
17 2016, the District Judge issued an initial scheduling order upon commencement of this action.  
18 See ECF No. 54. In that order, the court addressed discovery as follows:

19 All discovery, with the exception of expert discovery, shall be  
20 completed no later than three hundred sixty-five (365) days from the filing  
21 of the original complaint in the action. **In this context, "completed"**  
22 **means that all discovery shall have been conducted so that all**  
23 **depositions have been taken and any disputes relative to discovery**  
24 **shall have been resolved by appropriate order if necessary and, where**  
25 **discovery has been ordered, the order has been obeyed.** All motions to  
26 compel discovery must be notice on the magistrate judge's calendar in  
27 accordance with the Local Rules. (footnote omitted).

28 Id. at 2 (bold added).

On August 10, 2018, the court issued a stipulated modified discovery and  
scheduling order. See ECF No. 146 (stipulated order). Pursuant to that order, fact discovery was  
set to close on July 10, 2019, and dispositive motions were set to be filed within 150 days after  
the close of fact discovery. See id. at 3-4. On June 18, 2019, the District Judge issued an order

1 extending all operative case deadlines, as outlined in the court's August 10, 2018, discovery and  
2 scheduling order, by six months to January 10, 2020. See ECF No. 229. Pursuant to further  
3 stipulation, the time to conduct fact witness depositions has been extended to and including  
4 February 15, 2020. See ECF No. 291 (stipulated order). The docket does not reflect any requests  
5 for or orders approving further modification of the August 10, 2018, scheduling order.

6 Thus, all fact discovery, except fact depositions, closed on or about January 10,  
7 2020. The time to conduct fact depositions has been extended to February 15, 2020.

8 Plaintiffs served their requests for production, set two, on defendant AI on  
9 November 27, 2019. See ECF No. 325-3, pg. 37 (proof of service). Defendant AI served  
10 responses on December 27, 2019. See ECF No. 325-2, pg. 39 (proof of service). Plaintiffs'  
11 instant motion to compel was filed on January 22, 2020. As the District Judge explained in the  
12 May 2016 initial scheduling order, the deadline for completion of fact discovery includes the  
13 filing of any necessary motions to compel. See ECF No. 54. Because plaintiff's motion was filed  
14 after the deadline for completion of fact discovery – January 10, 2020 – it is clearly untimely and  
15 will be denied as such.

16 **B. Walmart's Motion to Enforce the Court's Order Regarding Depositions and**  
17 **for a Protective Order (ECF No. 332)**

18 By earlier motion, plaintiffs sought leave to take more than the maximum ten  
19 depositions allowed under the Federal Rule of Civil Procedure. See ECF Nos. 288 (Notice of  
20 Motion) and 317 (Joint Statement). Arguments were heard on January 15, 2020, and the court  
21 issued an order on January 17, 2020. See ECF No. 323. In granting plaintiff's motion, the court  
22 stated:

23 Plaintiffs seek an order authorizing them to take more than the  
24 maximum ten deposition allowed under the Federal Rules of Civil Procedure  
25 without leave of court. See ECF No. 288 (Notice of Motion); see also ECF  
26 No. 317 (Joint Statement). In the notice of motion, plaintiff states they seek  
27 to take a total of 13 depositions. See ECF No. 288, pg. 4. In the joint  
28 statement, plaintiffs state they seek to take a total of 18 depositions. See ECF  
No. 317, pg. 21. To date, plaintiffs have not taken any depositions.

Parties are limited to no more than ten depositions without  
leave of court or stipulation. See Fed. R. Civ. P. 30(a)(2)(A)(i); see also  
Nevis v. Rideout Mem'l Hosp., 2019 U.S. Dist. LEXIS 188550, at \*5-6  
(E.D. Cal. Oct. 30, 2019). The party seeking more than ten depositions bears

1 the burden of making a particularized showing of the need for additional  
2 depositions. See Rideout Mem'l Hosp., 2019 U.S. Dist. LEXIS 188550, at  
3 \*5-6. Where the action is complex, parties are not required to exhaust the ten  
4 allowable deposition prior to seeking leave to take additional depositions.  
5 See Aerojet Rocketdyne, Inc. v. Global Aerospace, Inc., 2018 WL 5993585  
6 at \*1 (E.D. Cal. Nov. 6, 2018); see also Del Campo v. American Corrective  
7 Counseling Servs., Inc., 2007 WL 3306496 at \*6 (N.D. Cal. Nov. 6, 2007)  
8 (“[I]t would be prejudicial to require Plaintiffs to choose the ten depositions  
9 to take before they know whether they will be granted more”). Finally, once  
10 a showing has been made, the court may relieve parties of the limitations on  
11 depositions. See Fed. R. Civ. P. 26(b)(2)(A).

12 Here, the court finds plaintiffs have made the necessary  
13 showing as to the 18 deponents listed in the parties’ joint statement and will  
14 grant plaintiff’s motion for leave to take 18 depositions. While leave is  
15 hereby granted to take up to the 18 depositions designated by plaintiff, the  
16 depositions are to be completed by the previously stipulated deadline of  
17 February 15, 2020. As Defendant Walmart has indicated that defendant has  
18 depositions yet to be completed by that same deadline, the parties are  
19 directed to cooperate in the scheduling and coordination of **all** remaining  
20 depositions, including but not limited to scheduling depositions to proceed  
21 on concurrent schedules, in multiple venues to be covered by multiple  
22 counsel, other than just lead counsel, and depositions scheduled outside  
23 ordinary business hours, including early mornings, evenings and weekends.

24 ECF No. 323, pgs. 10-11.

25 The parties agree on the following subsequent history:

26 On January 27, 2020, plaintiffs served counsel for Walmart with  
27 notices of depositions of Jeanne Helfrich and Robin Foshee. See ECF No.  
28 332 (Declaration of Catherine S. Simonsen (“Simonsen Decl.”)), ¶¶ 3-4, Ex.  
29 2, 3; *id.*, ¶ 9, Ex. 8, 9. On January 28, 2020, counsel for Walmart met and  
30 conferred with counsel for plaintiffs regarding the deposition notices. See *id.*,  
31 ¶¶ 13-14. Counsel for Walmart asked plaintiffs to withdraw the Helfrich and  
32 Foshee deposition notices on the grounds that they exceeded the 10-  
33 deposition limit under Fed. R. Civ. P. 30(a)(2)(A)(i) and were not permitted  
34 by the Court’s Order of January 17, 2020, authorizing the specific 18  
35 depositions plaintiffs sought leave to take (which did not include the  
36 depositions of Ms. Helfrich or Ms. Foshee). See ECF No. 323 at 10-11.  
37 Plaintiffs’ counsel did not agree to withdraw the Helfrich and Foshee  
38 deposition notices. See *id.*, ¶¶ 13-14, Ex. 13.

39 ECF No. 342, pg. 3 (Joint Statement).

40 Walmart now moves for enforcement of the court’s January 17, 2020, order permitting only those  
41 depositions outlined by plaintiffs in their prior filings.

42 Walmart’s motion is well-taken in that plaintiffs were granted leave to take the  
43 specific depositions listed in the prior joint statement. In obtaining that relief, plaintiffs made the  
44 required showing as to each of the witnesses listed. Neither Ms. Helfrich nor Ms. Foshee were  
45 listed and, as such, plaintiffs made no showing as to such witnesses. To the extent plaintiffs seek

1 with the notices of deposition directed to Helfrich and Foshee to take more than the 18  
2 depositions previously authorized, Walmart's motion will be granted. Plaintiffs shall not be  
3 permitted to take more than the 18 depositions for which leave has been granted.

4 In their prior motion for leave to take excess depositions, plaintiffs listed eight  
5 witnesses as person most knowledgeable designees of various entities under Federal Rule of Civil  
6 30(b)(6). See ECF No. 317, pgs. 29-33. Specifically, plaintiffs listed among the 18 depositions  
7 they sought leave to take the Rule 30(b)(6) designees of AI, see id. at 29 (witness no. 5),  
8 Walmart, see id. at 31 (witness no. 12), Pacific World, see id. (witness no. 13), Coty, see id.  
9 (witness no. 14), P&G, see id. (witness no. 15), Energizer, see id. (witness no. 16), KISS, see id.  
10 (witness no. 17), and Onyx, see id. (witness no. 18). To the extent plaintiffs now seek to  
11 substitute Ms. Helfrich and/or Ms. Foshee as a Rule 30(b)(6) designee listed in plaintiffs' prior  
12 motion, Walmart's motion will be denied, and such depositions may proceed, so long as the  
13 authorized total of 18 depositions is not exceeded.

14 C. **The Parties' Cross-Motions Regarding Plaintiff's Notice of Deposition of**  
15 **Walmart's Rule 30(b)(6) Witness (ECF Nos. 334 and 336)**

16 Federal Rule of Civil Procedure 30(b)(6) provides in relevant part:

17 In its notice [of deposition] . . . , a party may name as the deponent a  
18 public or private corporation, a partnership, an association, a governmental  
19 agency, or other entity and must describe with reasonable particularity the  
20 matters for examination. The named organization must then designate one or  
21 more officers, directors, or managing agents, or designate other persons who  
22 consent to testify on its behalf; and it may set out the matters on which each  
23 person designated will testify. . . .

24 Fed. R. Civ. P. 30(b)(6).

25 On January 15, 2020, plaintiffs served a notice of deposition for Walmart's Rule 30(b)(6) witness.  
26 The notice specified 32 separate topics for examination. See ECF No. 352-2 (Walmart's  
27 objections to notice, attached as Exhibit 1 to the declaration of Erick Kuyلمان). Walmart  
28 objected to all 32 topics. See id.

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1           During the course of the meet-and-confer process, the parties have narrowed the  
2 dispute to Topics 4, 5, 6, 7, and 29. See ECF No. 352, pgs. 8-9 (joint statement). According to  
3 the parties:

4                     . . .The parties primarily disagreed about the relevant, particularity,  
5 and temporal scope of the topics. (citation omitted). Although Stiles agreed  
6 to limit the scope of the topics to the Beauty and Wet Shave categories and to  
7 the period of January 1, 2007, to October 1, 2014, Walmart was unwilling to  
8 withdraw its objections. (citation omitted).

9           Id. at 9.

10          The specific topics remaining at issue are as follows:

11                     Topic 4           Walmart’s category advisor program.

12                     Topic 5           Walmart’s practices, processes, and procedures for selecting  
13 category advisors.

14                     Topic 6           Walmart’s use of category advisors, including what  
15 information is shared with category advisors.

16                     Topic 7           Walmart’s practices, processes, and procedures for sharing  
17 price, cost, and supply information with product suppliers.

18                     Topic 29          The documents and spreadsheets that Walmart produced with  
19 its August 14, 2019, volume 10 production and its November  
20 15, 2019, production.

21                     ECF No. 352-2, Exhibit 1.

22          Walmart refused to provide a Rule 30(b)(6) witness to testify on any of these topics. See id.

23           As outlined above, during the meet-and-confer process plaintiffs agreed to limit  
24 the scope of Walmart’s Rule 30(b)(6) witness deposition to the beauty and wet shave categories  
25 for the time between January 1, 2007, and October 1, 2014. At the hearing, plaintiffs’ counsel  
26 agreed to further limit the scope of Walmart’s Rule 30(b)(6) witness deposition to the time period  
27 between January 1, 2009, and October 1, 2014, for the “beauty” category. Pursuant to plaintiffs’  
28 counsel’s representations, the following limitations shall apply to Walmart’s Rule 30(b)(6)  
witness deposition:

<u>CATEGORY</u>	<u>TIME PERIOD</u>
Wet Shave	January 1, 2007, to October 1, 2014
Beauty	January 1, 2009, to October 1, 2014

1  
2 The above-listed additional particularity specified by plaintiffs was accordingly considered with  
3 regard to each of the disputed topics discussed below.

4 1. Topic 4 -- Walmart's category advisor program

5 Walmart objects as follows:

6 Walmart objects to this Topic to the extent it seeks information  
7 protected by the attorney-client privilege, the work-product doctrine, or any  
8 other applicable privilege or protection. Walmart objects to this Topic to the  
9 extent it seeks confidential, trade secret, competitive, business, or other  
10 proprietary information and reserves the right to designate any transcript(s)  
11 of Walmart's designee(s) confidential as permitted under the Protective  
12 Order. Walmart objects to this Topic on the grounds that it is vague and  
13 ambiguous, including in its use of the term "category advisor program,"  
14 which is not defined and Walmart interprets this Topic as it reasonably  
15 understands these terms. Walmart further objects to this request as  
16 inconsistent with Rule 30(b)(6) of the Federal Rules of Civil Procedure  
17 because it fails to describe with reasonable particularity the matters for  
18 examination. Walmart objects to this Topic as overly broad and unduly  
19 burdensome because it lacks temporary scope Walmart further objects to  
20 this Topic as overly broad to the extent it seeks information that is neither  
21 relevant to any party's claim or defense, nor proportional to the needs of the  
22 case because it seeks discovery beyond the scope of plaintiffs' claims as  
23 plead in the Fourth Amended Complaint.

24 ECF No. 352-2, pg. 7.

25 Walmart refused to produce any witness to testify on this topic. See id.

26 With the narrowing of this topic to the beauty category for the time period January  
27 1, 2009, to October 1, 2014, and the wet shave category for the time period January 1, 2007, to  
28 October 1, 2014, the Court finds this topic to be described with reasonable particularity.

Plaintiffs' motion will be granted and Walmart's cross-motion will be denied as to Topic 4.

2. Topic 5 – Walmart's practices, processes, and procedures for selecting  
category advisors

Walmart objects as follows:

Walmart objects to this Topic to the extent it seeks information  
protected by the attorney-client privilege, the work-product doctrine, or any  
other applicable privilege or protection. Walmart objects to this Topic to the  
extent it seeks confidential, trade secret, competitive, business, or other  
proprietary information and reserves the right to designate any transcript(s)  
of Walmart's designee(s) confidential as permitted under the Protective  
Order. Walmart objects to this Topic on the grounds that it is vague and



1 ambiguous, including in its use of the terms “practices,” “processes,”  
2 “procedures,” and “category advisors,” which are not defined and Walmart  
3 interprets this Topic as it reasonably understands these terms. Walmart  
4 further objects to this request as inconsistent with Rule 30(b)(6) of the  
5 Federal Rules of Civil Procedure because it fails to describe with reasonable  
6 particularity the matters for examination. Walmart objects to this Topic as  
7 overly broad and unduly burdensome because it lacks temporary scope  
8 Walmart further objects to this Topic as overly broad to the extent it seeks  
9 information that is neither relevant to any party’s claim or defense, nor  
10 proportional to the needs of the case because it seeks discovery beyond the  
11 scope of plaintiffs’ claims as plead in the Fourth Amended Complaint.

12 ECF No. 352-2, pgs. 7-8.

13 Walmart refused to produce any witness to testify on this topic. See id.

14 With the narrowing of this topic to the beauty category for the time period January  
15 1, 2009, to October 1, 2014, and the wet shave category for the time period January 1, 2007, to  
16 October 1, 2014, the Court finds this topic to be described with reasonable particularity.  
17 Plaintiffs’ motion will be granted and Walmart’s cross-motion will be denied as to Topic 5.

18 3. Topic 6 – Walmart’s use of category advisors, including what  
19 information is shared with category advisors

20 Walmart objects as follows:

21 Walmart objects to this Topic to the extent it seeks information  
22 protected by the attorney-client privilege, the work-product doctrine, or any  
23 other applicable privilege or protection. Walmart objects to this Topic to the  
24 extent it seeks confidential, trade secret, competitive, business, or other  
25 proprietary information and reserves the right to designate any transcript(s)  
26 of Walmart’s designee(s) confidential as permitted under the Protective  
27 Order. Walmart objects to this Topic on the grounds that it is vague and  
28 ambiguous, including in its use of the terms “use,” “category advisors,”  
“information,” and “shared,” which are not defined and Walmart interprets  
this Topic as it reasonably understands these terms. Walmart further objects  
to this request as inconsistent with Rule 30(b)(6) of the Federal Rules of  
Civil Procedure because it fails to describe with reasonable particularity the  
matters for examination. Walmart objects to this Topic as overly broad and  
unduly burdensome because it lacks temporary scope Walmart further  
objects to this Topic as overly broad to the extent it seeks information that is  
neither relevant to any party’s claim or defense, nor proportional to the needs  
of the case because it seeks discovery beyond the scope of plaintiffs’ claims  
as plead in the Fourth Amended Complaint.

ECF No. 352-2, pg. 8.

Walmart refused to produce any witness to testify on this topic. See id.

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1 With the narrowing of this topic to the beauty category for the time period January  
2 1, 2009, to October 1, 2014, and the wet shave category for the time period January 1, 2007, to  
3 October 1, 2014, the court finds this topic to be described with reasonable particularity.  
4 Plaintiffs' motion will be granted and Walmart's cross-motion will be denied as to Topic 6.

5 4. Topic 7 – Walmart's practices, processes, and procedures for sharing  
6 price, cost, and supply information with product suppliers

7 Walmart objects as follows:

8 Walmart objects to this Topic to the extent it seeks information  
9 protected by the attorney-client privilege, the work-product doctrine, or any  
10 other applicable privilege or protection. Walmart objects to this Topic to the  
11 extent it seeks confidential, trade secret, competitive, business, or other  
12 proprietary information and reserves the right to designate any transcript(s)  
13 of Walmart's designee(s) confidential as permitted under the Protective  
14 Order. Walmart objects to this Topic on the grounds that it is vague and  
15 ambiguous, including in its use of the terms "practices," "processes,"  
16 "procedures," "sharing," "price," "cost," "supply information," and "product  
17 suppliers," which are not defined and Walmart interprets this Topic as it  
18 reasonably understands these terms. Walmart further objects to this request  
19 as inconsistent with Rule 30(b)(6) of the Federal Rules of Civil Procedure  
20 because it fails to describe with reasonable particularity the matters for  
21 examination. Walmart objects to this Topic as overly broad and unduly  
22 burdensome because it lacks temporary scope. Walmart further objects to  
23 this Topic as overly broad to the extent it seeks information that is neither  
24 relevant to any party's claim or defense, nor proportional to the needs of the  
25 case because it seeks discovery beyond the scope of plaintiffs' claims as  
26 plead in the Fourth Amended Complaint. Walmart objects to this Topic  
27 because it assumes the existence of facts not in evidence. Walmart further  
28 objections [sic] to this Topic on the grounds that it is unintelligible.

ECF No. 352-2, pg. 9.

Walmart refused to produce any witness to testify on this topic. See id.

To the extent this topic seeks testimony concerning the mechanics (i.e., "practices,  
processes, and procedures") for sharing information with product suppliers, the Court finds the  
topic to be described with reasonable particularity. To the extent the topic seeks information  
beyond the mechanics of Walmart's sharing of information with product suppliers, the court finds  
the topic to be overbroad. Plaintiffs' motion will be granted and Walmart's cross-motion will be  
denied to the extent plaintiffs seek testimony concerning the mechanics of Walmart's information  
sharing. The granting of this motion is without prejudice to any objections by Walmart, at the  
time of the subject deposition, to the extent plaintiffs seek testimony beyond the mechanics of

1 Walmart's information-sharing process and procedure.

2 5. Topic 29 – The documents and spreadsheets that Walmart produced  
3 with its August 14, 2019, volume 10 production and its November 15,  
4 2019, production

4 Walmart objects as follows:

5 Walmart objects to this Topic to the extent it seeks information  
6 protected by the attorney-client privilege, the work-product doctrine, or any  
7 other applicable privilege or protection. Walmart objects to this Topic on the  
8 grounds that it is vague and ambiguous, including in its use of the terms  
9 “documents” and “spreadsheets,” which are not defined and Walmart  
10 interprets this Topic as it reasonably understands these terms. Walmart  
11 objects to this Topic as improper and outside the scope of Federal Rule of  
12 Civil Procedure 30(b)(6) testimony. Walmart objects to this Topic to the  
13 extent it seeks information that is neither relevant to any party's claim or  
14 defense, nor proportional to the needs of the case because it seeks discovery  
15 beyond the scope of plaintiffs' claims as plead in the Fourth Amended  
16 Complaint. Walmart objects to this Topic to the extent it seeks information  
17 that is duplicative of other discovery requests propounded by Plaintiffs in  
18 this litigation.

12 ECF No. 352-2, pg. 25.

14 Walmart refused to produce any witness to testify on this topic. See id.

15 As to this topic, Walmart's objection will be overruled. Plaintiffs should be  
16 permitted to ask Walmart's Rule 30(b)(6) witness about documents Walmart produced. The  
17 scope of the topic is specifically limited to documents produced by Walmart on August 14, 2019,  
18 and November 15, 2019. Presumably, Walmart knows what these documents are and should have  
19 its Rule 30(b)(6) witness prepared to discuss them. Plaintiffs' motion will be granted and  
20 Walmart's cross-motion will be denied as to Topic 29.

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1 **III. CONCLUSION**

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Plaintiffs' motion to compel defendant AI to provide further responses to  
4 requests for production, set two (ECF No. 324) is denied;

5 2. Walmart's motion to enforce the court's prior order regarding depositions  
6 and for a protective order (ECF No. 332) is resolved as follows:

7 a. The motion is granted to the extent plaintiff will not be permitted to  
8 take more than 18 depositions, as provided in the court's January 17, 2020, order;

9 b. The motion is denied to the extent plaintiffs seek to substitute Ms.  
10 Helfrich and/or Ms. Foshee as a Rule 30(b)(6) designee listed in plaintiffs' prior  
11 motion;

12 3. The parties cross-motions regarding plaintiffs' notice of deposition of  
13 Walmart's Rule 30(b)(6) witness (ECF Nos. 334 and 336) are resolved as follows:

14 a. Pursuant to plaintiffs' counsel's representations, the scope of  
15 Walmart's Rule 30(b)(6) witness deposition as to Topics 4, 5, and 6 is limited to  
16 the beauty category for the time period January 1, 2009, to October 1, 2014, and  
17 the wet shave category for the time period January 1, 2007, to October 1, 2014;

18 b. Subject to the limitations on scope outlined above, plaintiffs'  
19 motion is granted and Walmart's motion is denied as to Topics 4, 5, and 6;

20 c. Plaintiffs' motion is granted and Walmart's cross-motion is denied  
21 as to Topic 7 to the extent plaintiffs seek testimony concerning the mechanics of  
22 Walmart's information sharing;

23 d. Plaintiffs' motion is granted and Walmart's cross-motion is denied  
24 as to Topic 29.

25 Dated: February 5, 2020



26 DENNIS M. COTA  
27 UNITED STATES MAGISTRATE JUDGE  
28