

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JAN D. GRAHAM

PLAINTIFF

VS.

CIVIL ACTION NO. 3:11-cv-00068-MPM-JMV

WAL-MART STORES, INC.

DEFENDANT

DEFENDANT'S SUPPLEMENTAL EXPERT DESIGNATION

COMES NOW, Wal-Mart Stores, Inc., Defendant in this cause of action, by and through counsel, and supplement its Expert Designation previously filed on January 22, 2013:

1. Susan R. Meisinger, SPHR, JD
9718 Braided Mane Court
Fairfax Station, VA 22039-3417

In supplementation of its original designation, Defendant now submits Ms. Meisinger's report, which is attached hereto as Exhibit "A".

THIS the 7 day of February, 2013.

WAL-MART STORES, INC.

By: 

ARTHUR D. SPRATLIN, JR. (MB No. 9035)
MICHAEL C. MCLAREN (MB No. 103486)

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CERTIFICATE OF SERVICE

I, Arthur D. Spratlin, Jr., one of the attorneys for Defendant Wal-Mart Stores, Inc., hereby certify that, this day, I have served a true and correct copy of the above and foregoing document, via Email and U.S. Mail, to the following counsel of record:

T.K. Moffett, Esq.
W. Brent McBride, Esq.
Moffett Law Firm, PLLC
Post Office Box 1707
Tupelo, MS 38802

ATTORNEYS FOR PLAINTIFF

SO CERTIFIED this the 7 day of Febuary, 2013.



ARTHUR D. SPRATLIN, JR.

February 7, 2013

Memorandum

To: Arthur D. Spratlin, Jr., Esq.; Butler, Snow, O'Mara, Stevens & Cannada, PLLC

From: Susan R. Meisinger, SPHR, J.D.

Re: Jan Graham v. Wal-Mart Stores, Inc.
U.S. District Court, Northern District of Mississippi, Western Division
Civil Action No. 3:11-cv-00068-MPM-JMV

This report is a summary of the expert testimony I am able to offer on this matter.

My Background: I am the former President and Chief Executive Officer of the Society for Human Resource Management (SHRM). Prior to serving as President and CEO for 6 years, I spent more than 14 years with SHRM in various roles, progressing from Vice President, to Senior Vice President, Executive Vice President and Chief Operating Officer before becoming President and CEO.

SHRM is the world's largest association devoted to human resource management, representing more than 250,000 individual members in more than 140 countries. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India, and serves the needs of HR professionals. SHRM is an individual membership organization, and with a staff of more than 350, it has specialized departments that serve the needs of the HR professional by providing the most essential and comprehensive set of resources available. During my tenure, and with my direction, SHRM:

- Built and sustained partnerships with human resource professionals, media, governments, non-governmental organizations, businesses and academic institutions to address people management challenges that influence the effectiveness and sustainability of their organizations and communities.
- Provided a community for human resource professionals, media, governments, non-governmental organizations, businesses and academic institutions to share expertise and create innovative solutions on people management issues. SHRM proactively provided thought leadership, education and research to human resource professionals, media, governments, non-governmental organizations, businesses and academic institutions on the entire spectrum of human resource management issues, including employment laws. SHRM annually answered tens of thousands of questions from members on the entire range of human resource management-related issues.
- Served as an advocate to ensure that policy makers, law makers and regulators were aware of key people concerns facing organizations and the human resource profession.

Exhibit "A"

I am a life-time member of SHRM, having been granted this special status because of my contributions to the human resource management profession. I have earned certification from the Human Resource Certification Institute (HRCI) as a Senior Professional in Human Resources (SPHR). I also served on the Board of Directors of HRCI, which is the organization which provides leadership in identifying the body of knowledge required for certification in the profession and administers certification exams.

With David Ulrich and Michael Losey, I co-edited the book *The Future of Human Resource Management: 64 Thought Leaders Explore the Critical HR Issues of Today and Tomorrow*, which was published in 2005. I am a former board member for the World Federation of Personnel Management Associations, where I also served as Secretary General. I am a former board member of the Ethics Resource Center, a nonprofit devoted to fostering ethical practices in individuals and organizations. I am also a Fellow and board member of the National Academy of Human Resources (NAHR), an organization that recognizes individuals and institutions in HR for outstanding professional achievement and contributions to their field.

Prior to joining SHRM I was Deputy Under Secretary of Labor for Employment Standards for the U.S. Department of Labor, with responsibility for the administration and enforcement of more than 90 employment laws, including wage and hour, non-discrimination and federal workers' compensation laws.

I am a graduate of the University of Mary Washington, with a B.A. in Psychology, and of the National Law Center of George Washington University, with a J.D. I am currently an inactive member of the DC Bar Association.

Documents Reviewed:

My opinions are based on a review of the following documents:

- Complaint in the Circuit Court of Pontotoc County MS, Cause No. CV10-199R(PO)
- Answer and Defenses of Wal-Mart Stores, Inc. and Sammy M. Sappington
- Order on Plaintiff's Motion to Remand
- Plaintiff's Responses to Wal-Mart's First Set of Interrogatories
- Defendant's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents and Tangible Things to Defendant Sammy M. Sappington
- Defendant's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents and Tangible Things of Defendant Wal-Mart Stores
- Deposition of Jan Graham with Exhibits
- Deposition of Thomas Carrigan with Exhibits
- Deposition of Michelle Clifton
- Deposition of Nanette Houston with Exhibits
- Deposition of Carolyn Jones
- Deposition of Sandra Law with Exhibits
- Deposition of Shannon Moore

- Deposition of Douglas Norman
- Deposition of Debby Petre
- Deposition of Sammy Sappington with Exhibits
- Summary of expert opinion of Ms. Julie A. Moore, Esquire, SPHR, dated December 20, 2012.

Factual Summary:

The relevant facts are as follows:

- Plaintiff Jan Graham was employed by Kraft as a sales representative, checking Kraft products at various stores, including Wal-Mart stores. She was responsible for ensuring adequate levels of inventory, proper display, and marketing of Kraft product to increase sales at these stores.
- On July 16, 2009, a Wal-Mart employee, Debbie Petre, saw the Plaintiff remove crackers from the Plaintiff's car and place them in the car of another Wal-Mart employee, Sandra Law.
- Plaintiff's actions were captured on videotape.
- Plaintiff admitted in deposition and in a written, signed statement that she had placed crackers in Ms. Law's car.¹
- By giving a gift or gratuity² to a Wal-Mart employee, Plaintiff violated terms of the vendor agreement between Kraft and Wal-Mart, which required adherence to Wal-Mart's Gift and Gratuity Policy.³
- Because Plaintiff violated the terms of Kraft's agreement with Wal-Mart, Wal-Mart informed Kraft that the Plaintiff could no longer service Wal-Mart stores for Kraft.
- Kraft terminated Plaintiff because she failed to "meet the requirements of your position as a Sales Representatives" [sic].⁴

Opinion #1: Wal-Mart had a well-written, well-established, and well-communicated Statement of Ethics and vendor standards which provided clear guidance to employees and vendors that vendors could not give gifts to employees.

In my opinion Wal-Mart followed best practices in drafting and communicating its Statement of Ethics and vendor standards. It is clear, well organized, written for easy understanding by a broad audience,

¹ Graham Deposition, pages 60-61; Exhibit 5.

² The amount, value or quality of the gifted crackers is irrelevant; they were still a gift. The Merriam-Webster online dictionary defines "gift" as "something voluntarily transferred by one person to another without compensation". <http://www.merriam-webster.com/dictionary/gift>. In my opinion the crackers could also constitute a gratuity to Ms. Law. The Merriam-Webster online dictionary defines "gratuity" as "something given voluntarily or beyond obligation *usually for some service*" (emphasis added). Plaintiff testified that "I had talked to Sandra Law because we were – at that time we had some Ritz coupons and I was doing really well selling Ritz over there with those coupons but we had people that would tear the whole thing off. You know, it's on a tear pad and you stick it on the shelf but there's – people would come by and they would tear the whole thing off. And she had told me if I – if I would leave her some of those she would put them up as the other ones – you know, as they got torn off—Q. Right. A.—and so I did that." Graham deposition, page 60, lines 6-17.

³ Sappington Deposition, Exhibit 3, page 9.

⁴ Corrigan deposition, Exhibit 1.

with clear statements of expected behaviors and examples of how the statement of ethics would apply. These elements are all fundamental for a successful ethics code in an organization.

According to the leader in business ethics, the Ethics Resource Center,⁵

“The manner in which the code is written, organized and presented will have an important impact on the degree to which employees will understand the code or refer back to it. Because an organization generally intends its code to be read by employees at different levels of responsibility and in a wide range of functional areas, the code should be written in plain, direct language. The syntax should be uncomplicated.”⁶

In structuring its Statement of Ethics, Wal-Mart included the elements recommended by ERC, providing a table of contents, a leadership letter from the chairman and CEO, an introduction that explains how to use the Statement of Ethics, a list of Wal-Mart’s core values and principles, provisions on substantive matters and information and resources for the reader to get additional information.⁷

Within the Statement of Ethics, the discussion of conflicts of interest and prohibited gifts and gratuities is clear and unambiguous. Specifically, these provisions state that:

“A conflict of interest can arise when our judgment could be influenced, or might appear as being influenced, by the possibility of personal benefit.....

Accepting gifts and entertainment can cause a conflict of interest, or an appearance of a conflict between personal interests and professional responsibility. The Wal-Mart culture is to never accept gifts or entertainment from a supplier, potential supplier, government, or any person the associate has reason to believe may be seeking to influence business decisions or transactions.”

In addition to being clearly written and easily understood, Wal-Mart included a review of the Statement of Ethics when on-boarding new employees, and required employees to complete a computer-based learning module on the policy. Employees were not considered to have completed the module unless and until they passed an exam on what the policy required. Requiring all employees to complete this training, and documenting its efforts about its Statement of Ethics, as Wal-Mart did in this case, is best practice because it clearly holds employees accountable for knowing about and adhering to a policy.

⁵ The Ethics Resource Center (ERC) is a private, nonprofit organization devoted to independent research and the advancement of high ethical standards and practices in public and private institutions. For 89 years ERC has been a resource for institutions committed to a strong ethical culture. www.ethics.org

⁶ Code Construction and Content, (2009) Ethics Resource Center, retrieved from <http://www.ethics.org/resource/code-construction-and-content>

⁷ Code Construction and Content, (2009) Ethics Resource Center, retrieved from <http://www.ethics.org/resource/code-construction-and-content>

In my opinion, the effectiveness of Wal-Mart's Statement of Ethics and its efforts to ensure all employees were aware of its terms was best demonstrated in this case by Wal-Mart's own employees and the actions of Kraft.

It was a Wal-Mart employee with knowledge and understanding of Wal-Mart's policy on gifts and gratuities who, having witnessed Plaintiff place a gift in Ms. Law's car, immediately reported Plaintiff's action to a supervisor, as provided for in the policy.

In every deposition reviewed in this case – whether a Wal-Mart or Kraft employee -- the deponent testified that he or she knew about the policy, and knew that employees could not accept gifts or gratuities from vendors and vendors were not permitted to give gifts and gratuities to employees.⁸ This wide-spread understanding of a company policy, which is necessary for an effective ethics policy, demonstrates that Wal-Mart's efforts to continually communicate clearly and to reinforce the terms of its policy were successful and best practice.

Similarly, the language included in vendor Kraft's supplier agreement is clear:

⁸ Even Plaintiff was familiar with the policy "Q. Okay. Now, are you familiar with Wal-Mart's gift and gratuities policy? A. Uh-huh." Graham deposition page 18, lines 19-21. Plaintiff's employer, Kraft, was also familiar, and reminded employees about the policy during meetings with employees. In describing the policy, Plaintiff's immediate supervisor, Carrigan, testified that "A. I would imagine there's a — if there's a policy manual, it would be in that, but we've covered it in our meetings. You asked me earlier about that. In a meeting we said we do not give samples to any of Wal-Mart employees." Carrigan deposition, page 32, lines 12-15. Even Ms. Law, who was the recipient of the gift from Plaintiff, appears to have understood that gifts from vendors were not permitted. "A. In the modular -- or the training program -- Q. Yes, ma'am. A. -- you know, it shows that you're not to accept any free -- like, if they had new cookies or this, you know, they'd say, take the package and all. You're not supposed to accept anything like that and hold the package or any such as that. Q. As a gift? A. As a gift, yes, sir, or to try to see how you like it or anything." Law deposition, page 29, lines 8-18. See also: Clifton deposition, page 16, lines 11-19 ("Q. At that point, did you think there was anything wrong with that? [Plaintiff putting something in Law' car] A. Yes, sir. Q. Why? A. Because we have a gift and gratuity policy that violates that. Q. Violates that as far as who's concerned, the vendor or Sandra? A. Both."); Houston deposition, page 12, lines 6-9 ("Q. (Mr. Moffett) Wal-Mart's policy. A. We're not allowed to take any gifts or gratuities from the vendors."); Jones deposition, page 16, lines 1-8 ("Q. What is your understanding of Wal-Mart policy regarding vendors giving products to individual store employees? A. Just my summary kind of? Q. Yes, ma'am. A. The associates are not to ask or receive gifts or gratuities from vendors or anybody who might try to influence our decisions."); Sappington deposition, page 47, lines 2-9 ("Q. Explain to me what your understanding is of that [ethics] policy. A. It's an ethics policy that was put in place by the company to actually prevent goods being given to people in stores or to management that's not paid for to simply keep the cost of doing business down. That's my understanding of the policy. It's an ethics policy that we're not to receive gratuities of any form from a supplier or a vendor."); Petre deposition, pages 10-11, lines 20-3 ("Q. Do you know what the policy at Wal-Mart is and was at that time regarding vendors giving anything to employees? Just in your own words, tell me what you -- what you believe the policy to be. *** A. You were not to take anything from a vendor. Q. (Mr. Moffett) Okay. What about vendors giving anything to employees? A. They weren't supposed to do that either."); Moore deposition pages 27-28, lines 23-4 ("Q. Okay. When's the first time you recall after coming to work for Wal-Mart before you received training in the company ethics? A. I want to say they went over the statement of ethics during orientation. Q. Okay. And since then, it's been frequent? A. Yes sir.") Douglas deposition, page 11, lines 14-16 ("Q. How long had that policy [Wal-Mart policy prohibiting gifts] been in existence, best you know? A. My entire career.")

“Any supplier, factory or manufacturer who violates this policy by offering or accepting any form of gift or gratuity to/from any associate, employee, agent or affiliate of Wal-Mart Stores, Inc. will be subject to all loss of existing and future business, regardless of whether the gift or gratuity was accepted.”⁹

Just as Wal-Mart used best practices to disseminate Wal-Mart’s no gifts and gratuities policy to employees, it used best practices to ensure that Kraft employees followed this policy as well through inclusion of terms and conditions of its supplier contract with Wal-Mart. By contractually obligating vendor Kraft to the no gift or gratuity policy, Wal-Mart provided a powerful tool by which to enforce its policy: contract law. Wal-Mart even made sure that its employees were aware of the fact that this policy was included in supplier contracts.¹⁰ Wal-Mart’s practice of including language in supplier contracts prohibiting gifts and gratuities demonstrates how committed the company was to the policy as part of its culture, and went beyond what most companies do.

Furthermore, Wal-Mart held regular meetings with vendors where vendors were reminded of the policy. Kraft recognized the importance of adherence to this policy, and Kraft employees -- including Plaintiff -- participated in Kraft meetings on a regular basis where this condition was reviewed to ensure their adherence.¹¹

Contrary to the suggestion by Plaintiff’s expert witness, the fact that Wal-Mart’s Statement of Ethics was subject to periodic clarification is another example of best practice in policy implementation. Wal-Mart took steps to continually monitor the implementation of its policy, and continuously provided clarification to enhance the effectiveness of the policy. This ongoing review of policy to ensure their continuing effectiveness is best practice. Organizations and the people in it are constantly changing, and corporations must regularly adjust and refine policies. While policy statements used for different purposes may have been edited, at no time did Wal-Mart’s policy to prohibit the giving or receiving of gifts and gratuities change. It remained constant and all parties, including vendor Kraft, fully understood the terms of the policy.

In my opinion, Wal-Mart’s efforts to contractually bind vendors to its no gifts and gratuities policy, to include similar language in vendor packets, holding vendor meetings where the policy was reviewed, while also educating its own employees on the policy, were best practices.

⁹ Sappington deposition, Exhibit 3, page 9.

¹⁰ Moore deposition, page 58. Plaintiff’s suggestion that Wal-Mart managers needed to be aware of each specific vendor’s contract language makes no sense; no company would expect store employees to be familiar with each vendor contract. Rather, companies do what Wal-Mart did: train employees so they know that the policy is included in vendor contracts.

¹¹ Carrigan deposition, page 17, lines 13-17: “Q. Did you receive training on Wal-Mart’s policies?”

A. We have received training in — we were in a meeting and it was basically Do’s and Don’ts and you just don’t give Wal-Mart employees any — we don’t buy them coffee; we don’t buy them anything.

Q. Who was present for that training? A. We had all our sales reps in the meeting. This is when we would bring all the companies together and all the sales reps; some other managers were in there.”

Opinion #2: Wal-Mart followed sound human resource practice by promptly investigating possible policy violations by an employee and vendor, when it was brought to its attention by its own employees.

Wal-Mart followed best practice when it responded as promptly as it did and investigated a potential violation of its policy brought to its attention by employees. In my opinion, Wal-Mart's investigation was well-executed, methodical, and thorough.

Wal-Mart followed best practice when it promptly investigated an allegation that Plaintiff placed a gift in an employee's car, interviewing witnesses and obtaining written statements.¹² On July 16th, the same day the allegation was received:

- Wal-Mart management interviewed the employees who initially reported that Plaintiff had violated Wal-Mart's Statement of Ethics policy.
- Wal-Mart management reviewed a video tape that showed Plaintiff placing a gift of crackers in Ms. Law's car.
- Ms. Law was accompanied to her car to confirm that the crackers were in her car, and to retrieve the crackers gifted to her.
- Ms. Law was interviewed, and asked for and provided a written explanation of how the crackers came to be in her car.
- The employees who initially reported the potential breach of Wal-Mart policy were interviewed and provided written statements of what happened.
- Ms. Law was asked to leave work pending the remainder of the investigation and until a determination could be made regarding discipline for violating the Statement of Ethics policy.¹³

Shortly thereafter, on July 20th, Wal-Mart continued its investigation, interviewing Plaintiff when she returned to the store and re-interviewing Ms. Law. Plaintiff was asked for, and provided, a written statement recounting what had happened, in which she admitted that she had placed a gift of crackers in Ms. Law's car.

¹² "When an informal or formal complaint is made, the employer should take immediate steps to stop the alleged conflict, protect those involved and begin investigations." How to Conduct an Investigation, SHRM (2010) retrieved from <http://www.shrm.org/templatestools/howtoguides/pages/howtoconductaninvestigation.aspx>. As noted in the Guiding Principles for Investigators Conducting Impartial Workplace Investigations (2012): "There are many effective ways to handle witness interviews. The investigator should create an environment that maximizes the chances of obtaining reliable information and should document (either through note taking, recording or some other method) the witness' testimony in a reliable and consistent fashion." Retrieved from <http://www.aowi.org/assets/documents/guiding%20principles.pdf>.

¹³ An additional indication of Wal-Mart's best practice in communicating its Statement of Ethics, it communicated the company's commitment to its policy by disciplining an employee, Ms. Law, for violating the policy and receiving the gift.

A Wal-Mart manager completed a detailed Investigation Report, which included all of the relevant information from the investigation.¹⁴

In short, Wal-Mart conducted a “systematic collection of facts to describe an event or conduct that has taken place and to explain why it happened,”¹⁵ and it is my opinion that the company followed best practice in doing it promptly, thoroughly, and effectively. All of the relevant parties were contacted, the relevant facts were undisputed, and further investigation was unnecessary.

The facts uncovered by the investigation, including Plaintiff’s own written statement, confirmed the allegation that Plaintiff had placed a gift of crackers in Ms. Law’s car, which was a violation of Wal-Mart policy. There were no relevant facts in conflict: there was a clear policy violation. Wal-Mart followed best practice in enforcing its policy by enforcing the terms of its contract with Kraft, which Plaintiff’s actions had breached, and informing Kraft to cure the breach by ensuring that Plaintiff no longer serviced Wal-Mart stores.

In my opinion Wal-Mart had no duty to investigate and determine the exact origin of every box of crackers, as Plaintiff’s expert witness, Ms. Moore, seems to suggest. According to the Association of Workplace Investigators, Inc. “Guiding Principles”,¹⁶ the investigator’s responsibility is to gather “*relevant evidence*” (emphasis added).

Determining where the gifted crackers came from was not necessary, and therefore not relevant, to Wal-Mart’s determination that Plaintiff could no longer service Wal-Mart stores. It did not matter where the crackers came from: any gift or gratuity was unacceptable under the Statement of Ethics and the terms of Wal-Mart’s contract with Kraft.

Furthermore, whether or not Plaintiff disposed of crackers properly or not is not relevant, because the policy regarding Plaintiff’s proper disposal of Kraft products was determined by Kraft – and it was therefore up to Kraft, as Plaintiff’s employer, not Wal-Mart, to determine whether Plaintiff violated Kraft policies.¹⁷ Wal-Mart’s decision to inform Kraft that Plaintiff couldn’t service its stores was based on the company’s review of the Statement of Ethics, and her violation of its provisions regarding gifts and gratuities. Wal-Mart reached no formal conclusion regarding where the crackers came from, or whether the store received appropriate credits for the crackers, and did not need to do so because it was not

¹⁴ Sappington deposition, Exhibit 7.

¹⁵ “Conducting Workplace Investigations” SHRM (2011) retrieved from <http://www.shrm.org/templatestools/toolkits/pages/workplaceinvestigations.aspx> “As potentially disruptive as investigations can be, they must be prompt, thorough and effective to ensure everyone’s protection.”

¹⁶ Guiding Principles for Investigators Conducting Impartial Workplace Investigations (2012), retrieved from <http://www.aowi.org/assets/documents/guiding%20principles.pdf>

¹⁷ In Kraft’s memorandum informing Plaintiff of her termination from Kraft, Kraft determined that its policy had been violated: “.....On 7/16/09, you were videotaped by Wal-Mart surveillance cameras placing Kraft unsalable biscuit product in a Wal-Mart employee’s car. This is a violation of Kraft Foods process on handling unsalable credits.... As a result of the incident detailed above, and in view of Kraft’s store removal policy, you have left Kraft Foods with no alternative but to terminate your employment effective immediately.”

relevant or necessary. The evidence of the policy violation alone justified the decision to preclude Graham from servicing Wal-Mart stores.¹⁸

In summary, in my opinion, Wal-Mart's investigation followed best practice by fully considering and evaluating the *relevant* evidence that Kraft's sales representative, Plaintiff, had violated Wal-Mart's policy prohibiting gifts or gratuities. As provided in the Guiding Principles of the Association of Workplace Investigators:

"When evaluating the evidence, the investigator generally considers use of an evidentiary standard similar to the "preponderance of evidence" standard used in civil courts: after weighing all evidence, (a) is it more likely than not that the alleged incident occurred or (b) is it more likely than not that the alleged incident did not occur."¹⁹

In my opinion, Wal-Mart had enough information, gathered through its investigation, to determine that the Plaintiff had violated its policy. The statement written by the Plaintiff alone, in which she admitted violating the policy, meets this "preponderance of evidence" standard. The additional video tape of her act and the written statements from other witnesses provided much more than just a "preponderance" of evidence.

Opinion #3: Wal-Mart followed sound human resource practice by taking action to enforce its policy regarding gifts and gratuities, based on the results of its investigation. Wal-Mart followed good human resource management practice to protect its own employees when it insisted that Plaintiff no longer service its stores for Kraft.

The best way to ensure a policy is followed is by enforcing it when a violation is uncovered. That's what Wal-Mart did. Wal-Mart disciplined its employee, Ms. Law, for receiving the gift, and informed its vendor, Kraft, that its employee, Plaintiff, could no longer service Wal-Mart stores.

Prompt enforcement of a policy, once all relevant facts are known, is best practice. Employees "respond to visible justice so if managers' or employees' behaviors do not match the code and nothing happens, it will fail."²⁰

If, for example, a Kraft employee had violated the company's no-harassment policy, by harassing a Wal-Mart employee, Wal-Mart would be expected to take steps to protect its employees from this behavior, and ban the individual from servicing the store. Wal-Mart's decision to ban Plaintiff from servicing its store for violating its no gift policy similarly protects employees from being put at risk by a vendor

¹⁸ As explained in a SHRM workshop, "The worst thing you can do is expand the investigation' when a narrower investigation would have sufficed. *** You should not have to worry that you'll be absolutely right' or keep searching until you find the smoking gun.'" *Don't Worry, Just Follow Right Investigation Protocol*, SHRM (2012) retrieved from <http://www.shrm.org/LegalIssues/EmploymentLawAreas/Pages/SherlockHolmes.aspx>.

¹⁹ Guiding Principles for Investigators Conducting Impartial Workplace Investigations (2012), retrieved from <http://www.aowi.org/assets/documents/guiding%20principles.pdf>

²⁰ Electronic Journal of Business Ethics and Organization Studies article "Corporate Ethical Codes as Strategic Documents: An Analysis of Success and Failure" (2009) retrieved from https://jyx.jyu.fi/dspace/bitstream/handle/123456789/25441/ejbo_vol14_no2_pages_14-20.pdf?sequence=1

violating company policy. Certainly Ms. Law, who was suspended as a result of Plaintiff's actions, would not have been suspended if the gifts weren't placed in her car.

Opinion #4: Wal-Mart had no employment relationship with Plaintiff, and Kraft is solely responsible for its decision to terminate the Plaintiff. Wal-Mart appropriately played no role in Kraft's decision to terminate Plaintiff.

There is no question that Plaintiff Graham was an employee of Kraft – she was paid by Kraft, visited stores assigned to her by Kraft, and ultimately collected unemployment benefits as a result of her employment relationship with Kraft. Therefore, Wal-Mart had no duty to treat the Plaintiff as if she were a Wal-Mart employee.

The obligations that Wal-Mart had to disseminate and train its employees on its Statement of Ethics did not extend to non-employees. Plaintiff worked for Kraft, and was bound by Kraft's employment policies. If Plaintiff were unaware of the policy (which doesn't appear to be the case),²¹ her dispute is with her employer, Kraft, which was contractually bound to Wal-Mart's no gift and gratuity policy as part of its vendor agreement.

While Plaintiff has asserted that Wal-Mart's actions (and not her own) caused Kraft to terminate her, in my opinion this is simply not the case. Wal-Mart did what any reasonable employer would do when confronted with a third-party employee violating corporate policy while on its premises, by ensuring that the individual no longer services the premises.

The record is clear that Kraft was not forced to terminate Plaintiff because Wal-Mart refused to let her service its stores. Her supervisor, Thomas Carrigan, testified that he proposed to his supervisors that his territory be redistributed among his sales representatives in such a way that Plaintiff would no longer be assigned to any Wal-Mart stores:

"Q. The bottom of Exhibit 1 [Kraft memo terminating Plaintiff] says: As a result of the incident detailed above, and in view of Kraft's store removal policy, you have left Kraft Foods no alternative but to terminate your employment effective immediately. Why was there no alternative?

A. I don't know. And I say that because I had rerouted — there were four territories up there. I rerouted all four territories to give Jan a territory without Wal-Mart. Just Krogers, independents. And I submitted that. It would have been difficult because there were three other people involved. Impossible? No. Difficult? Yes, based on travel, work time, hours. And I submitted that, and I was told that would it not be feasible."²²

²¹ "Q. Okay. Now, are you familiar with Wal-Mart's gift and gratuities policy? A. Uh-huh." Graham deposition page 18, lines 19-21.

²² Carrigan deposition, page 34, lines 8-16:

It was Kraft's decision not to adjust sales territories – a decision in which Wal-Mart played no role -- which resulted in Plaintiff's termination. Rather than disrupt its operations, and re-distribute the work of other Kraft employees, Kraft chose to terminate Plaintiff.

All of the opinions expressed in this report are based on a reasonable degree of human resource management best practice certainty, informed by my education, training, and decades of experience in the field of human resource management.

Please let me know if you have any questions or would like me to elaborate on any opinions I have provided.