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FILED
ALAMEDA COUNTY

OCT 04 2018

CLERK OF THE SUPERIOR COURT

By Sue Perko Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ALICIA CAPPELLO and CATHERINE
MOSQUEDA, for themselves and all
others similarly situated,

Plaintiffs,

vs.

WALMART, INC., a Delaware
corporation; and DOES 1-50, inclusive,

Defendants.

Case No.

RG18923367

CLASS ACTION

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF BASED ON:

1. VIOLATION OF THE VIDEO PRIVACY PROTECTION ACT (18 U.S.C. § 2710)
2. VIOLATION OF CAL. CIV. CODE. § 1799.3
3. VIOLATION OF THE UNFAIR COMPETITION LAW (CAL. BUS. & PROF CODE § 17200 ET SEQ.)

DEMAND FOR JURY TRIAL

1 NATURE OF ACTION

2 1. Plaintiffs Alicia Cappello and Catherine Mosqueda bring this class action against
3 Walmart, Inc. ("Walmart") for violating the Video Privacy Protection Act, 18 U.S.C. § 2710 (the
4 "VPPA") and Cal. Civ. Code § 1799.3 by disclosing walmart.com customers' identities and video
5 media purchases to Facebook, Inc. ("Facebook").

6 2. The VPPA prohibits "video tape service providers" like Walmart from knowingly
7 disclosing consumers' personally-identifiable information, including "information which identifies
8 a person as having requested or obtained specific video materials or services from a video tape
9 service provider," without express written consent in a stand-alone consent form.

10 3. Cal. Civ. Code § 1799.3 prohibits video sellers from disclosing "any personal
11 information or the contents of any record, including sales or rental information, which is prepared
12 or maintained by that person, to any person, other than the individual who is the subject of the
13 record, without the written consent of that individual."

14 4. Walmart installed an advertising tool called a Facebook pixel on its retail website
15 walmart.com that systematically disclosed to Facebook: (1) walmart.com customers' Facebook
16 ID's, and (2) the Walmart product ID's of the products those customers purchased.

17 5. When a walmart.com customer purchased a DVD, Blu-ray Disc, video game, or
18 other video media (all jointly "Video Media"), this disclosure to Facebook violated the VPPA and
19 Cal. Civ. Code § 1799.3 because it identified the consumer to Facebook as having requested or
20 obtained specific video materials from Walmart.

21 6. Walmart knew it was disclosing and intended to disclose Video Media purchasers'
22 personal information to Facebook based on, among other things, the functionality of the pixel,
23 including its enablement of individually targeted advertising based on the specific products
24 specific customers purchased on walmart.com. Walmart installed the pixel for this purpose.
25 Walmart also knew the requirements of the VPPA. Walmart nevertheless failed to obtain the
26 requisite express written consent of the customer in a separate stand-alone consent form
27 beforehand.

28 7. Plaintiffs seek an injunction prohibiting Walmart's unlawful disclosures,

1 mandatory liquidated damages of \$2,500 per violation, and punitive damages under the VPPA, a
2 civil penalty of up to \$500 per violation under Cal. Civ. Code § 1799.3, and attorneys' fees.

3 **Parties**

4 8. Plaintiffs are individuals who purchased Video Media from walmart.com and never
5 authorized Walmart to disclose their Video Media purchase information to Facebook.

6 9. Plaintiff Alicia Cappello is an individual who at all relevant times resided in
7 Bakersfield, California. Plaintiff Catherine Mosqueda is an individual who at all relevant times
8 resided in Yreka, California.

9 10. Defendant Walmart, Inc. is a Delaware corporation with its principal place of
10 business in Bentonville, Arkansas.

11 11. Plaintiffs are unaware of the true identities of those Defendants sued herein as
12 DOES 1 through 50, inclusive, and therefore sue these Defendants by these fictitious names.
13 Plaintiffs will seek leave of Court to amend this Complaint to show the true names and capacities
14 of the fictitiously named Defendants if and when ascertained. Plaintiffs are informed and believe
15 that each fictitiously named Defendant is liable in some manner for the injuries and damages
16 alleged by Plaintiffs.

17 **Venue and Jurisdiction**

18 12. This Court has general subject matter jurisdiction. Further, the applicable
19 walmart.com terms of use provide that “[a]ny action or proceeding arising out of or related to this
20 Agreement or your use of the Walmart Sites must be brought in the state or federal courts of
21 California and you consent to the exclusive personal jurisdiction of such courts.”

22 13. Venue is proper in this county under Code of Civil Procedure § 395 because
23 Defendant does not reside in California and has not designated a California county in which it
24 maintains its principal local office¹ and may therefore be sued in the county designated by
25 Plaintiffs in their complaint. *See Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243,
26

27 ¹ See California Secretary of State Statement of Information for Walmart Inc., filed January 9,
28 2018, available at <https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=01634374-23491937> as of August 1, 2018 (omitting Principal California Office address).

1 246-247 (1970).

2 **Facts Common to All Causes of Action**

3 14. Walmart operates the retail websites walmart.com and mobile.walmart.com
4 (together “walmart.com”), where it sells a variety of consumer goods, including Video Media.

5 15. To take advantage of advertising and information services offered by Facebook,
6 Walmart programmed walmart.com to include a Facebook pixel that automatically discloses the
7 Walmart product ID of all products purchased on walmart.com, including Video Media, to
8 Facebook.

9 16. A Facebook pixel is an analytics tool that tracks consumers’ actions on Facebook
10 advertisers’ websites and reports them to Facebook. For an advertiser to incorporate a Facebook
11 pixel into its website, the advertiser must add the code for the pixel to its website. To obtain the
12 code for the pixel, the advertiser tells Facebook which website events it wants to track (e.g.
13 purchases, additions to cart, product views) and Facebook returns corresponding Facebook pixel
14 code for the advertiser to incorporate into its website.

15 17. Walmart set up its Facebook pixel to track, among other things, the Walmart
16 product ID of products purchased on walmart.com, including Video Media. A Walmart product ID
17 is a unique identifier assigned to each Walmart product that returns the name of the associated
18 product when searched for via walmart.com or Google. Generally, when a consumer with a
19 Facebook account purchases Video Media from walmart.com the purchase confirmation page
20 loads and the Facebook pixel on that page causes the purchaser’s browser to send the purchased
21 Video Media’s product ID, and the consumer’s Facebook user ID, to Facebook’s servers through a
22 message called a “GET Request.”²

23 18. The GET Request to Facebook includes the contents of any non-expired Facebook
24 “cookies” stored on the user’s computer. A cookie is a small file sent from a website and stored on
25 the user’s computer by the user’s web browser while the user is browsing. Multiple Facebook
26 cookies enable Facebook to identify the user associated with the GET request, including a

27 _____
28 ² A “GET Request” is a message sent from a web browser to a server, requesting information for display on the computer or device.

1 “c_user” cookie that contains the user’s Facebook ID. A Facebook ID is a unique and persistent
2 identifier that Facebook assigns to each user. With it, anyone can (or during the relevant time
3 frame, could) look up the user’s Facebook profile and name.

4 19. When a Facebook user with one or more personally-identifiable Facebook cookies
5 on his or her browser purchases Video Media from walmart.com, Walmart, through its website
6 code, causes the purchaser’s identity and Video Media purchases to be transmitted to Facebook by
7 the user’s browser. This transmission is not the purchaser’s decision, but results from Walmart’s
8 purposeful use of its Facebook tracking pixel by incorporation of that pixel and code into
9 walmart.com. Walmart easily could program walmart.com so that this information is not
10 automatically transmitted to Facebook when a customer purchases Video Media.

11 20. At all relevant times, Walmart knew that the Facebook pixel disclosed customers’
12 identities and purchases to Facebook. This was evident from, among other things, the functionality
13 of the pixel, including that it enabled Walmart.com to show targeted advertising to its customers
14 based on the products those customers had previously purchased on walmart.com, including Video
15 Media purchases. This targeting capability demonstrates Facebook’s and Walmart’s intended
16 purpose and practice of combining Facebook ID’s and product ID’s to identify which users
17 purchased which products. Representative statements from Facebook to advertisers like Walmart
18 describing the targeting and matching functions the Pixel enables include:

19 a. “Using the Facebook Pixel—a snippet of code you install on your
20 website—you can create a custom audience of people who have visited your website. You can
21 even use the website traffic data to show people ads for things they’ve shown interest in on your
22 website.”³

23 b. “When someone visits your website and takes an action (for example,
24 buying something), the Facebook pixel is triggered and reports this action. This way, you’ll know
25 when a customer took an action after seeing your Facebook ad. You’ll also be able to reach this
26

27 ³ Facebook Business, [https://www.facebook.com/business/learn/facebook-ads-reach-existing-](https://www.facebook.com/business/learn/facebook-ads-reach-existing-customers#)
28 [customers#](https://www.facebook.com/business/learn/facebook-ads-reach-existing-customers#) (last verified by counsel for plaintiff on Jan. 31, 2018).

1 customer again by using a custom audience.”⁴

2 c. “One great way to reach real people is with Custom Audiences from your
3 website. These identify people with Facebook ID’s who have visited specific product pages or
4 added products to a cart. Once a Custom Audience pixel is placed on your website, you can use
5 that data to remarket to visitors across all their devices.”⁵

6 d. “The Facebook pixel has an advanced matching feature that enables you to
7 send your customer data through the pixel to match more website actions with Facebook users.
8 With this additional data, you can report and optimize your ads for more conversions and build
9 larger re-marketing audiences. You can pass the customer identifiers, such as email, phone number
10 that you collect from your website during the checkout, account sign-in, or registration process as
11 parameters in the pixel. Facebook then uses this information to match pixel events with Facebook
12 users when the Facebook cookie is not present on the browser that fires the pixel.”⁶

13 21. Walmart continues to engage in all of the unlawful conduct alleged herein, so
14 Plaintiffs and the general public face continuing, present, adverse effects and likelihood of future
15 injury from Walmart’s conduct.

16 **Plaintiffs**

17 22. Plaintiff Alicia Cappello purchased “Prometheus” on Blu-Ray and “Alien
18 Covenant” on Blu-Ray from walmart.com on or about September 23, 2017, using an internet-
19 enabled device. Cappello purchased “Jeepers Creepers” on Blu-Ray from walmart.com on or
20 about November 24, 2017, using her internet-enabled device. At the time of each purchase,
21 Plaintiff Cappello was logged into her Facebook account on that same device. Consequently,
22 Plaintiff Cappello’s personally-identifiable video purchase information, including her Facebook
23 ID and the Walmart product ID of the purchased Video Media were disclosed to Facebook
24 pursuant to the systematic processes described above.

25 ⁴ Facebook Business, <https://www.facebook.com/business/learn/facebook-ads-pixel> (last verified
26 by counsel for plaintiff on Jan. 31, 2018).

27 ⁵ Facebook Business, <https://www.facebook.com/business/a/performance-marketing-strategies>
28 (last verified by counsel for plaintiff on Jan. 31, 2018).

⁶ Facebook for Developers, <https://developers.facebook.com/docs/facebook-pixel/pixel-with-ads/conversion-tracking> (last verified by counsel for plaintiff on Jan. 31, 2018).

Facebook ID being sent to Facebook.

1
2 28. Excluded from the Class and California Subclass are: (1) all officers and directors
3 of Walmart and its parents, subsidiaries, and affiliates, and (2) all judges assigned to hear any
4 aspect of this litigation and their immediate family members.

5 29. Plaintiffs reserve the right to modify or amend the definition of the proposed Class
6 before the Court determines whether certification is appropriate.

7 30. Numerosity: The potential members of the Class and California Subclass are so
8 numerous that joinder of all the members of the class is impracticable. Plaintiffs are informed and
9 believe that the Class and California Subclass each includes at least thousands of members.

10 31. Commonality: There are questions of law and fact common to the Class that
11 predominate over any questions affecting only individual members of the Class, including:

12 a. What information Walmart disclosed to Facebook concerning Class
13 members' Video Media purchases;

14 b. Whether the information Walmart disclosed to Facebook concerning Class
15 members' Video Media purchases constitutes personally-identifiable information under the VPPA;

16 c. Whether Walmart's disclosure of Class members' personally-identifiable
17 information to Facebook was knowing under the VPPA;

18 d. Whether Class members consented to Walmart's disclosure of their
19 personally-identifiable information to Facebook in the manner required by 18 U.S.C. §
20 2710(b)(2)(B); and

21 e. Whether the Class is entitled to damages as a result of Walmart's conduct.

22 32. There are questions of law and fact common to the California Subclass that
23 predominate over any questions affecting only individual members of the California Subclass,
24 including:

25 a. Whether the information Walmart disclosed to Facebook concerning
26 California Subclass members' Video Media purchases constitutes "personal information or the
27 contents of any record, including sales or rental information, which is prepared or maintained by"
28 Walmart;

1 “informed, written consent (including through an electronic means using the Internet) of the
2 consumer.” 18 U.S.C § 2710.

3 39. Walmart is a “video tape service provider” as defined in 18 U.S.C. §2710(a)(4)
4 because it is engaged in the business of selling and delivering audiovisual materials that are
5 similar to prerecorded video cassette tapes including, without limitation, DVDs and Blu-ray Discs,
6 and those sales affect interstate or foreign commerce.

7 40. All Plaintiffs and Class members are “consumers” as defined in 18 U.S.C.
8 §2710(a)(1) because they purchased goods from Walmart.

9 41. Walmart knowingly disclosed personally-identifiable information concerning
10 Plaintiffs and Class members to Facebook, including their Facebook ID’s and the Walmart
11 product ID’s of the Video Media that each respective Class member purchased.

12 42. This information constitutes personally-identifiable information under 18 U.S.C.
13 §2710(a)(3) because it identified each Plaintiff and Class member to Facebook as an individual
14 who requested or obtained named Video Media from Walmart.

15 43. Walmart knew that these disclosures identified Plaintiffs and Class members to
16 Facebook as individuals having requested or obtained specific Video Media from Walmart
17 because, *inter alia*, Walmart chose, programmed, and intended for Facebook to receive the
18 Walmart product ID’s of the products customers purchased on walmart.com and Walmart
19 understood that Facebook could then, to advance Walmart’s business purposes and otherwise,
20 serve targeted ads to individuals based on the products they purchased, which necessarily required
21 Facebook to know which customers purchased which products. Plaintiffs are informed and believe
22 that Walmart knew its disclosures identified Plaintiffs and Class members to Facebook as
23 individuals having requested or obtained specific video materials from Walmart for other reasons
24 that are known to Walmart and are not publicly available.

25 44. Plaintiffs and Class members did not provide to Walmart and Walmart did not
26 otherwise obtain their informed written consent, in a form distinct and separate from any form
27 setting forth their other legal or financial obligations, to disclose Plaintiffs’ and Class members’
28 Video Media purchases to Facebook.

Second Cause of Action
Violation of Cal. Civ. Code. § 1799.3
(On Behalf of Plaintiffs and the California Subclass)

1
2 45. Plaintiffs incorporate all preceding paragraphs as though repeated here.

3
4 46. Cal. Civ. Code § 1799.3(a) prohibits a “person providing video recording sales”
5 from disclosing “any personal information or the contents of any record, including sales or rental
6 information, which is prepared or maintained by that person, to any person, other than the
7 individual who is the subject of the record, without the written consent of that individual.”

8 47. Walmart is a “person providing video recording sales or rental services” under Cal.
9 Civ. Code § 1799.3(a) because it is engaged in the business of selling video recordings, including,
10 without limitation, DVDs, Blu-ray Discs, and video games.

11 48. Walmart willfully disclosed information that identified Plaintiffs and California
12 Subclass members to Facebook as individuals having requested or obtained specific video
13 materials from Walmart, including their Facebook ID’s and the Walmart product ID’s of the
14 Video Media that they purchased. This information constitutes: (a) the personal information of
15 Plaintiffs and California Subclass members, and/or (b) the contents of a record concerning
16 Plaintiffs and California Subclass members that Walmart prepared or maintained.

17 49. Plaintiffs and California Subclass members did not consent, in writing or otherwise,
18 to Walmart’s disclosure of their Video Media purchases to Facebook. Walmart’s disclosure of this
19 information to Facebook therefore violated Cal. Civ. Code § 1799.3(a).

Third Cause of Action
Violation of Cal. Business & Professions Code. § 17200, et seq.
(On Behalf of Plaintiffs and the California Subclass)

20
21 50. Plaintiffs incorporate all preceding paragraphs as though repeated here.

22 51. California Business and Professions Code § 17200 *et seq.*, the Unfair Competition
23 Law (“UCL”), prohibits unfair, unlawful, and fraudulent business practices.

24 52. Walmart violated the UCL’s unlawful prong by, among other things:

25 a. Disclosing personally-identifiable information concerning Plaintiffs and
26 Class members to Facebook, including their Facebook ID’s and the Walmart product ID’s of the
27 Video Media that each respective Class member purchased, without the requisite consent, in
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8. For such other and further relief as the Court deems just and proper.

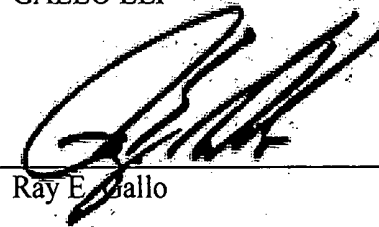
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DATED: October 4, 2018

RESPECTFULLY SUBMITTED,

GALLO LLP

By: _____



Ray E. Gallo

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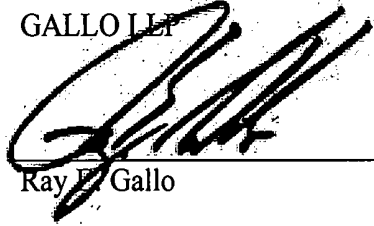
DEMAND FOR JURY TRIAL

Plaintiffs and each of them, for themselves and all others similarly situated, hereby demand a jury trial of all issues, claims, and causes of action so triable.

DATED: October 4, 2018

RESPECTFULLY SUBMITTED,

GALLO LLP

By: 
Ray F. Gallo