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Attorneys for Plaintiffs

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.

RG18923307

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

ENDORSED
FILED
ALAMEDA COUNTY

OCT 04 2018

SUE PESKO

BY FAX

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

1 23. Plaintiff Catherine Mosqueda purchased “Independence Day Resurgence” on Blu-
2 Ray and DVD, “Star Trek Beyond” on Blu-Ray and DVD, and “Finding Dory” on Blu-Ray and
3 DVD from walmart.com on or about November 24, 2016, using her internet-enabled device.
4 Mosqueda purchased “The Land Before Time: Complete Collection” on Blu-Ray, from
5 walmart.com on or about November 26, 2017, using her internet-enabled device. She purchased
6 “UNCHARTED: The Nathan Drake Collection” and “LEGO: Jurassic World” video games for
7 Playstation 4 from walmart.com on or about November 24, 2017, using her internet-enabled
8 device. At the time of each purchase, Plaintiff Mosqueda was logged into her Facebook account
9 on that same device. Consequently, Plaintiff Mosqueda’s personally-identifiable video purchase
10 records information, including her Facebook ID and the Walmart product ID of the purchased
11 Video Media were disclosed to Facebook pursuant to the systematic processes described above.

12 24. Plaintiffs never gave Walmart any written consent to disclose their Video Media
13 purchases to Facebook, let alone the consent required by the VPPA, *i.e.*, written consent in a form
14 distinct and separate from any form setting forth their other legal or financial obligations.

15 25. Plaintiffs and the proposed classes face a threat of imminent or actual harm
16 because, *inter alia*, they cannot make an informed decision about whether to purchase Video
17 Media from Walmart in the future without knowing whether Walmart has ceased its unlawful
18 practices.

19 **Class Action Allegations**

20 26. Pursuant to Code of Civil Procedure Section 382, Plaintiffs bring this action for
21 themselves and the following class (the “Class”):

22 All persons in the United States who purchased Video Media from
23 walmart.com within the two years immediately preceding the filing
24 of this action and before November 28, 2017 in a transaction that
25 resulted in the Video Media’s Walmart product ID and the
26 purchaser’s Facebook ID being sent to Facebook.

27 27. Plaintiffs seek certification of the following subclass (the “California Subclass”):

28 All persons in California who purchased Video Media from
walmart.com between within the applicable statutory limitations
period and before November 28, 2017 in a transaction that resulted
in the Video Media’s Walmart product ID and the purchaser’s

Facebook ID being sent to Facebook.

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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 b. Whether Walmart’s disclosure of California Subclass members’ personal
2 information or record contents to Facebook was willful under Cal. Civ. Code § 1799.3(c);

3 c. Whether California Subclass members provided written consent to
4 Walmart’s disclosure of their personal information or record contents to Facebook; and

5 d. Whether the Class is entitled to civil penalties under Cal. Civ. Code §
6 1799.3(c) as a result of Walmart’s conduct.

7 33. Typicality: Plaintiffs’ claims are typical of Class members’ and California Subclass
8 members’ claims because Plaintiffs each purchased Video Media from walmart.com in
9 transactions that resulted in the Video Media’s product ID’s and purchaser’s Facebook ID being
10 sent to Facebook without the requisite consent.

11 34. Adequacy of Representation: Plaintiffs are all members of the Class and California
12 Subclass, Plaintiffs’ interests do not conflict with the interests of other Class members, and
13 Plaintiffs’ counsel are competent and experienced in litigating consumer class actions.

14 35. Superiority of Class Action: A class action is superior to other available means for
15 the fair and efficient adjudication of this controversy. Individual joinder of all Class or California
16 Subclass members is not practicable, and questions of law and fact common to the Class and
17 California Subclass predominate over any questions affecting only individual members of the
18 Class. Class action treatment will allow those similarly situated persons to litigate their claims in
19 the manner that is most efficient and economical for the parties and the judicial system.

20 36. Injunctive relief is necessary to prevent further unlawful conduct by Walmart.
21 Money damages, alone, could not provide adequate and complete relief. Injunctive relief is
22 necessary to restrain Walmart from continuing to commit its illegal and unfair violations of
23 privacy.

24 **First Cause of Action**
25 **Violation of the Video Privacy Protection Act (“VPPA”), 18 U.S.C. § 2710**
26 **(Against all Defendants, on behalf of Plaintiffs and the Class)**

26 37. Plaintiffs incorporate all preceding paragraphs as though repeated here.

27 38. The VPPA prohibits a “video tape service provider” from knowingly disclosing
28 “personally-identifying information” concerning any consumer to any person without the

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.

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

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

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

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

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

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

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

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

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

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

a. Disclosing personally-identifiable information concerning Plaintiffs and Class members to Facebook, including their Facebook ID’s and the Walmart product ID’s of the Video Media that each respective Class member purchased, without the requisite consent, in

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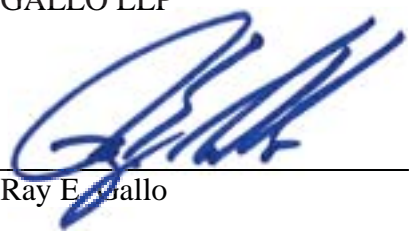
8. For such other and further relief as the Court deems just and proper.

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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 E. Gallo

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Lawsuit Accuses Walmart of Sharing Customer Info with Facebook](#)
