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**ELECTRONICALLY**

**FILED**

**7/8/2021 8:49 AM**

SAN LUIS OBISPO SUPERIOR COURT  
BY   
D. Rincon, Deputy Clerk

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8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO**

9  
10 THE PEOPLE OF THE STATE OF CALIFORNIA,) No. 21CV-0390  
11 Plaintiff, )  
12 v. ) COMPLAINT FOR CIVIL PENALTIES  
13 ) AND OTHER RELIEF  
14 WALMART STORES, Incorporated, ) (Bus. and Prof. Code § 17200 et seq.;)  
15 a Delaware Corporation, ) *Exempt from fees per*  
16 Defendant, ) *Gov. Code §6103*  
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19 The People of the State of California, by and through Dan Dow, District Attorney for  
20 the County of San Luis Obispo, hereby allege as follows:

21 **DEFENDANT**

22 1. Defendant Walmart Stores, Inc., is a Delaware corporation which owns and  
23 operates physical retail stores as well as online storefronts at its website, Walmart.com, in  
24 San Luis Obispo County. Walmart Stores is a general retailer, and as such, advertises and  
25 sells goods including goods categorized as emergency supplies and medical supplies under  
26 Penal Code section 396.

27 2. All references in this Complaint to the alleged acts of Defendant Walmart are  
28 deemed to mean acts of the corporate Defendant, through its officers, directors, agents,

1 employees, and/or representatives while they were acting within the actual or ostensible  
2 scope of their authority.

### 3 JURISDICTION AND VENUE

4 3. The violations of law by Defendant alleged in this Complaint occurred online—  
5 at Walmart.com—within San Luis Obispo County. The Plaintiff brings this action solely for  
6 those alleged violations concerning goods advertised and sold online to those addresses  
7 within the boundary of San Luis Obispo County, pursuant to California’s unfair competition  
8 laws. Specifically, Plaintiff contends that Defendant advertised and sold packs of sanitizing  
9 wipes within the County of San Luis Obispo at a price exceeding that permitted for the sale  
10 of goods defined as emergency and medical supplies during a declared State of Emergency  
11 resulting from the COVID-19 pandemic.

### 12 STATUTORY BACKGROUND AND ENFORCEMENT AUTHORITY

13 4. On March 3, 2020, as a result of the COVID-19 pandemic, the Governor of the  
14 State of California proclaimed a State of Emergency in California as a result of the threat of  
15 COVID-19.

16 5. On April 3, 2020, the Governor’s Office issued Executive Order N-44-20,  
17 which ordered in part, the prohibition of offering to sell or selling medical or emergency  
18 supplies that a retailer had not previously sold prior to February 4, 2020, for “an  
19 unconscionably excessive price.” The order defined a price is “unconscionably excessive” if  
20 that price is more than 50 percent greater than the amount the business paid for the item.  
21 The executive order held that in each instance of a sale, or even an offer to sell, it would  
22 constitute a separate violation of the order. The executive order mandated that such a  
23 violation shall be redressable as either a misdemeanor, or as any other unlawful business  
24 practice under the Unfair Competition Law, Business and Professions Code section 17200  
25 et seq.

26 6. Executive Order N-44-20 was originally effective from April 4, 2020, through  
27 September 4, 2020, the timeframe of the alleged violations of law.

28 7. Plaintiff elects to bring this action as an unlawful business practice under the

1 Unfair Competition Law involving the offer to sell and the sale of medical and emergency  
2 supplies in violation of Executive Order N-44-20.

3 **CAUSE OF ACTION**

4 **Violations of Business and Professions Code Section 17200**

5 **Unfair or Unlawful Business Acts or Practices**

6 8. Plaintiff restates and incorporates by reference paragraphs 1 through 7 as  
7 though fully set forth herein.

8 9. In May and June of 2020, Defendant engaged in acts of unfair competition by  
9 violating Executive Order N-44-20 by conduct which includes:

10 A. Offering to sell and selling on its online storefront, Walmart.com, an  
11 item entitled, "Caresour W-075 75% Alcohol disinfecting wipes (50-pack)." These  
12 disinfecting wipes constitute "emergency supplies" and "medical supplies" under Penal  
13 Code section 396.

14 B. The disinfecting wipes were sold eight times to six separate  
15 households in San Luis Obispo County from May 26, 2020, through June 22, 2020.  
16 Defendant sold the item between \$18.99 and \$19.99. The cost to Walmart exceeded the  
17 50% markup, constituting a violation of the executive order.

18 C. After being contacted by San Luis Obispo District Attorney's Office,  
19 Defendant removed the item from its online platform and provided a 100% refund to not  
20 only the sales within San Luis Obispo County, but throughout the State of California.  
21 Defendant represents the violations resulted from an internal error and contends the error  
22 has been corrected.

23 **PRAYER**

24 WHEREFORE, Plaintiff prays for the following relief:

25 1. That pursuant to Business and Professions Code section 17206,

26 "The Court shall impose a civil penalty for each violation. In  
27 assessing the amount of the civil penalty, the court shall consider  
28 any one or more of the relevant circumstances presented by any of  
the parties to the case, including, but not limited to, the following:

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the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth."

Accordingly, the plaintiff seeks a civil penalty of one thousand five hundred dollars (\$1,500) against Defendant for the violations of Business and Professions Code section 17200, for the offer to sell and the sale of emergency and medical goods within San Luis Obispo County in violation of the executive order.

2. That Defendant be required to pay the Plaintiff's investigatory and litigation costs of seven thousand five hundred dollars (\$7,500).

3. That the Court grant such other relief as the Court deems just and proper.

Dated: 6/23/2021

Respectfully submitted,

DAN DOW  
DISTRICT ATTORNEY



By: Kenneth Jorgensen  
Deputy District Attorney