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13
14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
15 **SAN JOSE DIVISION**

16 JEANETTE MERCADO, on behalf of herself
and all others similarly situated,

17
18 Plaintiff,

19 v.

20 EBAY INC., a Delaware Corporation,

21 Defendant.

No.

CLASS ACTION COMPLAINT FOR
VIOLATION OF CALIFORNIA’S UNFAIR
COMPETITION LAW, CALIFORNIA’S
CONSUMER LEGAL REMEDIES ACT,
AND QUASI-CONTRACT, RESTITUTION,
UNJUST ENRICHMENT

JURY TRIAL DEMANDED

CLASS ACTION

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1 Plaintiff Jeanette Mercado, on behalf of herself and other similarly situated consumers,
 2 hereby brings this action against eBay Inc. for violations of California’s Unfair Competition Law
 3 (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et seq., Consumers Legal Remedies Act, California
 4 Civil Code §1750, et seq. (the “CLRA”), and for quasi-contract/restitution/unjust enrichment.

5 INTRODUCTION

6 1. In the midst of the ongoing COVID-19 pandemic, while federal, state, and local
 7 governments around the country declare states of emergency and issue mandates for citizens to stay
 8 home and practice social distancing in order to avoid spreading the highly contagious novel
 9 coronavirus that causes an often severe and sometimes fatal respiratory infection, unscrupulous
 10 sellers opportunistically prey upon the public by gouging prices of essential items—like N-95, N-
 11 100 and surgical masks; hand sanitizer and gel; disinfectant sprays like Lysol; disinfecting wipes;
 12 toilet paper; gloves; paper towels; baby formula; baby wipes; tampons; and diapers—to
 13 unconscionably profit off of vulnerable and fearful consumers during these unprecedented times.
 14 Not only is such gross misconduct unfair and inhumane, it is a criminal offense that constitutes a
 15 per se violation of California’s Unfair Competition Law. *See* Cal. Penal. Code §§ 396(h), (i).

16 2. While eBay now publicly states that it is trying to stem the use of eBay’s platform
 17 by sellers who have charged, and continue to charge, gouging rates to consumers across the
 18 country, eBay’s very business model not only allows but encourages such price gouging, to eBay’s
 19 financial benefit: in addition to charging fees for initially listing items, eBay charges a “final value
 20 fee” when items actually sell, which is calculated as a percentage of the total amount of the sale.¹
 21 Thus, the higher the sale price, the more profit eBay stands to earn.

22 3. California has been at the front lines of the fight against the COVID-19 pandemic.
 23 Indeed, on February 3, 2020, Santa Clara County—where eBay is headquartered—was the first in
 24 the state to declare a state of emergency after its first confirmed COVID-19 infection. On March 4,
 25 2020, Governor Newsom declared a State of Emergency per Government Code § 8625(c), and
 26 thereafter instructed all “individuals living in the State of California to stay home or at their place
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28 ¹<https://www.ebay.com/help/selling/fees-credits-invoices/selling-fees?id=4364#section2> (last
 accessed May 3, 2020).

1 of residence,” and to “[c]onsider on-line ordering for food and other supplies.”² By March 13,
 2 2020, the United States of America declared a state of emergency pursuant to the National
 3 Emergencies Act.³

4 4. Further, the CDC has advised all Americans to “[o]rder food and other items online
 5 for home delivery or curbside pickup (if possible),” and to “[o]nly visit the grocery store, or other
 6 stores selling household essentials, in person when you absolutely need to,” as “[t]his will limit
 7 your potential exposure to others and the virus that causes COVID-19.”⁴

8 5. Due in large part to the widespread coronavirus shutdowns, and with product
 9 scarcity pervading brick-and-mortar establishments, online retailers have enjoyed unparalleled
 10 demand from consumers who need to obtain essential supplies without leaving their homes. It was
 11 against this dire backdrop that Senator Edward J. Markey (D-Massachusetts) stated that internet-
 12 based retailers “have a particular responsibility to guard against price gouging in current
 13 circumstances as consumers—who are finding the shelves of local brick-and-mortar stores bare,
 14 and who may wish to avoid venturing into crowded stores and shopping malls—turn to the
 15 internet.”⁵

16 6. In short, the COVID-19 pandemic has sparked a profound shift in how the global
 17 market operates. In light of the conditions the pandemic created—where consumers are ordered to
 18 stay home and warned that venturing out into the public can be as dangerous as a game of Russian
 19 roulette—Plaintiff and the Class are left with no choice but to purchase essential goods like N-95,
 20 N-100 and surgical masks; hand sanitizer and gel; disinfectants like Lysol; disinfecting wipes;
 21 toilet paper; gloves; paper towels; baby formula; baby wipes; tampons; and diapers from online
 22 marketplaces like eBay.⁶

23 _____
 24 ²https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Self_Isolation_Guidance_03.16.20.pdf (last accessed May 3, 2020); *see also* <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf> (last accessed May 3, 2020).

25 ³<https://www.fema.gov/news-release/2020/03/13/president-donald-j-trump-directs-fema-support-under-emergency-declaration> (last accessed May 3, 2020).

26 ⁴<https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (last accessed May 3, 2020).

27 ⁵<https://www.markey.senate.gov/imo/media/doc/letter%20to%20Bezos%20re%20coronavirus%20price-gouging.pdf> (last accessed May 3, 2020).

28 ⁶ For these reasons, the Court should reject any attempt by eBay to enforce any restrictive provisions of the take-it-or-leave-it contract against its customers, especially during this emergency

1 15. eBay is an online auction and classified advertisement website. eBay is the world's
2 largest open marketplace with *1.3 billion* listings live at any given time and with millions of
3 transactions happening every day on its platform across more than 190 markets.⁷

4 16. Under current Centers for Disease Control and Prevention (CDC) guidance, N95
5 respirators are critical supplies that must be reserved for health care workers and other medical first
6 responders, rather than sold to the general public.⁸ As further stated by Mike Roman, CEO of 3M
7 (who manufactures n95 masks), “[e]very respirator mask that’s available right now should be
8 going to a healthcare worker on the front lines, caring for coronavirus-infected patients. They
9 should not be sold in stores to consumers.”⁹

10 17. On March 14, 2020, Jeanette, an Uber and Lyft driver—performing an essential
11 business and high-at-risk for infection due to the close proximity to the public—was sold a 2-pack
12 of n95 masks on eBay for a total of \$23.98. As the retail price of these masks as listed by Home
13 Depot, O’Reilly’s Auto Parts, and other national retailers never exceeded \$8.99, Jeanette purchased
14 the masks at a nearly *300% markup*.

15 18. California’s anti-price gouging statute, Cal. Penal Code § 396, strictly prohibits
16 price gouging during a declared emergency, and was enacted because “some merchants have taken
17 unfair advantage of consumers by greatly increasing prices for essential consumer goods and
18 services.” Cal. Penal Code § 396(a). The legislature acknowledged that “[w]hile the pricing of
19 consumer goods and services is generally best left to the marketplace under ordinary conditions,
20 when a declared state of emergency or local emergency results in abnormal disruptions of the
21 market, the public interest requires that excessive and unjustified increases in the prices of essential
22 consumer goods and services be prohibited.” *Id.*

23 19. To discourage price gouging, and make the prohibition effective and enforceable,
24 California’s anti-price gouging statute prohibits raising the price of many consumer goods and
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26 ⁷ <https://www.ebayinc.com/stories/news/we-are-actively-removing-price-gouging-prohibited-items-from-ebays-marketplace/> (last accessed May 3, 2020).

27 ⁸ <https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/n95-respirators-and-surgical-masks-face-masks> (last accessed May 3, 2020).

28 ⁹ <https://www.cnn.com/2020/03/23/business/3m-ceo-n95-masks-target/index.html> (last accessed May 3, 2020).

1 services by more than 10% after an emergency has been declared, rendering presumptively
2 unlawful any price increases above that threshold. Specifically, the governing statute provides in
3 pertinent part:

4 Upon the proclamation of a state of emergency declared by the President of the
5 United States or the Governor, or upon the declaration of a local emergency by an
6 official, board, or other governing body vested with authority to make that
7 declaration in any county, city, or city and county, and for a period of 30 days
8 following that proclamation or declaration, it is unlawful for a person, contractor,
9 business, or other entity to sell or offer to sell any consumer food items or goods,
 goods or services used for emergency cleanup, emergency supplies, medical
 supplies, home heating oil, building materials, housing, transportation, freight,
 and storage services, or gasoline or other motor fuels for a price of more than 10
 percent greater than the price charged by that person for those goods or services
 immediately prior to the proclamation or declaration of emergency.

10 Cal. Penal Code § 396(b). Such price increases are only permitted under California Penal Code §
11 396(b) if they are “directly attributable to additional costs” imposed on the seller by an upstream
12 supplier or due to “additional costs for labor or materials used to provide the services [] during the
13 state of emergency or local emergency.” *Id.*

14 20. Not only is a violation of California’s price gouging law a misdemeanor offense,
15 punishable by imprisonment up to a year, or a fine of up to \$10,000, or both, it is a per se “unlawful
16 business practice and an act of unfair competition within the meaning of Section 17200 of the
17 Business and Professions Code.” *Id.* §§ 396(h)–(i).

18 21. The price protections set forth in California Penal Code § 396 were triggered no
19 later than February 3, 2020, when Santa Clara County declared California’s first state of emergency
20 relating to COVID-19. From that point forward, price increases anywhere in California exceeding
21 the 10 percent statutory threshold were presumptively unlawful. Subsequently, Governor Newsom
22 declared a statewide State of Emergency on March 4, 2020, and the United States federal
23 government followed suit and declared a national state of emergency on March 13, 2020. While §
24 396(b) provides that a prohibition on price gouging lasts 30 days after each declared emergency,
25 through Executive Order N-44-20, Governor Newsom extended California’s price gouging
26 prohibition for all products covered by § 396(b) until September 4, 2020, in accordance with §
27 396(g) (providing that prohibition on price gouging may be extended “for additional 30-day
28 periods, as needed, by a local legislative body, local official, the Governor, or the Legislature, if

1 deemed necessary to protect the lives, property, or welfare of the citizens.”).

2 22. According to E Commerce Bytes, April 30, 2020:¹⁰

3 Ecommerce platforms are under scrutiny for their listings of high-demand items at
4 exorbitant prices as people complain of price gouging during the coronavirus
5 outbreak - including lawmakers and regulators. Online sellers have both defended
6 the practice as capitalism’s supply-and-demand model and condemned the
7 practice as exploitive during a public health crisis. . . .

8 The poster child of "price gouging" was the seller profiled in the New York Times
9 in early March who reportedly bought up nearly 18,000 bottles of hand-sanitizer
10 to sell on eBay. He donated the bottles after a backlash, and the state Attorney
11 General began an investigation. . To some who are outraged about the items and
12 prices turning up on marketplaces, it feels like platforms are swatting at listings
13 that violate the bans, such as eBay's ban on face masks and other items.

14 23. To avoid adverse publicity while at the same time allowing price-gouging to flourish
15 on its platform, eBay took what it knew to be superficial and ineffective steps to end acknowledged
16 price-gouging on its platform. Beginning on March 5, 2020, eBay reported that it had
17 “implemented a ban on certain items listed on our site, which includes blocking new listings and
18 removing existing ones that sell: masks including N95/N100 and surgical masks; hand
19 sanitizers/gels; and disinfecting wipes. This week, we expanded the restricted items list to include
20 toilet paper, baby formula and baby wipes, tampons and diapers, which will only be permitted for
21 sale by business sellers in a fixed price format. In addition, we have added a price gouging
22 reporting tool, allowing people to report items that violate our policies in real time.”¹¹

23 24. eBay knows that its “ban” is insufficient and ineffective to halt the rampant price
24 gouging that pervades its platform: while it has sought to remove “millions” of listings violating
25 the “ban,” any such action failed to effectively stop the ongoing price gouging where on any given
26 day it hosts over 1.3 *billion* listings.¹²

27 25. eBay’s business model incentivizes it to turn a blind eye to price gouging in most
28 cases: in addition to charging fees for initially listing items, eBay charges a “final value fee” when

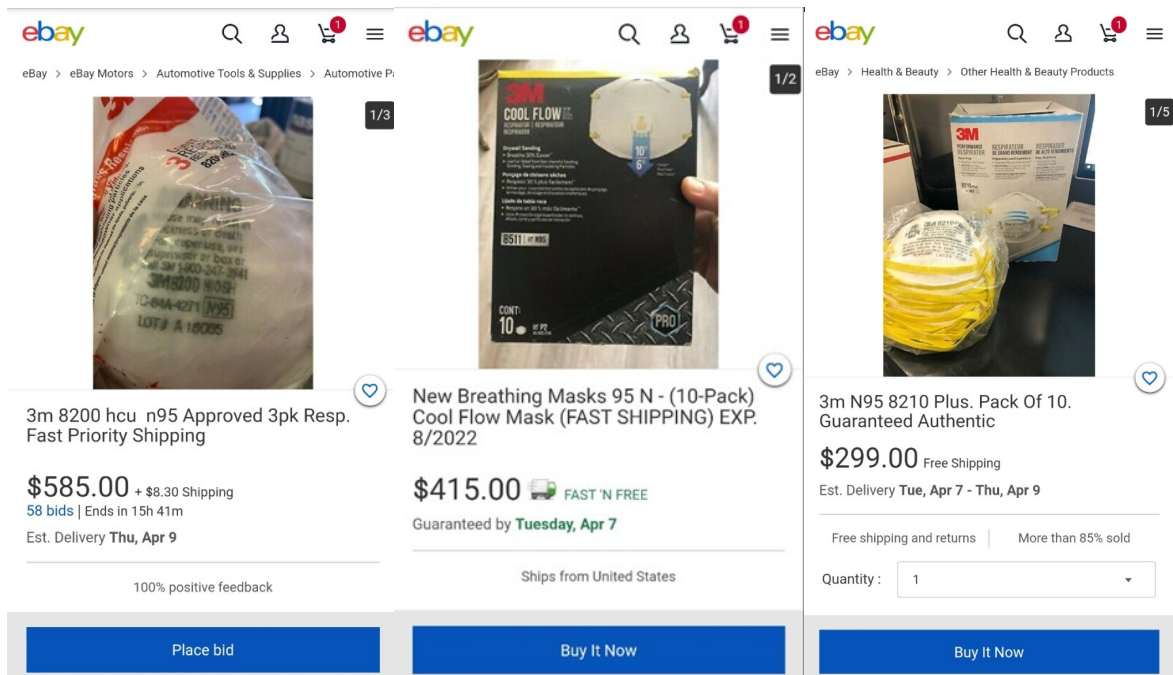
¹⁰<https://www.ecommercebytes.com/C/abblog/blog.pl?/comments/2020/3/1585061795.html/1/0>
(last accessed May 3, 2020).

¹¹<https://www.ebayinc.com/stories/news/we-are-actively-removing-price-gouging-prohibited-items-from-ebays-marketplace/> (last accessed May 3, 2020).

¹² *Id.* (last accessed May 3, 2020).

1 items actually sell, which is calculated as a percentage of the total amount of the sale.¹³ Thus, the
 2 higher the sale price, the more profit eBay stands to earn.

3 26. For this reason, even months after eBay implemented its ban, there are many
 4 examples of essential products such as n95 masks continuing to be sold on eBay for exorbitant and
 5 unconscionable prices. Below are but a few examples:



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 28 ¹³<https://www.ebay.com/help/selling/fees-credits-invoices/selling-fees?id=4364#section2> (last accessed May 3, 2020).

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ebay Shop by category All Categories

Back to search results | Listed in category: Business & Industrial > Facility Maintenance & Safety > Personal Protective Equipment (PPE) > Masks & Respirators > Mask Replacement Cartridges > See more 3M 8210 Plus N95 Respirator Mask | [Add to Watchlist](#)

3M 8210 Plus N95 Respirator

3M Respirator (quantity 4)

155 product ratings
404 viewed per hour

Seller: **snowboardrxman** (206) | [Save this Seller](#) | [Contact seller](#) | [See other items](#)

Condition: **New**

Price: **US \$400.00**
\$37 for 12 months

[Buy It Now](#)

[Add to cart](#)

Best Offer: [Make Offer](#)

[Add to Watchlist](#)

Free shipping | Ships from United States

Shipping: **FREE Expedited Shipping** | [See details](#)
Item location: East Grand Forks, Minnesota, United States
Ships to: United States | [See exclusions](#)

Delivery: **Estimated between Sat. May. 02 and Tue. May. 05** to 92804

Payments: **PayPal CREDIT**
*\$37 for 12 months. Minimum purchase required. [Apply Now](#) | [See terms](#)

Earn up to 5x points when you use your eBay Mastercard. [Learn more](#)

Hi Mi! | [Daily Deals](#) | [Brand Outlet](#) | [Help & Contact](#) | [Sell](#) | [Watchlist](#) | [My eBay](#)

ebay Shop by category All Categories

Back to previous page | Listed in category: Home & Garden > Household Supplies & Cleaning > Cleaning Products | [Add to Watchlist](#)

Lysol Disinfectant Spray

Lot of 5 19 oz Cans of Disinfectant Spray Crisp Linen Scent Sanitizing

Seller: **hensleystore** (468) | 100% Positive feedback | [Save this Seller](#) | [Contact seller](#) | [See other items](#) | [Visit store](#)

Condition: **New**

Time left: 5h 29m 12s Today 6:54PM

Current bid: **US \$227.50** [61 bids]

[Place bid](#)

Enter US \$230.00 or more

[Add to Watchlist](#)

29 watchers | Free returns | Ships from United States

Shipping: **\$19.99 Standard Shipping** | [See details](#)
Item location: Kennewick, Washington, United States
Ships to: United States and many other countries | [See details](#)

Delivery: **Estimated on or before Fri. May. 08** to 92804

Payments: **PayPal CREDIT**
No interest if paid in full in 6 months on \$99+. [Apply Now](#) | [See terms](#)

Earn up to 5x points when you use your eBay Mastercard. [Learn more](#)

Returns: **Free 30 day returns** | [See details](#)

Have one to sell? [Sell now](#)



Lysoil Disinfectant Spray Can 19 Oz Crisp Linen Scent...BRAND NEW, NEVER USED!

🔥 41 viewed per hour

Seller: raza1010 (601) 100% Positive feedback

Save this Seller | Contact seller | See other items

Condition: **New**

Quantity:

More than 10 available

Price: **US \$45.49**

Buy It Now

Add to cart

Add to Watchlist

Free delivery in 4 days

Ships from United States

Shipping:  FAST 'N FREE

Guaranteed by **Sat. May. 09** | See details

Item location: Naples, Florida, United States

Ships to: United States | See exclusions

Payments:

PayPal CREDIT

Special financing available. [Apply Now](#) | [See terms](#)

Earn up to 5x points when you use your eBay Mastercard. [Learn more](#)

Returns: Seller does not accept returns | [See details](#)



Cottonelle Ultra CleanCare Bath Tissue,12 Mega Rolls = 48 Regular Rolls

🔥 25 viewed per hour

Seller: rojbiay0 (28) 100% Positive feedback

Save this Seller | Contact seller | See other items

Condition: **New**

Quantity:

Last one / 2 sold in 1 hour

Price: **US \$49.90**

Buy It Now

Add to cart

Add to Watchlist

Free delivery in 4 days

Last item available

More than 66% sold

Shipping:  FAST 'N FREE

Guaranteed by **Fri. May. 08** | See details

Item location: Washington, District Of Columbia, United States

Ships to: United States | See exclusions

Payments:

PayPal CREDIT

Special financing available. [Apply Now](#) | [See terms](#)

Earn up to 5x points when you use your eBay Mastercard. [Learn more](#)

Returns: Seller does not accept returns | [See details](#)

Have one to sell? [Sell now](#)

1 27. Moreover, eBay’s public touting of a purported “ban” on price gouging is itself
 2 likely to mislead consumers, because it creates the false impression that the remaining listings for
 3 essential products have been screened for unlawful price-gouging.

4 28. eBay’s purported crack-down on unlawful sales on its platform is deliberately
 5 pretextual, undertaken with “a wink and a nod” to the continued daily sale of tens of thousands
 6 essential products at price-gouging prices. The upside for eBay in allowing this rampant price-
 7 gouging on its platform is clear: eBay’s posted revenues since the beginning of the COVID-
 8 19 pandemic have surpassed all prior expectations, and eBay shares have added about 8.2%
 9 since the beginning of the year versus the S&P 500’s decline of -11.4%.¹⁴

11 CLASS ACTION ALLEGATIONS

12 29. Plaintiff brings this proposed action on behalf of herself and, pursuant to Rule 23,
 13 subdivisions (a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of the
 14 following National Class and California Class (collectively, the “Classes”):
 15

16 **National Class:**

17 All persons who purchased a Protected Product on eBay.com on or after
 18 February 4, 2020, at a price 10 percent greater than the price charged on
 19 eBay.com, for the same Protected Product (a) on February 2, 2020, or (b)
 immediately prior to any declaration of a State of Emergency relating to the
 COVID-19 crisis.

20 **California Class:**

21 All persons who purchased in California a Protected Product on eBay.com on or
 22 after February 4, 2020 at a price 10 percent greater than the price charged on
 23 eBay.com for the same Protected Product (a) on February 2, 2020, or (b)
 immediately prior to any declaration of a State of Emergency relating to the
 COVID-19 crisis.

24 “State of Emergency” is defined in the Classes as any emergency relating to
 25 COVID-19 or the novel coronavirus declared by (a) the President of the United
 26 States, (b) the Governor of California, or (c) any official, board, or other
 27 governing body vested with authority to make that declaration in any county or
 city of California. States of Emergency were declared on at least the following
 dates: February 3, 2020 (Santa Clara County, California); March 4, 2020
 (California, Governor Newsom—extended through September 4, 2020 per

28 ¹⁴ <https://www.nasdaq.com/articles/ebay-ebay-q1-earnings-and-revenues-top-estimates-2020-04-29>
 (last accessed May 3, 2020).

1 Executive Order N-44-20¹⁵ dated April 3, 2020); March 13, 2020 (United States,
2 President Trump).

3 “Protected Product” is defined in the Classes as all consumer food items or goods,
4 goods or services used for emergency cleanup, emergency supplies, medical
5 supplies, home heating oil, building materials, housing, transportation, freight,
6 and storage services, or gasoline or other motor fuels. *See* Cal. Penal Code §
7 396(b).

8 30. Plaintiff reserves the right to revisit the Class definition based upon information
9 learned through discovery. Plaintiff further reserves the right to amend this Complaint to join
10 additional plaintiffs asserting additional claims on behalf of other state-only classes.

11 31. Excluded from the proposed Classes are Defendant eBay; Defendant’s affiliates and
12 subsidiaries; Defendant’s current or former employees, officers, directors, agents, and
13 representatives; and the district judge or magistrate judge to whom this case is assigned, as well as
14 those judges’ immediate family members.

15 32. **Numerosity:** There are thousands of members of each of the Classes, which are thus
16 so numerous that joinder of all members is impracticable. The precise number of Class members is
17 not available to Plaintiffs at this time, but the identities and addresses of the members of these
18 Classes can be readily ascertained from business records maintained by eBay.

19 33. This action may appropriately proceed as a class action because Plaintiff seeks
20 equitable relief that will apply to the Class as a whole and, further, because Plaintiff will prove the
21 elements of their damages claims with predominantly common evidence.

22 34. **Commonality and Predominance:** Numerous questions of law and fact are
23 common to the claims of the Plaintiffs and members of the proposed Class, and these common
24 questions predominate over any questions affecting only individual Class members. These include,
25 but are not limited to:

26 (a) Whether products were offered and sold on the eBay platform at inflated prices in
27 California during the COVID-19 pandemic;

28 (b) Whether those prices were in excess of 10 percent on products protected under
California Penal Code § 396;

¹⁵ *See* <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.3.20-EO-N-44-20-text.pdf> (last
accessed May 3, 2020).

- 1
- 2 (c) Whether those sales occurred after qualifying declared states of emergency in
- 3 California under California Penal Code § 396;
- 4 (d) Whether and the extent to which a reasonable consumer would be misled by eBay’s
- 5 actions regarding the prices charged in those sales;
- 6 (e) Whether and the extent to which a reasonable consumer would be misled by eBay’s
- 7 actions regarding its purported screening for and “ban” on price-gouging;
- 8 (f) Whether and the extent to which consumers in California were and are being harmed by
- 9 eBay’s actions;
- 10 (g) The extent to which eBay was enriched unjustly by its actions; and
- 11 (h) Whether Plaintiffs are entitled to injunctive relief and the appropriate scope of any
- 12 equitable relief.

13 35. **Typicality:** Plaintiffs’ claims are typical of the claims of all Class members

14 because, among other things, all Class members were comparably and similarly injured by eBay’s

15 wrongful conduct alleged herein. Plaintiffs, like all Class members, purchased essential products

16 from eBay at prices that were unlawfully inflated during the COVID-19 pandemic.

17 36. **Adequacy:** Plaintiff is willing and prepared to serve the Court and the proposed

18 Classes in a representative capacity. Undersigned Counsel have served as Lead Counsel in some of

19 the largest consumer class actions in the country. Plaintiff will fairly and adequately protect the

20 interests of the Classes and has no interests that are adverse to, or which materially and

21 irreconcilably conflict with, the interests of the other members of the Classes. The self-interests of

22 Plaintiff are co-extensive with and not antagonistic to those of absent Class members. Plaintiff will

23 undertake to represent and protect the interests of absent Class members. Plaintiff has engaged the

24 services of counsel indicated below who are experienced in complex class litigation and life

25 insurance matters, will adequately prosecute this action, and will assert and protect the rights of and

26 otherwise represent Plaintiff and the putative Class members.

27 37. **Injunctive and declaratory relief:** By way of the conduct described in this

28 Complaint, defendant has acted on grounds that apply generally to the proposed Class.

1 Accordingly, final injunctive relief or corresponding declaratory relief is appropriate respecting the
2 Class as a whole.

3 38. **Superiority:** A class action is superior to all other available methods for the fair
4 and efficient adjudication of this controversy, and no unusual difficulties are likely to be
5 encountered in its management. Even if members of the proposed Class could sustain individual
6 litigation, the injuries suffered by individual Class Members are, though important to them,
7 relatively small compared to the burden and expense of individual prosecution needed to address
8 eBay’s conduct. Individualized litigation presents a potential for inconsistent or contradictory
9 judgments. In contrast, a class action presents far fewer management difficulties; allows the
10 hearing of claims that might otherwise go unaddressed; and provides the benefits of single
11 adjudication, economies of scale, and comprehensive supervision by a single court.

12 39. Nature of Notice to the Proposed Classes. The names and addresses of all Class
13 Members are contained in the business records maintained by eBay and are readily available to
14 eBay. The Class Members are readily and objectively identifiable. Plaintiffs contemplate that
15 notice will be provided to Class Members by e-mail, mail, and published notice.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW** **(CAL. BUS. & PROF. CODE § 17200)** *(on behalf of Plaintiff and the California Class)*

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20 40. Plaintiff repeats and realleges the allegations in paragraphs 1–39 as if set forth
21 herein in full.

22 41. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et
23 seq., proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business
24 act or practice.”

25 42. Any violation of California Penal Code § 396 “constitute[s] an unlawful business
26 practice and an act of unfair competition within the meaning of Section 17200 of the Business and
27 Professions Code.” Cal. Penal Code § 396(i).

1 43. As set forth herein, eBay violated California Penal Code § 396(b) because, after
2 states of emergency were declared in California in relation to COVID-19, eBay offered to sell and
3 sold essential items—like N-95, N-100 and surgical masks; hand sanitizer and gel; disinfectants
4 like Lysol; disinfecting wipes; toilet paper; gloves; paper towels; baby formula; baby wipes;
5 tampons; and diapers—at prices “10 percent greater” than the price eBay charged “immediately
6 prior to the proclamation or declaration of emergency.” Cal. Penal Code § 396(b). These
7 Protected Products eBay sold or offered to sell at statutorily excessive prices constitute “consumer
8 food items or goods, goods or services used for emergency cleanup, emergency supplies, medical
9 supplies, home heating oil, building materials, housing, transportation, freight, and storage services,
10 or gasoline or other motor fuels.” *Id.*

11 44. On information and belief, the increased prices paid for the Protected Products
12 offered and sold on the eBay platform were not directly attributable to additional costs imposed on
13 eBay by the suppliers of the Protected Products, and eBay offered and sold many Protected
14 Products in excess of 10 percent even when accounting for any additional costs and the markup
15 eBay customarily applies to the Protected Products. § 396(b).

16 45. All products available on eBay.com are offered for sale or sold by eBay, and thus
17 eBay is liable under California Penal Code § 396(b), and the UCL, for all unlawful prices on its
18 platform. Consumers purchasing third-party supplied products interact almost exclusively with
19 eBay, which, functioning as the seller for the purposes of § 396(b), controls virtually all aspects of
20 the transaction including, in some cases, the price itself. Even with respect to products priced by
21 third-party suppliers, eBay functions as the seller for purposes of § 396(b), because it is the entity
22 that offers the products for sale and controls the transaction.

23 46. eBay is thus liable to Plaintiff and the other members of the Classes under either or
24 both the “unlawful” and “unfair” prongs of the UCL.

25 47. In the alternative, or in addition, eBay is liable under the UCL for products priced
26 by third-parties because eBay (a) furnished the means for the violation of § 396(b) and (b) aided
27 and abetted the third-party suppliers through active participation in their wrongdoing.
28

1 are “consumer food items or goods, goods or services used for emergency cleanup, emergency
2 supplies, medical supplies, home heating oil, building materials, housing, transportation, freight,
3 and storage services, or gasoline or other motor fuels” at prices “10 percent greater” than the price
4 eBay charged “immediately prior to the proclamation or declaration of emergency,” Cal. Penal
5 Code § 396(b):

6 (5) Representing that goods or services have sponsorship, approval, characteristics,
7 ingredients, uses, benefits, or quantities that they do not have or that a person has a
8 sponsorship, approval, status, affiliation, or connection that the person does not
have...

9 (7) Representing that goods or services are of a particular standard, quality, or grade,
or that goods are of a particular style or model, if they are of another...

10 (14) Representing that a transaction confers or involves rights, remedies, or
11 obligations that it does not have or involve, or that are prohibited by law.

12 54. In addition, eBay’s purported screening for and purported “ban” on price-gouging
13 activity on its platform violated and continues to violate the Act by “[r]epresenting that [the
14 Protected Product” has been supplied in accordance with a previous representation when [it has]
15 not. California Civil Code §1770(a)(16).

16 55. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a Court
17 order enjoining the above-described wrongful acts and practices of Defendant.

18 **THIRD CAUSE OF ACTION**
19 **QUASI-CONTRACT/RESTITUTION/UNJUST ENRICHMENT**
20 ***(on behalf of Plaintiff and the National Class)***

21 56. Plaintiff repeats and realleges the allegations in paragraphs 1–39 as if set forth
herein in full.

22 57. eBay has exploited vulnerable consumers by selling, and offering for sale, products
23 at excessive prices during COVID-19 pandemic. Facing retail scarcity, and official warnings as to
24 the risks of public interaction, consumers have turned to eBay as a lifeline to obtain goods vital to
25 their safety, health, and well-being. California law, and basic principles of equity and fair dealing,
26 prohibit sellers from capitalizing on such exigencies to charge consumers excessive prices.

27 58. By selling consumer goods, emergency supplies, medical equipment and other
28 essential products at excessive and inflated prices during the COVID-19 pandemic, eBay was

1 unjustly enriched. For instance, eBay profited on the sale of every n95 mask sold notwithstanding
2 that they are supplied by third-parties because eBay retains a portion of the transaction proceeds.
3 All of these inflated profits were conferred by California consumers, and retained unjustly by eBay.

4 59. In selling goods at excessive prices during a public health crisis, eBay knew that it
5 was overcharging consumers, that consumers would be harmed, and that by retaining the sale
6 proceeds eBay would be unjustly enriched.

7 60. It is inequitable for eBay to retain these financial benefits to the detriment of
8 Plaintiff and the Class.

9 61. In the event Plaintiff is determined to lack an adequate remedy at law, eBay is
10 required to make restitution in equity pursuant to the common law of unjust enrichment.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff prays for a judgment:

- 13 A. Certifying the Classes as requested herein;
14 B. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant
15 from continuing the unlawful practices as set forth herein;
16 C. Awarding restitutionary and other appropriate equitable relief to Plaintiff and the
17 proposed Class members;
18 D. Awarding attorneys' fees and costs; and
19 E. Affording such further relief as may be just and proper

20 **JURY TRIAL DEMAND**

21 Plaintiff demands a jury trial on all issues so triable.

22
23 Dated: May 4th, 2020.

24 Respectfully submitted,

25 By: /s/ Alan Kang

26
27 Alan Kang, Esq. (Bar No. 235080)
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