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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

JAKE CAVANAUGH, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

FANATICS, LLC.,

Defendant.

Case No. 22CECG01395

Assigned Hon. Kristi Culver Kapetan
Dept: 403

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Complaint Filed: May 6, 2022
Trial Date: None

1 Plaintiff Jake Cavanaugh, on behalf of himself and all others similarly situated, complains and
2 alleges upon information and belief based, among other things, upon the investigation made by Plaintiff
3 and through his attorneys as follows:

4 **NATURE OF ACTION**

5 1. This is a proposed class action seeking monetary damages, restitution, and injunctive and
6 declaratory relief from Defendant Fanatics, LLC (“Defendant” or “Fanatics”), arising from its deceptive
7 and untruthful promises to provide “free” or flat, low-cost shipping on orders of sports merchandise ordered
8 through its website.

9 2. Fanatics prominently advertises “FREE SHIPPING” or, on other occasions, a flat, low-cost
10 shipping price on its website. Those marketing representations are false because Fanatics surreptitiously
11 adds a so-called “Handling Fee” of \$1.99 to all orders, which it falsely and deceptively claims (in a difficult
12 to access hyperlink) is for “warehouse and packing” costs.

13 3. As discussed in detail herein, the assessment of this fee is deceptive and unfair, since, a)
14 Fanatics does not disclose this added fee until the very last step in the multi-step ordering process; b) the
15 fee itself is deceptively named and described; and c) the fee is in actuality a hidden shipping fee.

16 4. The deceptive addition of the \$1.99 “Handling Fee” renders Fanatics’ promise of FREE or
17 a flat, low cost shipping false.

18 5. Fanatics misrepresents the nature of the shipping charges assessed on the Fanatics website,
19 by making representations that fail to correct reasonable understandings of its FREE or flat, low-cost
20 shipping promises, and that misrepresent the actual costs of shipping charged to consumers.

21 6. Fanatics omits and conceals material facts about the Fanatics shipping service, never once
22 informing consumers in any disclosure, at any time, that the so-called “Handling Fee” is actually a shipping
23 charge.

24 7. Hundreds of thousands of Fanatics customers like Plaintiff have been assessed hidden
25 shipping charges they did not bargain for.

26 8. Consumers like Plaintiff reasonably understand Fanatics’ express FREE or flat, low-cost
27 shipping representation to disclose the total additional cost they will pay to have their sports merchandise
28 delivered.

1 9. By unfairly obscuring its true shipping costs, Fanatics deceives consumers and gains an
2 unfair upper hand on competitors that fairly disclose their true shipping charges. To wit, no other major e-
3 commerce site assesses a “handling” or “warehouse and packing” fee in addition to a shipping charge—
4 for the simple reason that warehouse storage of goods and packing of shipped goods are essential,
5 inextricable aspects of “shipping.”

6 10. Plaintiff seeks damages and, among other remedies, injunctive relief that fairly allows
7 consumers to decide whether they will pay Fanatics’ shipping costs.

8 **PARTIES**

9 11. Plaintiff Cavanaugh is a citizen and resident of Fresno County, California.

10 12. Defendant, Fanatics Holdings, Inc., is incorporated in Delaware and maintains its principal
11 business offices in the city of Jacksonville, Florida. Fanatics operates and conducts business, throughout,
12 the State of California.

13 **JURISDICTION AND VENUE**

14 13. This Court has jurisdiction over Defendant and the claims set forth below pursuant to Code
15 of Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because this case is a cause
16 not given by statute to the other trial courts.

17 14. Plaintiff is informed and believes that the State of California has personal jurisdiction over
18 the Defendant named in the action because Defendant is a company who conducts business in this State.
19 Defendant does sufficient business with sufficient minimum contacts in California and/or otherwise
20 intentionally avails itself of the California market, including in the County of Fresno, which has caused
21 both obligations and liability of Defendant to arise in the County of Fresno.

22 15. The amount in controversy exceeds the jurisdictional minimum of this Court.

23 **COMMON FACTUAL ALLEGATIONS**

24 **A. Fanatics’ App and Website Fails to Bind Users to Any Terms of Service**

25 16. When a consumer selects an item for purchase on the Fanatics website, she then enters into
26 a four-step purchase process in which she is shown four screens that, in order: 1) confirm the item(s) being
27 purchased; 2) require entry of a shipping address; 3) require entry of payment information; 4) require
28 confirmation of purchase from the consumer.

1 17. During the four-screen process, users are never provided with Fanatics’ terms of service;
2 are never required to view such terms of service; and are never required to Affirmatively consent to terms
3 of service.

4 **B. Fanatics Prominently and Plainly Promises FREE SHIPPING or Flat, Low-Cost**
5 **Shipping on Its Website**

6 18. Fanatics prominently features FREE SHIPPING or (on other orders) flat, low-cost shipping
7 promises on its website. Such representations are made on all pages of the website, including on all four
8 pages of the multi-step purchase process described above.

9 19. Such representations never carry a disclaimer or other warning that FREE SHIPPING or
10 flat, low-cost shipping only includes certain aspects of the shipping process, but not all.

11 20. On the first two steps of the Fanatics.com ordering process, the price is disclosed as follows:

12 Subtotal: [representing the cost of the merchandise selected]

13 Shipping: [FREE or low cost]

14 Taxes: [representing sales taxes and additional fees]

15 ORDER TOTAL: [adding up the above]

16 21. Only on the third step of the four-step ordering process on Fanatics.com—after deceiving
17 users into believing they will pay a set price for their sports merchandise and receive FREE or flat, low-
18 cost shipping—does Fanatics add the so-called “Handling Fee” to the order. At that point, the price is
19 displayed as:

20 Subtotal: [representing the cost of the merchandise selected]

21 Shipping: [FREE or low cost]

22 Handling Fee: \$1.99

23 Taxes: [representing sales taxes and additional fees]

24 ORDER TOTAL: [adding up the above]

25 22. Upon information and belief, Fanatics adds the Handling Fee late in the ordering process to
26 ensure users “anchor” to the purchase with incomplete information, including that shipping will be “FREE”
27 or a flat, low cost.

28 **C. Fanatics Omits and Conceals Material Facts About the Costs of Shipping**

1 23. Worse, those Handling Fee disclosures were false and misleading, and the shipping charge
2 was not, in fact, “FREE” or a flat, low cost.

3 24. That is because the “Handling Fee” is a disguised shipping charge, and because Fanatics
4 misrepresents what the “Handling Fee” is actually for: a hidden shipping charge.

5 25. Reasonable consumers like Plaintiff understand shipping to include reasonable
6 accoutrements to effectuate that shipping, including human or robot packing of the item, materials needed
7 to pack the item, bringing the item to a shipping point like a post office or UPS location, etc.

8 26. In short, there is no “handling” of the purchased item, separate and apart from the shipping
9 process, and Fanatics deceived consumers by stating otherwise.

10 27. By assessing add-on fees for certain aspects of “shipping,” Fanatics renders its FREE
11 SHIPPING or flat, low-cost shipping promises false.

12 28. By unfairly obscuring its true shipping charges to consumers, Fanatics deceives consumers
13 and gains an unfair upper hand on competitors that fairly disclose their true shipping charges. Indeed, no
14 other major e-commerce sites in the U.S. assess a “handling” or “warehouse and packing” fee in addition
15 to a shipping charge—for the simple reason that warehouse storage of goods and packing of shipped goods
16 are essential, inextricable aspects of “shipping.”

17 29. Worse, Fanatics expressly misrepresents the nature of the “Handling Fee,” with a deceptive
18 description behind a hyperlink. The Fanatics website states that the Handling Fee is “added on an order to
19 cover warehouse storage cost and packing cost.”

20 30. This description of the Handling Fee is false and deceptive, for two reasons. First, Fanatics
21 falsely represents that the “Handling Charge” is a pass-through charge for each order’s packing and
22 warehouse costs. But upon information and belief, the \$1.99 per order Handling Charge far exceeds
23 Fanatics’ per-order packing and warehouse costs.

24 31. Indeed, because the \$1.99 Handling Fee is assessed as a flat rate on all orders, the charge
25 cannot possibly be “to cover” that order’s packing and warehouse-related costs.

26 32. Further evidence that the Handling Charge is a sham, hidden shipping charge—not a charge
27 for packing and warehouse space—is that on other websites operated by Fanatics, the company does not
28 assess such a Handling Fee. Again, that is because “handling” is an inextricable part of “shipping.”

1 33. Specifically, other than Fanatics.com, Defendant operates e-commerce websites for Major
2 League Baseball, the NBA, NFL, NHL and other sports organizations. Defendant does not assess Handling
3 Charges on orders placed on those websites.

4 34. In short, the disclosed “Shipping” cost on Fanatics.com is not actually FREE or a flat, low
5 cost. The *actual* “shipping” cost—the extra charge to have the sports merchandize delivered to a home—
6 is the listed “Shipping” cost *plus* the “Handling Fee” that Fanatics deceptively adds late in the ordering
7 process.

8 35. Fanatics does not inform consumers the true costs of shipping and it misrepresents its
9 Shipping cost as FREE or low-price, when in fact those costs are actually higher.

10 **D. Plaintiff’s Experience**

11 36. Plaintiff used Fanatics.com to purchase a branded sports apparel on September 24, 2021.

12 37. When using the website, Plaintiff was repeatedly informed that “Shipping” was FREE,
13 including on the check-out screen, in which Fanatics informed him: “Shipping: FREE” as part of his
14 \$49.61 order total.

15 38. However, Plaintiff’s purchase included a \$1.99 “Handling Fee,” that—for the reasons
16 described above—in fact represented an additional shipping charge.

17 39. Upon information and belief, this same Handling Fee is assessed only on Fanatics.com
18 orders like the one made by Plaintiff and would not have been assessed to Plaintiff if he had placed his
19 order on different Fanatics-operated websites.

20 40. Plaintiff would not have made the purchase if he had known the Fanatics shipping charge
21 was not in fact FREE.

22 41. If he had known the true shipping fee, he would have chosen another method or merchant
23 for ordering his item.

24 **CLASS ALLEGATIONS**

25 42. Plaintiff brings this action on behalf of himself and a Class of similarly situated persons.
26 The Class is defined as follows:

27 All consumers in California who, within the applicable statute of limitations
28 preceding the filing of this action to the date of class certification, ordered
merchandise through Fanatics.com, and were assessed a so-called “Handling
Fee.”

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2 43. Excluded from the Class is Defendant, any entities in which it has a controlling interest, any
3 of its parents, subsidiaries, affiliates, officers, directors, employees and members of such persons'
4 immediate families, and the presiding judge(s) in this case, and their staff. Plaintiff reserves the right to
5 expand, limit, modify, or amend this class definition, including the addition of one or more subclasses, in
6 connection with his motion for class certification, or at any other time, based upon, *inter alia*, changing
7 circumstances and/or new facts obtained during discovery.

8 44. **Numerosity:** At this time, Plaintiff does not know the exact size of the Class; however, due
9 to the nature of the trade and commerce involved, Plaintiff believes that the Class members are well into
10 the thousands, and thus are so numerous that joinder of all members is impractical. The number and
11 identities of Class members is administratively feasible and can be determined through appropriate
12 discovery in the possession of the Defendant.

13 45. **Commonality:** There are questions of law or fact common to the Class, which include, but
14 are not limited to the following:

- 15 a. Whether during the class period, Defendant deceptively represented its Shipping
16 cost for orders on Fanatics.com;
- 17 b. Whether Defendant's alleged misconduct misled or had the tendency to mislead
18 consumers;
- 19 c. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business
20 practices under the laws asserted;
- 21 d. Whether Defendant's alleged conduct constitutes violations of the laws asserted;
- 22 e. Whether Plaintiff and members of the Class were harmed by Defendant's
23 misrepresentations;
- 24 f. Whether Plaintiff and the Class have been damaged, and if so, the proper measure
25 of damages; and
- 26 g. Whether an injunction is necessary to prevent Defendant from continuing to
27 deceptively represent the amount of the shipping costs for orders on Fanatics.com.

28 46. **Typicality:** Like Plaintiff, many other consumers ordered goods for shipping from

1 Fanatics' website or mobile app, believing shipping to be the flat fee represented based on Defendant's
2 representations. Plaintiff's claims are typical of the claims of the Class because Plaintiff and each Class
3 member was injured by Defendant's false representations about the true nature of the shipping cost.
4 Plaintiff and the Class have suffered the same or similar injury as a result of Defendant's false, deceptive
5 and misleading representations. Plaintiff's claims and the claims of members of the Class emanate from
6 the same legal theory, Plaintiff's claims are typical of the claims of the Class, and, therefore, class treatment
7 is appropriate.

8 47. **Adequacy of Representation:** Plaintiff is committed to pursuing this action and has
9 retained counsel competent and experienced in prosecuting and resolving consumer class actions. Plaintiff
10 will fairly and adequately represent the interests of the Class and does not have any interests adverse to
11 those of the Class.

12 48. **The Proposed Class Satisfies Prerequisites for Injunctive Relief.** Defendant has acted or
13 refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive
14 and equitable relief with respect to the Class as a whole. Plaintiff remains interested in ordering goods for
15 shipping through Fanatics' website; there is no way for his to know when or if Defendant will cease
16 deceptively misrepresenting the cost of shipping.

17 49. Specifically, Defendant should be ordered to cease from representing its shipping service
18 as a flat fee and to disclose the true nature of its mark-ups.

19 50. Defendant's ongoing and systematic practices make declaratory relief with respect to the
20 Class appropriate.

21 51. **The Proposed Class Satisfies the Prerequisites for Damages.** The common questions of
22 law and fact enumerated above predominate over questions affecting only individual members of the Class,
23 and a class action is the superior method for fair and efficient adjudication of the controversy. The
24 likelihood that individual members of the Class will prosecute separate actions is remote due to the
25 extensive time and considerable expense necessary to conduct such litigation, especially when compared
26 to the relatively modest amount of monetary, injunctive, and equitable relief at issue for each individual
27 Class member.

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CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

**Violation of California’s Unfair Competition Law (“UCL”)
Cal. Bus. & Prof. Code § 17200, *et seq.*
(On behalf of the Class)**

52. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

53. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice.”

54. Fanatics’ deceptive conduct related to material omissions and/or material misrepresentations that it provides FREE or flat, low cost shipping for orders through its website violates each of the statute’s “unfair,” “unlawful,” and “fraudulent” prongs.

55. The UCL imposes strict liability. Plaintiff need not prove that Fanatics intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

56. A business act or practice is “unfair” under the UCL if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and that unfairness is determined by weighing the reasons, justifications, and motives of the practice against the gravity of the harm to the alleged victims.

57. Defendant’s practices as described herein are (a) immoral, unethical, oppressive, and/or unscrupulous and violate established public policy as recognized by, *inter alia*, causing injury to consumers which outweigh any purported benefits or utility.

58. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members of the public.

59. Defendant’s practices, as described herein, constitute “fraudulent” business practices in violation of the UCL because, among other things, they are likely to deceive reasonable consumers, who do not expect to pay for shipping fees on orders through Fanatics’ website and mobile app.

60. A business act or practice is “unlawful” under the UCL if it violates any other law or regulation.

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1 61. Among other statutes, laws, and/or regulations, Defendant's acts and practices violate the
2 following statutes, laws, and/or regulations:

3 a. Violating Cal. Civ. Code § 1750, *et seq.*;

4 b. Engaging in conduct in which the gravity of harm to Plaintiff and the Class outweighs
5 the utility of the Defendant's conduct; and/or

6 c. Engaging in acts and/or practices and/or omissions that are immoral, unethical,
7 oppressive, and/or unscrupulous and causes injury to consumers which outweigh its
8 benefits.

9 62. Fanatics committed unfair and fraudulent business acts and practices in violation of Cal.
10 Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting on its website that
11 shipping would be FREE or a flat, low cost and then assessing a "Handling Fee" on website orders.

12 63. Defendant's acts and practices offend an established public policy of fee transparency in
13 the marketplace, and constitute immoral, unethical, oppressive, and unscrupulous activities that are
14 substantially injurious to consumers.

15 64. The harm to Plaintiff and the Class outweighs the utility of Defendant's practices. There
16 were reasonably available alternatives to further Defendant's legitimate business interests, other than the
17 misleading and deceptive conduct described herein.

18 65. Fanatics' business practices have misled Plaintiff and the proposed Class and will continue
19 to mislead them in the future.

20 66. Plaintiff relied on Defendant's misrepresentations.

21 67. Had Plaintiff known the true shipping costs of website orders, he would have chosen another
22 method to make a purchase or purchase the item with another provider.

23 68. As a direct and proximate result of Fanatics' unfair, fraudulent, and/or unlawful practices,
24 Plaintiff and Class members suffered and will continue to suffer actual damages. Moreover, Defendant's
25 fraudulent conduct is ongoing and continues to present a continuing threat to the general public that they
26 will be deceived into making purchases with the Fanatics service. Plaintiff seeks an order of this Court
27 enjoining Defendant from continuing to engage, use, or employ misleading advertising.

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1 69. As a result of its unfair, fraudulent, and unlawful conduct, Fanatics has been unjustly
2 enriched and should be required to disgorge its unjust profits and make restitution to Plaintiff and Class
3 members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

4 **SECOND CLAIM FOR RELIEF**
5 **Violation of California’s Consumers Legal Remedies Act (“CLRA”)**
6 **Cal. Civ. Code § 1750, *et seq.***
7 **(On behalf of the Class)**

8 70. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

9 71. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California
10 Civil Code § 1750, *et seq.* Plaintiff and each member of the proposed Class are “consumers” as defined
11 by California Civil Code § 1761(d). Defendant’s sale of sports memorabilia and merchandise through its
12 website are “transactions” within the meaning of California Civil Code § 1761(e). Shipping and handling
13 is a “service” within the meaning of California Civil Code § 1761(b). The merchandise purchased by
14 Plaintiff and the Class are “goods” within the meaning of California Civil Code § 1761(a).

15 72. Defendant violated and continues to violate the CLRA by engaging in the following
16 practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which
17 were intended to result in, and did result in, the sale of Airbnb bookings:

- 18 a. “Representing that goods or services have . . . characteristics . . . that they do not have”
19 (a)(5); and
20 b. “Advertising goods or services with intent not to sell them as advertised” (a)(9).

21 73. Specifically, Fanatics falsely advertised FREE or flat, low cost shipping price on its website.
22 Fanatics failed to inform consumers in any disclosure, at any time, that the so-called “Handling Fee” is
23 actually a shipping charge in disguise.

24 74. Pursuant to § 1782(a) of the CLRA, Plaintiff’s counsel notified Defendant in writing by
25 certified mail of the particular violations of §1770 of the CLRA and demanded that it rectify the problems
26 associated with the actions detailed above and give notice to all affected consumers of Defendant’s intent
27 to act. If Defendant fails to respond to Plaintiff’s letter or agree to rectify the problems associated with the
28 actions detailed above and give notice to all affected consumers within 30 days of the date of written notice,
as proscribed by §1782, Plaintiff will move to amend his Complaint to pursue claims for actual, punitive

1 and statutory damages, as appropriate against Defendant. As to this cause of action, at this time, Plaintiff
2 seeks only injunctive relief.

3 **THIRD CLAIM FOR RELIEF**
4 **Breach of Contract**
5 **(On behalf of the Class)**

6 75. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

7 76. Plaintiff and Fanatics have contracted for sport merchandise shipping services, as
8 embodied in the representations made on the Fanatics website.

9 77. No contract provision authorizes Fanatics to be able to impose hidden shipping charges on
10 its customers in addition to the “shipping” cost represented as FREE or as a flat, low cost price on its
11 website.

12 78. Fanatics breached the terms of its contract with consumers by charging an additional \$1.99
13 in excess of the contracted-for “shipping” charge.

14 79. Plaintiff and members of the Class have performed all, or substantially all, of the obligations
15 imposed on them under the contract.

16 80. Plaintiff and members of the Class have sustained damages as a result of Fanatics’ breach
17 of the contract and breach of the implied covenant of good faith and fair dealing.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff on behalf of himself and the Class seeks judgment in an amount to be
20 determined at trial, as follows:

- 21 (a) For an order enjoining Defendant from continuing the unlawful practices set forth above;
22 (b) For declaratory and injunctive relief as set forth above;
23 (c) For an order requiring Defendant to disgorge and make restitution of all monies it acquired
24 by means of the unlawful practices set forth above;
25 (d) For compensatory damages according to proof;
26 (e) For punitive damages according to proof;
27 (f) For reasonable attorneys’ fees and costs of suit;
28 (g) For pre-judgment interest; and

1 (h) Awarding such other and further relief as this Court deems just, proper and equitable.

2 **JURY DEMAND**

3 Plaintiff hereby demands a jury trial on all claims so triable.

4 Dated: June 8, 2022

KALIELGOLD PLLC

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6 By: _____

7 Jeffrey D. Kalief

Sophia G. Gold

8 **EDELSBERG LAW, P.A.**

9 Scott Edelsberg

10 *Attorneys for Plaintiff and the Proposed Class*

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