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Electronically FILED by
 Superior Court of California,
 County of Los Angeles
 11/21/2023 2:45 PM
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 Executive Officer/Clerk of Court,
 By G. Carini, Deputy Clerk

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12 Attorneys for Plaintiffs

14 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 15 COUNTY OF LOS ANGELES

17 XAVIER MALDONADO, an individual;
 JUSTIN PURSER, an individual; and
 18 CHRISTOPHER BUTLER, an individual,
 on behalf of themselves and all others
 19 similarly situated,

20 Plaintiffs,

21 v.

22 BPS DIRECT, LLC, a limited liability
 company; CABELA'S LLC, a limited
 23 liability company; GREAT OUTDOORS
 GROUP, LLC, a limited liability company;
 24 BASS PRO OUTDOOR WORLD, LLC, a
 limited liability company; CABELA'S
 25 WHOLESALE, LLC, a limited liability
 company; and DOES 1 through 100,
 26 inclusive,

27 Defendants.

No. **23STCV28730**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 **COMPLAINT**

2 Plaintiffs Xavier Maldonado, Justin Purser, and Christopher Butler, by and through their
3 undersigned counsel, on their own behalf and on behalf of all other persons similarly situated
4 (residents of California only) (collectively, “Plaintiffs”), sue BPS Direct, LLC, Cabela’s LLC,
5 Great Outdoors Group, LLC, Bass Pro Outdoor World, LLC, and Cabela’s Wholesale, LLC
6 (collectively “Bass Pro”) and Does 1 through 100 (“Doe Defendants”) (Bass Pro and Doe
7 Defendants are collectively referred to herein as the “Defendants”) and for this Complaint, allege
8 upon information and belief, and based on the investigation to date of their counsel, as follows:

9 **INTRODUCTION**

10 1. This is a class action brought for the benefit and protection of Plaintiffs, and all other
11 similarly situated consumers who are residents of California and who have visited, used, or
12 completed sales transactions through at least one of the websites operated by Bass Pro, including
13 without limitation basspro.com, basspro-shops.com, bassproshops1source.com,
14 basspro1source.com, cabelas.com, m.basspro.com, blogs.basspro.com and outdoorsite.com (the
15 “Websites”).

16 2. By way of this action, Plaintiffs, and all others similarly situated, seek damages,
17 restitution, injunctive relief, public injunctive relief, and other relief necessitated by Defendants’
18 unlawful and unfair actions in violation of California Civil Code section 1670.8 and California
19 Business and Professions Code section 17200. Plaintiffs on behalf of themselves and all others
20 similarly situated seek an order permanently enjoining Defendants from engaging in these ongoing
21 unlawful and unfair practices, and civil penalties and damages available under California law.

22 3. Because of the current power of the internet and social media platforms to publicize
23 a company’s offerings of goods or services—and the potential harm to corporate interests when
24 negative consumer statements “go viral”—Defendants have a significant incentive to minimize the
25 negative publicity they receive, including in the form of negative online reviews and comments.
26 Some companies have gone so far as to attempt to prohibit customers and potential customers from
27 making negative statements about the goods or services they offer, to the detriment of consumers,
28 potential consumers, and the public of the State of California. Fortunately, California Civil Code

1 section 1670.8 was enacted to protect the right of California consumers to voice their opinions,
2 observations, and experiences about the products and services delivered or offered to California
3 consumers, as well as the citizens of the State of California. The California Legislature reasonably
4 and correctly determined that such freedom is important to keep the public informed and keep large
5 corporations honest about the quality of the goods or services they offer to consumers.

6 4. Section 1670.8(a) provides as follows: “(1) **A contract or proposed contract** for
7 the sale or lease of consumer goods or services **may not include a provision waiving the**
8 **consumer’s right to make any statement** regarding the seller or lessor or its employees or agents,
9 or concerning the goods or services” and “(2) **It shall be unlawful to threaten or seek to enforce**
10 **a provision made unlawful under this section, or to otherwise penalize a consumer for making**
11 **any statement protected under this section.**” Section 1670.8’s protections are so important that
12 the statute expressly provides that “**any waiver of the provisions of this section is contrary to**
13 **public policy, and is void and unenforceable.**”

14 5. In order to use and benefit from the Bass Pro Websites, visitors to the Websites, or
15 users, are informed that they must agree to Bass Pro’s Terms of Use and Community Guidelines
16 (“Terms”). In fact, Bass Pro asserts that simply by accessing or using these Websites, users have
17 read, understood, and agreed to be bound by the Terms—regardless of whether users are simply
18 visiting the Websites or are actual purchasers or registered members of the Websites. The Terms
19 provide, “by accessing the Site, you agree to the following rules of conduct.”

20 6. While conducting substantial business with California consumers, the Terms
21 Defendants impose upon Bass Pro’s customers and prospective customers clearly violate Section
22 1670.8. Pursuant to the Terms that Defendants impose upon their customers for the privilege of
23 accessing the goods and/or services offered and promoted on the Websites, Bass Pro requires users
24 to agree they “shall not distribute, submit or publish any content...that may be insulting...to any
25 individual, partnership, or corporation.” The Terms further threaten that “Bass Pro reserves the
26 right to immediately terminate your account without further notice in the event that, in its judgment,
27 you violate the Terms.” This chilling activity is the precise conduct prohibited by Section 1670.8.

28 7. Defendants’ conduct is unlawful, including among other reasons, because it is aimed

1 to stifle California consumers’ right to free speech, and the right of the California public to hear
2 lawful discourse. Defendants’ strong-arm tactics to silence injured parties were and continue to be
3 intentionally exercised to protect Defendants’ self-promoting public image for commercial and
4 other benefits. Defendants’ unlawful business practices, purposefully designed to maintain and
5 increase its consumers and sales, all while denying the public, consumers, and potential consumers
6 accurate information so that they may make informed decisions as consumers.

7 8. By way of these provisions, Bass Pro seeks to have users waive their right as
8 consumers to make negative statements regarding Bass Pro or its employees, agents, goods or
9 services, and further threatens to penalize consumers for making such statements. These unlawful
10 restrictions—imposed by Defendants against their own customers and prospective customers—is
11 an important component of Bass Pro’s business strategy, which relies upon the popularity of its
12 product offerings nationwide to generate significant revenues and profits. But Defendants’ efforts
13 to silence their customers and prospective customers is clearly prohibited by California law, thereby
14 subjecting Defendants to significant penalties, as described herein.

15 **JURISDICTION AND VENUE**

16 9. This Court has jurisdiction over the claims and causes of action asserted herein
17 because such claims arise solely and specifically out of Defendants’ unlawful business practices
18 within the State of California, and relate to at least one statute—California Civil Code section
19 1670.8—that was designed to protect California’s citizens, the application of which is exclusively
20 a matter for the courts of this State.

21 10. Venue is proper in this Court because: Defendants transact business in California
22 and in the County of Los Angeles based on Plaintiffs’ use of the Websites in this County;
23 Defendants have committed unlawful acts in the County by and through the Websites and
24 associated business transactions within the County; and a substantial part of the events giving rise
25 to the claims alleged herein occurred in this County, where at least one of the Plaintiffs resides.

26 **THE PARTIES**

27 11. At all relevant times, Plaintiff Xavier Maldonado was and has been a citizen of the
28 State of California and a resident of Los Angeles County. Maldonado is an individual who visited,

1 used, or completed sales transactions on the Websites within the applicable limitations period in
2 Los Angeles County in the State of California.

3 12. At all relevant times, Plaintiff Justin Purser was and has been a citizen of the State
4 of California. Purser is an individual who visited, used, or completed sales transactions on the
5 Websites within the applicable limitations period the State of California.

6 13. At all relevant times, Plaintiff Christopher Butler was and has been a citizen of the
7 State of California. Butler is an individual who visited, used, or completed sales transactions on
8 the Websites within the applicable limitations period the State of California.

9 14. Upon information and belief, Defendants are comprised of affiliated corporate
10 entities, each of which conducts business in the state of California with California citizens. These
11 entities, individually or collectively, through an integrated corporate structure (the details of which
12 Plaintiffs are presently unaware), manufacture, market, and sell a wide variety of hunting, fishing,
13 and outdoor gear. Bass Pro operates over one hundred retail outlets nationwide and generates sales
14 through the Websites.

15 15. The true names and/or capacities, whether individual, corporate, partnership,
16 associate, governmental, or otherwise, of the Doe Defendants, inclusive, and each of them, are
17 unknown to Plaintiffs at this time, who therefore sues said Doe Defendants by such fictitious names.
18 Plaintiffs are informed and believe, and thereon allege, that each defendant designated herein as a
19 Doe Defendant caused injuries and damages proximately thereby to Plaintiffs as hereafter alleged,
20 and that each Doe Defendant is liable to Plaintiffs for the acts and omissions alleged herein below,
21 and the resulting injuries to Plaintiffs, and damages sustained by Plaintiffs. Plaintiffs will amend
22 this Complaint to allege the true names and capacities of said Doe Defendants when that same is
23 ascertained.

24 **FACTS COMMON TO ALL CLASS MEMBERS**

25 16. At all relevant times, Bass Pro was and currently is in the business of designing,
26 researching, manufacturing, testing, advertising, promoting, marketing, selling, and distributing
27 consumer products through its Websites, which Websites are targeted to, and accessible by, the
28 citizenry of California.

1 17. Bass Pro is well aware that its public image is vital to maintaining and gaining
2 customers. If the public sees content posted by users that may be insulting to Bass Pro, and/or any
3 of its partners, and/or any its employees, and/or concerning any of its goods or services, then its
4 current customers and/or prospective customers may shift to a competitor, ultimately resulting in
5 loss of business and loss of revenue.

6 18. Thus, in order to maintain a positive public image, Bass Pro has engaged in an
7 intentional business strategy to silence each and every customer or potential customer who visits
8 its Websites by purporting to bind users to its Terms—immediately upon accessing any of its
9 Websites.

10 19. Specifically, Bass Pro’s Terms provide that “[b]y accessing the Site. . . [y]ou agree
11 and warrant that you shall not distribute, submit or publish any content that is, or may reasonably
12 considered to be. . .insulting to any individual, partnership or corporation.”

13 20. Bass Pro’s Terms, moreover, threaten to penalize users for making any statements
14 that it considers to be “insulting” in providing that “Bass Pro reserves the right to immediately
15 terminate your account without further notice in the event that, in its judgment, you violate these
16 [Terms].”

17 21. Bass Pro has sold and continues to sell at least hundreds of thousands of products to
18 consumers through its Websites.

19 22. Bass Pro purports to forbid any California consumers who have purchased, will
20 purchase, or are even considering purchasing products from Bass Pro through its Websites from
21 making any so-called “insulting” statements about Bass Pro itself, any of its partners, any of its
22 employees, any of its agents, and any of its goods or services.

23 23. In doing so, Bass Pro has and continues to engage in unlawful and unfair conduct,
24 that is contrary to public policy and in violation of California Civil Code section 1670.8 and
25 California Business and Professions Code section 17200.

26 24. Each of the Plaintiffs specifically identified herein, and millions more similarly
27 situated persons in the State of California, have visited the Websites—either as consumers or
28 potential consumers—and thus have ostensibly been subjected to the unlawful Terms.

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CLASS ACTION ALLEGATIONS

25. Pursuant to California Code of Civil Procedure section 382, Plaintiffs bring this class action on their own behalf and on behalf of all other similarly situated consumers in California.

The proposed class is defined as follows:

- a. With respect to Count I below, during the fullest period allowed by law, all persons residing in California, who visited, used, or completed sales transactions on the Websites (“Class”); and
- b. With respect to Count II below, a subclass of the Class, during the fullest period allowed by law, all persons residing in California who completed sales transactions on the Websites (“Subclass”).

26. Like Plaintiffs, all Class members are California residents who visited, used, or completed sales transactions on the Websites and who were subject to the Terms that limit their right as consumers to make statements regarding Bass Pro or its employees, agents, and goods or services.

27. Excluded from the Class are assigned judges and members of their families within the first degree of consanguinity; Defendants; and Defendants’ subsidiaries, affiliates, officers, and directors.

28. The requirements of Code of Civil Procedure section 382 are satisfied for the proposed Class.

29. The proposed Class is so numerous that individual joinder of all the members is impracticable because members of the Class number in at least the tens or hundreds of thousands. The precise number of Class members and their identities are unknown to Plaintiffs at this time but are objectively ascertainable and will be determined through appropriate discovery and other readily available means.

30. Defendants possess objective evidence as to the identity of each Class member and, to a reasonable degree of certainty, the harm suffered by each Class member, including without limitation web traffic data evidencing visits to the Websites, sales receipts, phone numbers, names, rewards accounts data, credit card data, customer service complaint forms/emails/date, and other

1 evidence which objectively identifies class members.

2 31. Class members may be notified of the pendency of this action by mail, publication
3 and/or through the records of Defendants.

4 32. There are common questions of law and fact affecting Plaintiffs and Class members.
5 Common legal and factual questions include, but are not limited to:

6 a. Whether each imposition of Defendants' Terms upon members of the Class constitutes a
7 violation of the provisions of California Civil Code section 1670.8 and, if so, whether each such
8 violation is a "willful, intentional, or reckless" violation;

9 b. Whether Defendants' Terms are unlawful, contrary to public policy, void and/or
10 unenforceable;

11 c. Whether by the misconduct set forth in this Complaint, Defendants engaged and continue
12 to engage in unfair, fraudulent, or unlawful business practices;

13 d. Whether the Class is entitled to recover statutory attorney's fees;

14 e. Whether Class members are entitled to civil penalties; and

15 f. Whether, as a result of Defendants' misconduct alleged herein, Plaintiffs and Class
16 members are entitled to restitution, injunctive public injunctive relief, and/or monetary relief and,
17 if so, the amount and nature of such relief.

18 33. Plaintiffs' claims are typical of the claims of the proposed Class because the rights
19 of Plaintiffs and Class members were violated in the same manner by the same conduct.

20 34. Plaintiffs and Class members are all entitled to recover statutory penalties and other
21 relief arising out of Defendants' violations of statutory law alleged herein.

22 35. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

23 36. Plaintiffs' interests do not conflict with the interests of the Class they seek to
24 represent. Plaintiffs have retained counsel competent and experienced in prosecuting class actions,
25 and Plaintiffs intend to vigorously prosecute this action.

26 37. The class mechanism is superior to other available means for the fair and efficient
27 adjudication of the claims of Plaintiffs and Class members.

28 38. Given the relative value of statutory penalties available to any of the individual Class

1 members, individual litigation is not practicable.

2 39. Individual Class members will not wish to undertake the burden and expense of
3 individual cases.

4 40. In addition, individualized litigation increases the delay and expense to all parties
5 and multiplied the burden on the judicial system. Individualized ligation also presents the potential
6 for inconsistent or contradictory judgments.

7 41. In contrast, the class action device presents far fewer management difficulties and
8 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by
9 a single court.

10 42. Questions of law and fact common to all Class members predominate over any
11 questions affecting only individual Class members. Injuries sustained by Plaintiffs and Class
12 members flow, in each instance, from a common nucleus of operative facts as set forth above.

13 43. In each case, Defendants' actions caused harm to all Class members as a result of
14 such conduct. The resolution of these central issues will be the focus of the litigation and
15 predominate over any individual issues.

16 44. Proposed Class counsel possesses the knowledge, experience, reputation, ability,
17 skill, and resources to represent the Class and should be appointed lead counsel for the Class.

18 **COUNT I— VIOLATION OF CIVIL CODE SECTION 1670.8**

19 45. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 44 of their
20 Complaint. Plaintiffs assert this cause of action on behalf of themselves and all other similarly
21 situated persons residing in California who used the Websites.

22 46. Defendants are in the business of selling or leasing consumer goods or services.

23 47. Plaintiffs and Class members used, visited, or completed sales transactions for goods
24 or services from Defendants via the Bass Pro Websites.

25 48. Pursuant to the Terms on the Website, Defendants told Plaintiffs and the Class
26 members that they must agree to not distribute, submit or publish any content that may be insulting
27 to Bass Pro or any other individual, partnership, or corporation.

28 49. Defendants further threatened Plaintiffs and Class members that they reserve the

1 right to immediately terminate accounts without further notice in the event that, in their judgment,
2 Plaintiffs or Class members violate the Terms.

3 50. By visiting, using, or making purchases on the Websites, Defendants purport to have
4 charged Plaintiffs and Class members with having read, understood, and agreed to be bound by the
5 Terms.

6 51. By way of this restriction, Defendants intentionally, willfully, or recklessly sought
7 to have Plaintiffs and the Class members waive their right as consumers to make statements
8 regarding Bass Pro or its employees, agents, and goods or services, which restriction is prohibited
9 under California Civil Code 1670.8 and is contrary to public policy.

10 52. Defendants have repeatedly violated California Civil Code 1670.8 in relation to each
11 of the Plaintiffs and Class members and their respective visits, uses, and transactions on the
12 Websites.

13 53. Defendants' conduct has caused Plaintiffs and Class members to suffer harm.

14 54. Plaintiffs and Class members are entitled to restitutionary and injunctive relief,
15 including public injunctive relief.

16 55. Plaintiffs and Class members are also entitled to civil penalties for Defendants'
17 violations of Civil Code 1670.8.

18 **COUNT II—VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

19 56. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 55 of their
20 Complaint. Plaintiffs assert this second cause of action on behalf of themselves and all other
21 similarly situated persons within the Subclass.

22 57. By engaging in the above-described conduct, Defendants, and each of them, acted
23 in a manner that is unlawful and unfair—including by virtue of the fact that their conduct violates
24 California Civil Code section 1670.8—and have thus engaged in unfair and unlawful business
25 practices to the extreme detriment of Plaintiffs and Subclass members, which conduct is prohibited
26 under California Business & Professions Code sections 17200, et seq.

27 58. Defendants' unlawful and unfair conduct has allowed for Defendants to enrich
28 themselves at the expense of Plaintiffs and Subclass members, including through Plaintiffs'

1 payment of monies to Defendants, including without limitation through the purchase transactions
2 completed on the Websites.

3 59. Plaintiffs are thus entitled to restitutionary and injunctive relief, including without
4 limitation disgorgement of any unlawful gains that Defendants obtained as a result of their unlawful
5 and unfair conduct at the expense of Plaintiffs and Subclass members.

6 **PRAYERS FOR RELIEF**

7 **WHEREFORE**, Plaintiffs, on behalf of themselves and the putative Class members, pray
8 for judgment as follows:

9 a. Determining that this action is a proper class action and certifying the Class and Subclass,
10 as defined herein;

11 b. Appointing Plaintiffs as Class and Subclass representatives;

12 c. Appointing the undersigned as Class and Subclass counsel;

13 d. Finding Defendants liable to Plaintiffs and Class members for damages in such amount(s)
14 as the Court or Jury may determine;

15 e. Awarding statutorily provided damages to Plaintiffs and Class members as appropriate;

16 f. Awarding restitutionary disgorgement and all other forms of equitable monetary relief to
17 Plaintiffs, Class members, and Subclass members;

18 h. Awarding pre- and post-judgment interest;

19 i. Awarding injunctive relief, including public injunctive relief, as claimed herein or as the
20 Court may deem proper;

21 j. Awarding Plaintiffs, Class members, and Subclass member attorney fees and all litigation
22 costs as allowed by law; and

23 k. Awarding such other and further relief as may be just and proper.

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25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a trial by jury on all issues so triable.
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Dated: November 21, 2023

SINGLETON SCHREIBER, LLP

By:  _____

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