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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **WESTERN DIVISION**

11 ARIA PERIERA, on behalf of herself and all  
12 others similarly situated,

13 Plaintiff,

14 vs.

15 INTERNATIONAL SURF VENTURES,  
16 LLC

17 Defendant.

Case No.

**CLASS ACTION COMPLAINT**

18 Plaintiff Aria Periera (“Plaintiff”), individually and on behalf of all others  
19 similarly situated, brings this class action complaint against Defendant International  
20 Surf Ventures, LLC (“Defendant” or “ISV”). Plaintiff makes the following allegations  
21 based upon, *inter alia*, the investigation made by her counsel, and based upon  
22 information and belief, except as to those allegations specifically pertaining to Plaintiff  
23 which are based on her personal knowledge and alleges the following:

24 **PRELIMINARY STATEMENT**

25 1. This is a proposed class action seeking monetary damages, restitution, and  
26 injunctive and declaratory relief from Defendant International Surf Ventures, LLC,  
27 arising from its use of surreptitiously tacking on “Route Package Protection” fees on  
28 all orders placed on its website without consumers’ consent.

1           2.     When consumers make a purchase through ISV's website, they browse  
2 products, select items from the online store, add them to their cart, enter their billing  
3 and shipping information. Up until this point, this is all standard for an online  
4 purchasing experience. However, ISV vastly diverts from the standard experience on  
5 the final payment screen by secretly tacking on a so-called "Route Package Protection"  
6 Fee, which is a percentage of the transaction that is automatically added to all orders.

7           3.     Never do consumers affirmatively choose to add the "Route Package  
8 Protection" to their shopping cart. Instead, ISV secretly adds this fee without  
9 consumers' consent right before the purchase is complete.

10          4.     Automatically sneaking in this fee is what the FTC has deemed as a  
11 "Digital Dark Pattern" designed to trick or manipulate consumers into making choices  
12 that they might not otherwise have made.

13          5.     As discussed in detail herein, sneaking in this Fee is deceptive and unfair,  
14 since, a) ISV automatically adds this fee to consumers' carts without their permission  
15 and does not disclose this added Fee until the very last step in the multi-step purchasing  
16 process; and b) the Fee itself is deceptively named and described.

17          6.     ISV hides, disguises, and fails to divulge that a "Route Package  
18 Protection" fee will be automatically added to all orders to deceive consumers into  
19 purchasing it.

20          7.     Automatically adding additional products or services to online shopping  
21 carts without explicit consumer consent is a deceptive practice.

22          8.     ISV omits and conceals material facts about purchasing items on ISV's  
23 website, never once informing consumers in any disclosure, at any time, that the so-  
24 called "Route Package Protection" Fee will be automatically and surreptitiously added  
25 to all orders.

26          9.     Despite its own responsibilities to ensure the care and delivery of the  
27 products it sells and ships to consumers, ISV utilizes deceptive tactics to foot the bill  
28 on the consumers, tricking them into paying for services already provided and forcing

1 them into subsidizing ISV's customer support costs, all to the benefit of ISV's bottom  
2 line.

3 10. Thousands of ISV customers like Plaintiff have been assessed a hidden  
4 fee for which they did not bargain.

5 11. Consumers like Plaintiff reasonably understand ISV's advertised price to  
6 disclose the total cost they will pay for their products, as well as the costs of delivery.  
7

8 12. By unfairly obscuring its addition of a "Route Package Protection" Fee to  
9 consumers shopping carts, ISV deceives consumers and gains an unfair upper hand on  
10 competitors that fairly disclose their true prices and fees.  
11

12 13. Plaintiff seeks damages and, among other remedies, injunctive relief that  
13 fairly allows consumers to decide whether they will pay ISV's surreptitiously added-  
14 on fee.  
15

## 16 **PARTIES**

17 14. Plaintiff Aria Periera is a resident and a citizen of Los Angeles, California.  
18

19 15. Defendant International Surf Ventures, LLC is a sporting goods  
20 manufacturer incorporated in Delaware and headquartered in Southlake, Texas.  
21

## 22 **JURISDICTION AND VENUE**

23 16. This Court has jurisdiction over the subject matter of this action pursuant  
24 to 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds \$5,000,000,  
25 exclusive of interest and costs, and is a class action in which at least one member of  
26 the class is a citizen of a different State than Defendant, including Plaintiff. The exact  
27 number of members of the proposed Class is unknown to Plaintiff, but upon  
28

1 information and belief, is more than 100. 28 U.S.C. § 1332(d)(5)(B).

2 17. This Court has personal jurisdiction over the Defendant because  
3 Defendant is registered with the California Secretary of State to do business in  
4 California. Defendant maintains minimum contacts with California such that an  
5 exercise of personal jurisdiction does not offend traditional notions of fair play and  
6 substantial justice and/or otherwise intentionally avails itself of the California market,  
7 including in this District, which has caused both obligations and liability of Defendant  
8 to arise here.  
9

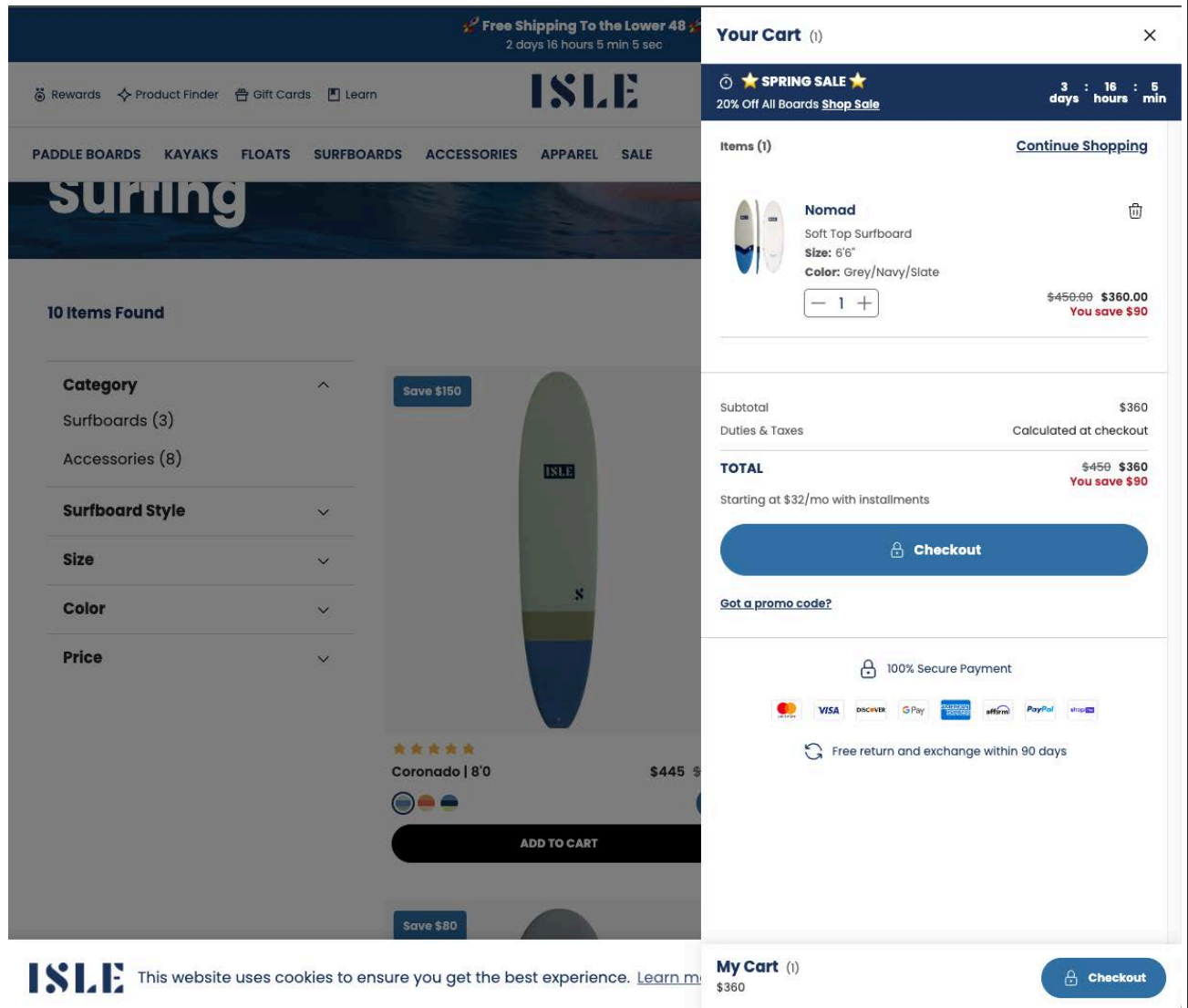
10  
11 18. Plaintiff and the proposed Class have suffered injury as a result of  
12 Defendant's acts in this District.  
13

14 19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because  
15 Defendant does business in this District and because a substantial part of the events or  
16 omissions giving rise to the claims occurred in this District.  
17


18 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

19 **A. ISV's Website Fails to Bind Users to Any Terms of Service**

20 20. When a consumer selects an item for purchase on the ISV website, she  
21 then enters into a multi-step purchasing process in which she is first shown a screen  
22 displaying her shopping cart and a subtotal, as seen on the next page.  
23  
24  
25  
26  
27  
28



21. Next, as depicted on the following page, a consumer is shown a screen that requires the entry of personal information and payment information.



Express checkout

shop Pay PayPal G Pay venmo

OR

**Contact** [Log in](#)

Email

Enter an email

☒ Email me with news and offers

Have an account? Log in to receive loyalty points.

**Delivery**

Country/Region  
United States

First name Last name

Enter a first name Enter a last name

Company (optional)

Address

Enter an address

Apartment, suite, etc. (optional)

City State ZIP code

Florida

**Items:**

- Nomad Soft Top Surfboard 6'6" / Grey/Navy/Slate \$360.00
- Shipping Protection by Route \$17.18

Discount code or gift card

Subtotal · 2 items \$377.18

Shipping \$60.00 FREE

FREESHIPMARCH

Estimated taxes \$26.40

**Total** USD **\$403.58**

**TOTAL SAVINGS \$60.00**

**Package Protection from Route** ☒

\$17.18 - Get help fast with shipping issues such as loss, damage and theft. [Learn more](#)

22. During the multi-step process, ISV users are never required to view ISV's terms of service and are never required to affirmatively consent to ISV's terms of service.

23. As such, Plaintiff and consumers were not provided with adequate notice of ISV's Terms of Service and thus are not bound to them.

## B. ISV's Use of Route

24. ISV is an online retailer whose "mission is to inspire and equip for a life

1 that's better in balance through adventure on the water,” offering paddleboarding,  
2 kayaking, surfing, and other aquatic activity goods through its website,  
3 islesufandsup.com.<sup>1</sup>  
4

5 25. ISV’s terms of use explicitly acknowledges that as long as a consumer  
6 submits an accurate and complete purchase order, ISV is responsible for any delivery  
7 errors associated with a consumers’ purchase through the website.<sup>2</sup>  
8

9 26. This aligns with the general principles of the Uniform Commercial Code  
10 (“UCC”), under which the default rule is that a merchant seller cannot transfer risk of  
11 loss to the buyer until the buyer has actually received the merchandise. *See* Unif.  
12 Commercial Code § 2-509(3).  
13

14 27. As a result of this inherent risk, ecommerce retailers are purported to  
15 spend in excess of 18% of every dollar gained through online sales towards fulfillment  
16 costs like packaging, delivery, and customer support.<sup>3</sup>  
17

18 28. Route is an ecommerce service provider that purports to relieve retailers  
19 of these costs in two ways: 1) providing “shipping insurance,” which shifts the risk of  
20 loss to Route, the carrier, rather than remaining with the merchant; and 2) providing  
21 customer support for shipment related issues.  
22

23 29. Route touts that it provides “instant resolutions and world-class support”  
24  
25

26 <sup>1</sup> <https://islesurfandsup.com/pages/about-us>

27 <sup>2</sup> *See* <https://islesurfandsup.com/policies/terms-of-service> (“FAILED DELIVERY: The Owner  
28 cannot be held responsible for delivery errors due to inaccuracies or incompleteness in the execution  
of the purchase order by the User, nor for any damages or delays after handover to the carrier if the  
latter is arranged by the User”).

<sup>3</sup> *See* CGE Logistics

1 to a retailer's customers, having resolved over one milling shipping related customer  
2 support tickets. For a fee as low as \$349/month, a retailer can offload its potential  
3 liability for lost, stolen or damaged shipments to Route, saving the significant costs it  
4 would otherwise have to spend itself on customer support resolutions.  
5

6 30. However, the way Route can offer such a low-cost service, and the way  
7 the retailer can achieve such great savings, is that Route charges the *consumer* a "Route  
8 Package Protection" fee on each transaction.  
9

10 31. As a matter of course, the consumer who bears the expense of this fee is  
11 not afforded any additional security or "insurance" as to the successful and safe  
12 delivery of their purchase; by default, the merchant seller bears the risk of loss until the  
13 goods are received by the buyer. Accordingly, the only insuring effect is to the benefit  
14 of the seller, who has shifted any of that liability to Route.  
15  
16

17 32. Consequently, rather than paying for any benefit that they would  
18 otherwise not receive, ISV uses Route to make consumers pay separately for *its own*  
19 insurance and customer support needs, all the while benefitting ISV's bottom line to  
20 consumers financial detriment.  
21

22 33. To make matters worse, ISV uses deceptive, dark pattern practices to trick  
23 consumers into unwittingly bearing the costs of this erroneous fee.  
24

25 **B. Sneaking in and automatically adding "Route Package Protection" is**  
26 **Misleading and Deceptive**

27 34. The FTC defines unlawful dark patterns to include any online "design  
28 practices that trick or manipulate users into making decisions they would not otherwise



1 have made and that may cause harm.”<sup>4</sup>

2 35. ISV uses manipulative and deceptive user-interface (i.e. “dark patterns”)  
3 to trick consumers into purchasing Route Package Protection.

4 36. First, this Route Package Protection is automatically added to consumers’  
5 shopping carts, without their affirmative consent, at the final stage of the purchasing  
6 process after consumers have invested ample time and have already decided to make a  
7 purchase.  
8

9 37. Because the Route Protection Package is surreptitiously added to  
10 consumers’ shopping carts at the very end of a transaction, many consumers may not  
11 realize that they are being charged for this unwanted product or service, leading to  
12 unintentional purchases and overpayments by consumers.

13 38. Second, instead of obtaining consumers’ express and informed consent  
14 before adding this charge for an unnecessary product or service, ISV’s checkout page  
15 presents the “package protection” as a *prechecked* box in small script . This is unlike  
16 other companies that require consumers to affirmatively check a box to agree to an  
17 additional product or service such as shipping protection or express shipping options.  
18

19 39. ISV prechecks the box to dupe consumers into paying for this unnecessary  
20 fee, capitalizing on the fact that countless consumers will not notice the additional  
21 charge.  
22

23  
24  
25  
26  
27  
28 <sup>4</sup>FTC, Bringing Dark Patterns to Light, at 2 (September 2022), <https://www.ftc.gov/reports/bringing-dark-patterns-light>.

1           40. Finally, adding to the consumer confusion is that there is no clear way to  
2 avoid paying for the fee. Unlike other products that can be easily removed from a  
3 shopping cart, the Route Package Protection can only be removed if a consumer  
4 unselects the prechecked box, displayed separate and apart from their shopping cart  
5 “bag”.

6  
7           41. ISV fails to adequately disclose to consumers how to avoid paying for the  
8 Route Package Protection.  
9

10           **C. ISV Omits and Conceals Material Facts About the Costs of Delivery**

11           42. The Route Package Protection Fee is not disclosed until the final payment  
12 screen, and thereby ISV misrepresents the cost of the products on which the consumer  
13 relies in placing an order.  
14

15           43. The representation of shipping costs is false because ISV surreptitiously  
16 tacks on an additional delivery fee described as the “Route Package Protection” Fee.  
17 Moreover, rather than including the costs in the “shipping” section of the checkout  
18 page, the Fee is surreptitiously combined into the “subtotal” along with the actual retail  
19 items purchased.  
20

21           44. By assessing the “Route Package Protection” Fee to all orders placed on  
22 ISV’s website, the advertised price for any specific item product is false.  
23

24           45. By unfairly obscuring its true fees to consumers, ISV deceives consumers  
25 and gains an unfair upper hand on competitors that fairly disclose their true fees.  
26 Indeed, other major fashion retailers in the U.S. do not assess fees outside of those  
27  
28

1 properly disclosed at the outset of a consumer's order.

2 30. In short, the disclosed item cost on ISV's website is not accurate, due to  
3 the Route Package Protection Fee that ISV deceptively adds late in the ordering  
4 process.  
5

6 31. ISV does not inform consumers of the true costs of its products and  
7 delivery service.  
8

9 32. Moreover, the Route Package Protection Fee assessed is never reasonably  
10 disclosed to consumers until it shows up as a line item in their shopping cart—after the  
11 purchase process is largely complete. This process fails to provide an adequate advance  
12 warning to customers that additional fees will be imposed on their purchases.  
13

14 33. Many consumers do not notice these fees are being added to their order.  
15 Others believe that they have no choice but to pay these fees. And others still notice  
16 the previously undisclosed fees but decide to go through with the purchase anyway  
17 unsure of how it can be removed from their Cart after it was automatically added: they  
18 have already invested substantial time and effort inputting their information into the  
19 ISV's system. Consumers are disincentivized to start over and research whether there  
20 is a way to avoid these fees. The deceptive checkout practice has done its job and  
21 diverted the inflated sale to ISV.  
22  
23  
24

25 34. In any of these situations, the result is the same: a consumer who otherwise  
26 would have found a way to pay without paying the fees, ends up paying the fees.  
27 Defendant profits; Plaintiff and the class pay more.  
28

35. This is a classic case of “Drip pricing”. “Drip pricing” works because as research has shown, “our brains tend to fix on the price we first encountered even after we learn the total cost. And even when consumers learn about the hidden fees, they often pay up rather than shop around . . . because they figure that ‘investing more time into searching for it will not be worthwhile.’” Santul Narkar, *It’s a Great Deal, Before the ‘Drip Pricing’*, New York Times, available at <https://www.nytimes.com/interactive/2024/02/23/business/what-is-drip-pricing.html> (quoting Professor David Friedman of Willamette University).

36. By unfairly obscuring its charges to consumers, ISV deceives consumers and gains an unfair upper hand on competitors that fairly disclose their true charges.

**D. The Router Package Protection Fee Is a Junk Fees That Violates Federal Guidance**

37. ISV’s fee is precisely the type of “Junk Fee” that has come under government scrutiny in recent years:

Junk fees are fees that are mandatory but not transparently disclosed to consumers. Consumers are lured in with the promise of a low price, but when they get to the register, they discover that price was never really available. Junk fees harm consumers and actively undermine competition by making it impractical for consumers to compare prices, a linchpin of our economic system.

The White House, *The Price Isn’t Right: How Junk Fees Cost Consumers and Undermine Competition*, March 5, 2024, available at [https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/#\\_ftnref3](https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/#_ftnref3).

38. As the Federal Trade Commission said recently in its effort to combat

1 Junk Fees:

2 [M]any consumers said that sellers often do not advertise the total amount  
3 they will have to pay and disclose fees only after they are well into  
4 completing the transaction. They also said that sellers often misrepresent  
5 or do not adequately disclose the nature or purpose of certain fees, leaving  
6 consumers wondering what they are paying for or if they are getting  
7 anything at all for the fee charged.

8 Fed. Trade Comm’n, *FTC Proposes Rule to Ban Junk Fees – Proposed rule would*  
9 *prohibit hidden and falsely advertised fees*, October 11, 2023, available at  
10 [https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-](https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees)  
11 [junk-fees](https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees).

12 39. In July of 2024, California expanded its Consumer Legal Remedies Act  
13 (“CLRA”) to expressly make illegal “drip pricing,” which involves advertising a price  
14 that is less than the actual price that a consumer will have to pay for a good or service.  
15 California Civil Code Section 1770(a)(29). Under the new California law, it is illegal  
16 to advertise a low price for a product, only for that product to be subject to additional  
17 or mandatory fees later. In other words, “the price listed or advertised to the consumer  
18 must be the full price that the consumer is required to pay.” *See* California Department  
19 of Justice, Office of the Attorney General, *SB 478 Frequently Asked Questions*,  
20 available at [https://oag.ca.gov/system/files/attachments/press-](https://oag.ca.gov/system/files/attachments/press-docs/SB%20478%20FAQ%20%28B%29.pdf)  
21 [docs/SB%20478%20FAQ%20%28B%29.pdf](https://oag.ca.gov/system/files/attachments/press-docs/SB%20478%20FAQ%20%28B%29.pdf) (last accessed July 18, 2024). As the  
22 California Department of Justice stated:

23  
24 Businesses are free to explain how they set their prices or to *subsequently*  
25 itemize the charges that make up the total price that they charge  
26 customers. However, the price they advertise or display must be the total  
27 price that customers will have to pay for the good or service. Knowing the  
28 price of a good of service is essential to competition, and displaying a  
price that is less than what the customer will actually be charged is  
deceptive.

*Id.* at p. 4 (emphasis added).

1           40. In its 2013 publication “.com Disclosures: How to Make Effective  
2 Disclosures in Digital Advertising, the FTC makes clear that when advertising and  
3 selling are combined on a website, and the consumer will be completing the transaction  
4 online, the disclosures should be provided before the consumer makes the decision to  
5 buy – for example, before the consumer “add[s] to shopping cart.” *See* Fed. Trade  
6 Comm’n, *How to Make Effective Disclosures in Digital Advertising* at ii, 14 (Mar.  
7 2013), available at [https://www.ftc.gov/sites/default/files/attachments/press-](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf)  
8 [releases/ftc-staff-revises-online-advertising-disclosure-](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf)  
9 [guidelines/130312dotcomdisclosures.pdf](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf).

10  
11  
12  
13           41. Defendant violates federal guidance and California Law by adding the  
14 Route Package Protection fee as a line item well after the consumer “add[s] to shopping  
15 cart.”

16  
17           **E. Plaintiff Periera’s Experience**

18           42. Plaintiff Periera used the ISV website to place an order for a paddle board  
19 and an electric pump on June 25, 2023.

20  
21           43. When using the website, Plaintiff was repeatedly informed that her cart  
22 total was \$525.00.

23           44. However, unbeknownst to Plaintiff, Plaintiff’s purchase included a  
24 surreptitious Route Package Protection Fee amounting to \$31.63 that—for the reasons  
25 described above—in fact represented an additional product and delivery fee tacked on  
26 to Plaintiff’s order.  
27  
28

1 45. Plaintiff would not have made this purchase if she had known that ISV  
2 would tack on additional fees.

3 46. If she had known the true cost of her orders, she would have chosen  
4 another method or merchant for ordering her paddle board and electric pump.  
5

6 47. As a result of Defendant's deceptive addition of a Route Package  
7 Protection Fee, Plaintiff overpaid for her ISV purchase.  
8

9 **CLASS ALLEGATIONS**

10 48. Pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), Plaintiff brings this  
11 action on behalf of herself and a Class of similarly situated persons. The Class is  
12 defined as follows:  
13

14 All consumers in California who, within the applicable  
15 statute of limitations preceding the filing of this action to the  
16 date of class certification, ordered products from  
islesurfandsup.com, and were assessed a so-called Route  
Package Protection Fee.

17 49. Excluded from the Class is Defendant, any entities in which it has a  
18 controlling interest, any of its parents, subsidiaries, affiliates, officers, directors,  
19 employees and members of such persons' immediate families, and the presiding  
20 judge(s) in this case, and their staff. Plaintiff reserves the right to expand, limit, modify,  
21 or amend this class definition, including the addition of one or more subclasses, in  
22 connection with her motion for class certification, or at any other time, based upon,  
23 *inter alia*, changing circumstances and/or new facts obtained during discovery.  
24  
25

26 50. **Numerosity:** At this time, Plaintiff does not know the exact size of the  
27 Class; however, due to the nature of the trade and commerce involved, Plaintiff  
28

1 believes that the Class members are well into the thousands, and thus are so numerous  
2 that joinder of all members is impractical. The number and identities of Class members  
3 is administratively feasible and can be determined through appropriate discovery in the  
4 possession of the Defendant.  
5

6       51. **Commonality:** There are questions of law or fact common to the Class,  
7 which include, but are not limited to the following:  
8

- 9           a. Whether during the class period, Defendant deceptively represented  
10 its Fees for orders on islesurfandsup.com;
- 11           b. Whether Defendant's alleged misconduct misled or had the  
12 tendency to mislead consumers;
- 13           c. Whether Defendant engaged in unfair, unlawful, and/or fraudulent  
14 business practices under the laws asserted;
- 15           d. Whether Defendant's advertised prices are false;
- 16           e. Whether Defendant's alleged conduct constitutes violations of the  
17 laws asserted;
- 18           f. Whether Defendant acted in bad faith when it charged a Route  
19 Package Protection Fee;
- 20           g. Whether Defendant violated California's Unfair Competition Law;
- 21           h. Whether Defendant violated California's False Advertising Law;
- 22           i. Whether Defendant violated California's Consumer Legal  
23 Remedies Act;
- 24           j. Whether Plaintiff and members of the Class were harmed by  
25 Defendant's misrepresentations;  
26  
27  
28



1 k. Whether Plaintiff and the Class have been damaged, and if so, the  
2 proper measure of damages; and

3 l. Whether an injunction is necessary to prevent Defendant from  
4 continuing to deceptively represent the amount for orders on  
5 islesurfandsup.com.

6 52. **Typicality:** Like Plaintiff, many other consumers ordered products for  
7 delivery from ISV's website, believing that the price reflected throughout the check-  
8 out process represented the total Plaintiff and other consumer's would pay for their  
9 order. Plaintiff's claims are typical of the claims of the Class because Plaintiff and each  
10 Class member was injured by Defendant's false representations about the true nature  
11 of ISV's products and delivery service. Plaintiff and the Class have suffered the same  
12 or similar injury as a result of Defendant's false, deceptive and misleading  
13 representations. Plaintiff's claims and the claims of members of the Class emanate from  
14 the same legal theory, Plaintiff's claims are typical of the claims of the Class, and,  
15 therefore, class treatment is appropriate.

16 53. **Adequacy of Representation:** Plaintiff is committed to pursuing this  
17 action and has retained counsel competent and experienced in prosecuting and  
18 resolving consumer class actions. Plaintiff will fairly and adequately represent the  
19 interests of the Class and does not have any interests adverse to those of the Class.

20 54. **The Proposed Class Satisfies Prerequisites for Injunctive Relief.**  
21 Defendant has acted or refused to act on grounds generally applicable to the Class,  
22 thereby making appropriate final injunctive and equitable relief with respect to the  
23 Class as a whole. Plaintiff remains interested in ordering products for delivery through

1 ISV's website; there is no way for her to know when or if Defendant will cease  
2 deceptively misrepresenting the cost of delivery.

3 55. Specifically, Defendant should be ordered to disclose the true costs of its  
4 products and delivery service.  
5

6 56. Defendant's ongoing and systematic practices make declaratory relief  
7 with respect to the Class appropriate.  
8

9 57. **The Proposed Class Satisfies the Prerequisites for Damages.** The  
10 common questions of law and fact enumerated above predominate over questions  
11 affecting only individual members of the Class, and a class action is the superior  
12 method for fair and efficient adjudication of the controversy. The likelihood that  
13 individual members of the Class will prosecute separate actions is remote due to the  
14 extensive time and considerable expense necessary to conduct such litigation,  
15 especially when compared to the relatively modest amount of monetary, injunctive,  
16 and equitable relief at issue for each individual Class member.  
17  
18

## 19 **CAUSES OF ACTION**

### 20 **FIRST CLAIM FOR RELIEF** 21 **Unjust Enrichment** 22 **(On Behalf of Plaintiff and the Class)**

23 58. Plaintiff repeats, realleges, and incorporates the allegations in Paragraphs  
24 1-57 as if fully set forth herein.

25 59. To the detriment of Plaintiff and the Class, Defendant has been, and  
26 continues to be, unjustly enriched as a result of its wrongful conduct alleged herein.  
27

28 60. Plaintiff and the Class conferred a benefit on Defendant when they paid

1 Defendant the “Route Package Protection” Fee, which they did not agree to and could  
2 not reasonably avoid.

3 61. Defendant unfairly, deceptively, unjustly, and/or unlawfully accepted said  
4 benefits, which under the circumstances, would be unjust to allow Defendant to retain.  
5

6 62. Defendant’s unjust enrichment is traceable to, and resulted directly and  
7 proximately from, the conduct alleged herein.  
8

9 63. Plaintiff and the Class, therefore, seek disgorgement of all wrongfully  
10 obtained fees received by Defendant as a result of its inequitable conduct as more fully  
11 stated herein.  
12

13 **SECOND CLAIM FOR RELIEF**  
14 **Violation of California’s Unfair Competition Law**  
15 **(Cal. Bus. & Prof. Code § 17200, et seq.)**  
16 **(On Behalf of Plaintiff and the Class)**

17 64. Plaintiff repeats, realleges, and incorporates the allegations in Paragraphs  
18 1-57 as if fully set forth herein.

19 65. Defendant’s conduct described herein violates the Unfair Competition  
20 Law (“UCL”), codified at California Business and Professions Code section 17200, *et*  
21 *seq.*

22 66. The UCL prohibits, and provides civil remedies for, unfair competition.  
23 Its purpose is to protect both consumers and competitors by promoting fair competition  
24 in commercial markets for goods and services. In service of that purpose, the  
25 Legislature framed the UCL’s substantive provisions in broad, sweeping language.  
26  
27

28 67. The UCL imposes strict liability. Plaintiff need not prove that Defendant

1 intentionally or negligently engaged in unlawful, unfair, or fraudulent business  
2 practices—but only that such practices occurred.

3         68. A business act or practice is “unfair” under the UCL if it offends an  
4 established public policy or is immoral, unethical, oppressive, unscrupulous, or  
5 substantially injurious to consumers, and that unfairness is determined by weighing the  
6 reasons, justifications, and motives of the practice against the gravity of the harm to  
7 the alleged victims.  
8

9  
10         69. A business act or practice is “fraudulent” under the UCL if it is likely to  
11 deceive members of the public.  
12

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

15         71. Defendant committed unfair and fraudulent business acts and practices in  
16 violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly  
17 misrepresenting that the presence and nature of its Route Package Protection fee.  
18

19         72. Defendant’s acts and practices offend an established public policy of  
20 truthful advertising and fee disclosure in the marketplace, and constitute immoral,  
21 unethical, oppressive, and unscrupulous activities that are substantially injurious to  
22 consumers.  
23

24  
25         73. The harm to Plaintiff and the Class outweighs the utility of Defendant’s  
26 practices. There were reasonably available alternatives to further Defendant’s  
27 legitimate business interests, other than the misleading and deceptive conduct  
28

1 described herein.

2 74. Defendant's conduct also constitutes an "unlawful" act under the UCL  
3 because it also constitutes a violation of sections 1770(a)(5) and (a)(9) of the California  
4 Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code section 1750, *et seq.*  
5

6 75. Defendant's business practices have misled Plaintiff and the proposed  
7 Class and, unless enjoined, will continue to mislead them in the future.  
8

9 76. Plaintiff relied on Defendant's misrepresentations in making her purchase.

10 77. By falsely marketing its products and delivery services, Defendant  
11 deceived Plaintiff and Class members into making purchases they otherwise would not  
12 make and paying more than they should have.  
13

14 78. As a direct and proximate result of Defendant's unfair, fraudulent, and  
15 unlawful practices, Plaintiff and Class members suffered and will continue to suffer  
16 actual damages. Defendant's fraudulent conduct is ongoing and presents a continuing  
17 threat to Plaintiff and Class members that they will be deceived. Plaintiff desires to  
18 conduct further business with Defendant but cannot rely on Defendant's  
19 representations unless an injunction is issued.  
20  
21

22 79. As a result of its unfair, fraudulent, and unlawful conduct, Defendant has  
23 been unjustly enriched and should be required to disgorge its unjust profits and make  
24 restitution to Plaintiff and Class members pursuant to Cal. Bus. & Prof. Code § 17203  
25 and 17204.  
26

27 80. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff  
28

1 and the members of the Class, on behalf of the general public, seek an order of this  
 2 Court enjoining Defendant from continuing to engage, use, or employ their unfair,  
 3 unlawful, and fraudulent practices.

4  
 5 81. Plaintiff has no adequate remedy at law in part because Defendant  
 6 continues to add its Route Protection Package fees to purchases. Plaintiff therefore  
 7 seeks an injunction on behalf of the general public to prevent Defendant from  
 8 continuing to engage in the deceptive and misleading practices described herein.  
 9

10  
 11  
 12 **THIRD CLAIM FOR RELIEF**  
 13 **False and Misleading Advertising**  
 14 **(Bus. & Prof. Code §§ 17500, et seq.)**  
 15 **(On Behalf of Plaintiff and the Class)**

16  
 17 82. Plaintiff repeats, realleges, and incorporates the allegations in Paragraphs  
 18 1-57 as if fully set forth herein.

19  
 20 83. California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code  
 21 section 17500, states that "[i]t is unlawful for any . . . corporation . . . with intent . . . to  
 22 dispose of . . . personal property . . . to induce the public to enter into any obligation  
 23 relating thereto, to make or disseminate or cause to be made or disseminated . . . from  
 24 this state before the public in any state, in any newspaper or other publication, or any  
 25 advertising device, or by public outcry or proclamation, or in any other manner or  
 26 means whatever, including over the Internet, any statement . . . which is untrue or  
 27 misleading and which is known, or which by the exercise of reasonable care should be  
 28 known, to be untrue or misleading . . . ."

84. Further, the FAL provides that: "Any advertisement, including any

1 advertisement over the Internet, soliciting the purchase or lease of a product or service,  
2 or any combination thereof, that requires, as a condition of sale, the purchase or lease  
3 of a different product or service, or any combination thereof, ***shall conspicuously***  
4 ***disclose in the advertisement the price of all those products or services.***” Cal. Bus. &  
5 Prof. Code §17509(a).  
6

7       85. Defendant materially misrepresents the true costs of its products and  
8 services by 1) surreptitiously adding the Route Package Protection to consumers carts  
9 without their consent; and 2) failing to disclose in its advertisements the true price of  
10 all products and services charged.  
11  
12

13       86. Defendant knowingly misrepresents the costs of its products in its online  
14 advertisements  
15

16       87. Defendant’s material misrepresentations and omissions alleged herein  
17 violate Business and Professions Code section 17500.  
18

19       88. Defendant knew or should have known that its misrepresentations and  
20 omissions were false, deceptive, and misleading.  
21

22       89. Pursuant to Business and Professions Code sections 17203 and 17500,  
23 Plaintiff and the members of the Class, on behalf of the general public, seek an order  
24 of this Court enjoining Defendant from continuing to engage, use, or employ their  
25 deceptive practices.  
26

27       90. Further, Plaintiff requests an order awarding Plaintiff and Class members  
28 restitution of the money wrongfully acquired by Defendant by means of said

1 misrepresentations.

2 91. Additionally, Plaintiff and the Class members seek an order requiring  
3 Defendant to pay attorneys' fees pursuant to California Civil Code section 1021.5.  
4

5 **FOURTH CLAIM FOR RELIEF**  
6 **Violation of California's Consumer Legal Remedies Act ("CLRA")**  
7 **Cal. Civ. Code § 1750, *et seq.***  
8 **(On Behalf of Plaintiff and the Class)**

9 92. Plaintiff repeats, realleges, and incorporates the allegations in Paragraphs  
10 1-57 as if fully set forth herein.

11 93. This cause of action is brought pursuant to the Consumers Legal Remedies  
12 Act (CLRA), California Civil Code § 1750, *et seq.* Plaintiff and each member of the  
13 proposed Class are "consumers" as defined by California Civil Code § 1761(d).  
14 Defendant's products and delivery services offered to consumers in exchange for  
15 payment are "transactions" within the meaning of California Civil Code § 1761(e). The  
16 products purchased by Plaintiff and the Class are "goods" within the meaning of  
17 California Civil Code § 1761(a).  
18

19 94. Defendant violated and continues to violate the CLRA by engaging in the  
20 following practices proscribed by California Civil Code § 1770(a) in transactions with  
21 Plaintiff and the Class which were intended to result in, and did result in, the sale of  
22 ISV products:  
23

- 24
- 25 a. "Representing that goods or services have . . . characteristics . . .
  - 26 that they do not have";
  - 27 b. "Using deceptive representations . . . in connection with . . .
  - 28 services";



- c. “Advertising goods or services with intent not to sell them as advertised”; and
- d. “Advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges.

95. Specifically, ISV affirmatively and knowingly misrepresented the price of any given product on its website. ISV failed to inform consumers in any disclosure, at any time, that the so-called “Route Package Protection” Fee would be automatically tacked on to their purchase total at the last possible opportunity.

96. At no time does Defendant disclose the true nature of its Route Package Protection Fee; instead, it repeatedly conceals and misrepresents this material information at several steps of the transaction process.

97. Defendant’s conduct and actions are deceptive, untrue, and misleading to reasonable consumers and will continue to mislead consumers in the future.

98. Plaintiff relied on Defendant’s representations in making her purchase.

99. As a result of Defendant’s deceptive practices, Plaintiff overpaid for her purchase.

100. As a direct and proximate result of Defendant’s misconduct, Plaintiff and the Class members have suffered and will continue to suffer damages.

101. Pursuant to § 1782(a) of the CLRA, Plaintiff’s counsel notified Defendant in writing by certified mail of the particular violations of §1770 of the CLRA and demanded that it rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant’s intent to act. If Defendant fails to

1 respond to Plaintiff's letter or agree to rectify the problems associated with the actions  
2 detailed above and give notice to all affected consumers within 30 days of the date of  
3 written notice, as proscribed by §1782, Plaintiff will move to amend her Complaint to  
4 pursue claims for actual, punitive and statutory damages, as appropriate against  
5 Defendant. As to this cause of action, at this time, Plaintiff seeks only injunctive relief.  
6

7 102. Plaintiff also seeks public injunctive relief, as described above.  
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff and the members of the Class seek an Order:

- 11 1. Certifying the proposed Class;  
12 2. Declaring that Defendant is financially responsible for notifying the Class  
13 members of the pendency of this suit;  
14 3. Declaring the Defendant has committed the violations of law alleged  
15 herein;  
16 4. Providing for any and all injunctive relief the Court deems appropriate;  
17 5. Awarding statutory damages in the maximum amount for which the law  
18 provides;  
19 6. Awarding monetary damages, including but not limited to any  
20 compensatory, incidental, or consequential damages in an amount that the Court or jury  
21 will determine, in accordance with applicable law;  
22 7. Providing for any and all equitable monetary relief the Court deems  
23 appropriate;  
24 8. Awarding punitive or exemplary damages in accordance with proof and  
25 in an amount consistent with applicable precedent;  
26 9. Awarding Plaintiff their reasonable costs and expenses of suit, including  
27 attorneys' fees;  
28

11. Providing such further relief as this Court may deem just and proper.

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this complaint that are so triable as a matter of right.

By: /s/ Scott Edelsberg  
 Scott Edelsberg (SBN 330990)  
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