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8

9 **UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
11

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

14 Plaintiff,

15 v.

16 FANATICS, LLC,

17 Defendant.
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CASE NO. _____

**NOTICE OF REMOVAL OF CIVIL
ACTION PURSUANT TO 28 U.S.C.
SECTIONS 1332(d) AND 1453**

Filed (state court): May 6, 2022

Removed: August 25, 2022

CASE NO.

NOTICE OF REMOVAL OF CIVIL ACTION

1 **PLEASE TAKE NOTICE** that Defendant Fanatics, LLC (“Fanatics” or
2 “Defendant”) hereby removes the above-captioned action from the Superior Court of the
3 State of California for the County of Fresno (Case No. 22CEG01395, the “State Court
4 Action”) to the United States District Court for the Eastern District of California. This
5 removal is made pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(d) and 1453.

6 Fanatics denies the allegations and request for relief sought in the Complaint and
7 First Amended Complaint, and it files this Notice without waiving any defenses. Defendant
8 does not concede, and specifically reserves, its right to contest the suitability of this lawsuit
9 for certification as a class action.

10 A removing defendant is required to provide only a “short and plain statement” of
11 the bases for removal and need not present or plead evidentiary detail. *Dart Cherokee Basin*
12 *Operating Co., LLC v. Owens*, 574 U.S. 81 (2014).¹ If a challenge is raised to the Court’s
13 jurisdiction, Defendant will provide evidence to support the allegations in this pleading.

14 **I. RELEVANT PROCEDURAL HISTORY**

15 1. Plaintiff Jake Cavanaugh filed the putative Class Action Complaint (the
16 “Complaint”) in the Superior Court of California for the County of Fresno on May 6, 2022.
17 In the Complaint, Plaintiff asserts claims “on behalf of himself and all others similarly
18 situated” (Ex. C, Complaint at 2:1-3.)²

19 2. The Complaint named just one defendant, Fanatics Holdings, Inc., which was
20 later dismissed with prejudice and replaced by Defendant Fanatics, LLC when Plaintiff
21 filed the First Amended Complaint on June 8, 2022. A true and correct copy of the
22

23 ¹ See also *Janis v. Health Net, Inc.*, 472 F. App’x 533, 534 (9th Cir. 2012) (“Nothing in
24 28 U.S.C. § 1446 requires a removing defendant to attach evidence of the federal court’s
25 jurisdiction to its notice of removal. Section 1446(a) requires merely a ‘short and plain
26 statement of the grounds for removal.’ Moreover, we have observed that ‘it is clearly
27 appropriate for the district courts, in their discretion, to accept certain post-removal
28 [evidence] as determinative of the [jurisdictional requirements].”).

² As explained below, Exhibit C contains all process, pleadings, and orders in the State
Court Action that are *not* included in Exhibits A or B.

1 Summons and First Amended Complaint (collectively, the “FAC”) is attached as **Exhibit**
2 **A.**

3 3. Plaintiff sent Defendant’s counsel a Notice of Acknowledgment Form for the
4 Summons and FAC on July 6, 2022. Defendant’s counsel signed and returned the form on
5 July 26, 2022. A true and correct copy of the signed Notice of Acknowledgment Form is
6 attached as **Exhibit B.**

7 4. True and correct copies of all process, pleadings, and orders in the State Court
8 Action that are not included in Exhibits A or B are attached as **Exhibit C.**

9 5. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(1) because it is
10 filed within 30 days of Defendant’s signature and return of the Notice of Acknowledgment,
11 which is the date on which the Summons and FAC are deemed served. *See* Cal. Civ. Proc.
12 Code § 415.30(c) (service deemed complete when written acknowledgment of receipt of
13 summons is executed and returned by the defendant to the sender).

14 **II. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

15 6. Fanatics sells licensed sportswear, collectibles, and merchandise through its
16 website <https://www.fanatics.com/>. The FAC alleges that Fanatics misled consumers by
17 advertising “free shipping” or “flat, low-cost shipping” while at the same time charging a
18 “Handling Fee” that Plaintiff characterizes as a “hidden shipping fee.” (*See, e.g.,* Ex. A
19 (FAC) ¶¶ 1-9.)

20 7. Based on these allegations, Plaintiff asserts three claims under (i) California’s
21 Unfair Competition Law (“UCL”) and (ii) Consumers Legal Remedies Act (“CLRA”), as
22 well as (iii) a claim for breach of contract. (Ex. A (FAC).)

23 **III. VENUE**

24 8. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the United
25 States District Court for the district and division embracing the location where the State
26 Court Action was pending at the time of removal.

1 **IV. JURISDICTION**

2 9. The Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d) and 1453,
3 grants this Court jurisdiction over this action because: (i) this case meets CAFA’s
4 definition of a “class action”; (ii) the putative class consists of more than 100 members;
5 (iii) there is minimal diversity of citizenship; (iv) the amount in controversy, after
6 aggregating the sum or value of each proposed class member’s potential claim, exceeds \$5
7 million (exclusive of interest and costs); and (v) Defendant is not a state, state official or
8 other governmental entity. *See* 28 U.S.C. § 1332(d).

9 **A. This Action Fits CAFA’s Definition of a “Class Action.”**

10 10. CAFA defines a “class action” as “any civil action filed under rule 23 of the
11 Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure
12 authorizing an action to be brought by 1 or more representative persons as a class action .
13 . . .” 28 U.S.C. § 1332(d)(1)(B).

14 11. Plaintiff’s operative pleading is called the “First Amended *Class Action*
15 *Complaint.*” (Ex. A (FAC) at 1 (emphasis added).) The FAC explains that “this [case] is a
16 proposed class action” (*Id.* ¶ 1.) The FAC also includes a section on “Class
17 Allegations.” (*Id.* ¶¶ 42–51.) And Plaintiff seeks to certify a putative class meeting the
18 following proposed definition: “All consumers in California who, within the applicable
19 statute of limitations preceding the filing of this action to the date of class certification,
20 ordered merchandise through Fanatics.com, and were assessed a so-called ‘Handling
21 Fee.’” (*Id.* ¶ 42.) Thus, Plaintiff’s allegations in the FAC meet CAFA’s definition of a
22 “class action.”

23 **B. The Putative Class Consists of More than 100 Members.**

24 12. CAFA requires more than 100 putative class members for removal. 28 U.S.C.
25 § 1332(d).

26 13. The FAC alleges that “hundreds of thousands of Fanatics customers like
27 Plaintiff have been assessed hidden shipping charges they did not bargain for.” (Ex. A
28 (FAC) ¶ 7.) And in addressing the “numerosity” requirement, the FAC alleges that “due to

1 the nature of the trade and commerce involved, Plaintiff believes that the Class members
2 are well into the thousands, and thus are so numerous that joinder of all members is
3 impractical.” (*Id.* ¶ 44.)

4 14. Fanatics has confirmed that the number of consumers in California who
5 ordered merchandise through <https://www.fanatics.com/> and were assessed a “Handling
6 Fee” during the applicable limitations period exceeds 100. Thus, the aggregate number of
7 class members is greater than 100 persons for purposes of 28 U.S.C. § 1332(d)(5)(B).³

8 **C. This Action Meets CAFA’s Diversity Requirements.**

9 15. Diversity under CAFA exists if the citizenship of “any member of a class of
10 plaintiffs is a citizen of a state different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

11 16. Plaintiff alleges that he is a citizen of the State of California. (Ex. A (FAC)
12 ¶ 11.)

13 17. Fanatics, LLC is a limited liability company that is organized under Delaware
14 law and maintains its principal place of business in Florida. Thus, under CAFA, Defendant
15 is a citizen of Delaware and Florida. *See* 28 U.S.C. §1332(d)(10).⁴

16 18. CAFA’s minimal diversity requirement is satisfied because Plaintiff is a
17 citizen of California, on the one hand, and Fanatics is a citizen of Delaware and Florida,
18 on the other. *See* 28 U.S.C. § 1332(d)(2)(A).

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20
21 ³ Although Fanatics concedes that the putative class meets the threshold for CAFA
22 jurisdiction, Fanatics rejects any suggestion that this lawsuit will ultimately be appropriate
for class treatment.

23 ⁴ *See also Ramirez v. Carefusion Res., LLC*, No. 18-CV-2852-BEN-MSB, 2019 WL
24 2897902, at *2 (S.D. Cal. July 5, 2019) (finding “that for purposes of CAFA, [a limited
25 liability company] is a citizen of the State where it has its principal place of business and
the State under whose laws it is organized” and denying motion for remand); *Hernandez*
26 *v. State Farm Fire & Cas. Co.*, No. 16CV200-LAB (JLB), 2017 WL 932198, at *2 n.1
27 (S.D. Cal. Mar. 9, 2017) (finding that “[u]nder CAFA, . . . an LLC is deemed to be a
28 citizen both of the state where it has its principal place of business as well as the state
under whose laws it is organized”); *Parker v. Dean Transportation, Inc.*, No. CV 13-
2621-BRO(VBKX), 2013 WL 12091841, at *9 (C.D. Cal. June 26, 2013) (same).

1 **D. The Amount in Controversy Exceeds the CAFA Threshold of \$5 Million.**

2 19. Federal courts have original jurisdiction under CAFA for “any civil action in
3 which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
4 interest and costs.” 28 U.S.C. § 1332(d)(2). In determining whether that threshold is met,
5 the claims of the individual class members are aggregated. *See* 28 U.S.C. § 1332(d)(6).
6 “The amount in controversy is not proof of the amount the plaintiff will recover. Rather, it
7 is an estimate of the amount that will be put at issue in the course of the litigation.” *Lewis*
8 *v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (quotation marks omitted).

9 20. To satisfy this requirement, “a defendant’s notice of removal need include
10 only a plausible allegation that the amount in controversy exceeds the jurisdictional
11 threshold; the notice need not contain evidentiary submissions.” *Dart Cherokee Basin*
12 *Operating Co., LLC v. Owens*, 574 U.S. 81 (2014); *see also Ibarra v. Manheim Invs., Inc.*,
13 775 F.3d 1193, 1197 (9th Cir. 2015) (same).

14 21. Plaintiff does not quantify the monetary relief sought, and Fanatics denies that
15 Plaintiff and the putative class are entitled to any damages or other monetary relief.
16 Nonetheless, taking Plaintiff’s allegations as true for purposes of removal *only*, his claims
17 satisfy CAFA’s threshold.

18 22. Again, Plaintiff seeks to certify a putative class consisting of: “All consumers
19 in California who, within the applicable statute of limitations preceding the filing of this
20 action to the date of class certification, ordered merchandise through Fanatics.com, and
21 were assessed a so-called ‘Handling Fee.’” (Ex. A (FAC) ¶ 42.) The FAC seeks monetary
22 damages, compensatory damages, punitive damages, disgorgement, restitution, declaratory
23 relief, injunctive relief, attorneys’ fees, and costs on behalf of the putative class. (Ex. A
24 (FAC) ¶¶ 1, 10, 45(f), 51, 68, 80 and pp. 12–13 (Prayer for Relief).) Plaintiff’s request for
25 monetary relief and attorneys’ fees places more than \$7,500,000 in controversy, well above
26 CAFA’s minimum.

27 23. **Base Damages/Restitution:** Plaintiff alleges that all putative class members
28 sustained injury arising from Fanatics’ “promises to provide ‘free’ or flat, low-cost

1 shipping on orders of sports merchandise ordered through its website.” (Ex. A (FAC) ¶ 1.)
2 Plaintiff further alleges that Fanatics’ “marketing representations are false because
3 Fanatics surreptitiously adds a so-called ‘Handling Fee’ of \$1.99 to all orders, which it
4 falsely and deceptively claims . . . is for ‘warehouse and packing’ costs.” (*Id.* ¶ 2.)
5 According to Plaintiff, “the deceptive addition of the \$1.99 ‘Handling Fee’ renders
6 Fanatics’ promise of FREE or a flat, low cost shipping false.” (*Id.* ¶ 4; *see also id.* ¶¶ 24,
7 32, 38, 73.) Under that alleged theory, Plaintiff claims that “the *actual* ‘shipping’ cost—
8 the extra charge to have the sports merchandize delivered to a home—is the listed
9 ‘Shipping’ cost *plus* the ‘Handling Fee’ that Fanatics deceptively adds late in the ordering
10 process.” (FAC ¶ 34 (emphasis in original).) Thus, Plaintiff seeks to recover, at minimum,
11 the alleged “Handling Fees” charged by Fanatics to the putative class. (*See, e.g.*, FAC ¶¶
12 1, 2, 4, 24, 32, 34, 38, 69, 73, 78, 80.)

13 24. **Punitive Damages:** “A defendant satisfies the amount-in-controversy
14 requirement under CAFA if it is reasonably possible that it may be liable for the proffered
15 punitive damages amount.” *Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir.
16 2020). One way the removing party can meet that burden is to cite other cases where
17 punitive damages are awarded at or above the ratio supporting the removal’s estimates. *Id.*
18 (citing *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1201 (9th Cir. 2015)).

19 25. In *Greene*, plaintiff asserted a CLRA claim, and defendant removed the case
20 to federal court under CAFA. The district court granted plaintiff’s motion to remand, but
21 the Ninth Circuit reversed, finding that defendant satisfied CAFA’s amount-in-controversy
22 requirement “by citing four cases where juries had awarded punitive damages at ratios
23 higher than 1:1 for claims based on the CLRA.” *Id.* Those same cases support removal
24 here. *See Gutierrez vs. Autowest Inc.*, 37 Trials Digest 12th 6 (2009) (S.F. Sup. Ct. July 5,
25 2009) (awarding 2:1 ratio between punitive and economic damages under CLRA);
26 *Gutierrez v. PCH Roulette, Inc.*, 23 TRIALS DIGEST 5th 2, 2001 WL 1897961 (S. Cruz
27 Sup. Ct. July 18, 2001) (awarding 11:1 ratio between punitive damages and general
28 damages); *Angel v. YFB Hemet, Inc.*, No. G030528, 2004 WL 1058180 (Cal. Ct. App. Apr.

1 30, 2004) (awarding 10:1 ratio between punitive damages and restitution award); *Int'l*
2 *Paper Co. v. Affiliate FM Ins. Co.*, 2001 Jury Verdicts LEXIS 49427 (Nov. 2, 2001)
3 (awarding 3:1 ratio between punitive damages and general damages).⁵

4 26. **Attorneys' Fees:** Under CAFA, the amount in controversy includes all
5 reasonable attorneys' fees that might permitted, not just through the date of removal, but
6 through resolution of the action. *See Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d
7 785, 795 (9th Cir. 2018). The FAC seeks attorneys' fees. (Ex. A (FAC) at 12 (Prayer for
8 Relief).)

9 27. Based on experience, the scope of the action, and the issues raised by the FAC,
10 Defendant reasonably estimates that Plaintiff's counsel will seek to recover at least 25%
11 of any monetary award as attorneys' fees. This belief is supported by prior requests by
12 these same Plaintiffs' attorneys for 25% (or more) in fees in other consumer class actions
13 filed in California. Some examples are included as **Exhibit E**.

14 28. Further, although not applied as a *per se* rule, a 25% benchmark is typically
15 applied by courts in this Circuit to assess the amount in controversy in class actions. *See*,
16 *e.g., Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 774 n.4 (9th Cir. 2020) (holding that
17 removal was proper where defendant calculated "25 percent of the compensatory damages
18 and punitive damages . . . to meet the \$5+ million amount-in-controversy requirement" and
19 district court "assumed it to be acceptable"); *see also In re Google Inc. St. View Elec.*
20 *Commc'ns Litig.*, 21 F.4th 1102, 1120 (9th Cir. 2021) (discussing "25% benchmark for
21 attorneys' fees" for consumer class actions).

22 29. **The Amount in Controversy Exceeds \$5 Million:** Of the three claims, the
23 CLRA has the shortest limitations period of three years. Cal. Civ. Code § 1783.⁶ Since
24 May 6, 2019 (*i.e.*, three years before filing), California customers who ordered
25

26 ⁵ Copies of these documents are attached as **Exhibit D** for the Court's convenience.

27 ⁶ The contract and UCL claims are subject to four-year statutes of limitation. Cal. Civil
28 Proc. Code § 337(a) (4 years for breach of written contract); Cal. Bus. Prof. Code
§ 17208 (4 years for UCL).

1 merchandise through Fanatics.com paid several million in “Handling Fees” during this
2 period, which Plaintiff has put at issue. Plaintiff also seeks punitive damages.⁷ Applying a
3 1:1 compensatories-to-punitive-damages ratio, plus the 25% benchmark for attorneys’
4 fees, the amount in controversy is more than \$7,500,000. If challenged or requested by the
5 Court, Fanatics will submit the evidentiary detail supporting this calculation.

6 **E. Defendant Is Not a State, State Official, or Other Governmental Entity**

7 30. Defendant is not a state, state official, or other governmental entity.

8 **V. NOTICE TO PLAINTIFF AND SERVICE ON THE STATE COURT**

9 31. As required by 28 U.S.C. § 1446(d), Fanatics will serve written notice of this
10 Notice of Removal on Plaintiff, and Fanatics will file a copy of this Notice of Removal
11 with the clerk of the Superior Court of California for the County of Fresno, California.

12 **VI. CONCLUSION**

13 As shown above and in the supporting Exhibits, this lawsuit meets CAFA’s
14 requirements. WHEREFORE, this action, which was previously pending in the Superior
15 Court of California for the County of Fresno, California, is hereby removed to this Court.

16
17 DATED: August 25, 2022

GREENBERG TRAURIG, LLP

18
19 By/s/ Robert J. Herrington
20 Robert J. Herrington
21 Adil M. Khan
22 Attorneys for Defendant,
23 FANATICS, LLC
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28 ⁷ See Ex. A (FAC) ¶ 74; see also Cal. Civ. Code § 1780(a)(4) (authorizing punitive damages under CLRA).

EXHIBIT A

SUM-100

SUMMONS *on First Amended Complaint*
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
FANATICS, LLC

E-FILED
6/20/2022
Superior Court of California
County of Fresno
By: I. Herrera, Deputy

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
JAKE CAVANAUGH, on behalf of himself and all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Fresno County Superior Court
B.F. Sisk Courthouse, 1130 "O" Street, Fresno, CA 93721-2220

CASE NUMBER: (Número del
Caso): 22CECG01395

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jeffrey D. Kaliei, Sophia G. Gold, KalieiGold PLLC, 950 Gilman St., Ste. 200, Berkeley, CA 94710 (202) 350-4783

DATE: 6/20/2022
(Fecha)

Clerk, by /s/ I. Herrera, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): Limited Liability Company
4. by personal delivery on (date):

1 Jeffrey D. Kaliel (SBN 238293)
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4 1100 15th Street NW, 4th Floor
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10 950 Gilman Street, Suite 200
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12 Tel: (202) 350-4783

13 **EDELSBERG LAW, P.A.**
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18 Tel: 305-975-3320

19 *Attorneys for Plaintiff and the Proposed Class*

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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 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.”

1
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 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

5 

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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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Free Shipping? Fanatics Hit with Class Action Over Allegedly Hidden 'Handling Fee' for Online Orders](#)
