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10 Richard Dalton

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA — WESTERN DIVISION**

13
14 Richard Dalton, individually and on
15 behalf of others similarly situated,

16 Plaintiff,

17 v.

18 Anovos Productions, LLC; Disney
19 Lucasfilm Ltd.; NBCUniversal Media,
20 LLC; and CBS Studios, Inc.,

21 Defendants.

Case No: 2:19-cv-04821

Class Action

**Complaint for Damages and
Injunctive Relief for:**

- 22 **1. Fraud;**
- 23 **2. Breach of Contract;**
- 24 **3. California Bus. & Prof. § 17200, et**
25 **seq.;**
- 26 **4. Unjust Enrichment**
- 27 **5. California Civ. Code § 1750, et**
28 **seq.;**
- 6. Negligent Misrepresentation; and**
- 7. Intentional Misrepresentation.**

JURY TRIAL DEMANDED



INTRODUCTION

1. Richard Dalton (“Plaintiff”), through his attorneys, brings this class action complaint for damages, and injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Anovos Productions, LLC (“Anovos”); Disney Lucasfilm Ltd. (“Disney”); NBCUniversal Media, LLC (“NBCU”); and CBS Studios, Inc. (“CBS”) (collectively “Defendants”), in connection with the marketing and sale of licensed products.
2. More specifically, Plaintiff brings this complaint, by and through his attorneys, for damages arising out of Defendants’ practice of charging consumers upfront costs for licensed products and shipping, despite the fact these products were never delivered and monies never refunded.
3. Plaintiff alleges as follows upon personal knowledge as to his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff’s attorneys.
4. Defendants collectively engaged in fraudulent practices in connection with their licensing and or marketing of products to consumers. At all times material to this complaint, Defendants Disney, NBCU, and CBS (collectively “Licensors”) controlled the acts and practices of Anovos, including the acts and practices alleged in this complaint.
5. Specifically, Licensors licensed the right to sell their products with their logos and despite having knowledge of Anovos’ fraudulent scheme to abscond with consumers’ money, Licensors continued to reap profits from their licensing agreements.
6. Employing this strategy Defendants profited for years at the expense of Plaintiff and consumers alike.
7. Unless otherwise indicated, the use of Defendants’ name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors,



1 assigns, principals, trustees, sureties, subrogees, representatives, and insurers
2 of Defendant.

3 **JURISDICTION AND VENUE**

4 8. Jurisdiction is proper under the Class Action Fairness Act of 2005 (“CAFA”),
5 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of the State of Louisiana,
6 seeks relief on behalf of a nationwide class, which will result in at least one
7 class member belonging to a different state than that of Defendants, Delaware
8 and California companies.

9 9. Plaintiff also seeks refund of all monies paid and disgorgement of ill-gotten
10 monies in connection with the marketing and sale of Defendants’ products,
11 which in Plaintiff’s case alone exceeds \$40,000. When aggregated among a
12 proposed class number in the tens of thousands, damages exceed the
13 \$5,000,000 threshold for federal court jurisdiction.

14 10. Therefore, both diversity jurisdiction and the damages threshold under CAFA
15 are present, and this Court has jurisdiction.

16 11. Because NBCU and Disney are headquartered in California, and CBS and
17 Anovos conduct business within the State of California, personal jurisdiction
18 is established.

19 12. Venue is proper pursuant to 28 U.S.C. § 1391 because Defendants are subject
20 to the Court’s personal jurisdiction with respect to this action.

21 **PARTIES & DEFINITIONS**

22 13. Plaintiff is a natural person who resides in the State of Louisiana who
23 purchased multiple products from Defendant and has yet to receive them nor
24 a refund.

25 14. Defendant NBCU is a Delaware Corporation with its headquarters located in
26 Universal City, California.

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1 15. Defendant CBS is a Delaware Corporation, registered to conduct business in
2 California. Defendant CBS regularly and continuously conducts business in
3 Los Angeles, California.

4 16. Defendant Disney is a California limited liability company, located in San
5 Francisco, California.

6 17. Defendant Anovos is a Delaware Corporation headquartered in McAllen,
7 Texas, systematically and continuously conducting its business nationwide,
8 including Los Angeles, California.

9 18. Upon information and belief, Defendant Anovos is an agent and authorized
10 representative of Defendants, Licensors. Anovos is engaged in the promotion
11 and sale of various products containing the Licensors' trademarks in the
12 United States, including in this District, through its business, social media
13 websites, and its own website at anovos.com.

14 19. Upon information and belief, Defendant Anovos was founded in 2009 and has
15 been licensed by Licensors to provide movie and television accurate replicas
16 of costumes for Internet Protocol networks such as Star Wars, Star Trek, and
17 Battlestar Galactica. Anovos' Star Trek uniform replica license from CBS
18 covers the design, prototyping, manufacturing and distribution of Star Trek
19 the movie and television line. Anovos' Battlestar Galactica line, awarded by
20 NBCU covers uniform replicas as well as prop replicas and accessories. And
21 Anovos acquired the license for Star Wars costumes and props from Disney.

22 20. Upon information and belief, Anovos is the exclusive licensee for costumes
23 and props for Licensors.

24 **FACTUAL ALLEGATIONS**

25 21. Anovos has charged Plaintiff nearly \$40,000 for Anovos Products licensed by
26 Licensors. Anovos has required Plaintiff and consumers alike to pay upfront
27 this total cost, which includes prices for shipping.
28



1 22. In the instances described below, consumers who purchased Anovos products,
2 after experiencing significant delays, have never received the products they
3 already paid for nor have they received a refund for their payments.

4 **Anovos Products**

5 23. Defendant Anovos operates anovos.com, which sells accurate uniforms and
6 prop replicas from movies, television, and contemporary media, all of which
7 are manufactured and marketed by Anovos.

8 24. Many Anovos customers go through great lengths to acquire Anovos'
9 products for Cosplay.

10 25. Cosplay is short for the term costume play. Cosplay refers to someone
11 dressing up as a superhero or a character from a video game, comic book, or
12 movie. Cosplay's popularity surged in the '90s, when Japanese anime and
13 manga gained popularity in the US. Cosplay's popularity has surged to the
14 point where there is even a television show about it—Heroes of Cosplay.

15 26. Cosplay is the next level of fandom.

16 27. Cosplay is about expressing what individuals love as well as being about
17 community. While anyone can cosplay, cosplayers often attend and display
18 their costumes at world renowned conventions such as the San Diego Comic-
19 Con.

20 28. Indeed, cosplay is often seen as a type of performance art.

21 29. Still, a majority of Anovos customers are not involved in Cosplay

22 30. Instead, Anovos customers are made up of a variety of individuals.

23 31. Be it the love of a character, interests in collecting, enjoying the attention of
24 being in an elaborate costume or portraying a loved character, or the
25 appreciation from completing a complex costume or model, there are many
26 motivations for purchasing Anovos products.

27 32. Accordingly, obtaining the the high-end costumes and replicas in a timely
28 manner is paramount for consumers.

1 33. Anovos’ website currently, and at all times relevant, marketed Star Wars, Star
2 Trek, and Battlestar Galactica memorabilia for pre-sale orders. Its website
3 describes products for sale, their prices, estimated delivery dates, and terms
4 and conditions of sale. It touts the process for creating its replicas including
5 gaining access to the original films and the uniqueness of the unaltered
6 versions Anovos can provide.

7 34. For all pre-orders, Defendants have required consumers pay upfront the entire
8 amount of an order stating, “Payment for the order is remitted at the time the
9 order is placed, in addition to shipping and handling. . . .”

10 **Plaintiff Richard Dalton**

11 35. On or around March 22, 2016, Plaintiff made the first of many purchases on
12 Anovos’ website for a Star Trek Spock Replica Blue Tunic, Star Wars TIE
13 Fighter Pilot Helmet, Star Trek Captain Kirk Replica Gold Tunic, and a Star
14 Trek Starfleet Uniform Shirt for a total of \$856.80 plus \$54.27 shipping.

15 36. Upon submission of Plaintiff’s order, Plaintiff paid and Anovos received the
16 entire payment amount of \$911.07.

17 37. To date, over three years later, Plaintiff has not received these items nor a
18 refund for the \$911.07 paid to Anovos.

19 38. Unsuspecting of Anovos’ business practices, on or around April 16, 2016,
20 Plaintiff made a second purchase inclusive of a Star Wars Imperil Shadow
21 Trooper (Pre-order) kit with Completed Helmet and a Star Wars: The Force
22 Awakens: Kylo Ren Costume Ensemble with Helmet (Pre-order) for a total of
23 \$3,420.00 plus \$51.69 shipping.

24 39. Upon submission of Plaintiff’s order, Plaintiff paid and Anovos received the
25 entire payment amount of \$3,471.69.

26 40. Similarly, to date, Plaintiff has not received these items nor a refund for the
27 \$3,471.69 paid to Anovos.
28





1 41. Up to December 11, 2018, Plaintiff continuously made pre-order purchases on
2 Anovos’ website. Products ranged from \$10.00 pennants to a \$9,000 Star Trek
3 Discovery NCC - 1701 U.S.S. Enterprise Constitution Starship (a buildable
4 replica of the ship inspired by the iconic Federation Starship from the original
5 Star Trek series.)

6 42. With each purchase, Plaintiff was required to pay upfront 100% of the cost of
7 the product.

8 43. With nearly each purchase, Plaintiff was required to upfront the cost of
9 shipping.

10 44. As the estimated shipping dates for each product approached, Anovos would
11 delay the shipping due date for a myriad of reasons including issues with the
12 manufacturer.

13 45. Plaintiff, however, remained optimistic that these delays were temporary and
14 he would soon receive his prepaid products.

15 46. Ultimately, on April 11, 2019 —over three years after Plaintiff’s first Anovos
16 purchase—Anovos announced, on its website, the cause of the shipping
17 delays Plaintiff and consumers alike were experiencing:

18 [W]hen a product had production issues and became delayed, we
19 would push out the delivery date. This change cause some customers
20 to cancel their orders, and in some ways, resulted in a buying habit of
21 waiting until an item was in-stock prior to making a purchase.
22 However, this “wait and see” behavior frequently backfired o the
23 customer since the majority of our items are produced to meet a
24 minimum order quantity, leaving little—if any—inventory available
25 after pre-orders were fulfilled. As an unintended consequence,
26 cancelations of pre-orders caused a gradual shrinkage of overall
27 production budget. Fewer pre-orders let to a number of issues
28 including an increase in raw goods pricing, increase in per unit cost, a
deprioritizaiton of product and—in some extreme cases—the
cancellation of items that no longer met the factory’s minimums.¹

47. Between March 22, 2016 and December 11, 2018, Anovos accepted
Plaintiff’s payments.

¹ <https://www.anovos.com/blogs/news/the-refund-issue> (internal parenthetical omitted).

1 48. However, Anovos has still not delivered its pre-ordered and pre-paid products
2 to Plaintiff.

3 **Defendants Practices**

4 49. Despite Anovos' inability to fulfill the hundreds, if not thousands of pre-paid
5 orders customers have already submitted, Anovos continues to market and sell
6 pre-order items on its website and on social media in the same manner:
7 requiring full upfront costs of the items in addition to shipping.

8 50. In numerous instances, consumers reached out directly to CBS, NBCU, and
9 Disney regarding their concerns about Anovos.

10 51. Indeed, as early as 2016, Anovos' conduct has been heavily scrutinized.

11 52. Due to the high volume of consumer complaints concerning Anovos' failure
12 to deliver purchased items, on January 27, 2016, the Better Business Bureau
13 (BBB) sent a certified letter to Anovos. Specifically the letter addressed
14 complaints similar to Plaintiff's, denouncing the fact that consumers were not
15 receiving their orders.

16 53. After receiving no response from Anovos, BBB sent a follow up certified
17 letter to Anovos in March of 2016. However, Anovos has failed to respond, nor
18 improve its practices.

19 54. Instead, Anovos has recently announced on April 11, 2019 its new "all sales
20 are final" policy, whereby refunds for pre-ordered (non-delivered) products
21 placed in the future can no longer be issued.

22 55. Despite this "new" announcement, regardless of Anovos' purported policy in
23 place, Anovos has often failed to provide refunds to consumers, even though
24 they have not provided consumers with promised products or consumers have
25 not received products for years.

26 56. In numerous instances, consumers have tried to contact Defendants to cancel
27 their orders and obtain refunds, but have either been unable to reach
28 Defendants or are told to simply wait.



- 1 57. Upon information and belief, Anovos must pay a minimum guarantee to
2 Licensors.
- 3 58. Typically, a licensee only pays royalty fees once a minimum guarantee has
4 been paid off. Thus, however much Anovos paid Licensors on release of their
5 licensed products, Anovos would only pay royalties once the products net
6 sales exceed that amount paid.
- 7 59. Over the lifetime of the individual licensing agreements between Licensors
8 and Anovos, Licensors have collected their minimum guarantees and are
9 further incentivized to have Anovos continue sales in order for Licensors to
10 collect earned royalty income therefrom.
- 11 60. Upon information and belief, Licensors are the owners of everything Anovos
12 designs, creates, markets and sells for Licensors.
- 13 61. Throughout Anovos' advertisements whether on its own website or social
14 media, Licensors' logos are prominently featured on each promotional
15 material and product.
- 16 62. Should Anovos fail to meet agreed upon quality standards, Licensors can
17 order Anovos to stop the production of said product.
- 18 63. Accordingly, Licensors have a duty to supervise Anovos' use of the Licensors'
19 own marks.
- 20 64. Licensors knew or should have known of Anovos' scheme. Nevertheless,
21 Licensors profited from the scheme by permitting Anovos to use their well-
22 known names and trademarked logos to induce target consumers to become
23 Anovos customers.
- 24 65. There is a causal nexus between the Licensors and Anovos. The Licensors
25 awarded Anovos the Star Wars, Star Trek, and Battlestar Galactica replica and
26 costume licenses thereby approving Anovos' decisions to advertise, market,
27 design, and distribute such costume and replica memorabilia.
28



1 66. While the Licensors acknowledged the complaints against Anovos and
2 Anovos' inability to adhere to the purchase agreements it made with
3 consumers, the Licensors still renewed Anovos' licensing agreements and
4 permitted Anovos to continue to defraud consumers.

5 67. Throughout the proposed class period, Anovos' conduct was on behalf of and
6 with the authorization of each of the Licensors in a coordinated effort to earn
7 profit on Star Wars, Star Trek, and Battlestar Galactica memorabilia.

8 68. The Licensors maintained profits from their licensing agreements with
9 Anovos at the expense of consumers.

10 69. Consequently, Anovos' illegal actions were the responsibility of the Licensors
11 both directly and vicariously. Therefore, Disney, CBS, and NBCU are each
12 liable for Anovos' unlawful conduct discussed herein as it pertains to their
13 licensed products.

14 70. Despite notice of errors, lack of oversight, deliberate ignorance of complaints
15 Defendants continue their unlawful and fraudulent practices, subjecting
16 consumers not only to substantial stress, frustration, and anxiety over
17 Defendants, but also economic damages - Defendants' deposit of unearned
18 payments.

19 71. In truth and in fact, consumers have not received their pre-ordered and pre-
20 paid products. Consumers have suffered and will continue to suffer
21 substantial injury as a result of Defendants' conduct.

22 72. Defendants took advantage of Plaintiff and consumers alike through their
23 joint oppressive and fraudulent conduct, including but not limited to inducing
24 consumers into purchasing items it did not have the intentions nor ability to
25 produce, then for years continuously requesting consumers pre-order items all
26 the while stalling at production of the products.

1 73. Plaintiff, believing that Defendants were acting in good faith naively paid for
2 unearned payments, until the day Plaintiff realized that the products promised
3 by Defendants would never be delivered.

4 **CLASS ACTION ALLEGATIONS**

5 74. Plaintiff and the members of the Class have all suffered injury in fact as a
6 result of the Defendants' unlawful and misleading conduct.

7 75. The “Class Period” means four years prior to filing of the Complaint in this
8 action.

9 76. Plaintiff brings this lawsuit individually and on behalf of other consumers
10 similarly situated. Subject to additional information obtained through further
11 investigation and/or discovery, the proposed “Class” consists of:

12
13 All consumers who paid for a pre-order product(s) from Anovos and
14 licensed by Disney, NBCU, and/or CBS, and who have not received the
15 product nor a refund from January 1, 2016 through the present.

16 77. Excluded from the Class are Defendants and any of Defendants' officers,
17 directors, and employees. Plaintiff reserves the right to modify or amend the
18 Class definition before the Court determines whether certification is
19 appropriate.

20 78. **Ascertainability.** The members of the Class are readily ascertainable from
21 Defendants' records, as well as through public notice.

22 79. **Numerosity.** The members of the Class are so numerous that their individual
23 joinder is impracticable. Plaintiff is informed and believe, and on that basis
24 alleges, that the proposed class consists of thousands of members.

25 80. **Existence and Predominance of Common Questions of Law and Fact.**
26 Common questions of law and fact exist as to all members of the Class , and
27 predominate over any questions affecting only individual Class members. All
28 members of the Class have been subject to the same conduct and their claims

1 are based on the standardized marketing, advertisements, delays, and policies
2 of Defendants. The common legal and factual questions include, but are not
3 limited to, the following:

- 4 • Whether Defendants' shipping estimations are untrue, or are misleading,
5 or likely to deceive reasonable consumers;
- 6 • Whether Defendants' conduct in requiring consumers pay full price for
7 pre-order items and then not deliver them is misleading or unlawful
8 within the meaning of California Business & Professions Code §§ 17200,
9 *et seq.*
- 10 • Whether Defendants' conduct is a fraudulent act or practice within the
11 meaning of California Business & Professions Code §§ 17200, *et seq.*;
- 12 • Whether Defendants' conduct is an unfair act or practice within the
13 meaning of California Business & Professions Code §§ 17200, *et seq.*;
- 14 • Whether Defendants' advertising is unfair, deceptive, untrue or misleading
15 within the meaning of California Business & Professions Code §§ 17200,
16 *et seq.*;
- 17 • Whether Defendants' advertising is false, untrue, or misleading within the
18 meaning of California Business & Professions Code §§ 17500, *et seq.*;
- 19 • Whether Defendant, through its conduct, received money that, in equity
20 and good conscience, belongs to Plaintiff and members of the Class;
- 21 • Whether Plaintiff and proposed members of the Class are entitled to
22 equitable relief, including but not limited to restitution and/or
23 disgorgement; and
- 24 • Whether Plaintiff and proposed members of the Class are entitled to
25 injunctive relief sought herein.

26 81. **Typicality.** Plaintiff's claims are typical of the claims of the members of the
27 Class in that Plaintiff is a member of the Class that Plaintiff seeks to
28 represent. Plaintiff, like members of the proposed Class, purchased pre-order

1 Anovos' products licensed by Licensors and never received these products.
2 Plaintiff is advancing the same claims and legal theories individually and on
3 behalf of all absent members of the Class. Defendants have no defenses
4 unique to Plaintiff.

5 82. ***Adequacy of Representation.*** Plaintiff will fairly and adequately protect the
6 interests of the members of the Class. Plaintiff has retained counsel
7 experienced in consumer protection law, including class actions. Plaintiff has
8 no adverse or antagonistic interest to those in the Class, and will fairly and
9 adequately protect the interests of the Class. Plaintiff's attorneys are aware of
10 no interests adverse or antagonistic to those of Plaintiff and proposed Class.

11 83. ***Superiority.*** A class action is superior to all other available means for the fair
12 and efficient adjudication of this controversy. Individualized litigation would
13 create the danger of inconsistent and/or contradictory judgments arising from
14 the same set of facts. Individualized litigation would also increase the delay
15 and expense to all parties and court system and the issues raised by this
16 action. The damages or other financial detriment suffered by individual Class
17 members may be relatively small compared to the burden and expense that
18 would be entailed by individual litigation of the claims against Defendant.
19 The injury suffered by each individual member of the proposed class is
20 relatively small in comparison to the burden and expense of individual
21 prosecution of the complex and extensive litigation necessitated by
22 Defendants' conduct. It would be impractical for members of the proposed
23 Class to individually redress effectively the wrongs to them. Even if the
24 members of the proposed Class could afford such litigation, the court system
25 could not. Individualized litigation increases the delay and expense to all
26 parties, and to the court system, presented by the complex legal and factual
27 issues of the case. By contrast, the class action device presents far fewer
28

1 management difficulties, and provides the benefits of single adjudication,
2 economy of scale, and comprehensive supervision by a single court.

3 84. Unless the Class is certified, Defendants will retain monies received as a
4 result of Defendants' unlawful and deceptive conduct alleged herein. Unless a
5 class-wide injunction is issued, Defendants will continue to take payments for
6 pre-orders from consumers without delivering said orders, and members of
7 the public will continue to be misled, while members of the Class will
8 continue to be harmed, and denied their rights under California law.

9 85. Moreover, Defendants have acted or refused to act on grounds that are
10 generally applicable to the class, so that declaratory and injunctive relief is
11 appropriate to the Class as a whole, further making class certification
12 appropriate.

13 **FIRST CAUSE OF ACTION**

14 **FRAUD**

15 86. Plaintiff repeats, re-alleges, and incorporates by reference, all of the above
16 paragraphs of this Complaint as though fully stated herein.

17 87. From March 22, 2016, through and including December 11, 2018, Defendants
18 fraudulently requested payments for products that Defendants never intended
19 to deliver to Plaintiff.

20 88. Plaintiff was not obligated to pay full price for products Defendants could not
21 and would not provide Plaintiff. Thus, the amounts demanded by Defendants'
22 advertisements were false and inaccurate in attempt for Defendants to
23 maximize unearned profits.

24 89. Further, since at least 2016, Licensors were aware of Anovos' fraudulent
25 conduct, yet did nothing to prevent its continuance. Instead, Licensors reap the
26 benefits of Anovos' conduct.

27 90. Since the inception of their licensing agreements, all Defendants, in attempt to
28 maximize their profits, fraudulently began demanding and retaining Plaintiff

1 and class members' payments for products as well as shipping that were never
2 and will never be shipped.

3 91. Defendants failed to disclose that Defendants were charging Plaintiff monies
4 that were never earned i.e. fees that were not going towards products Plaintiff
5 and the class would receive.

6 92. Plaintiff reasonably believed that Defendants would deliver the products
7 purchased.

8 93. Plaintiff reasonably relied first on the truthfulness of Defendants' online
9 advertisements and then on Defendants continuous notifications that despite
10 delays in shipping, products would still be delivered to consumers.

11 94. As a result of Defendants' fraudulent misrepresentations, concealment of the
12 true nature of pre-orders, and refusals to refund monies to Plaintiff and
13 consumers alike, Plaintiff and the class suffered great economic injury.

14 95. Thus, Plaintiff and the Class seek economic and non-economic damages,
15 punitive damages, attorneys' fees, and litigation costs as a result of
16 Defendants' oppressive and fraudulent conduct.

17 **SECOND CAUSE OF ACTION**

18 **BREACH OF CONTRACT**

19 **(PLAINTIFF V. ANOVOS)**

20 96. Plaintiff repeats, re-alleges, and incorporates by reference, all of the above
21 paragraphs of this Complaint as though fully stated herein.

22 97. On or about March 22, 2016 Plaintiff ordered a Star Trek: The Movie -
23 Spock Replica Blue Tunic; a Star Wars: The Force Awakens: First Order TIE
24 Fighter Pilot Helmet Premier Line Accessory; Star Trek: The Movie - Captain
25 Kirk Replica Gold Tunic; Star Trek: Into Darkness - Starfleet Uniform Shirt
26 from Anovos' website. (Order # 20352).

27 98. Plaintiff paid Anovos \$911.07 for the products and shipping.
28



1 99. Despite Plaintiff’s payment, Plaintiff has yet to receive these products from
2 Anovos.

3 100. Following, Plaintiff made 47 additional purchases. (Order #s 21055; 21094;
4 24447; 24453; 35626; 39430; 43050; 43169; 43276; 43603; 44364; 44567;
5 44568; 46382; 46510; 47111; 47285; 47494; 48004; 48720; 48855; 50388;
6 50389; 50390; 50434; 50435; 50489; 50725; 50831; 52545; 52706; 52707;
7 52741; 52935; 53360; 53530; 54865; 54866; 55017; 55368; 55584; 57346;
8 57453; 57760; 57832; 57869; and 60966.)

9 101. Just as with the March 22, 2016 purchase, Anovos failed to fulfill these
10 orders.

11 102. As a direct and proximate result of Defendant Anovos’ aforesaid conduct,
12 Plaintiff and the Class suffered direct financial harm.

13 103. As a direct and proximate result of Defendant, Anovos’ aforesaid conduct,
14 Plaintiff and the Class suffered and will continue to suffer economic damages
15 and the loss of use of the products they were promised.

16 104. Therefore, Plaintiff and the class are entitled to recover damages, and seek a
17 injunctive relief to prevent such conduct in the future.

18 **THIRD CAUSE OF ACTION**

19 **UNJUST ENRICHMENT**

20 105. Plaintiff repeats, re-alleges, and incorporates by reference, all of the above
21 paragraphs of this Complaint as though fully stated herein.

22 106. At all times relevant hereto, Defendants unlawfully and unjustly absconded
23 with Plaintiff and the Class’ funds.

24 107. Defendants had and followed a policy and practice of taking the full price of
25 pre-ordered products from consumers then failing to deliver those products.

26 108. Defendants thereafter unlawfully retained Plaintiff and the Class’ funds.

27 //

28 //

1 109. Defendants should not be permitted to unjustly enrich themselves at the
2 expense of Plaintiff and the Class, and should be required to make restitution
3 of the received unlawful funds.

4 110. As a direct and proximate result of Defendants' aforesaid conduct, Plaintiff
5 and the Class suffered and will continue to suffer economic damages as well
6 as the loss of use of items promised to them.

7 111. Therefore, Plaintiff and the Class are entitled to recover damages, and seek
8 injunctive relief to prevent such conduct in the future.

9 **FOURTH CAUSE OF ACTION**

10 **UNFAIR COMPETITIONS LAW UNDER CAL. BUS. & PROF. CODE § 17200**

11 112. Plaintiff repeats, re-alleges, and incorporates by reference, all of the above
12 paragraphs of this Complaint as though fully stated herein.

13 113. "Unfair competition" is defined by Business Professions Code Section §
14 17200 as encompassing several types of business "wrongs," including: (1) an
15 "unlawful" business act or practice, (2) an "unfair" business act or practice,
16 (3) a "fraudulent business act or practice, and (4) "unfair, deceptive, untrue or
17 misleading advertising." The definitions in § 17200 are drafted in the
18 disjunctive, meaning that each of these "wrongs" operates independently
19 from the others.

20 114. By and through Defendants' joint and several unlawful conduct alleged in
21 further detail above and herein, Defendants engaged in conduct which
22 constitutes unlawful, unfair, and/or fraudulent business practices, specifically
23 Defendants' unlawful taking of unearned monies, and Defendants' unlawful
24 refusal to issue refunds to consumers.

25 **A. "Unlawful" Prong**

26 115. Defendants have violated California's Consumers Legal Remedies Act, Cal.
27 Civ. Code § 1770(a)(9) and (10) and committed negligent and/or intentional
28 misrepresentation, therefore, Defendants have violated California's Unfair

1 Competition Law (“UCL”), Business & Professions Code §17200, *et seq.*,
2 which provides a cause of action for an “unlawful” business act or practice
3 carried out on members of the California public.

4 116. Defendant had other reasonably available alternatives to further its business
5 interests, other than the unlawful conduct described herein.

6 117. Instead Defendants deliberately requested and accepted Plaintiff and the
7 Class’ full payments without the intent to deliver and provide the paid for
8 products.

9 118. Further, Defendants’ conduct constitutes unlawful business practices because
10 charging unearned amounts is an unlawful activity, in essence - theft of
11 Plaintiff and the Class’ funds.

12 119. Plaintiff reserves the right to allege other violations of law, which constitute
13 additional unlawful business practices or acts, as such conduct is ongoing and
14 continues to this date.

15 **B. “Unfair” Prong**

16 120. Defendants actions and representations constitute an “unfair” business act or
17 practice under Business & Professions Code § 17200, *et seq.* in that
18 Defendants’ conduct is substantially injurious to consumers, offends public
19 policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity
20 of the conduct outweighs any alleged benefits attributable to such conduct.
21 Without limitation, it is an unfair business act or practice for Defendants to
22 knowingly or negligently represent to the consuming public that it offers Star
23 Wars, Star Trek, and Battlestar Galactica products, then secure payment, only
24 to not provide such products, nor return payment to the customers.

25 121. Such conduct by Defendants is “unfair” because it offends established public
26 policy and/or is immoral, unethical, oppressive, unscrupulous and/or
27 substantially injurious to consumers in that consumers are led to believe that
28 Defendants will actually provide the products they offer.

1 122. Plaintiff could not have reasonably avoided the injury he suffered. Indeed, for
2 years, Anovos announced it would fulfill Plaintiff's pre-order shipments.

3 123. Plaintiff reserves the right to allege further conduct that constitutes other
4 unfair business acts or practices. Such conduct is ongoing and continues to
5 this date, as Defendants continue to mislead the public.

6 **C. "Fraudulent" Prong**

7 124. Defendants' claims and statements were false, misleading and/or likely to
8 deceive the consuming public within the meaning of Business & Professions
9 Code § 17200, *et seq.* Whether through conduct, in writing or orally,
10 Defendants engaged in fraudulent acts and business practices by knowingly or
11 negligently representing to the public, that Defendants' would be produced by
12 certain dates, year after year.

13 125. Plaintiff reserves the right to allege further conduct that constitutes other
14 fraudulent business acts or practices. Such conduct is ongoing and continues
15 to this date.

16 126. Defendants' fraudulent, unlawful and unfair business practices, as described
17 above, present an ongoing threat to consumers because consumers will
18 continue to be misled by the products and services Defendants offer on its
19 website and through social media.

20 127. Plaintiff has suffered injury in fact and has lost money as a result of
21 Defendants' unfair competition, as more fully set forth herein. Plaintiff has
22 been injured as he relied on Defendants' misrepresentations.

23 128. Defendant, through its acts of unfair competition, has unfairly acquired
24 several thousands of dollars from Plaintiff and consumers alike. Plaintiff
25 requests that this Court restore these monies for Defendants' violations of the
26 California Business & Professions Code § 17200, *et seq.*, as discussed herein.



1 129. Plaintiff further seeks an order requiring Defendants to make full restitution
2 of all monies wrongfully obtained and disgorge all ill-gotten revenues and/or
3 profits, together with interest thereupon.

4 **FIFTH CAUSE OF ACTION**

5 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

6 **Cal. Civ. Code Section 1750, et seq.**

7 130. Plaintiff repeats, re-alleges and incorporates herein by reference the above
8 allegations as if fully stated herein.

9 131. California Civil Code section 1750, *et seq.*, titled the Consumers Legal
10 Remedies Act (“CLRA”), provides a list of “unfair or deceptive” practices in
11 a “transaction” relating to the sale of “goods” or “services” to a “consumer.”
12 The Legislature’s intent in promulgating the CLRA is expressed in Civil Code
13 section 1760, which provides, *inter alia*, that its terms are to be:

14
15 “Construed liberally and applied to promote its underlying purposes,
16 which are to protect consumers against unfair and deceptive business
17 practices and to provide efficient and economical procedures to secure
18 such protection.”

18 132. Defendant, Plaintiff, and the Class members are each “person[s]” as defined
19 pursuant to Civil Code section 1761(c).

20 133. Defendants’ products constitute “goods” as defined pursuant to Civil Code
21 Section 1761(a).

22 134. Plaintiff, and the Class members, are each “consumer[s]” as defined pursuant
23 to Civil Code section 1761(d).

24 135. Plaintiff and the Class member’s attempted procurement of Defendants’
25 products constituted a “Transaction” as defined by Civil Code section
26 1761(e).

27 136. Civil Code section 1770(a)(9) states that:
28



1 (a) The following unfair methods of competition and unfair or
2 deceptive acts or practices undertaken by any person in a transaction
3 intended to result or which results in the sale or lease of goods or
4 services to any consumer are unlawful:

(9) Advertising goods or services with intent not to sell them as
5 advertised.

6 137. Civil Code section 1770(a)(10) states that:

7 (a) The following unfair methods of competition and unfair or
8 deceptive acts or practices undertaken by any person in a transaction
9 intended to result or which results in the sale or lease of goods or
10 services to any consumer are unlawful:

(10) Advertising goods or services with intent not to supply reasonably
11 expectable demand, unless the advertisement discloses a limitation of
12 quantity.

13 138. Defendant violated Civil Code section 1770(a)(9) and (10) by representing,
14 online, that certain goods would be delivered at a certain time.

15 139. Defendant never intended to deliver such goods, further evidenced by the fact
16 that to date Defendants have not delivered goods ordered over three years
17 ago, in violation of Civil Code section 1770(a)(9) and (10).

18 140. Through their purchase confirmations provided to consumers, Defendants
19 guaranteed the production of shipment of goods. All the while Defendants
20 continuously stalled at producing said goods.

21 141. On information and belief, Defendants' violations of the CLRA set forth
22 herein were done with awareness of the fact that the conduct alleged was
23 wrongful and was motivated solely for Defendants' self-interest, monetary
24 gain, and increased profit.

25 142. On information and belief, Defendant committed these acts knowing the harm
26 that would result to Plaintiff and the Class, and Defendant engaged in such
27 unfair and deceptive conduct notwithstanding such knowledge. In fact,
28 Defendants continue to engage in such conduct despite the complaints
brought to their attention.

1 143. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by
2 Defendants as a result of Defendants’ false representations set forth on
3 Defendants’ advertisements.

4 144. As a direct and proximate result of Defendants' violations of the CLRA,
5 Plaintiff and the Class are entitled to and seek injunctive relief prohibiting
6 such conduct in the future.

7 145. Plaintiff served a certified letter pursuant to the CLRA, California Civil Code
8 section 1782 on Defendant with respect to its business.

9 146. As of the date of the filing of this Complaint, Defendants have not complied
10 with Plaintiff’s demands outlined in the letter to Defendant.

11 **SIXTH CAUSE OF ACTION**

12 **NEGLIGENT MISREPRESENTATION**

13 147. Plaintiff repeats, re-alleges and incorporates herein by reference the above
14 allegations as if fully stated herein.

15 148. Defendants represented to the public, including Plaintiff, that their products
16 would be delivered. However, as delivery dates for pre-order products
17 approached, Defendants would continuously delay and extend shipment dates,
18 and never delivering the paid for products.

19 149. Defendants made the representations herein alleged, negligently, and should
20 have known these representations were untrue, and Defendants lacked a
21 reasonable basis for believing the representations to be true at the time such
22 representations were made to Plaintiff, and others similarly situated.

23 150. By making these representations, Defendants intended to induce Plaintiff and
24 others to pay thousands of dollars for products that would never be delivered
25 to them.

26 151. Through its website, press conferences, and social media posts, Plaintiff saw,
27 believed, and reasonably relied upon Defendants’ representations and, in such
28



1 reliance, continued to purchase products for Anovos and patiently wait for the
2 shipments.

3 152. Plaintiff was harmed in that Plaintiff actually had to pay thousands of dollars,
4 for items he never received.

5 153. Plaintiff's reliance on Defendants' representation of products to be delivered
6 and estimated shipment dates was a substantial factor in causing Plaintiff's
7 harm.

8 **SEVENTH CAUSE OF ACTION**

9 **INTENTIONAL MISREPRESENTATION**

10 154. Plaintiff repeats, re-alleges and incorporates herein by reference the above
11 allegations as if fully stated herein.

12 155. Defendants represented to the public, including Plaintiff, that their products
13 would be delivered to consumers. However, when shipment dates approached,
14 Defendant Anovos continuously extended the shipment dates, yet refused to
15 provide refunds in numerous instances.

16 156. Defendants intentionally made the representations regarding the delivery of
17 its products, all the while, Defendants knew that these representations were
18 false; or Defendants made the representations recklessly and without regard
19 for their truth.

20 157. By making these representations, Defendants intended that Plaintiff and other
21 consumers would rely on those statements in deciding whether or not to buy
22 Defendants' products.

23 158. Plaintiff was harmed in that Plaintiff actually had to pay thousands of dollars,
24 and continues to be without the use and enjoyment of the products promised.

25 159. Plaintiff's reliance on Defendants' representation of the products being
26 delivered and estimated shipment dates was a substantial factor in causing
27 Plaintiff's harm.
28



1 160. By engaging in the acts described above, Defendants are guilty of malice,
2 oppression, and fraud, and Plaintiff and the Class are therefore entitled to
3 recover exemplary or punitive damages.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff
6 and the putative Class members the following relief against Defendants:

- 7
- 8 • This Action be certified as a class action;
 - 9 • Plaintiff be appointed as the Class Representative;
 - 10 • Plaintiff’s attorneys be appointed as Class counsel;

11 Plaintiff further prays for judgment against Defendants as follows:

12 **First Cause of Action**

13 **Fraud**

- 14 • An award of compensatory, special, general, and punitive damages according to proof against all Defendants;
- 15 • An award of reasonable attorney’s fees and costs;
- 16 • An award of pre- and post-judgment interest; and
- 17 • Any other relief the Court may deem just and proper.

18 **Second Cause of Action**

19 **Breach of Contract**

20 **(Plaintiff v. Anovos)**

- 21 • An award of compensatory, special, and general damages according to proof against Anovos;
- 22 • An award of reasonable attorney’s fees and costs;
- 23 • An award of pre- and post-judgment interest;
- 24 • Any other relief the Court may deem just and proper.

25 **Third Cause of Action**

26 **Unjust Enrichment**





- 1 • An award of compensatory, special, and general damages according to
- 2 proof against all Defendants;
- 3 • An award of reasonable attorneys’ fees and costs;
- 4 • An award of pre- and post-judgment interest;
- 5 • Any other relief the Court may deem just and proper.

Fourth Cause of Action

Unfair Competitions Law Under Cal. Bus. & Prof. Code § 17200

- 8 • An award of compensatory, special, general, and punitive damages
- 9 according to proof against all Defendants;
- 10 • An award of reasonable attorney’s fees and costs;
- 11 • An award of pre- and post-judgment interest; and
- 12 • Any other relief the Court may deem just and proper.

Fifth Cause of Action

California Consumers Legal Remedies Act

Cal. Civ. Code Section 1750, et seq.

- 16 • Injunctive relief pursuant to Cal. Civ. Code § 1780(a);
- 17 • An award of costs and attorney’s fees pursuant to Cal. Civ. Code § 1780(e);
- 18 and
- 19 • Any and all relief that this Court deems necessary or appropriate.

Sixth Cause of Action

Negligent Misrepresentation

- 22 • Actual damages, injunctive relief, restitution, and punitive damages.

Seventh Cause of Action

Intentional Misrepresentation

- 25 • Actual damages, injunctive relief, restitution, and punitive damages.

26 //

27 //

28 //

JURY DEMAND

154. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: June 3, 2019

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