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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

GREGORY LATHAM, on behalf of himself
and all others similarly situated;

Plaintiff,

v.

PWCC MARKETPLACE, LLC;

Defendant.

Case No.

**CLASS ACTION ALLEGATION
COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiff Gregory Latham (“Plaintiff”), on behalf of himself and all others similarly situated, by his undersigned counsel, alleges the following upon personal knowledge as to his own acts, and upon information and belief as to all other matters. Plaintiff’s information and belief are based upon an investigation conducted by counsel.

INTRODUCTION

1. PWCC Marketplace, LLC (“PWCC”) touts itself as the largest, most complete trading card marketplace in the world.
2. Since 1998, PWCC has provided buyers and sellers of sports trading cards with a marketplace.
3. Prior to August 2021, upon information and belief, PWCC was the largest trading card seller on eBay.
4. The eBay website is an online auction and shopping website in which people and businesses buy and sell a wide variety of goods and services worldwide.
5. On August 17, 2021, eBay announced that it determined that individuals associated with PWCC engaged in “shill bidding,” which is prohibited on eBay.
6. Shill bidding is intentionally fake bidding by a seller on his/her own auction to inflate the final price of the product.
7. The shill bidding by PWCC is an unconscionable tactic, misrepresents the price of the goods, is false, and is misleading, all in violation of the Unlawful Trade Practices Act ORS 646.608 et seq.
8. As a result of the shill bidding by people associated with PWCC, eBay restricted PWCC’s selling privileges and listings.
9. On information and belief, PWCC engaged in shill bidding on other online auction sites.
10. Plaintiff and the proposed Class suffered damages from the shill bidding by PWCC on auctions of trading cards listed on eBay and other online auction sites by PWCC.
11. The shill bidding by PWCC artificially inflated the price of the goods being sold by PWCC, which resulted in the proposed Class plaintiffs paying a price that was falsely inflated

for the goods.

12. On information and belief, the shill bidding by PWCC resulting in damages to the Plaintiff and the proposed Class in excess of \$25,000,000.00.

PARTIES

13. At all times relevant hereto, Plaintiff Gregory Latham resided at 6017 Vicksburg Street, New Orleans, Louisiana 70124.

14. Plaintiff Gregory Latham purchased numerous trading cards from PWCC as seller and on the eBay online auction and shopping website including paying \$243.82 for a 1914 T213 Coupon Type 2 Eddie Collins CHICAGO A ON SHIRT SGC 2 GD (143671122633#) from PWCC on August 11, 2020.

15. Defendant, PWCC Marketplace, LLC is an Oregon Limited Liability Company with its principal place of business located at 7560 SW Durham Rd, Tigard, OR 97224.

JURISDICTION AND VENUE

16. The Court has personal jurisdiction over PWCC because it is a limited liability company organized under the laws of the state of Oregon, with its principal place of business located at 7560 SW Durham Road, Tigard, OR 97224. PWCC advertised, marketed, sold, and distributed its goods and services in Oregon, to Oregon consumers.

17. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and is a class action in which some members of the proposed Class are citizens of different states than PWCC. *See* 28 U.S.C. § 1332(d)(2)(A). This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

18. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 because PWCC is a

citizen of Oregon, with its principal place of business in Oregon, a substantial part of the events or omissions giving rise to the claims occurred in the District of Oregon, PWCC conducted substantial business here, solicited substantial business here, and made representations and promises here.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all members of the following proposed class (the “Class” or “Class Members”):

All persons who purchased goods from PWCC through an online auction.

20. Excluded from the proposed Class are PWCC, any entity in which PWCC has a controlling interest or that has a controlling interest in (or is under common control with) PWCC, and PWCC’s legal representatives, assignees, and successors. Also excluded are the judge to whom this case is assigned and any member of the judge’s immediate family.

21. The proposed Class meets all of the criteria required by Federal Rule of Civil Procedure 23(a).

22. **Numerosity:** The proposed Class is so numerous that joinder of all members is impracticable. Upon information and belief, the proposed Class has more than 100 members.

23. **Commonality:** There are many questions of law and fact common to Plaintiff and the Class. These common questions of law and fact include, but are not limited to:

- a. Whether and how PWCC engaged in unlawful shill bidding on the eBay platform.
- b. Whether PWCC violated Oregon’s Unlawful Trade Practices Act.
- c. Whether Plaintiff and the Class are entitled to statutory damages, other damages, attorney fees and costs, restitution, or other monetary or equitable relief, and if so, the methodology of determining such relief.

- d. What steps, if any, has PWCC taken to ensure that persons affiliated with PWCC did not and do not engage in shill bidding.

24. Common sources of evidence may be used to demonstrate PWCC's unlawful conduct on a class-wide basis, including but not limited to documents and testimony about how PWCC engaged in shill bidding, the average amount of price increase caused by shill bidding, the efforts taken to conceal the shill bidding, and the affiliated persons PWCC used to accomplish the shill bidding.

25. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff's claims and claims of the proposed Class arise out of the same common course of conduct by PWCC and are based on the same legal, equitable, and remedial theories. Plaintiff has no interests adverse to the interests of the proposed Class.

26. **Adequacy:** Plaintiff fairly and adequately protects the interests of the proposed Class. Plaintiff has retained competent and capable attorneys with experience in complex and class action litigation. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the proposed Class and have the financial resources to do so. Neither Plaintiff nor his counsel have interests that are contrary to or that conflict with those of the proposed Class.

27. PWCC have engaged in a common course of conduct toward Plaintiff and the proposed Class. The common issues arising from this conduct that affect Plaintiff and Class Members predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

28. The proposed Class also satisfies the criteria for certification under Federal Rule of Civil Procedure 23(b) and 23(c). Among other things, prosecution of separate actions by the individual members of the proposed class would create a risk of inconsistent or varying adjudication which would establish incompatible standards of conduct for PWCC; prosecution of

separate actions by individual members of the Class would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; questions of law or fact common to the proposed Class predominate over any questions affecting only individual members; and class action treatment is superior to other available methods for the fair and efficient adjudication of the controversy which is the subject of this action.

29. One or more subclasses or issues may be appropriate for certification under Federal Rule of Civil Procedure 23(c). Plaintiff reserves the right to propose one or more sub-classes if discovery reveals that such subclasses are appropriate.

30. The interests of judicial economy will be served by concentrating litigation concerning these claims in this Court. The management of the proposed Class will not be difficult.

31. Plaintiff and other members of the proposed Class have suffered damages as a result of PWCC's unlawful and wrongful conduct. Absent a class action, PWCC will retain substantial funds received as a result of their wrongdoing, and such unlawful and improper conduct shall, in large measure, not go remedied. Absent a class action, the members of the proposed Class will not be able to effectively litigate these claims and will suffer further losses, as PWCC will be allowed to continue such conduct with impunity and retain the proceeds of its ill-gotten gains.

32. A class action is the superior method for the fair and efficient adjudication of this controversy. Class-wide relief is essential to compel PWCC to comply with their legal obligations. The interest of individual members of the proposed Class in individually controlling the prosecution of separate claims against PWCC is small because the damages and other remedies available in an individual action against PWCC for failing to comply with its obligations under the law are relatively small. Class treatment is superior to multiple individual suits or piecemeal

litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, provides a forum for small claimants, and deters illegal activities. There will be no significant difficulty in the management of this case as a class action.

FIRST CAUSE OF ACTION

(Unlawful Trade Practices Act - ORS 646.605 *et seq.*)

33. Plaintiff repeats and realleges the allegations of paragraphs 1 to 37 above as if fully set forth in this paragraph.

34. PWCC is a “Person” as defined in ORS 646.605(4).

35. PWCC is an “Auctioneer” as defined in ORS 698.635(2).

36. The sports cards and other memorabilia, sold by PWCC at auction, are goods or services as defined by ORS 646.605(6)(a), because they are goods that are or may be obtained primarily for personal, family, or household uses.

37. Plaintiff and the proposed Class suffered an ascertainable loss of money or property under ORS 646.638.

38. Plaintiff and the proposed Class seek all rights, damages, and legal and equitable relief available under ORS 646.605 *et seq.*, including ORS 646.636 and ORS 646.638, and as otherwise available under statute, rule, or common law, including maintenance of a class action, statutory damages, actual damages, other legal and equitable relief, punitive damages, costs, pre and post judgment interest, and attorney fees.

39. PWCC is liable to Plaintiff and the Class as set forth herein together with interest from the date of loss.

40. Under ORS 646.638(3), Plaintiff and the proposed Class are entitled to recover their reasonable attorney fees from PWCC for PWCC’s violations of Oregon law as detailed herein.

41. Plaintiff and the proposed Class seek recovery of punitive damages from PWCC

because PWCC's conduct was reprehensible. PWCC inflicted economic injury upon Plaintiff and the proposed Class in an intentional manner.

42. Plaintiff and the proposed Class seek appropriate equitable relief.

Count 1: Willful Violations of Oregon Law

43. PWCC's willful practice of shill bidding on eBay and other online auction sites violates ORS 646.608(v) as it is unlawful for PWCC as auctioneer, auction mart operator or consignee to "employ or use another person to act as a bidder or buyer at the auction or consignment sale on behalf of the auctioneer, auction mart operator or consignee." *See* ORS 698.640(2)(d).

44. As a direct result of PWCC's unlawful, unfair, and deceptive practices of shill bidding, Plaintiff and the proposed Class suffered an ascertainable loss of money or property, namely the amounts representing the inflated price paid to purchase trading cards and/or other memorabilia or products from PWCC.

45. Under ORS 646.638(1), Plaintiff and the proposed Class seek to recover their actual damages for PWCC's willful use or employment of a method, act or practice declared unlawful under ORS 646.608.

Count 2: Reckless or Knowing Violations of Oregon Law

46. PWCC's reckless or knowing practice of shill bidding on eBay and other online auction sites violates ORS 646.608(v) as it is unlawful for PWCC as auctioneer, auction mart operator or consignee to "employ or use another person to act as a bidder or buyer at the auction or consignment sale on behalf of the auctioneer, auction mart operator or consignee." *See* ORS 698.640(2)(d).

47. As a direct result of PWCC's unlawful, unfair, and deceptive practices of shill bidding, Plaintiff and the proposed Class suffered an ascertainable loss of money or property,

namely the amounts representing the inflated price paid to purchase trading cards and/or other memorabilia or products from PWCC.

48. Under ORS 646.638(8)(a), Plaintiff and the proposed Class seek statutory minimum damages of \$200 for each of PWCC's reckless or knowing use or employment of a method, act or practice declared unlawful by ORS 646.608.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests of this Court the following prayer for relief, on behalf of himself and each Class Member:

A. An order certifying an appropriate Class pursuant to Federal Rule of Civil Procedure 23 and any additional subclasses the Court deems appropriate, finding that Plaintiff is a proper representative of the Class, and appointing Plaintiff's counsel as Class counsel;

B. An award of actual damages in an amount to be determined at trial;

C. An award of statutory damages of \$200 for each reckless or knowing violation of the Unlawful Trade Practices Act, ORS 646.605 *et seq.*;

D. Restitution and disgorgement of amounts unlawfully charged, received, and retained by PWCC;

E. Pre-judgment interest;

F. Post-judgment interest;

G. Attorneys' fees, costs, disbursements, and expenses of suit, including expert witness fees;

H. Punitive damages; and

I. Such other relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the Class, hereby demands a trial by jury on all matters

so triable.

DATED this 17th day of September, 2021.

NICK KAHL, LLC

/s Nick Kahl

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