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COUNTY OF SANTA CLARA
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SANTA CLARA

MEGAN TAYLOR, an individual on behalf of herself, and
on behalf of all those similarly situated,

Plaintiff,

v.

SHUTTERFLY, INC.; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. **17CV320338**

UNLIMITED CIVIL CASE

CLASS ACTION COMPLAINT
FOR FALSE ADVERTISING,
VIOLATION OF THE CALI-
FORNIA CONSUMERS LE-
GAL REMEDIES ACT;
BREACH OF CONTRACT,
FRAUD, DECEIT AND/OR
MISREPRESENTATION; AND
UNFAIR BUSINESS PRAC-
TICES

JURY TRIAL DEMANDED

1 Megan Taylor, by and through her counsel, brings this Class Action Complaint against
2 Defendants, on behalf of herself and those similarly situated, for violations of sections 17500 *et*
3 *seq* of the California Business and Professions Code, violation of the California Consumers
4 Legal Remedies Act, breach of contract, fraud, deceit and/or misrepresentation, and violations of
5 sections 17200 *et seq* of the California Business and Professions Code. The following allegations
6 are based upon information and belief, including the investigation of Plaintiff's counsel, unless
7 stated otherwise

8 INTRODUCTION

9 1 This case is about Defendants' misleading and deceptive advertisement of
10 promotional deals. Defendants advertised on the Groupon website that if a customer purchased
11 the advertised deal, the customer would receive a fixed dollar credit to be used to purchase
12 products on the Shutterfly website in the future. Defendants deceptively hid from consumers that
13 the Shutterfly Groupon deal that they were purchasing was not a credit but was merely a
14 promotional code that could not be combined with any other sales or promotions offered on the
15 Shutterfly website, including free shipping codes. As a result, the Defendants used the misleading
16 advertising to induce customers into purchasing Shutterfly Groupon deals, only to tell them
17 thereafter that the deal would be treated as a promotional code.

18 PARTIES

19 2 Megan Taylor ("Plaintiff") is, and at all times alleged in this Class Action
20 Complaint was, an individual and a resident of Grayslake, Illinois

21 3 Defendant Shutterfly Inc ("Shutterfly") is a Delaware corporation with its
22 headquarters and principal executive offices at 2800 Bridge Parkway, Redwood City, California
23 94065

24 4 The true names and capacities of Defendants sued as Does 1 through 50 inclusive
25 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to
26 section 474 of the California Code of Civil Procedure. Plaintiff will seek leave of Court to amend
27 this Class Action Complaint when said true names and capacities have been ascertained

28 5 The Parties identified in paragraphs 3 through 4 of this Class Action Complaint are

1 collectively referred to hereafter as “Defendants ”

2 6 At all times herein mentioned, each of the Defendants was the agent, servant,
3 representative, officer, director, partner or employee of each of the other Defendants and, in doing
4 the things herein alleged, was acting within the scope and course of her/her/its authority as such
5 agent, servant, representative, officer, director, partner or employee, and with the permission and
6 consent of each Defendant

7 7 At all times herein mentioned, each of the Defendants was a member of, and
8 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
9 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

10 8 At all times herein mentioned, the acts and omissions of each of the Defendants
11 concurred and contributed to the various acts and omissions of each and all of the other
12 Defendants in proximately causing the injuries and damages as herein alleged

13 9 At all times herein mentioned, each of the Defendants ratified each and every act
14 or omission complained of herein At all times herein mentioned, each of the Defendants aided
15 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
16 the damages, and other injuries, as herein alleged

17 JURISDICTION AND VENUE

18 10 This action is brought by Plaintiff pursuant, *inter alia*, to the California Business
19 and Professions Code, section 17200 *et seq* Plaintiff and Defendants are “persons” within the
20 meaning of the California Business and Professions Code, section 17201

21 11 The injuries, damages and/or harm upon which this action is based, occurred or
22 arose out of activities engaged in by Defendants within, and affecting, the State of California

23 12 Defendants have engaged, and continue to engage, in substantial and continuous
24 business practices in the State of California, including in San Mateo County

25 13 Defendants maintain their corporate headquarters and principal place of business
26 in Redwood City, California The actions described in this Complaint were taken in, or directed
27 by persons who work in, San Mateo County A declaration compliant with California Civil Code
28 section 1780(c) is filed herewith

1 14 Shutterfly provides Terms of Use on its website at the following address
 2 [http //shutterflyinc com/terms html](http://shutterflyinc.com/terms.html) The Terms of Use contain a choice of law and jurisdiction
 3 provision as follows “These Terms are governed by and construed in accordance with the laws of
 4 the State of California, United States of America, without regards to its conflict of law provisions
 5 You agree to submit to the exclusive jurisdiction of any State or Federal court located in the
 6 County of Santa Clara, California, United States of America, and waive any jurisdictional, venue
 7 or inconvenient forum objections to such courts ” (emphasis supplied)

8 15 In addition, the Terms of Use purport to require arbitration of all claims and to
 9 waive customers’ rights to bring or participate in a class action. In particular, the Terms of Use
 10 state the following:

11 If you are a Shutterfly customer in the United States (including its possessions
 12 and territories), you and Shutterfly agree that any dispute, claim or controversy
 13 arising out of or relating in any way to the Shutterfly service, these Terms of Use
 14 and this Arbitration Agreement, shall be determined by binding arbitration or in
 15 small claims court Arbitration is more informal than a lawsuit in court
 16 Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more
 17 limited discovery than in court, and is subject to very limited review by courts
 18 Arbitrators can award the same damages and relief that a court can award. You
 19 agree that, by agreeing to these Terms of Use, the U S Federal Arbitration Act
 20 governs the interpretation and enforcement of this provision, and that you and
 21 Shutterfly are each waiving the right to a trial by jury or to participate in a class
 22 action YOU AND SHUTTERFLY AGREE THAT EACH MAY BRING
 23 CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL
 24 CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY
 25 PURPORTED CLASS OR REPRESENTATIVE PROCEEDING Further,
 26 unless both you and Shutterfly agree otherwise, the arbitrator may not
 27 consolidate more than one person's claims with your claims, and may not
 28 otherwise preside over any form of a representative or class proceeding If this
 29 specific provision is found to be unenforceable, then the entirety of this
 30 arbitration provision shall be null and void The arbitrator may award declaratory
 31 or injunctive relief only in favor of the individual party seeking relief and only to
 32 the extent necessary to provide relief warranted by that party's individual claim

16 The waiver of the right to public injunctive relief in the Terms of Use is invalid
 under *McGill v Citibank* (2017) 2 Cal 5th 945 Since the arbitrator “may not otherwise preside
 over any form of a representative or class proceeding,” this provision is unenforceable and
 pursuant to the subsequent clause “the entirety of this arbitration provision shall be null and
 void ”

17 Accordingly, this Court may exercise jurisdiction over this Action and venue is
 proper in this Court

SUBSTANTIVE ALLEGATIONS

Defendants Market, Advertise and Sell Photo Products

18 Shutterfly is a leading image publishing service. Shutterfly helps consumers turn photos into photo books, cards, photo gifts, personal websites, among other things.

19 Shutterfly routinely offers its products on sale by providing consumers with promotional codes or discounts to reduce the price of its products or the shipping price. The sales terms offered on Shutterfly vary, but all require the use of promotional codes and shipping codes to obtain the advertised discounts on the item or service price or shipping costs. Shutterfly limits consumers to using one discount promotional code and one shipping code per order. For example, in the screenshot below, Shutterfly advertises a free shipping promotional code for orders of \$49+ (in the upper left) and a promotional code to obtain a discount based on the total purchase price



(in the red bar and upper right)

Defendants' Misleading Advertisement of the Shutterfly Groupon Deals

20 On or about November 15, 2017, Plaintiff received an email advertisement from Groupon, Inc. One of the deals advertised in the email was for "Photo Products from Shutterfly". Plaintiff clicked on the link and viewed the Shutterfly advertisement of the deal on the Groupon website ("the "Shutterfly Groupon Promotion"). The Shutterfly Groupon Promotion provided

1 customers with three options “\$10 for \$20 to Spend at Shutterfly; \$20 for \$40 to Spend at
 2 Shutterfly, \$50 for \$75 to Spend at Shutterfly ” Plaintiff reviewed the advertisement and
 3 reasonably believed that if she purchased the Shutterfly Groupon Promotion she would receive a
 4 dollar credit to be used on the Shutterfly website in the future At the time that Plaintiff reviewed
 5 the Shutterfly Groupon Promotion, she had been planning to make a purchase of customized
 6 holiday cards Accordingly, Plaintiff decided, on the basis of and in reliance on Defendant’s
 7 advertising, to pay \$50 to purchase the Shutterfly Groupon Promotion, which was advertised as
 8 providing “\$75 to spend at Shutterfly ” Plaintiff reasonably believed that by purchasing the
 9 Shutterfly Groupon Promotion, she would have a net savings of \$25 when she finalized her
 10 Shutterfly order, after taking advantage of any other Shutterfly promotion codes and shipping
 11 codes available on the Shutterfly website

12 21 Nothing in the Shutterfly Groupon Promotion alerted Plaintiff, nor would anything
 13 alert a reasonable consumer, that the Shutterfly Groupon Promotion would (1) not provide a
 14 dollar credit or (2) not provide a net savings at Shutterfly equal to the difference between the
 15 amount paid for the Groupon (in her case \$50) and the amount that could be spent at Shutterfly
 16 (in her case \$75) The “Fine Print” for the Shutterfly deal, which were available on the website
 17 advertising the Shutterfly Groupon Promotion, stated the following

18 Promotional value expires Jan 31, 2018 Amount paid never expires. Limit 1 per
 19 account and/or billing address Limit 1 per order Valid only for option purchased
 20 Online only Minimum purchase required equal to the full offer value of the deal
 21 purchased Shipping, handling, and tax not included Not valid on Tiny Prints
 22 products, personalized postage stamps, prepaid plans, gift certificates, cards sent
 23 using mailing services, PrintFix, Groovebook, prior purchases and orders place
 for in-store pickup Voucher is non-transferable Must have or sign up for a
 Shutterfly account Redemption code expires January 31, 2018 See full terms
 Merchant is solely responsible to purchasers for the care and quality of the
 advertised goods and services

24 The words “full terms” were a link that opened another window on the Groupon website, which
 25 provided as follows (hereinafter “Full Terms”)

26 Promotional value expires January 31, 2018 (11 59 P M. PT). Offer is good for
 27 \$20 off one qualifying merchandise order of \$20+, or \$40 off one qualifying
 28 merchandise order of \$40+, or \$75 off one qualifying merchandise order of \$75+
 (depending on the offer purchased and after select discounts and before taxes,
 shipping and handling) through shutterfly com, our mobile-friendly site or
 Shutterfly app This offer code can only be entered once Limit one product or
 order discount code and one shipping code per order. Limit one per account

1 and/or billing address Minimum purchase required equal to the full offer value of
 2 the deal purchased. Taxes, shipping and handling will apply Not valid on Tiny
 3 Prints products, personalized postage stamps, prepaid plans, gift certificates, cards
 4 sent using mailing services, PrintFix, Groovebook, prior purchases and orders
 5 place for in-store pickup Cannot be redeemed for cash (unless required by law) or
 6 combined with select offers or credits Not valid for resale We reserve the right to
 7 modify or replace any part of these terms and conditions without notice If you
 8 have not redeemed the offer by the expiration date, the offer will be good for a
 9 credit equal to the amount you paid for the offer (the "Paid Value") The Paid
 10 Value will never expire until redeemed The Paid Value may be used toward the
 11 purchase of a merchandise order of the Paid Value. The Paid Value may not be
 12 used on certain purchases

13 22 Defendants did not disclose in the Fine Print, Full Terms, or anywhere else
 14 available to Plaintiff prior to her purchase, that Plaintiff was purchasing a promotional code,
 15 rather than a dollar credit, gift card, coupon or other voucher with a \$75 value to spend on
 16 shutterfly com Indeed, the Full Terms expressly say that the \$75 value was to be applied **after**
 17 other discounts "Offer is good for \$75 off one qualifying merchandise order of \$75+
 18 (depending on the offer purchased **and after select discounts** and before taxes, shipping and
 19 handling " While the Full Terms say "Limit one product or order discount code and one
 20 shipping code per order," they do not say that the Shutterfly Groupon Promotion being purchased
 21 was a "product" nor do they say that the Shutterfly Groupon Promotion can *not* be used with any
 22 "product or order discount code" nor with any "shipping code "

23 23 On November 29, 2017, when Plaintiff attempted to use the Shutterfly Groupon
 24 Promotion that she purchased, she learned for the first time that she did not receive a dollar credit,
 25 gift card, coupon or other voucher with a \$75 value as advertised, but instead she received a
 26 promotional code that could not be combined with any other sales or promotional codes offered
 27 on the Shutterfly website Further, Plaintiff learned that she could not use the free shipping code
 28 that was available on the Shutterfly website for all orders exceeding \$49, instead her order was
 eligible for free shipping only if it exceeded \$124—or \$49 plus the \$75 discount Plaintiff did not
 know or suspect until after she tried to use the Shutterfly Groupon Promotion that it was not a
 credit or that it could not be combined with any other promotional codes, discounts, or free
 shipping offers advertised on the Shutterfly website, nor would a reasonable consumer have so
 known or suspected

24 24 Defendants' advertisement of the Shutterfly Groupon Promotion should have

1 included a disclaimer such as the following “Good only towards full priced items Cannot be
2 combined with any other offers, promotions, or coupon codes Purchases made with this Groupon
3 will not be eligible for discounted or free shipping codes on shutterfly com unless the net total of
4 your order, after deducting the value of your Groupon and before shipping and taxes, is greater
5 than the minimum purchase requirement for use of the shipping code ” Defendants’ competitors
6 and other companies that advertise promotions on Groupon include similar disclaimers in their
7 Groupon deal advertisements For example, one such competitor is Vistaprint, an online photo
8 and printing company On November 13, 2014, Plaintiff purchased a Groupon deal for Vistaprint
9 The Groupon deal was advertised as “\$27 for \$70 Worth of Custom Printed Goods from
10 Vistaprint com ” She paid \$27 00 to obtain a \$70 00 credit to use on the Vistaprint website The
11 Fine Print for the Vistaprint Groupon deal, which was available to Plaintiff prior to her purchase,
12 stated “Standard shipping rate apply Voucher is non-transferrable Cannot be combined with
13 any other offers, promotions, or coupon codes ” As another example, on April 29, 2016, Plaintiff
14 purchased a Groupon deal for a \$10 credit to use at Shari’s Berries The Fine Print for the Shari’s
15 Berries deal, which was available to Plaintiff prior to her purchase, stated “Cannot be combined
16 with other promotions or discounts” in bold type

17 25 On December 1, 2017, Plaintiff purchased 85 holiday Christmas cards and three
18 photo prints using the promotional code that she received from the Shutterfly Groupon
19 Promotion She was unable to benefit from the product discount advertised on the Shutterfly
20 website on that day, which provided for 50% off premium cards, hard cover photo books, and
21 select photo gifts, and 40% off everything else, because she could only apply one promotional
22 code to her order

23 26 Plaintiff has been a customer of Shutterfly since 2011 and she has placed at least
24 five orders a year since 2011 Plaintiff regularly uses promotional codes that are she receives
25 from Shutterfly via email or from Shutterfly’s marketing partners, such as Kellogg’s, to obtain a
26 discount on her order or to receive free merchandise (such as a calendar or photobook) Plaintiff
27 has also been a customer of Groupon since 2010 and she has purchased over twenty-five Groupon
28 deals Over half of the Groupon deals that Plaintiff purchased were for a dollar credit, gift card,

1 coupon or other voucher Plaintiff desires to purchase Shutterfly Groupon deals in the future So
 2 long as Defendants continue to market promotions for a fixed dollar credit to be used to purchase
 3 products on the Shutterfly website in the future, Plaintiff will have no way to determine whether
 4 their representations are true Without purchasing and attempting to use the Shutterfly
 5 promotions, Plaintiff is unable to determine whether the promotions are for a dollar credit, gift
 6 card, coupon or other voucher, or alternatively, are for a promotional code that cannot be
 7 combined with any other promotions offered on the Shutterfly website. Thus, Plaintiff is likely to
 8 be repeatedly presented with false or misleading information when shopping online and will be
 9 unable to make informed decisions about whether to purchase a Shutterfly Groupon deal She is
 10 likely to be repeatedly misled by Defendants' conduct, unless and until Defendants are compelled
 11 to ensure that their Shutterfly Groupon deals conform to their representations

12 27 According to the Groupon website, over 7,000 of the Shutterfly Groupon
 13 Promotions were purchased in or around November 2017 Additionally, the advertisement that
 14 misled Plaintiff was one of a series of similar promotions for Defendants' products on the
 15 Groupon website that, except for the dates, purchase amounts, and credit amounts, had the same
 16 misleading aspects they did not make clear that the Groupon deal for Shutterfly photo products
 17 was not for a dollar credit, gift card, coupon or other voucher but instead was for a promotional
 18 code that could not be combined with any other promotional codes or discounts or free shipping
 19 offers advertised on the Shutterfly website (collectively, the "Shutterfly Groupon deals")

20 CLASS ALLEGATIONS

21 28 Plaintiff brings this action against Defendants on behalf of herself and all others
 22 similarly situated, as a class action pursuant to section 382 of the California Code of Civil
 23 Procedure and section 1781 of the California Civil Code Plaintiff seeks to represent a class of
 24 similarly situated person as follows:

25 All persons who, between December 8, 2013 and the present, purchased in the
 26 United States a deal on the Groupon website for dollar amount towards a purchase
 on the Shutterfly website

27 For purposes of this Class Action Complaint, the unmodified word "Class" and the phrase
 28 "Class Members" shall refer collectively to all members of the Class, including the Plaintiff and

1 all members of the Class

2 29 This action has been brought and may properly be maintained as a class action
3 against the Defendants pursuant to the provisions of California Code of Civil Procedure section
4 382 because there is a well-defined community of interest in the litigation and the proposed class
5 is easily ascertainable

6 30 Numerosity Plaintiff does not know the exact size of the Class, but it is estimated
7 that the Class is composed of more than 10,000 persons. The persons in the Class are so
8 numerous that the joinder of all such persons is impracticable and the disposition of their claims
9 in a class action rather than in individual actions will benefit the parties and the courts

10 31 Common Questions Predominate This action involves common questions of law
11 and fact to the potential class because each Class Member's claim derives from the same unlawful
12 or unfair advertising. The common questions of law and fact predominate over individual
13 questions, as proof of a common or single set of facts will establish the right of each member of
14 the Class to recover. Among the questions of law and fact common to the class are

15 a) Whether Defendants engaged in certain business practices, including the Shutterfly
16 Groupon Promotion and the similar Shutterfly Groupon deals, that were false, deceptive, illegal
17 or unfair,

18 b) Whether Defendants engaged in the alleged conduct knowingly, recklessly, or
19 negligently,

20 c) Whether Defendants' advertising and marketing regarding the Groupon Promotion
21 and the similar Shutterfly Groupon deals was likely to deceive Class Members or was unfair,

22 d) Whether the alleged conduct by Defendants constitutes a breach of their implied-
23 in-fact contract(s) with Plaintiff and Class Members,

24 e) Whether the arbitration provision in the Shutterfly Terms of Service should be
25 declared void,

26 f) The amount of revenues and profits Defendants received and/or the amount of
27 monies or other obligations lost by Class Members as a result of such wrongdoing,

28 g) Whether Class Members are entitled to injunctive and other equitable relief and, if

1 so, what is the nature of such relief, and

2 h) Whether Class Members are entitled to payment of actual, incidental,
3 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the
4 nature of such relief

5 32 Typicality Plaintiff's claims are typical of the class because Plaintiff was deceived
6 and misled by Defendants' advertising of a dollar credit, gift card, coupon or other voucher on the
7 Groupon website which did not make clear that it was a promotional code that could not be
8 combined with any other sales or promotions offered on the Shutterfly website, including free
9 shipping code The advertising is deceptive and misleading to reasonable consumers, including
10 Class Members, all of whom also purchased the Shutterfly Groupon Promotion or similar
11 Shutterfly Groupon deals. Thus, Plaintiff and Class Members sustained the same injuries and
12 damages arising out of Defendants' conduct in violation of the law The injuries and damages of
13 each Class Member were caused directly by Defendants' wrongful conduct in violation of law as
14 alleged

15 33 Adequacy Plaintiff will fairly and adequately protect the interests of all Class
16 Members because it is in her best interests to prosecute the claims alleged herein to obtain full
17 compensation due to her for the unfair and illegal conduct of which she complains. Plaintiff also
18 has no interests that conflict with or are antagonistic to the interests of Class Members. Plaintiff
19 has retained highly competent and experienced class action attorneys to represent her interests
20 and that of the class No conflict of interest exists between Plaintiff and Class Members hereby,
21 because all questions of law and fact regarding liability of Defendants are common to Class
22 Members and predominate over any individual issues that may exist, such that by prevailing on
23 her own claim, Plaintiff necessarily will establish Defendants' liability to all Class Members
24 Plaintiff and her counsel have the necessary financial resources to adequately and vigorously
25 litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to
26 the Class Members and are determined to diligently discharge those duties by vigorously seeking
27 the maximum possible recovery for Class Members

28 34 Superiority There is no plain, speedy, or adequate remedy other than by

1 maintenance of this class action. The prosecution of individual remedies by members of the class
 2 will tend to establish inconsistent standards of conduct for the Defendants and result in the
 3 impairment of Class Members' rights and the disposition of their interests through actions to
 4 which they were not parties. Class action treatment will permit a large number of similarly
 5 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
 6 and without the unnecessary duplication of effort and expense that numerous individual actions
 7 would engender. Furthermore, as the damages suffered by each individual member of the class
 8 may be relatively small, the expenses and burden of individual litigation would make it difficult
 9 or impossible for individual members of the class to redress the wrongs done to them, while an
 10 important public interest will be served by addressing the matter as a class action.

11 35 Nexus to California. The State of California has a special interest in regulating the
 12 affairs of corporations that are headquartered here and persons who live here. Defendants are
 13 headquartered and have their principal place of business in Redwood City, California. Defendants
 14 initiated the alleged conduct described herein in California, prepared the challenged advertising in
 15 California, and then distributed those materials from California throughout the United States.
 16 Accordingly, there is a substantial nexus between Defendants' unlawful behavior and California
 17 such that the California courts should take cognizance of this action on behalf of a class of
 18 individuals who reside throughout the United States.

19 36 Plaintiff is unaware of any difficulties that are likely to be encountered in the
 20 management of this action that would preclude its maintenance as a class action.

21 **CAUSES OF ACTION**

22 **PLAINTIFF'S FIRST CAUSE OF ACTION**

23 **(False Advertising, Business and Professions Code § 17500, *et seq.*)**
 24 **On Behalf of Herself and the Class**

25 37 Plaintiff realleges and incorporates by reference all of the paragraphs of this Class
 26 Action Complaint as if set forth herein.

27 38 Beginning at an exact date unknown to Plaintiff, but within three (3) years
 28 preceding the filing of the Class Action Complaint, Defendants have made untrue, false,
 deceptive and or misleading statements in connection with the advertising and marketing of the

1 Shutterfly Groupon Promotion and the similar Shutterfly Groupon deals throughout the State of
2 California and the country

3 39 Defendants have made representations and statements that customers would
4 receive dollar credit, gift card, coupon or other voucher when they purchased a deal from the
5 Groupon website, without disclosing that by purchasing a Shutterfly Groupon deal, the customer
6 would receive a promotional code that could not be combined with any other promotions or sales,
7 including free shipping coupons For example, Defendants made deceptive and misleading
8 statements in connection with the Shutterfly Groupon Promotion Specifically, Defendants made
9 representations and statements that customers that paid \$50 would receive \$75 to spend on the
10 Shutterfly website without clearly disclosing that the customer would actually receive a
11 promotional code that could not be combined with any other promotions or sales, including free
12 shipping coupons Defendants made similar representations and statements for each of the
13 Shutterfly Groupon deals

14 40 Plaintiff, and those similarly situated, relied, to their detriment, on Defendants'
15 false representations For example, Plaintiff and Class Members relied, to their detriment, on
16 Defendants' false representations that they would receive a dollar credit, gift card, coupon or
17 other voucher when they purchased a Shutterfly deal from the Groupon website Plaintiff and
18 Class Members were accordingly fraudulently induced into purchasing the Shutterfly Groupon
19 deal with the belief that in exchange, they would receive a dollar credit, gift card, coupon or other
20 voucher that could be combined with any other promotions or sales, including free shipping
21 coupons, offered on the Shutterfly website Plaintiff and Class Members would not have
22 purchased the Shutterfly Groupon deal but for Defendants' false advertising All Class Members
23 similarly relied on the advertising regarding the Shutterfly Groupon deal without being made '
24 aware that the she or he would receive a promotional code that could not be combined with any
25 other promotions or sales, including free shipping coupons, and would not have purchased the
26 Shutterfly Groupon deal but for Defendants' false advertising

27 41 Defendants engaged in these false, misleading and deceptive advertising and
28 marketing practices to increase their profits. Accordingly, Defendants have engaged in false

1 advertising, as defined and prohibited by section 17500, *et seq* of the California Business and
 2 Professions Code

3 42 The aforementioned practices, which Defendants have used, and continue to use,
 4 to their significant financial gain, also constitute unlawful competition and provide an unlawful
 5 advantage over Defendants' competitors as well as injury to the general public

6 43 As a direct and proximate result of such actions, Plaintiff and the other members of
 7 the Class have suffered, and continue to suffer, injury in fact and have lost money and/or property
 8 as a result of such false, deceptive and misleading advertising in an amount which will be proven
 9 at trial, but which is in excess of the jurisdictional minimum of this Court

10 44 Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as
 11 necessary and according to proof, to restore any and all monies acquired by Defendants from
 12 Plaintiff, the general public, or those similarly situated by means of the unfair and/or deceptive
 13 trade practices complained of herein, plus interest thereon

14 45 Plaintiff seeks, on behalf of herself, those similarly situated, and the general
 15 public, a declaration that the above-described practices constitute false, misleading and deceptive
 16 advertising, and an injunction restraining Defendants from engaging in any such advertising and
 17 marketing practices in the future. Such misconduct by Defendants, unless and until enjoined and
 18 restrained by order of this Court, will continue to cause injury in fact to the general public and the
 19 loss of money and property in that the Defendants will continue to violate the laws of California,
 20 unless specifically ordered to comply with the same. This expectation of future violations will
 21 require current and future customers to repeatedly and continuously seek legal redress in order to
 22 recover monies paid to Defendants to which Defendants are not entitled. Plaintiff, those similarly
 23 situated and/or other consumers nationwide have no other adequate remedy at law to ensure
 24 future compliance with the California Business and Professions Code alleged to have been
 25 violated herein

26 **PLAINTIFF'S SECOND CAUSE OF ACTION**

27 **(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)**
 28 **On Behalf of Herself And The Class**

46 Plaintiff realleges and incorporates all of the paragraphs of this Class Action

1 Complaint as if set forth herein

2 47 This cause of action is brought pursuant to the California Consumers Legal
3 Remedies Act, California Civil Code § 1750, *et seq* (“CLRA”)

4 48 Defendants’ actions, representations and conduct have violated, and continue to
5 violate the CLRA, because they extend to transactions that are intended to result, or which have
6 resulted, in the sale or lease of goods or services to consumers

7 49 Plaintiff and other Class Members are “consumers” as that term is defined by the
8 CLRA in California Civil Code § 1761(d)

9 50 The provision of clothing and accessories, that Plaintiff (and others similarly
10 situated Class Members) purchased from Defendants were “goods” within the meaning of
11 California Civil Code § 1761

12 51 By engaging in the actions, representations and conduct set forth in this Class
13 Action Complaint, Defendants have violated, and continue to violate, §§ 1770(a)(9), (13), (14),
14 (16), (17), and (19) of the CLRA. Specifically, in violation of California Civil Code §1770(a)(9),
15 Defendants advertise goods or services with intent not to sell them as advertised. In violation of
16 California Civil Code §1770(a)(13), Defendants made false or misleading statements of fact
17 concerning reasons for, existence of, or amounts of price reductions. In violation of California
18 Civil Code §1770(a)(14), Defendants represented that a transaction confers or involves rights,
19 remedies or obligations which it did not have or involve, or which are prohibited by law. In
20 violation of California Civil Code §1770(a)(16), Defendants represented that the subject of a
21 transaction has been supplied in accordance with a previous representation when it has not. In
22 violation of California Civil Code §1770(a)(17), Defendants represented that the consumer will
23 receive a rebate, discount, or other economic benefit, when the earning of the benefit is
24 contingent on an event to occur subsequent to the consummation of the transaction. All these
25 statutes were violated because Defendants represented on the Groupon website that the Shutterfly
26 Groupon deal would provide customers with a credit to be used on the Shutterfly website in the
27 future when it did not. Defendants did not represent to consumer that the Shutterfly Groupon deal
28 would provide customers with a promotional code that could not be combined with any other

1 promotions or sales, including free shipping coupons In violation of California Civil Code
 2 §1770(a)(19), Defendants inserted an unconscionable provision into their Terms of Service,
 3 namely their purported waiver of the right to seek public injunctive relief

4 52 Plaintiff seeks, on behalf of herself, those similarly situated, and the general
 5 public, a declaration that the above-described practices constitute false, misleading and deceptive
 6 advertising, and an injunction restraining Defendants from continuing to employ the unlawful
 7 methods, acts and practices alleged herein pursuant to California Civil Code § 1780(a)(2) If
 8 Defendants are not restrained from engaging in these types of practices in the future, Plaintiff and
 9 the other members of the Class will continue to suffer harm.

10 53 CIVIL CODE § 1782 NOTICE Plaintiff, on or about, December 8, 2017 provided
 11 to Defendants notice and demand that within thirty (30) days from that date, Defendants correct,
 12 repair, replace or otherwise rectify the unlawful, unfair, false and or deceptive practices
 13 complained of herein

14 54 Should the violations herein alleged not be corrected, repaired, replace or rectified
 15 as required by Civil Code § 1782 within 30 days with respect to all Class Members, Plaintiff will
 16 seek to amend this Class Action Complaint to seek, on behalf of each Class Member, actual
 17 damages of at least \$1000, punitive damages, an award of \$5000 for each Class Member who is a
 18 disabled person or senior citizen, and restitution of any ill-gotten gains due to Defendants' acts
 19 and practices

20 55 Plaintiff also requests that this Court award her costs and reasonable attorneys'
 21 fees pursuant to California Civil Code § 1780(d)

22 **PLAINTIFF'S THIRD CAUSE OF ACTION**

23 **(Breach of Contract)**

24 **On Behalf of Herself And The Class**

25 56 Plaintiff realleges and incorporates by reference all of the paragraphs of this Class
 26 Action Complaint as if set forth herein

27 57 Defendants, through their written advertising and marketing materials for the
 28 Shutterfly Groupon Promotion and the similar Shutterfly Groupon deals, made uniform
 representations and offers regarding its promotions, namely that if customers purchased the

1 Shutterfly Groupon deals they would receive would receive a dollar credit, gift card, coupon or
2 other voucher

3 58 Plaintiff accepted Defendants' offer and paid consideration of \$50 for the
4 Shutterfly Groupon deal that she purchased Specifically, on or about November 15, 2017,
5 Plaintiff entered into an contract with Defendants according to which she purchased \$75 worth of
6 credit to use on the Shutterfly website in exchange for \$50 She would not have made a \$50
7 purchase but for Defendants' promise Except for the dates, purchase amounts, and credit
8 amounts, Defendants entered into identical contractual agreements with the Class Members

9 59 Plaintiff, and those similarly situated, performed all their obligations under the
10 contracts Specifically, they gave to Defendants money in exchange for a dollar credit, gift card,
11 coupon or other voucher offered on the Groupon website

12 60 Plaintiff, and those similarly situated, did not receive the benefit of their bargain
13 Specifically, instead of receiving a dollar credit, gift card, coupon or other voucher as promised,
14 Plaintiff received a promotional code that could not be combined with any other promotions or
15 sales, including free shipping coupons As such Defendants breached the contract in which
16 Plaintiff, and those similarly situated, entered into with Defendants

17 61 Plaintiff, and those similarly situated, had a legal capacity to enter into the
18 aforementioned agreement(s)

19 62 As a direct and proximate result of the breaches set forth herein, Plaintiff, and
20 those similarly situated, have suffered, and continue to suffer, damages in an amount that will be
21 proven at trial, but which are in excess of the jurisdictional minimum of this Court.

22 63 Plaintiff seeks, on behalf of himself, those similarly situated, and the general
23 public, declaratory and injunctive relief against Defendants requiring specific performance of the
24 contract pursuant to Civil Code sections 3384 and 3386

25 **PLAINTIFF'S FOURTH CAUSE OF ACTION**

26 **(Fraud, Deceit and/or Misrepresentation)**

On Behalf of Herself and The Class

27 64 Plaintiff realleges and incorporates by reference all of the paragraphs of this Class
28 Action Complaint as if set forth herein

1 65 On or about November 15, 2017, Defendants informed Plaintiff that she would
2 receive a dollar credit, gift card, coupon or other voucher when she purchased a Shutterfly deal
3 from the Groupon website. Except for the dates of the promise, the purchase amounts, and the
4 credit amounts, Defendants made the identical representation to Class Members.

5 66 At the time of the purchase of the Shutterfly Groupon deal by Plaintiff and other
6 class members, Defendants failed to inform Plaintiff and the other class members that the
7 customer would receive a promotional code that could not be combined with any other
8 promotions or sales, including free shipping coupons. Because Defendants provided incomplete
9 and misleading information about the terms of the Shutterfly Groupon deals and because
10 Defendants had sole knowledge about how they would actually treat the Shutterfly Groupon deals
11 when redeemed at Shutterfly, Defendants had a duty to provide this information, which was
12 material to the decisions of Plaintiff and other class members as to whether to purchase the
13 Shutterfly Groupon deal.

14 67 In not so informing Plaintiff and other class members, Defendants breached their
15 duty to them. Defendants also gained financially from, and as a result of, their breach.

16 68 Plaintiff and the other Class members would have acted differently had Defendants
17 not made these misrepresentations and omissions, by not purchasing the Shutterfly Groupon deal.

18 69 By and through such fraud, deceit, misrepresentations and/or omissions,
19 Defendants intended to induce Plaintiff and those similarly situated to alter their position to their
20 detriment.

21 70 Plaintiff and those similarly situated justifiably and reasonably relied on
22 Defendants' misrepresentations, and, accordingly, were damaged by the Defendants.

23 71 Defendants' conduct as described herein was willful and malicious and was
24 designed to maximize Defendants' profits even though Defendants knew that it would cause loss
25 and harm to Plaintiff.

26 72 As a direct and proximate result of Defendants' misrepresentations, Plaintiff and
27 those similarly situated have suffered damages in an amount equal to the amount that Defendants
28 collected from them, or in the alternative suffered damages of at least the expected cash value of

1 the dollar credit, gift card, coupon or other voucher purchased on the Groupon website

2 73 Plaintiff seeks, on behalf of herself, those similarly situated, and the general
3 public, a declaration that the above-described practices constitute false, misleading and deceptive
4 advertising, and an injunction restraining Defendants from engaging in any such advertising and
5 marketing practices in the future. Such misconduct by Defendants, unless and until enjoined and
6 restrained by order of this Court, will continue to cause injury in fact to the general public and the
7 loss of money and property in that the Defendants will continue to violate the laws of California,
8 unless specifically ordered to comply with the same. This expectation of future violations will
9 require current and future customers to repeatedly and continuously seek legal redress in order to
10 recover monies paid to Defendants to which Defendants are not entitled. Plaintiff, those similarly
11 situated and/or other consumers nationwide have no other adequate remedy at law

12 **PLAINTIFF'S FIFTH CAUSE OF ACTION**

13 **(Unfair, Unlawful and Deceptive Trade Practices, Business and Professions Code § 17200,**
14 ***et seq.*)**

15 **On Behalf of Herself and the Class**

16 74 Plaintiff realleges and incorporates by reference all of the paragraphs of this Class
17 Action Complaint as if set forth herein

18 75 Within four (4) years preceding the filing of this Class Action Complaint, and at
19 all times mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful
20 and deceptive trade practices in California by engaging in the unfair and illegal business practices
21 outlined in this Class Action Complaint. In particular, Defendants have engaged, and continue to
22 engage, in unfair, unlawful and deceptive trade practices by, without limitation, marketing and
23 advertising that customers would receive dollar credit, gift card, coupon or other voucher when
24 they purchased a Shutterfly deal from the Groupon website, without disclosing that by purchasing
25 the Shutterfly Groupon deal, the customer would receive a promotional code that could not be
26 combined with any other promotions or sales, including free shipping coupons; including in their
27 Terms of Service an unconscionable and unenforceable waiver of the right to seek public
28 injunctive relief, and violating the False Advertising law and the CLRA as described herein

76 Defendants engage in these unfair practices to increase their profits. Accordingly,

1 Defendants have engaged in unlawful trade practices, as defined and prohibited by section 17200,
2 *et seq* of the California Business and Professions Code.

3 77 The aforementioned practices, which Defendants have used, and continue to use,
4 to their significant financial gain, also constitute unlawful competition and provide an unlawful
5 advantage over Defendants' competitors as well as injury to the general public

6 78 Plaintiff, and those similarly situated, relied, to their detriment, on Defendants'
7 false, deceptive, unfair and illegal representations that they would receive would receive dollar
8 credit, gift card, coupon or other voucher when they purchased a deal from the Groupon website
9 Plaintiff and Class, for example, were induced into purchasing the Shutterfly Groupon deals with
10 the belief that in exchange, they would receive dollar credit, gift card, coupon or other voucher
11 that could be used in the future in combination with other sales or promotional codes offered on
12 the Shutterfly website including free shipping codes Plaintiff and Class Members would not have
13 purchased the Shutterfly Groupon deal but for Defendants' deceptive, unfair, and unlawful
14 representations

15 79 On information and belief, Shutterfly has attempted to enforce the arbitration
16 provision against its customers, even though that provision is void under its own terms because it
17 includes an unconscionable and unenforceable waiver of public injunctive relief

18 80 As a direct and proximate result of such actions, Plaintiff and the other members
19 of the Class have suffered and continue to suffer injury in fact and have lost money and/or
20 property as a result of such deceptive, unfair and/or unlawful trade practices and unfair
21 competition in an amount which will be proven at trial, but which is in excess of the jurisdictional
22 minimum of this Court

23 81 Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as
24 necessary and according to proof, to restore any and all monies acquired by Defendants from
25 Plaintiff, the general public, or those similarly situated by means of the unfair and/or deceptive
26 trade practices complained of herein, plus interest thereon.

27 82 Plaintiff seeks, on behalf of herself, those similarly situated, and the general
28 public, a declaration that the above-described practices constitute false, misleading and deceptive

1 advertising, and an injunction restraining Defendants from engaging in any such advertising and
 2 marketing practices in the future. Such misconduct by Defendants, unless and until enjoined and
 3 restrained by order of this Court, will continue to cause injury in fact to the general public and the
 4 loss of money and property in that the Defendants will continue to violate the laws of California,
 5 unless specifically ordered to comply with the same. This expectation of future violations will
 6 require current and future customers to repeatedly and continuously seek legal redress in order to
 7 recover monies paid to Defendants to which Defendants are not entitled. Plaintiff, those similarly
 8 situated and/or other consumers nationwide have no other adequate remedy at law to ensure
 9 future compliance with the California Business and Professions Code alleged to have been
 10 violated herein.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment as follows

13 A On Causes of Action Numbers 1 and 5 against Defendants and in favor of
 14 Plaintiff and the other members of the Class

15 1 For restitution pursuant to, without limitation, the California Busi-
 16 ness & Professions Code §§ 17200, *et seq* and 17500, *et seq* , and

17 2 For injunctive relief pursuant to, without limitation, the California
 18 Business & Professions Code §§ 17200, *et seq* and 17500, *et seq* ,

19 B On Cause of Action Number 2 against Defendants and in favor of Plaintiff
 20 and the other members of the Class

21 1 For restitution and injunctive relief pursuant to California Civil
 22 Code section 1780, and

23 2 reserved,

24 C On Cause of Action Number 3 against Defendants and in favor of Plaintiff
 25 and the other members of the Class

26 1 For an award of compensatory damages, the amount of which is to
 27 be determined at trial, and

28 2 For injunctive relief requiring specific performance of the contract,

1 D. On Cause of Action Number 4 against Defendants and in favor of Plaintiff
2 and the other members of the Class

3 1 An award of compensatory damages, the amount of which is to be
4 determined at trial,

5 2 An award of punitive damages, the amount of which is to be deter-
6 mined at trial, and

7 3 For declaratory and injunctive relief;

8 F On all causes of action against Defendants and in favor of Plaintiff, Class
9 Members and the general public.

10 1 For reasonable attorneys' fees according to proof pursuant to, with-
11 out limitation, the California Legal Remedies Act and California
12 Code of Civil Procedure § 1021.5,

13 2 For costs of suit incurred, and

14 3 For such further relief as this Court may deem just and proper

15 **JURY TRIAL DEMANDED**

16 Plaintiff hereby demands a trial by jury

17 Dated: December 8, 2017

18 **GUTRIDE SAFIER LLP**

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