

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Todd Carpenter (234464), Lynch Carpenter, LLP, 1350 Columbia St., Ste. 603, San Diego, CA 92101 James Drimmer (196890), Lynch Carpenter, LLP, 1350 Columbia St., Ste. 603, San Diego, CA 92101 Warren Postman (330869), Keller Postman LLC, 150 N. Riverside Plaza, Ste. 4100, Chicago, IL 60606  TELEPHONE NO: (619) 762-1910 FAX NO. (Optional): E-MAIL ADDRESS (Optional): Todd@lcllp.com; jim@lcllp.com; wdp@kellerpostman.com ATTORNEY FOR (Name): Rosemarie Rivali	<b>FOR COURT USE ONLY</b>  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Diego <b>05/04/2023</b> at 03:22:24 PM Clerk of the Superior Court By Elizabeth Sanchez, Deputy Clerk
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 325 South Melrose Drive MAILING ADDRESS: 325 South Melrose Drive CITY AND ZIP CODE: Vista, 92081 BRANCH NAME: North County	CASE NUMBER:   37-2023-00019221-CU-BT-NC
PLAINTIFF: Rosemarie Rivali DEFENDANT: Shutterfly, LLC <input checked="" type="checkbox"/> DOES 1 TO <u>50</u> inclusive	
<b>COMPLAINT—Personal Injury, Property Damage, Wrongful Death</b> <input type="checkbox"/> <b>AMENDED (Number):</b> Type (check all that apply): <input type="checkbox"/> <b>MOTOR VEHICLE</b> <input checked="" type="checkbox"/> <b>OTHER (specify):</b> Pecuniary loss according to proof for unfair business practices <input type="checkbox"/> <b>Property Damage</b> <input type="checkbox"/> <b>Wrongful Death</b> <input type="checkbox"/> <b>Personal Injury</b> <input type="checkbox"/> <b>Other Damages (specify):</b>	
<b>Jurisdiction (check all that apply):</b> <input type="checkbox"/> <b>ACTION IS A LIMITED CIVIL CASE</b> Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> <b>ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)</b> <input type="checkbox"/> <b>ACTION IS RECLASSIFIED by this amended complaint</b> <input type="checkbox"/> <b>from limited to unlimited</b> <input type="checkbox"/> <b>from unlimited to limited</b>	

1. **Plaintiff** (name or names): Rosemarie Rivali

alleges causes of action against **defendant** (name or names):  
 Shutterfly, LLC, a Delaware Limited Liability Company

2. This pleading, including attachments and exhibits, consists of the following number of pages: 9

3. Each plaintiff named above is a competent adult

a.  **except** plaintiff (name):

- (1)  a corporation qualified to do business in California  
 (2)  an unincorporated entity (describe):  
 (3)  a public entity (describe):  
 (4)  a minor  an adult  
 (a)  for whom a guardian or conservator of the estate or a guardian ad litem has been appointed  
 (b)  other (specify):

(5)  other (specify):

b.  **except** plaintiff (name):

- (1)  a corporation qualified to do business in California  
 (2)  an unincorporated entity (describe):  
 (3)  a public entity (describe):  
 (4)  a minor  an adult  
 (a)  for whom a guardian or conservator of the estate or a guardian ad litem has been appointed  
 (b)  other (specify):

(5)  other (specify):

Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

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4.  Plaintiff (*name*):  
 is doing business under the fictitious name (*specify*):
- and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a.  **except** defendant (*name*): Shutterfly, LLC
- (1)  a business organization, form unknown
- (2)  a corporation
- (3)  an unincorporated entity (*describe*):
- (4)  a public entity (*describe*):
- (5)  other (*specify*):  
 Delaware Limited Liability Company
- c.  **except** defendant (*name*):
- (1)  a business organization, form unknown
- (2)  a corporation
- (3)  an unincorporated entity (*describe*):
- (4)  a public entity (*describe*):
- (5)  other (*specify*):
- b.  **except** defendant (*name*):
- (1)  a business organization, form unknown
- (2)  a corporation
- (3)  an unincorporated entity (*describe*):
- (4)  a public entity (*describe*):
- (5)  other (*specify*):
- d.  **except** defendant (*name*):
- (1)  a business organization, form unknown
- (2)  a corporation
- (3)  an unincorporated entity (*describe*):
- (4)  a public entity (*describe*):
- (5)  other (*specify*):
- Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a.  Doe defendants (*specify Doe numbers*): 1-50 \_\_\_\_\_ were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b.  Doe defendants (*specify Doe numbers*): \_\_\_\_\_ are persons whose capacities are unknown to plaintiff.
7.  Defendants who are joined under Code of Civil Procedure section 382 are (*names*):
8. This court is the proper court because
- a.  at least one defendant now resides in its jurisdictional area.
- b.  the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
- c.  injury to person or damage to personal property occurred in its jurisdictional area.
- d.  other (*specify*):
9.  Plaintiff is required to comply with a claims statute, **and**
- a.  has complied with applicable claims statutes, **or**
- b.  is excused from complying because (*specify*):

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10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a.  Motor Vehicle
- b.  General Negligence
- c.  Intentional Tort
- d.  Products Liability
- e.  Premises Liability
- f.  Other (*specify*):  
 Violation of California's Consumer Legal Remedies Act ("CLRA"); CAL.CIV.CODE §§ 1750, et seq.  
 Violation of California's False Advertising Laws ("FAL"); CAL.BUS. & PROF.CODE §§ 17500, et seq. Violation of California's Unfair Competition Laws ("UCL"); CAL.BUS. & PROF.CODE §§ 17200, et seq.

The Plaintiff seeks to certify the following class:

All persons, within the United States, who, within the preceding four years (the "Class Period"), purchased from Shutterfly's e-commerce website, one or more products at discounts from an advertised reference price and who have not received a refund or credit for their purchase(s).

11. Plaintiff has suffered

- a.  wage loss
- b.  loss of use of property
- c.  hospital and medical expenses
- d.  general damage
- e.  property damage
- f.  loss of earning capacity
- g.  other damage (*specify*):  
 Pecuniary loss according to proof

12.  The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a.  listed in Attachment 12.
- b.  as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

Restitution and disgorgement of unjust enrichment that Defendant obtained from Plaintiff as a result of its unlawful, unfair, and fraudulent business practices. Declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendant from continuing the unlawful practices. Order Defendant to engage in a corrective advertising campaign, awarding attorneys fees and costs, and further relief as the Court may deem necessary or appropriate.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1)  compensatory damages
- (2)  punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

- (1)  according to proof
- (2)  in the amount of: \$

15.  The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: May 4, 2023

Todd D. Carpenter

(TYPE OR PRINT NAME)



/s Todd D. Carpenter

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

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First **CAUSE OF ACTION**  **Fraud**

(number)

ATTACHMENT TO  Complaint  Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR- 1. Plaintiff (name): Rosemarie Rivali

alleges that defendant (name): Shutterfly, LLC

on or about (date): March 21, 2022 defrauded plaintiff as follows:

FR-2.  **Intentional or Negligent Misrepresentation**

a. Defendant made representations of material fact  as stated in Attachment FR-2.a  as follows:

Defendant violated California's Consumer Legal Remedies Act by fabricating an "original price" of products it sells, to deceptively discount its products to induce consumers to purchase its products under the guise of a significant sale. Civ. Code § 1750, et seq. Specifically, defendant advertised goods or services with intent to not sell them as advertised. Civ. Code § 1770(a)(9). Defendant also made false or misleading statement of fact concerning reasons for, existence of, or amount of price reductions. Civ. Code § 1770(a)(13).

b. These representations were in fact false. The truth was  as stated in Attachment FR-2.b  as follows:

The products were never sold at the "original price," and the advertised original price was inflated to depict a larger discount to consumers in order to deceive them into making a purchase on a perceived sale.

c. When defendant made the representations,

defendant knew they were false, or

defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FIR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3.  **Concealment**

a. Defendant concealed or suppressed material facts  as stated in Attachment FR-3.a  as follows:

Defendant concealed the actual value of the products it sells, by inflating the products "original price."

b. Defendant concealed or suppressed material facts

defendant was bound to disclose.

by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item IFIR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

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First \_\_\_\_\_  
 (number)

**CAUSE OF ACTION  Fraud**

FR-4.  **Promise Without Intent to Perform**

a. Defendant made a promise about a material matter without any intention of performing it  as stated in Attachment FR-4.a  as follows:

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act  as stated in Attachment FR-5  as follows:

Plaintiff was induced to purchase the discounted product in order to capture the perceived savings. Plaintiff would not have made a purchase knowing the true value of the product.

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged  as stated in Attachment FR- 6  as follows:

Plaintiff was damaged by making purchases they would not have otherwise made, due to the deceptive discount. Furthermore, a result of Defendants deceptive business practices, Plaintiff paid more than the actual value of the product purchased.

FIR - 7. Other:

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Second **CAUSE OF ACTION**  **Fraud**

(number)

ATTACHMENT TO  Complaint  Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR- 1. Plaintiff (name): Rosemarie Rivali

alleges that defendant (name): Shutterfly, LLC

on or about (date): March 21, 2022 defrauded plaintiff as follows:

FR-2.  **Intentional or Negligent Misrepresentation**

a. Defendant made representations of material fact  as stated in Attachment FR-2.a  as follows:

Defendant violated California's False Advertising Law by fabricating a false "original" price of products it sells, to deceptively discount its products to induce consumers to purchase its products under the guise of a significant sale. Bus. & Prof. Code §§ 17500 et seq. Defendant also violated the 90-day rule under California's False Advertising Law. Bus & Prof. Code § 17501.

b. These representations were in fact false. The truth was  as stated in Attachment FR-2.b  as follows:

The products were never sold at the "original price," and the advertised original price was inflated to depict a larger discount to consumers in order to deceive them into making a purchase on a perceived sale.

c. When defendant made the representations,

defendant knew they were false, or

defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FIR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3.  **Concealment**

a. Defendant concealed or suppressed material facts  as stated in Attachment FR-3.a  as follows:

Defendant concealed the actual value of the products it sells, by inflating the products "original price."

b. Defendant concealed or suppressed material facts

defendant was bound to disclose.

by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item IFIR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

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Second \_\_\_\_\_  
 (number)

**CAUSE OF ACTION  Fraud**

FR-4.  **Promise Without Intent to Perform**

a. Defendant made a promise about a material matter without any intention of performing it  as stated in Attachment FR-4.a  as follows:

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act  as stated in Attachment FR-5  as follows:

Plaintiff was induced to purchase the discounted product in order to capture the perceived savings. Plaintiff would not have made a purchase knowing the true value of the product.

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged  as stated in Attachment FR- 6  as follows:

Plaintiff was damaged by making purchases they would not have otherwise made, due to the deceptive discount. Furthermore, a result of Defendants deceptive business practices, Plaintiff paid more than the actual value of the product purchased.

FIR - 7. Other:

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Third **CAUSE OF ACTION**  **Fraud**

(number)

ATTACHMENT TO  Complaint  Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR- 1. Plaintiff (name): Rosemarie Rivali

alleges that defendant (name): Shutterfly, LLC

on or about (date): March 21, 2022 defrauded plaintiff as follows:

FR-2.  **Intentional or Negligent Misrepresentation**

a. Defendant made representations of material fact  as stated in Attachment FR-2.a  as follows:

Defendant violated the "unlawful" prong of California's Unfair Competition Law, by violating California's False Advertising Law. Bus & Prof. Code §§ 17200, et seq., and California's Consumer Legal Remedies Act. Civ. Code §§ 1750, et seq. Defendant inflated the "original price" of its products in order to offer a significant discounts to deceive consumers into purchasing the products for the perceived savings.

b. These representations were in fact false. The truth was  as stated in Attachment FR-2.b  as follows:

The products were never sold at the "original price," and the advertised original price was inflated to depict a larger discount to consumers in order to deceive them into making a purchase on a perceived sale.

c. When defendant made the representations,

defendant knew they were false, or

defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FIR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3.  **Concealment**

a. Defendant concealed or suppressed material facts  as stated in Attachment FR-3.a  as follows:

Defendant concealed the actual value of the products it sells, by inflating the products "original price."

b. Defendant concealed or suppressed material facts

defendant was bound to disclose.

by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item IFIR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.



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Third  
 (number)

**CAUSE OF ACTION  Fraud**

FR-4.  **Promise Without Intent to Perform**

a. Defendant made a promise about a material matter without any intention of performing it  as stated in Attachment FR-4.a  as follows:

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act  as stated in Attachment FR-5  as follows:

Plaintiff was induced to purchase the discounted product in order to capture the perceived savings. Plaintiff would not have made a purchase knowing the true value of the product.

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged  as stated in Attachment FR- 6  as follows:

Plaintiff was damaged by making purchases they would not have otherwise made, due to the deceptive discount. Furthermore, a result of Defendants deceptive business practices, Plaintiff paid more than the actual value of the product purchased.

FIR - 7. Other: