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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**07/10/2023** at 04:15:00 PM  
Clerk of the Superior Court  
By Ashley Carini, Deputy Clerk

8 Attorneys for Defendant SHUTTERFLY, LLC

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO**

11 ROSEMARIE RIVALI, on behalf of herself and  
12 all others similarly situated,

13 Plaintiff,

14 v.

15 SHUTTERFLY, LLC, a Delaware limited  
16 liability company, and DOES 1- 50, inclusive,,

17 Defendants.

CASE NO. 37-2023-00019221-CU-BT-NC

Assigned to Hon. Cynthia A. Freeland, Dept. N-27

**DEFENDANT SHUTTERFLY, LLC'S ANSWER  
TO COMPLAINT**

Date Filed: May 4, 2023

Trial: None Set

1 Defendant Shutterfly, LLC (“Shutterfly” or “Defendant”) submits this Answer in response to the  
2 unverified Complaint (“Complaint”) of Plaintiff Rosemarie Rivali, on behalf of herself and all others  
3 similarly situated (“Plaintiff”) as follows:

4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant generally denies  
6 each and every allegation of the Complaint, including each and every alleged cause of action, and further  
7 denies that Plaintiff is entitled to the relief requested or any relief at all, that Plaintiff sustained or will  
8 sustain damages in the sum or sums alleged, or any other sum or sums, or at all; Defendant further denies  
9 that Plaintiff is entitled to attorneys’ fees in the sum or sums alleged, or any other sum or sums, or at all.

10 **AFFIRMATIVE DEFENSES**

11 Defendant raises the following affirmative defenses, which do not affect the burdens of proof on  
12 the claims asserted by Plaintiff. Defendant does not waive and expressly reserves its right to assert  
13 additional affirmative defenses as this case progresses and as additional facts and circumstances are  
14 discovered and developed.

15 **FIRST AFFIRMATIVE DEFENSE**

16 **(Failure to State a Claim for Relief)**

17 The Complaint, and the causes of action asserted therein, fail to state facts sufficient to state a  
18 claim upon which relief can be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Arbitration Agreement)**

21 The claims asserted are subject to mandatory arbitration under the arbitration clause contained in  
22 the Terms of Use, to which Plaintiff agreed when making purchases.

23 **THIRD AFFIRMATIVE DEFENSE**

24 **(Statute of Limitations)**

25 Plaintiff’s claims, and the claims of each putative class member, if any, are barred or limited by  
26 the applicable statute(s) of limitations, including, but not limited to, California Business and Professions  
27 Code section 17028, California Code of Civil Procedure sections 338(a) and (h), and California Civil  
28 Code section 1783.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Uncertainty – Conclusory Representative Allegations)**

3 Plaintiff’s claims, and the claims of each putative class member, if any, are barred in whole or in  
4 part because the Complaint is uncertain in that the purported representative allegations are conclusory.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 **(Representative Action Unmanageable)**

7 The type of claims alleged by Plaintiff on behalf of himself and putative class members is a  
8 matter which cannot be manageably tried.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 **(Due Process)**

11 Representative treatment of Plaintiff’s purported claims, as applied to the facts and circumstances  
12 of this case, would constitute a denial of Defendant’s due process rights under both the United States and  
13 California Constitutions.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 **(Penalties Unjust, Arbitrary and Oppressive, or Confiscatory)**

16 Plaintiff and any alleged putative class members are not entitled to recover any civil penalties or  
17 statutory damages because, under the circumstances of the case, any such recovery would be unjust,  
18 arbitrary and oppressive, or confiscatory.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 **(No Injury/Lack of Standing)**

21 Plaintiff and any alleged putative class members are not entitled to recover and therefore lack  
22 standing because they did not suffer any actual injury from the alleged violations of California’s Unfair  
23 Competition Law (Business and Professions Code sections 17200 *et seq.*), False Advertising Law  
24 (Business and Professions Code sections 17500 *et seq.*), and Consumer Legal Remedies Act (Civil Code  
25 sections 1750 *et seq.*).  
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1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Constitutional Right to Equal Protection)**

3 An award of penalties against Defendant would be an unconstitutional denial of Defendant's  
4 rights to equal protection under both the United States and California Constitutions.

5 **TENTH AFFIRMATIVE DEFENSE**

6 **(Failure to Satisfy Requirements for Class Certification)**

7 Plaintiff fails to satisfy the prerequisites for class certification, and therefore, cannot represent the  
8 interests of others as to the causes of action alleged in the Complaint. Among other things, the claims  
9 asserted by Plaintiff are matters in which individual issues predominate, are neither common to nor  
10 typical of the claims, if any, of the alleged class members Plaintiff purports to represent, class treatment  
11 is not the superior method for adjudicating this dispute, and Plaintiff is not an adequate representative of  
12 the class.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 **(Waiver)**

15 Plaintiff's claims, and the claims of each putative class member, are barred in whole or in part by  
16 the doctrine of waiver.

17 **TWELFTH AFFIRMATIVE DEFENSE**

18 **(Estoppel)**

19 Plaintiff's claims, and the claims of each putative class member, are barred in whole or in part by  
20 the doctrine of estoppel.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 **(Unclean Hands)**

23 Plaintiff's claims, and the claims of each putative class member, if any, are barred in whole or in  
24 part by the doctrine of unclean hands, to the extent Plaintiff and/or putative class members engaged in  
25 wrongful conduct and actions.  
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1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Laches)**

3 Plaintiff's claims, and the claims of each putative class member, if any, are barred in whole or in  
4 part by the doctrine of laches.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 **(Release Through Prior Settlement Agreement, Compromise, Accord and Satisfaction or Release)**

7 To the extent that Plaintiff or any putative class member entered into or may enter into any  
8 individual settlement agreement, compromise, accord and satisfaction or release, and/or to the extent  
9 such a settlement, compromise, accord and satisfaction or release was entered into on their behalf, any  
10 such individual has released or will have released any claim purported to be alleged in the Complaint.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 **(Setoff and Recoupment)**

13 To the extent Plaintiff or any putative class member sustained any damages, although such is not  
14 admitted and is specifically denied, Defendant is entitled under the equitable doctrine of setoff and  
15 recoupment to offset all obligations of Plaintiff or any putative class member of the representative action  
16 owed to Defendant against any judgment that may be entered against Defendant.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 **(Excessive Fines)**

19 To the extent Plaintiff or any putative class members seek to recover civil penalties or statutory  
20 damages that are disproportionate to the actual harm suffered, if any, including but not limited to civil  
21 penalties or statutory damages under Business and Professions Code sections 17206 and 17536 or Civil  
22 Code section 1780(a)(1), an award of civil penalties or statutory damages under the circumstances of this  
23 case would constitute an excessive fine and otherwise would be in violation of Defendant's due process  
24 and other rights under the United States and California Constitutions.

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**

26 **(Conduct Reasonable and In Good Faith/Not Willful or Intentional)**

27 If Defendant is found to have failed to comply with applicable California laws, including the  
28 UCL, FAL or CLRA, which allegations Defendant denies, Defendant acted at all times on the basis of

1 good faith and reasonable belief that it had complied fully with such laws. Consequently, Defendant's  
2 conduct was not willful or knowing and intentional within the meaning of such laws.

3 **NINETEENTH AFFIRMATIVE DEFENSE**

4 **(Res Judicata and Collateral Estoppel)**

5 Plaintiff's Complaint, and the causes of action alleged therein, are barred by the doctrines of *res*  
6 *judicata* and/or collateral estoppel, to the extent Plaintiff and/or putative class members have asserted the  
7 same claims in any prior legal or administrative proceeding, and such claims were already resolved by a  
8 judgment.

9 **TWENTIETH AFFIRMATIVE DEFENSE**

10 **(Offset)**

11 Any claims for restitution, damages or other monetary recovery by Plaintiffs and/or members of  
12 the putative class must be offset and reduced by the value they received from the products at issue that  
13 they purchased.

14 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

15 **(Reservation of Rights)**

16 At this point, discovery in this action has not been commenced or accomplished in any fashion; as  
17 such, Defendant reserves the right to amend its answer, and allege additional affirmative or other  
18 defenses as additional facts, issues or defenses may be discovered.

19 **PRAYER**

20 Based on the foregoing, Defendant prays for judgment as follows:

- 21 1. That the Complaint be dismissed in its entirety, with prejudice;
- 22 2. That Plaintiff takes nothing by way of the Complaint;
- 23 3. That judgment be entered in favor of Defendant and against Plaintiff on all causes of  
24 action asserted against Defendant in the Complaint;
- 25 4. That, to the extent it is determined that Defendant is entitled to reasonable attorney's fees,  
26 that Defendant be awarded those fees according to proof;
- 27 5. That Defendant be awarded the costs of suit incurred herein; and,
- 28 6. That Defendant be awarded such other and further relief as the Court may deem just and

proper.

DATED: July 10, 2023

GREENBERG TRAURIG, LLP

By           /s/ Robert J. Herrington            
Robert J. Herrington  
Attorneys for Defendant SHUTTERFLY, LLC

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1 **PROOF OF SERVICE**

2 *San Diego Superior Court;*  
3 *Case No.: 37-2023-00019221-CU-BT-NC*

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:**

5 I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 1840 Century Park East, Suite 1900, Los Angeles, California 90067-2121 and email address is jeongk@gtlaw.com.

6 On the date given below, I served the **DEFENDANT SHUTTERFLY, LLC'S ANSWER TO COMPLAINT**, on the interested parties, addressed as follows:

7 Todd D. Carpenter  
8 James Drimmer  
9 LYNCH CARPENTER, LLP  
10 1234 Camino Del Mar  
11 Del Mar, CA 92014  
12 Tel: (619) 762-1910  
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Washington DC 20005  
Tel: (202) 918-1123  
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*Attorney for Plaintiff*

*Attorneys for Plaintiff*

13  **[BY MAIL]** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.

14  **[BY OVERNIGHT COURIER]** I am readily familiar with the business practice of my place of employment in respect to the collection and processing of times for delivery by overnight courier. The foregoing sealed envelope was placed for collection and overnight delivery by \_\_\_\_\_ this date consistent with the ordinary business practice of my employment, so that it will be picked up this date with delivery charges fully prepaid at Los Angeles, California, and delivered the following business day in the ordinary course of business.

15  **[BY E-MAIL]** By transmitting via e-mail the document(s) listed above to the addresses set forth below on this date. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

16  **[BY PERSONAL SERVICE]** I caused such envelope to be delivered by hand to the offices listed above.

17  **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

18 Executed on July 10, 2023, at Los Angeles, California.

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Karen Jeong