

KNEUPPER & COVEY, PC
A. Lorraine Weekes, Esq. (CA SBN 332369)
lorraine@kneuppercovey.com
Kevin Kneupper, Esq. (CA SBN 325413)
kevin@kneuppercovey.com
A. Cyclone Covey, Esq. (CA SBN 335957)
cyclone@kneuppercovey.com
17011 Beach Blvd., Suite 900
Huntington Beach, CA 92647
Tel: 657-845-3100
Fax: 855-596-3707

*Attorneys for Plaintiff Jeremy Sher
And the Putative Class*

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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JEREMY SHER, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

RAINBOW SANDALS, INC.,

Defendant.

Case No. **23STCV23449**

CLASS ACTION

COMPLAINT FOR:

1. Breach of Express Warranty;
2. Violation of the Magnuson-Moss
Warranty Act;
3. Violation of the Song-Beverly Consumer
Warranty Act;
4. Violation of the Consumers Legal
Remedies Act; and
5. Violation of the Unfair Competition Law.

DEMAND FOR JURY TRIAL

1 Plaintiff Jeremy Sher, by and through the undersigned counsel, on behalf of himself and
2 all others similarly situated, hereby files this Class Action Complaint against Defendant Rainbow
3 Sandals, Inc. (Rainbow) and alleges as follows:

4 **INTRODUCTION**

5 1. Rainbow is a shoe and apparel company known for its high-end flip-flops.
6 Rainbow brands itself as selling “The World’s Best Made Sandals Since 1974” and uses slogans,
7 such as “For the Long Ride . . .” and “Mileage Plus . . .” that foreground the longevity and
8 durability of its sandals.

9 2. Defendant Rainbow has misrepresented to consumers and continues to
10 misrepresent to consumers that many of its products come with a lifetime guarantee. Specifically,
11 Rainbow represents that many of its sandals come with “The Rainbow® Guarantee” which “is
12 for the lifetime of the sole. The sandals will be eligible for warranty until you have worn through
13 anywhere on the top or bottom layer of the sole.”

14 3. In actuality, Rainbow does not offer purchasers of its sandals a warranty for the
15 lifetime of the sandals’ sole: Defendant routinely denies consumers who seek to have Rainbow
16 repair manufacturing defects *during the lifetime of their sandals’ soles*. As such, Defendant’s
17 representations regarding the Rainbow® Guarantee it offers are false and misleading.

18 4. This is a class action brought on behalf of consumers, like Jeremy Sher, who
19 believed Rainbow when it touted its lifetime-of-the-sole guarantee, paid a premium for sandals
20 that come with a lifetime-of-the-sole guarantee, and then got far less than they bargained for when
21 Rainbow refused to repair manufacturing defects in their sandals *during the lifetime of the*
22 *sandals’ soles*.

23 **JURISDICTION AND VENUE**

24 5. This court has jurisdiction over this action pursuant to the California Constitution,
25 Article VI, section 10.

26 6. This court has personal jurisdiction over Defendant Rainbow because Rainbow
27 purposely directed its advertising and sales to California residents as described herein and because
28 Rainbow has its principal place of business in California and is incorporated in California.

7. Venue is proper in this court pursuant to California Civil Procedure Code section 395(b) because Plaintiff resided in this county at the time this action was commenced; venue is also proper in this court pursuant to California Civil Procedure Code section 395(b) because the buyer signed the contract in this county insofar as he purchased sandals for personal or household use from a retail store in Los Angeles County.

8. Venue is proper under California Civil Code section 1780(d) because Defendant is doing business in Los Angeles County and a substantial portion of the transaction at issue in this case occurred in Los Angeles County.

THE PARTIES

9. Plaintiff Jeremy Sher is a citizen of the State of California and resides in Los Angeles County, California. In 2011, Plaintiff purchased a pair of sandals from one of Defendant's brick-and-mortar storefront locations in Los Angeles County.

10. Defendant Rainbow Sandals, Inc. is a California corporation. Its principal place of business is at 900 Calle Negocio, San Clemente, CA 92673.

FACTS COMMON TO ALL CLASS MEMBERS

11. Defendant Rainbow sells a range of footwear, apparel and accessories, but it's best known for its flip-flops.

12. Rainbow emphasizes the durability and longevity of its sandals. For example, in a video featured on Rainbow Sandals’ “History” webpage, Rainbow’s founder Jay “Sparky” Longley explains “I started Rainbow Sandals because I figured I could make footwear, functional footwear that would last, uh, forever. And that’s what I’ve been doing.”¹

13. In adult sizes, the flip-flops Rainbow sells are priced at up to approximately ninety dollars, but most are between sixty and eighty dollars.

14. Rainbow can charge so much for its flip-flops in part because it advertises them as being backed by the lifetime-of-the-sole Rainbow® Guarantee.

¹ See “History,” Rainbow Sandals Inc., <https://www.rainbowsandals.com/rainbow-story/history> (embedding video from https://www.youtube.com/watch?v=KaN__HIVANM) (last accessed September 25, 2023).

The Rainbow Guarantee

15. Rainbow's website describes the Rainbow® Guarantee:

RAINBOW GUARANTEE

The Rainbow® Guarantee is for the lifetime of the sole. The sandals will be eligible for warranty until you have worn through anywhere on the top or bottom layer of the sole.

RAINBOW® SANDALS will repair your sandals if they are damaged or defective due to manufacturing defects only. If your sandals are covered under our warranty and we are unable to repair them, we will issue a new pair.

SIGNATURE SERIES GUARANTEE POLICY

Rainbow® Guarantee

Rainbow Sandals will repair your sandals if they are damaged or defective due to manufacturing defects only. If your sandals are covered under our warranty and we are unable to repair them, we will issue a new pair. If a Signature Series Sandal is covered under the lifetime warranty and cannot be repaired we will replace your sandals with another Signature Series pair based on product availability. If no Signature Series sandals are available we will replace your sandals with a new pair of regular sandals of your choice. No additional refund will be issued.²

16. Beneath the guarantee are pictures showing defects covered by the Rainbow Guarantee, which include: (1) **"Strap Pulling Out from Toe Straps[:]"** If toe strap comes unglued and pulls cleanly from between the layers of the sandal;" (2) **"Strap Pulling Out from Side Strap[:]"** If side straps come unglued and pull cleanly from between the layers of the sandals;" and (3) **"Delamination of layers[:]"** The top or bottom sole coming unglued and separating from the middle layer of colored foam."

17. If one scrolls all the way past the "Rainbow Guarantee" and its associated photos, one eventually reaches the "Non Guarantee Policy," which provides: "RAINBOW® SANDALS will NOT Repair or Replace your sandals if they have any of the below issues occurring. The situations described below are wear and tear issues. If any of the below are present on your sandals

² "Rainbow Guarantee," Rainbow Sandals Inc., <https://www.rainbowsandals.com/customer-service/rainbow-guarantee> (last accessed June 26, 2023) (changes made to font, font size, and font formatting for readability).

the warranty is immediately voided, regardless if a manufacturing defect is also present.”

18. Underneath this language one finds photographs of the wear and tear issues contemplated by the Non Guarantee Policy. These include: (1) “**Bottom or Top Sole Wearing Through to Soft Colored Insert**[:] Wearing the sandals from the top or bottom sole into the soft colored insert between the top and bottom soles.” (2) “**Excessive Abuse**[:] Chewed Strap from Dog, Gouged or Ripped materials, Skateboard Abuse, Cuts, Slashes, Burns, etc.”; (3) “**Torn Toe Straps**[:] If the side/toe straps tear out from the surface of the sandal or if the strap itself is cut or torn.” (4) “**Torn/Cut Side Straps**[:] If the side/toe straps tear out from the surface of the sandal or if the strap itself is cut or torn;” and (5) “**Cracked Leather and/or Materials Water Damage**[:] Any damage as a result of the sandal coming in contact with moisture, i.e. bowed, shrunk, faded, wrinkled materials, cracked leather.”

19. Rainbow uses its “lifetime guarantee” as a selling point when hawking its sandals. For example, the ad copy on the product page for Rainbow’s Luxury Leather - Single Layer Arch Support with a 1/2" Narrow Strap women’s flip-flop on Rainbow’s website concludes: “The Luxury Leather Collection is of course backed by the Rainbow® Sandals Lifetime Guarantee.”³ Nothing on that product page discloses that because of Defendant’s routine refusals to honor the Rainbow Guarantee, purchasers will not actually receive protection against manufacturing defects throughout the lifetime of the covered sandals’ soles.

20. Consumers who’ve already forked over the cash for sandals covered by the lifetime-of-the-sole Rainbow® Guarantee (“Guaranteed Sandals”) often find, however, that Rainbow weaponizes its so-called “Non Guarantee Policy” against them in ways that render the lifetime-of-the-sole Rainbow® Guarantee virtually worthless. Specifically, they find that during the lifetime of their Guaranteed Sandals’ soles, Rainbow refuses to repair manufacturing defects based on the pretense that normal wear-and-tear voids the Rainbow® Guarantee pursuant to Rainbow’s “Non Guarantee Policy.”

³ See “Luxury Leather - Single Layer Arch Support with a 1/2" Narrow Strap,” Rainbow Sandals Inc., https://www.rainbowsandals.com/product/301ALLN0_LADIES (last accessed September 25, 2023).

21. Consumers victimized by Rainbow’s predatory, deceptive, and wildly unreasonable application of the “Non Guarantee Policy” routinely take to the internet to complain about Rainbow’s anti-consumer practices and to highlight the deceptive nature of the company’s representations concerning the Rainbow Guarantee.

22. For example, on July 19, 2022, one consumer complained to the Better Business Bureau: “I purchased a pair of rainbow sandals in April ‘21 -The leather on them has separated from the cushion, indicating a manufacturers defect based on their ‘lifetime guarantee’-Rainbow Sandals says that this is not covered due to the sandals leather being cracked, even though that is not the defect in the product I’m looking to get coverage on.-Rainbow Sandals has a misleading ‘lifetime guarantee.’”⁴

23. On April 17, 2023, one consumer, “kevin m,” submitted the following review of Defendant to the Better Business Bureau:⁵

Always wore rainbow sandals growing up...then I actually grew up. I had a sole completely detach from the sandal but when I contacted them I was told that the condition of the leather wasn't up to par for a GUARANTEE? I owned them for less than a year. It was clearly an issue with the adhesive that failed because it was the first time in 20 years I'd had this type of issue. Also they sent me photos of a different, more distressed pair of sandals to show how my GUARANTEE didn't fit their criteria for replacement. Absolutely a scam promise.

24. On November 27, 2018, “King D.” of Trabuco, California posted on the Yelp! Page for Defendant’s San Clemente location:⁶

Quality and service has gone way downhill since my last review. I purchased USA-made sandals in June, and, six months later, the soles are coming apart. I sent them in for warranty replacement.

A week later, I received a letter stating, “Even though a true manufacturing defect is present...the manufacturer’s warranty is voided since your sandals have a non-covered issue.”

The non-covered issue they are referring to is a slightly frayed strap. The threads

⁴ See <https://www.bbb.org/us/ca/san-clemente/profile/custom-shoes/rainbow-sandals-inc-1126-13166605/complaints> (last accessed September 25, 2023).

⁵ See <https://www.bbb.org/us/ca/san-clemente/profile/custom-shoes/rainbow-sandals-inc-1126-13166605/customer-reviews> (last accessed September 25, 2023).

⁶ See [https://www.yelp.com/biz/rainbow-sandals-san-clemente-3?hrid=aRlugMtwEHJdS3HPtEtJlQ&utm_campaign=www_review_share_popup&utm_medium=coppy_link&utm_source=\(direct\)](https://www.yelp.com/biz/rainbow-sandals-san-clemente-3?hrid=aRlugMtwEHJdS3HPtEtJlQ&utm_campaign=www_review_share_popup&utm_medium=coppy_link&utm_source=(direct)) (last accessed September 25, 2023).

on the strap came loose (another manufacturing defect), which caused the fraying.

I'm really disappointed. These are no longer the world's greatest sandals :(

25. On July 3, 2018, Paige R. from Paradise Valley, Arizona, posted on the Yelp! Page for the San Clemente Rainbow sandals locations:⁷

I grew up in SC and my family, kids, everyone, have been buying Rainbow forever. We've now had two instances where the toe straps have cleanly broken loose. Rainbow would not honor their stated warranty. Guess this family is going to another brand. Perhaps Reef? Done with Rainbow

26. On April 14, 2015, Mike S. from Honolulu, Hawaii, posted on the Yelp! Page for the San Clemente Rainbow location:⁸

Good luck getting them to honor the lifetime warranty. They're all in your face about it the time of purchase. But, when it's come times to utilize it, they quickly backpedal by denying all responsibility and pushing the small print. Never again. Get them from somewhere else. You will be disappointed. Overpriced rubbish. What a joke!

27. On August 22, 2015, Alex W. from Irvine California, posted on the Yelp! Page for a San Clement Rainbow location:⁹

Would not replace defective sandals I bought here said they were not covered by warranty even though they were clearly made defective. So much for a lifetime warranty against manufacturing defects, I also did not wear through any layer of the sandals so they were suppose to be covered. After 10 years of wearing rainbows never again as they are made poorly and will not back up their product with their lifetime warrenty. [sic]

28. Plaintiff is informed and believes that these reviews and comments accurately reflect the experiences the posting consumers had with Defendant Rainbow.

29. Based on the number of online complaints concerning Rainbow's failure to honor its lifetime warranty, which date back more than five years, Plaintiff is informed and believes that

⁷ See [https://www.yelp.com/biz/rainbow-sandals-san-clemente-3?hrid=T8Izg2jZKDVIPSs-0UkVTQ&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/rainbow-sandals-san-clemente-3?hrid=T8Izg2jZKDVIPSs-0UkVTQ&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last accessed September 25, 2023).

⁸ See [https://www.yelp.com/biz/rainbow-sandals-san-clemente-3?hrid=mCnTaBfbPvYe8meCGgd7xg&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/rainbow-sandals-san-clemente-3?hrid=mCnTaBfbPvYe8meCGgd7xg&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last accessed September 25, 2023).

⁹ See [https://www.yelp.com/biz/rainbow-sandals-san-clemente-3?hrid=hbh2P3ikMUSPDKeG76AZWw&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/rainbow-sandals-san-clemente-3?hrid=hbh2P3ikMUSPDKeG76AZWw&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)) (last accessed September 25, 2023).

Defendant Rainbow is aware that numerous reasonable consumers have been misled by Defendant's representations concerning its "lifetime guarantee." Plaintiff is informed and believes that notwithstanding its knowledge of the misleading and deceptive nature of its representations concerning the Rainbow Guarantee, Defendant persisted in advertising its Guaranteed Sandals in a misleading manner.

Mr. Sher's Individual Allegations

30. In 2011, Jeremy Sher purchased a pair of leather sandals from a brick-and-mortar store operated by Defendant and located in the County of Los Angeles.

31. At the time Mr. Sher purchased these shoes, the operative lifetime guarantee Rainbow offered was substantively the same as the currently-offered Rainbow Guarantee.

32. On the Rainbow Guarantee webpage, Rainbow instructs its customers: "If you are not sure if your sandals are covered under the lifetime warranty please email pictures of the top and bottom of both sandals to customer service at Info@RainbowSandals.com for review before mailing them in."¹⁰

33. On February 27, 2023, Mr. Sher sent an email to info@RainbowSandals.com. The leather lining of his Rainbow sandals was pulling away from the sole of his shoe. Mr. Sher wrote: "I'm fairly confident that my sandals will qualify for replacement due to the delamination, if nothing else, but wanted to confirm before I went to the trouble to send them in. Here are photos. I tried to be thorough, and the soles are holding up great as far as I can tell."



34. Mr. Sher's February 27, 2023 email included a photo showing that his sandals' soles were

Figure 1 Photo included with Mr. Sher's first February 27, 2023 email to Rainbow.

¹⁰ "Rainbow Guarantee," Rainbow Sandals Inc., <https://www.rainbowsandals.com/customer-service/rainbow-guarantee> (last accessed September 25, 2023).

1 intact.

2 35. Mr. Sher's email also included
3 photos showing that, due to a manufacturing
4 defect, the top layer of the sandal was
5 delaminating from the sole.

6 36. Wear was visible on the
7 sandals' straps in some of the photos Mr. Sher
8 sent to Rainbow on February 27, 2023.



Figure 2 Delamination of Mr. Sher's sandal.

9 37. On February 27, 2023,
10 Rainbow wrote back to Mr. Sher refusing to
11 repair his delaminated sandals. Rainbow wrote:
12 "Thank you for sending us the photos,
13 unfortunately torn straps are not covered under
14 our warranty. Our warranty covers
15 manufacturing defects such as straps pulling out,
16 stitching coming undone, layers of the sandals
17 separating, leather bubbling, anything that
18 would indicate the sandals were not constructed



Figure 3 Wear visible on the strap of Mr. Sher's sandal.

19 properly. Wear and tear issues such as worn down soles, torn straps, cracked leather, dog chew,
20 etc. are not covered because they are caused by use which as a manufacture we have no control
21 over. Please let us know if you have additional questions."

22 38. Mr. Sher promptly wrote back on February 27, 2023, reiterating that "the layers of
23 the sandal are separating." Mr. Sher acknowledged that the straps were not in perfect condition
24 but, he wrote: "the layer of the sandals are separating from the sole." He concluded: "I look
25 forward to hearing back that these sandals qualify for replacement!"

26 39. Rainbow's only response to Mr. Sher's second email was to refer Mr. Sher to its
27 "Non-Guarantee Policy."

28 40. Frustrated, Mr. Sher sent an email (on February 27, 2023) to Rainbow's executive

1 team explaining his experience and his disappointment with Rainbow’s refusal to fulfil its
2 commitment to repair his sandals’ delamination pursuant to its Rainbow Guarantee.

3 41. Sabrina Sexton, Rainbow’s Executive Vice President for Sales & Operations wrote
4 back, admitting that “Yes, the delamination, and the stitching coming out are defects that are
5 generally covered for repair” Ms. Sexton then stated that even though these manufacturing
6 defects were generally covered by the Rainbow Guarantee, Rainbow would not repair Mr. Sher’s
7 sandals. Ms. Sexton did not contend that the soles on Mr. Sher’s sandals had worn through.
8 Rather, she claimed that *during the lifetime of the sandals*, the sandals were outside the lifetime
9 of-the-sole guarantee because their leather had cracked and the straps exhibited some tearing:
10 “Had this been sent in prior to the leather cracking, and the straps tearing away like they did,”
11 Ms. Sexton wrote, “they would have been repaired for you.”

12 42. On February 28, 2023, Mr. Sher wrote back to Rainbow’s executives highlighting
13 the absurdity and duplicity of Rainbow’s refusal to repair the manufacturing defects in his sandals.
14 “I have owned the sandals for 10 years,” he wrote. “I have abided by the rules of not applying
15 lotions/oils or whatever, I haven’t submerged them in water, etc. The condition of the strap is
16 normal wear and tear - the fact that using that as an excuse to not repair the sole IS the problem
17 The fact that you advertise as ‘the world’s best made sandals’ IS the problem. If the policy of the
18 warranty is that normal wear and tear to the strap can void the warranty of the sole THAT’S a
19 problem.” Despite his frustration, Mr. Sher remained open to the possibility that Rainbow might
20 cure its breach and honor its commitment under the lifetime guarantee. He wrote, in bold: “**If**
21 **you'd like to fix or repair the sandals I'll look forward to hearing back about that.**”

22 43. Despite Mr. Sher’s pleas that Rainbow honor its lifetime guarantee, Rainbow
23 would not budge. It persisted in refusing to repair the manufacturing defects present in Mr. Sher’s
24 sandals *even though* these defects manifested during the lifetime of the sandals’ soles.

25 44. Mr. Sher filed a demand for arbitration against Defendant Rainbow with the
26 American Arbitration Association (the AAA).

27 45. On June 9, 2023, the AAA informed the Parties to the arbitration that Rainbow
28 had not submitted its arbitration provision to the AAA for review and had not paid certain fees

1 that were required to be paid before the AAA would administer an arbitration involving Defendant
2 Rainbow. Defendant Rainbow did not pay the required fees and did not submit its arbitration
3 provision to the AAA for review within the timeframe provided for by the AAA. Accordingly,
4 on July 20, 2023, the AAA administratively closed its file and declined to administer the
5 arbitration between Plaintiff Sher and Defendant.

6 46. On July 13, 2023, Mr. Sher notified Defendant, via a notice sent via certified mail,
7 return receipt requested, that it had one final opportunity to cure its breach of express warranty
8 and repair his defective sandals. The notice Mr. Sher sent Rainbow indicated that Mr. Sher was
9 writing on behalf of not only himself, but also on behalf of a class of similarly situated consumers.

10 47. On or around August 2, 2023, Defendant Rainbow emailed Plaintiff stating that it
11 was willing to repair or replace his defective sandals.

12 48. On August 17, 2023, Plaintiff responded via email indicating that he would like a
13 pair of replacement sandals. Plaintiff provided Defendant his mailing address.

14 49. As of the filing of this Class Action Complaint, more than thirty days after Plaintiff
15 provided Defendant his mailing address, Plaintiff has not received any replacement sandals from
16 Defendant. Nor has Plaintiff received and response to his August 17, 2023 email advising him of
17 when to expect the replacement sandals.

18 **CLASS ACTION ALLEGATIONS**

19 50. Pursuant to California Code of Civil Procedure section 382, Jeremy Sher, the
20 named individual Plaintiff, seeks class certification. Plaintiff proposes the following Class
21 definitions:

22 **Class:** All natural persons in the United States who, within the applicable statute of
23 limitations period until the date notice is disseminated, purchased sandals from Rainbow
24 for personal, consumer, and/or household use from any collection other than: Comfort
25 Classics; East Cape; The Cloud; Holoholo; Mariner; Mocca Loaf; Mocca Shoe;
26 Navigator; North Cove; Cloud Collection; The Cottons; The Flirty Braidy; Westscape;
27 Baja Boots; T-Street; Bella; Lola; Tango; Gala; South Cove; Escape; Sandiva; Grombows;
28 and Kidcapes.

1
2 51. Excluded from the Class are governmental entities, Defendants, any entity in
3 which Defendants have a controlling interest, and Defendants’ officers, directors, affiliates, legal
4 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded
5 from the Class is any judge, justice, or judicial officer presiding over this matter and the members
6 of their immediate families and judicial staff.

7 52. Plaintiff reserves the right to amend or modify the class descriptions by altering
8 them or by making them more specific or by dividing the class members into subclasses or
9 limiting the issues as appropriate.

10 53. The Class is ascertainable and constitutes a well-defined community of interest.

11 54. **Numerosity:** Plaintiff and the Class are informed and believe, and on that basis
12 allege, that the Class is so numerous that individual joinder of all members would be
13 impracticable. Plaintiff and the Class are informed and believe, and on that basis alleged, that the
14 class is greater than 500 consumers geographically dispersed throughout the United States.

15 55. **Commonality:** Defendant’s practices and omissions were applied uniformly to all
16 members of the Class such that the questions of law and fact are common to all members of the
17 Class. All members of the putative Class were and are similarly affected by having purchased
18 Guaranteed Sandals from Defendant and the relief sought herein is for the benefit of Plaintiff and
19 all members of the putative Class.

20 56. Questions of law and fact common to the Class exist that predominate over
21 questions affecting only individual members. The common questions of law and fact include:

- 22 a. Whether Defendant markets Guaranteed Sandals in a manner that is false or
23 misleading;
- 24 b. Whether the wrongful conduct detailed in this Class Action Complaint constitutes
25 unfair or unlawful business practices;
- 26 c. Whether it is “reasonable” to read the Non Guarantee Policy together with the
27 Rainbow Guarantee such that Defendant has no warranty obligations under the
28 latter, *even during the lifetime of a given sandal’s sole*, if any of the wear-and-tear

issues identified in the Non Guarantee Policy are present;

- d. The extent to which Class members overpaid for flip-flops that came with highly limited guarantee that was far less comprehensive than the lifetime-of-the-sole Guarantee used to market the sandals;
- e. Whether the class is entitled to recover statutory attorney's fees; and
- f. Whether Plaintiff and the Class are entitled to appropriate remedies, including injunctive relief.

57. **Typicality:** The claims asserted by Plaintiff in this action are typical of the claims of the members of the Class as the claims arise from the same course of conduct by Defendants, all members of the Class have been similarly affected by Defendants' course of conduct, and the relief sought is common.

58. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has no interest adverse to the interests of the other Class members. Plaintiff has retained competent counsel with substantial experience in complex litigation and litigation involving consumer issues and Plaintiff's counsel are committed to vigorously prosecuting this action on behalf of the Class.

59. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the present controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that individual actions would engender. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, far outweigh any difficulties that it might be argued could arise in connection with the management of this class action. These benefits make class litigation superior to any other method available for the fair and efficient adjudication of these claims. Absent a class action, it would be highly unlikely that many members of the Class would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery.

1 60. Certification of this class action is appropriate because the questions of law or fact
2 common to the respective members of the Class predominate over questions of law or fact
3 affecting only individual members. Certification also is appropriate because Defendant acted, or
4 refused to act, on grounds generally applicable to the Class, thereby making appropriate the relief
5 sought on behalf of the Class as a whole. Further, given the large number of potentially injured
6 consumers, allowing individual actions to proceed in lieu of a class action would run the risk of
7 yielding inconsistent and conflicting adjudications. Certification of Plaintiff's claims for class-
8 wide treatment is also appropriate because Plaintiff and the Class can prove the elements of the
9 claims on a class-wide basis using the same evidence as would be used to prove those elements
10 in individual actions alleging the same claims.

11 61. Notice to the members of the Class may be accomplished inexpensively,
12 efficiently, and in a manner best designed to protect the rights of all Class members. Plaintiff is
13 informed and believes that Defendant has objective evidence concerning Class members'
14 identities, including without limitation, sales receipts, credit card data, e-mails concerning
15 warranty-related inquiries, and other objective evidence. Class notice can thus likely be directly
16 sent to individual members of the Class.

17 **FIRST CAUSE OF ACTION AGAINST RAINBOW**

18 **BREACH OF EXPRESS WARRANTY**

19 ***On behalf of Plaintiff and the Class***

20 62. Rainbow Sandals gave Plaintiff and the Class a written warranty against
21 manufacturing defects "for the lifetime of the sole." Specifically, Defendant warranted in writing
22 that: "The sandals will be eligible for warranty until you have worn through anywhere on the top
23 or bottom layer of the sole."

24 63. Under California Commercial Code section 2316, as under Uniform Commercial
25 Code section 2-316, "[w]ords or conduct relevant to the creation of an express warranty and words
26 or conduct tending to negate or limit warranty shall be construed wherever reasonable as
27 consistent with each other; but subject to the provisions of this division on parol or extrinsic
28 evidence . . . negation or limitation is inoperative to the extent that such construction is

unreasonable.”

64. Defendant Rainbow’s “Non-Guarantee Policy” purports to excuse Rainbow from its obligation under the Rainbow Guarantee to repair manufacturing defects that occur during the lifetime of a shoe’s sole if a given Guaranteed Sandal exhibits certain routine signs of wear-and-tear.

65. It is not reasonable to construe the Rainbow Guarantee and the Non-Guarantee Policy as consistent with one another: under the former Rainbow warrants that it will repair manufacturing defects during the lifetime of a Guaranteed Sandal’s sole, under the latter, Rainbow disavows its obligation to repair manufacturing defects during the lifetime of a Guaranteed Sandal’s sole.

66. Because it is unreasonable to construe the Rainbow Guarantee as consistent with the Non-Guarantee, the “negation or limitation” (the Non-Guarantee Policy) is inoperative.

67. Rainbow breached its express warranty (the Rainbow Guarantee) when it refused to repair manufacturing defects that manifested during the lifetime of the Guaranteed Sandals’ soles.

68. When the Guaranteed Sandals of Mr. Sher and the Class members exhibited manufacturing defects during the lifetimes of their soles, Plaintiff and other the members of the Class took reasonable steps to notify Defendant within a reasonable time of the defects.

69. Defendant refused to repair the Guaranteed Sandals as required by its written warranty.

70. Defendant’s refusal to repair the manufacturing defects in the Guaranteed Sandals is a breach of its express warranty, the Rainbow Guarantee.

71. Mr. Sher and the members of the Class were harmed by Defendant’s breach of its express warranty insofar as they had paid a premium for sandals that came with a lifetime guarantee and were deprived the benefit of that bargain by Defendant refusal to honor the lifetime guarantee.

72. The sandals Plaintiff and the Class purchased have a lower value than they would have if Defendant did not breach its express warranty.

73. Defendant’s breach of express warranty has directly and proximately caused Plaintiff and the Class Members to suffer damages in an amount to be determined at trial. These damages are actual damages insofar as Plaintiff and the Class Members decided to purchase the Guaranteed Sandals acting in reliance on the “Rainbow Guarantee,” but, because of Rainbow’s persistent refusal to fulfil its obligations under the Rainbow Guarantee, received products that were not covered by the guarantee and therefore had a lesser value than reasonably understood at the time of purchase.

SECOND CAUSE OF ACTION AGAINST RAINBOW

VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT

On behalf of Plaintiff and the Class

74. The sandals Rainbow sold Mr. Sher and the Class members are a “consumer product” within the meaning of the Magnuson-Moss Warranty Act (“Magnuson-Moss”) because they are “tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes” *See* 15 U.S.C. § 2301(1).

75. The Rainbow Guarantee is a written warranty within the meaning of the Magnuson-Moss because it is a “written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time” that is “part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.” *See* 15 U.S.C. § 2301(6)(A).

76. The Rainbow Guarantee is a written warranty within the meaning of the Magnuson-Moss because it is an “undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,” that is “part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.” *See* 15 U.S.C. § 2301(6)(B).

77. Mr. Sher and each member of the Class is a “consumer” within the meaning of the

Magnuson-Moss Warranty Act because they are “buyer[s] (other than for purposes of resale) of any consumer product.” *See* 15 U.S.C. section 2301(3).

78. Rainbow is a supplier within the meaning of the Magnuson-Moss Warranty Act because it is a “person engaged in the business of making a consumer product directly or indirectly available to consumers.” 15 U.S.C. § 2301(4).

79. Rainbow is a warrantor within the meaning of the Magnuson-Moss Warranty Act because it is “a supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.” 15 U.S.C. § 2301(5).

80. Rainbow breached its written warranty by refusing to fulfil its obligations under the Rainbow Guarantee.

81. Though Mr. Sher gave Rainbow reasonable notice on behalf of both himself and the Class that Defendant had failed to fulfil its obligations under the written warranty, Rainbow did not cure its breach.

82. As alleged above, Mr. Sher and the Class suffered damages as a result of Rainbow’s breach of its written warranty.

83. Rainbow’s breach of its written warranty is a violation of the Magnuson-Moss Warranty Act and Mr. Sher and the Class are entitled to bring an action for damages and other legal and equitable relief in this court. *See* 15 U.S.C. § 2310(d)(1)(A).

84. Rainbow further violated the Magnuson-Moss Warranty Act by failing to comply with the 15 U.S. Code section 2303(a)’s requirement that written warranties be designated either “full” or “limited.” Rainbow violated this provision because its written warranty (the Rainbow Guarantee) applies to products costing more than \$10.00 and is neither designated “full” nor “limited.”

85. Plaintiff and the Class are also entitled to recover their attorneys’ fees based on actual time expended and costs. *See* 15 U.S.C. § 2310(d)(2).

1 **THIRD CAUSE OF ACTION AGAINST RAINBOW**

2 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT**

3 ***On Behalf of Plaintiff and the Class***

4 86. The Guaranteed Sandals purchased by Class members are “consumer goods”
5 within the meaning of California Civil Code section 1791(a).

6 87. Plaintiff and the members of the Class are “buyers” within the meaning of
7 California Civil Code section 1791(b) because they are “individual[s] who buy[] consumer goods
8 from a person engaged in the business of manufacturing, distributing, or selling consumer goods
9 at retail.”

10 88. Defendant Rainbow is a “retailer” within the meaning of California Civil Code
11 section 1791(l) because it is a corporation that “that engages in the business of selling or leasing
12 consumer goods to retail buyers.”

13 89. Defendant Rainbow is a “manufacturer” within the meaning of California Civil
14 Code section 1791(j) because it is a corporation “that manufactures, assembles, or produces
15 consumer goods.”

16 90. As alleged above, Rainbow expressly warranted that it would repair or replace
17 consumer goods (the Guaranteed Sandals) that exhibit manufacturing defects during the lifetime
18 of their soles.

19 91. As alleged above, Rainbow breached this express warranty by refusing to repair
20 or replace the defects in the Guaranteed Sandals owned by Plaintiff and the Class during the
21 lifetime of their soles if those sandals also exhibit certain non-sole-related signs of wear and tear.
22 In so doing, Rainbow violated the Song-Beverly Consumer Warranty Act.

23 92. The unlawful conduct that forms the basis of this claim for violation of the Song-
24 Beverly Consumer Warranty Act occurred in California, where Rainbow is incorporated and has
25 its principal place of business. Additionally, Plaintiff is informed and believes that the policies
26 which led to Rainbow’s violation of the Song-Beverly Consumer Warranty Act were formulated
27 and codified by individuals within California. Furthermore, the address to which Rainbow’s
28 website directs consumers to mail sandals for warranty repairs is in San Clemente, California.

1 93. As a direct and proximate result of Rainbow’s violations of the Song-Beverly
2 Consumer Warranty Act, Plaintiff and the Class suffered damages in an amount to be proven at
3 trial.

4 94. Plaintiff and the Class seek damages and other legal and equitable relief, *see*
5 California Civil Code section 1794(a), as well as “a sum equal to the aggregate amount of costs
6 and expenses, including attorney’s fees based on actual time expended, determined by the court
7 to have been reasonably incurred by the [Plaintiff and the Class] in connection with the
8 commencement and prosecution of” this action. *See* Cal. Civ. Code § 1794(d).

9 **FOURTH CAUSE OF ACTION AGAINST RAINBOW**
10 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT**

11 *On behalf of Plaintiff and the Class*

12 95. The Consumers Legal Remedies Act (CLRA) prohibits unfair and deceptive acts
13 and practices in connection with the conduct of a business that provides goods, property, or
14 services primarily for personal, family, or household purposes.

15 96. Rainbow’s conduct and representations, as alleged herein, extend to transactions
16 that are intended to result, or which have resulted, in the sale of goods to consumers.

17 97. Plaintiff and the other Class Members are “consumers” as that term is defined in
18 California Civil Code section 1761(d).

19 98. The sandals Plaintiff and the other Class members purchased from Rainbow were
20 “goods” within the meaning of California Civil Code section 1761(a).

21 99. Rainbow violated California Civil Code section 1770(a)(5) by representing that its
22 Guaranteed Sandals had “sponsorship, approval, characteristics, ingredients, uses, benefits, or
23 quantities” that they did not actually have insofar as it represented that those sandals came with a
24 lifetime guarantee against manufacturing defects when, in practice, Rainbow would not actually
25 provide such a guarantee.

26 100. Rainbow violated California Civil Code section 1770(a)(9) by advertising that
27 Rainbow’s Guaranteed Sandals come with a lifetime guarantee against manufacturing defects
28 even though it did not actually intend to sell the sandals with a guarantee against manufacturing

defects that lasted as long as those products' soles.

101. These violations of the CLRA were malicious because Rainbow carried them out intentionally to maximize its profits and the expense of the victimized consumers it had deceived into overpaying for sandals that came with a written warranty that provided for far more robust and extensive that the coverage Rainbow actually, in practice, provided. These violations were carried out with a willful and conscious disregard of the rights of Mr. Sher and the Class insofar as the violations duped these consumers into paying for sandals which came with a written warranty that offered far fewer benefits and far less value than Mr. Sher and the Class were led to believe they offered. Mr. Sher's injuries — paying a premium for sandals that come with a "lifetime guarantee" and then missing out on the benefits of that guarantee due to Rainbow's wrongful conduct — are the intended outcome of Rainbow's CLRA violations.

102. Mr. Sher and the Class are informed and believe that the CLRA violations alleged herein were committed, authorized or ratified by Rainbow's officers, directors, or managing agents in California. This belief is informed by the fact that on February 27, 2023, Mr. Sher sent a lengthy email to Rainbow executives and officers explaining how its refusal to repair manufacturing defects in his sandals during their soles' lifetime was a breach of the Rainbow Guarantee. The recipients of this email included Jay Longley (President), Jack Robbins (Executive Vice President and General Counsel), Don Daley (Director of Retail Operations), and Sabrina Sexton (Vice President Sales and Operations). Rainbow did not change course after Mr. Sher alerted it to its unlawful conduct.

103. The misrepresentations that form the basis of this CLRA claim were made by a California corporation and emanated out from California. Additionally, Plaintiff is informed and believes that the policies which led to Rainbow's violation of the CLRA were formulated and codified by individuals within California. Plaintiff's belief that the unlawful conduct which forms the basis of this CLRA claim occurred in California is also informed by the fact that Rainbow has its principal place of business in California.

104. As a result of Rainbow's violations of the CLRA, Mr. Sher and the Class have, as alleged above, suffered harm and seek injunctive relief prohibiting further violations of the CLRA

1 by Rainbow. Mr. Sher and the Class also seek to recover their attorneys' fees and costs.

2 105. Under California Civil Code section 1782(d), a plaintiff may without prior
3 notification file a complaint alleging violations of the CLRA that seeks injunctive relief only. If
4 the plaintiff later sends a CLRA notification letter and the defendant does not remedy the CLRA
5 violations within thirty days of the notification, then the plaintiff may amend its CLRA causes of
6 action to add claims for damages.

7 106. Plaintiff will send Rainbow a CLRA notification letter shortly after the filing of
8 this Class Action Complaint. Plaintiff intends to amend the Class Action Complaint to add claims
9 for damages for Rainbow's violations of the CLRA after the thirty-day notice period has elapsed
10 in the event that the CLRA violations that are identified above are not remedied.

11 **FIFTH CAUSE OF ACTION AGAINST RAINBOW**
12 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

13 **Cal. Bus. & Prof. Code § 17200, et seq. ("UCL")**

14 ***On behalf of Plaintiff and the Class***

15 107. The UCL prohibits "unfair competition," which includes any "unlawful, unfair, or
16 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." *See*
17 Cal. Bus. & Prof. Code § 17200.

18 108. Plaintiff brings this action under the "unlawful" and "unfair" prongs of the UCL.

19 ***Rainbow's Unlawful Acts***

20 109. As alleged in this complaint, Rainbow's conduct has violated the Consumers
21 Legal Remedies Act, the Song-Beverly Consumer Warranty Act, and the Magnuson-Moss
22 Warranty Act. These unlawful acts are a violation of the UCL.

23 ***Rainbow's Unfair Acts***

24 110. Defendant Rainbow's conduct is "unfair" and in violation of both the letter and
25 the spirit of the UCL; Rainbow acted in an unscrupulous, deceptive, oppressive, and substantially
26 injurious manner by advertising, to the public at large, that its Guaranteed Sandals come with a
27 "lifetime guarantee" when, in fact, the guarantee Rainbow *in practice* honors is so undercut by
28 exceptions that it is virtually meaningless and is not a lifetime guarantee in any sense of the word.

111. The unfair practices herein alleged are substantially injurious to consumers, including Plaintiff and the Class, who suffered injury in fact because of Rainbow's unfair acts and practices.

112. The harm suffered by Plaintiff and the Class as a result of Rainbow's unfair acts outweighs any potential benefit or utility of Rainbow derives from duping consumers into buying sandals they wouldn't otherwise buy or overpaying for sandals that do not come with the comprehensive lifetime guarantee they are advertised as coming with.

113. The injuries Rainbow's unfair practices cause consumers could not be reasonably avoided by consumers.

114. There were reasonably available alternatives that would have further Rainbow's business interests in selling sandals, for example, declining to publicize any guarantee so that consumers understood that the sandals they were purchasing did not come with a warranty against manufacturing defects.

115. The unlawful and unfair conduct that forms the basis of this claim for violations of the UCL occurred in California, where Rainbow is incorporated and has its principal place of business. Additionally, Plaintiff is informed and believes that the policies which led to Rainbow's unlawful and unfair acts were formulated and codified by individuals within California.

PRAYER FOR RELIEF

Mr. Sher seek the following relief from the court:

- A. A certification of the Class as defined herein;
- B. The appointment of Plaintiff Jeremy Sher as Representative of the Class;
- C. The appointment of the undersigned as Class counsel;
- D. An award of damages against Defendant and in favor of Plaintiff and the putative Class in an amount to be determined at trial;
- E. An award of statutory damages, as appropriate;
- F. Reasonable attorneys' fees, *see* 15 U.S.C. § 2310(d)(2); Cal. Civ. Code § 1794(d);

1 G. Public injunctive relief in the form of an order prohibiting Rainbow from
2 advertising any of its sandals as coming with a guarantee for the lifetime of the soles when
3 Rainbow does not actually, in practice, provide such a guarantee;

4 H. A finding that such injunctive relief constitutes public injunctive relief, has
5 resulted in the enforcement of an important right affecting the public interest, and otherwise meets
6 the requirements of California Civil Procedure Code section 1021.5;

7 I. An award of attorneys' fees and costs pursuant to California Civil Procedure Code
8 section 1021.5 and other applicable provisions;

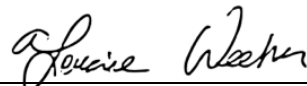
9 J. Such other relief as the Court may deem just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands that the claims herein asserted be determined by a jury.

12
13 DATED: September 27, 2023.

Respectfully submitted,

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15 

16 A. Lorraine Weekes, Esq. (CA SBN 332369)
17 Kevin Kneupper, Esq. (CA SBN 325413)
A. Cyclone Covey, Esq. (CA SBN 335957)

18 KNEUPPER & COVEY, PC
19 17011 Beach Blvd., Suite 900
Huntington Beach, CA 92647
20 Tel: 657-845-3100
Fax: 855-596-3707

21 *Attorneys for Plaintiff Jeremy Sher and the*
22 *Putative Class*

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1. I am over eighteen years of age and of sound mind and body.

3. Venue is proper in this action because the defendant is doing business in Los Angeles County, CA. Venue is also proper in this action because the transaction, or a substantial portion thereof, occurred in Los Angeles County.

Jeremy Sher

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Signature of Declarant