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13 *Attorneys for Plaintiff and the Proposed Classes*

14 **IN THE UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

17 CHRISTOPHER RASH, on behalf of
18 himself and all others similarly situated,

19 Plaintiff,

20 v.

21 TELEBRANDS CORPORATION,

22 Defendant.

CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff, Christopher Rash, on behalf of himself and all others similarly situated,
2 files this class action complaint against Defendant Telebrands Corporation. On personal
3 knowledge of his own circumstances and upon investigation and information and belief
4 of his counsel, Plaintiff Rash alleges the following:

5 **INTRODUCTION**

6 1. Defendant designs and develops, advertises, sells, and distributes expandable
7 Silver Bullet™ garden water hoses (the “Silver Bullet Hose”) throughout the United
8 States. Expandable garden water hoses like the Silver Bullet are designed to grow into a
9 full-sized hose when in use and then shrink back to an original compact size when dry
10 and after the first use. Defendant advertises the Silver Bullet Hoses as being reliable
11 alternatives to conventional rubber garden hoses.

12 2. The Silver Bullet Hose is available in 25, 50, 75, and 100-foot lengths. The
13 50-foot hose costs approximately \$30.00.

14 3. Through an extensive nationwide marketing and advertising campaign,
15 Defendant represents that Silver Bullet Hoses contain a “DURABLE OUTER SHELL”
16 and that “Silver Bullet’s™ exclusive Bullet Shell outer casing won’t snag, tear, or
17 wear.”¹ Plaintiff and members of the Classes were exposed to these representations
18 before purchasing a Silver Bullet Hose. Defendant provided a reasonable expectation to
19 consumers and the industry that Silver Bullet Hoses would be durable and useful for an
20 extended period of time.

21 4. Additionally, Defendant represents that Silver Bullet Hoses are “super-
22 lightweight and easy to maneuver around your lawn and garden.”²

23 5. The Silver Bullet Hose promotional materials and packaging reiterates these
24

25
26 ¹ <https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/dp/B07JCD8TG7>;
27 *see also* <https://mypockethosesilverBullet.com/?ref=mypockethosesilverBullet.com> (both
last accessed May 30, 2021).

28 ² <https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/dp/B07JCD8TG7>
(last accessed May 30, 2021).

claims:³



6. Plaintiff and members of the Classes saw and relied on the packaging and advertisements prior to purchasing a Silver Bullet Hose. Contrary to Defendant’s advertising and representations, however, shortly after the first use, Silver Bullet Hoses tear, wear, develop pin-holes, and leak. Silver Bullet Hoses are defective and will fail, costing consumers substantial replacement costs.

³ <https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/dp/B07JCD8TG7> (last accessed May 30, 2021).

1 7. Despite these proven defects, Defendant continue to market and sell Silver
2 Bullet Hoses to the public and continues to make false representations.

3 8. Plaintiff brings this action to seek redress for damages caused by
4 Defendant's wrongful conduct.

5 **JURISDICTION**

6 9. This Court has subject matter jurisdiction over this action pursuant to 28
7 U.S.C. section 1332(d)(2) because this civil action is a class action in which the matter in
8 controversy exceeds \$5,000,000.00 exclusive of interest and costs, and Plaintiff is a
9 citizen of a state that is different than the state of which Defendant is a citizen.

10 10. Venue is proper in this Court pursuant to 28 U.S.C. section 1391(b) because
11 a substantial part of the events or omissions giving rise to Plaintiff's and the members of
12 the Classes' claims occurred in this District, and Defendant is subject to the Court's
13 personal jurisdiction.

14 11. As a result of Defendant's designing, developing, advertising, selling, and
15 distributing Silver Bullet Hoses to purchasers throughout California, either directly or
16 indirectly through third parties or related entities, Defendant obtained the benefits of
17 California law and profited from California commerce.

18 12. Defendant conducted systematic and continuous business activities in and
19 throughout the state of California and otherwise intentionally availed itself of the markets
20 of the state of California through the promotion and marketing of its products.

21 **PARTIES**

22 13. Plaintiff Christopher Rash is a resident of Corona, California.

23 14. Telebrands Corporation is a New Jersey corporation with its principal place
24 of business and headquarters located at 79 Two Bridges Road, Fairfield, NJ 07004.
25 Telebrands is a direct television marketing company and is engaged in the business of
26 marketing and selling a wide variety of consumer products nationwide.

27 \\\

28 \\\

1 **FACTUAL ALLEGATIONS**

2 **Plaintiff Rash’s Factual Allegations.**

3 15. In approximately June 2019, Plaintiff Rash viewed a television infomercial
4 for the Silver Bullet Hose, which touted its qualities, including that it had a “DURABLE
5 OUTER SHELL: Pocket Hose Silver Bullet’s exclusive Bullet Shell outer casing won’t
6 snag, tear, or wear; inner tubing is kink-proof”⁴ and led Mr. Rash to believe that it would
7 be long lasting and durable. In reliance on the representations in the infomercial,
8 Plaintiff Rash purchased a 25-foot Silver Bullet Hose for approximately \$19.99 on
9 Amazon.com. Mr. Rash believes the hose he purchased lasted for approximately four (4)
10 weeks before fraying, wearing out, developing pin-holes, and leaking. Mr. Rash
11 estimates that he used the hose fewer than 10 times.

12 16. Mr. Rash then attempted to return the Silver Bullet Hose via Amazon but
13 was not permitted to do so. Instead, he was directed to the product’s manufacturer, Purple
14 Cow CSJ, LLC d/b/a Bulbhead the Home of Bright Ideas (“Bulbhead”). According to
15 Amazon’s website, Bulbhead is the exclusive reseller of products from Telebrands and
16 Bulbhead.⁵

17 17. Mr. Rash then attempted to return the Silver Bullet Hose to Bulbhead, but
18 Bulbhead made it so difficult and burdensome that he ultimately gave up.

19 18. On July 18, 2019, disappointed by Defendant’s failure to address or remedy
20 the defects and problems with his Silver Bullet Hose, Mr. Rash posted the following
21 complaint and two photos (showing the pin hole leaking) on Amazon’s website:

22 Customer Review



25
26 ⁴ <https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/dp/B07JCD8TG7>
(last accessed June 3, 2021).

27 ⁵ [https://www.amazon.com/sp?_encoding=UTF8&asin=&isAmazonFulfilled=1&isCBA=
28 &marketplaceID=ATVPDKIKX0DER&orderID=&protocol=current&seller=A313TAO
OW7I8GZ&sshmPath=](https://www.amazon.com/sp?_encoding=UTF8&asin=&isAmazonFulfilled=1&isCBA=&marketplaceID=ATVPDKIKX0DER&orderID=&protocol=current&seller=A313TAOOW7I8GZ&sshmPath=) (last visited December 21, 2020).

1 Chris Rash

2 1.0 out of 5 stars The single jacket covering the rubber hose wears easily
3 causing rubber hose to burst

4 Reviewed in the United States on July 18, 2019

5 Color: 75 Feet

6 As a firefighter, I was curious to see how this hose performed. I purchased a
7 25' hose and used it for four (4) weeks. During that time, I used the hose twice
8 a week to hose down my patio and walkways. The hose worked well.
9 However, I noticed that the single jacket sheath that is wrapped around the
10 interior rubber hose, easily began to fray while being drug across the concrete,
11 causing the interior rubber hose to be exposed and burst. The nozzle worked
12 well at first, but after each use, the effectiveness of the stream became less
13 and less, to where it could not maintain a consistent straight stream. This is
14 hose is a great idea, but the outer sheath needs to be double jacketed and the
15 nozzle needs improvement.

16 19. As described in the review and shown in the photos below, Mr. Rash's
17 Silver Bullet Hose frayed and developed pin-holes, which rendered it useless.





20. Mr. Rash would not have purchased the Silver Bullet Hose had Defendant disclosed the propensity for the Silver Bullet to fail. Defendant represents that Silver Bullet Hoses contain a “DURABLE OUTER SHELL” and that “Silver Bullet’s™ exclusive Bullet Shell outer casing won’t snag, tear, or wear.”⁶

Defendant and the Silver Bullet Hose.

21. Telebrands, the original creator of the “As Seen On TV” logo, is one of the oldest and most recognized companies in the direct response television marketing industry (“DRTV”). DRTV employs aggressive marketing campaigns designed to generate an immediate response from consumers in the form of sales or product orders. With DRTV campaigns, the viewer’s response is directly with the marketer, in this case

⁶ <https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/dp/B07JCD8TG7>; see also <https://mypockethosesilverBullet.com/?ref=mypockethosesilverBullet.com> (both last accessed May 30, 2021).

1 Telebrands.

2 22. The “As Seen On TV” advertisement for the Silver Bullet Hoses claims the
3 hose will not “tear or burst.”⁷

4 23. On websites promoting the Silver Bullet Hose⁸ (the “Silver Bullet Website”)
5 the product is described as “hassle free,” “making other hoses obsolete,” and having an
6 outer casing that is “resistant” to “tearing and wearing.”

7 24. In addition, the Silver Bullet Website boasts:

8 Things that used to be big and bulky now fit in your pocket - even your hose!
9 From the makers of the #1 expandable hose in the world comes another
10 amazing Pocket Hose®, the Pocket Hose® Silver Bullet™. The new Silver
11 Bullet™ is the hassle-free hose. Just turn on the water and watch the Silver
12 Bullet™ grow from pocket size to supersize. It's the hands-free hose that
13 grows! Then, when you're finished, just turn off the water and Silver Bullet™
14 shrinks to a super-light Pocket Hose® again. Pocket Hose® Silver Bullet™
15 stores easily and is perfect for boats and RVs. **The exclusive Bullet Shell
16 outer casing won't snag, tear, or wear.**⁹ (Emphasis added).

17 25. The Silver Bullet Website claims, “Over 100 Million Satisfied Customers,”
18 “100% Percent Satisfaction Guaranteed,” and “Easy Returns.” The Website prominently
19 claims “100% Satisfaction Guarantee.”¹⁰

20 26. Silver Bullet Hoses are marketed and sold for use as a reliable water hose.
21 Yet, Defendant has concealed from and/or failed to disclose to Plaintiff and members of
22 the Classes the defective nature of the Silver Bullet Hoses, which shortly after the first
23 use are prone to tears, pin-holes, and leaks.

24 27. Defendant has used and continues to use a variety of methods to
25 communicate representations about the durability and quality of the Silver Bullet Hose to

26 ⁷ <https://www.ebay.com/itm/Pocket-Hose-Silver-Bullet-Expandable-Water-Hose-As-Seen-On-TV-255075100-/173959016175> (last accessed December 12, 2020).

27 ⁸ <https://mypockethosesilverBullet.com/?ref=mypockethosesilverBullet.com> (last
28 accessed May 30, 2021).

⁹ <https://mypockethosesilverBullet.com/?ref=mypockethosesilverBullet.com> (last
accessed May 30, 2021).

¹⁰ <https://mypockethosesilverBullet.com/?ref=mypockethosesilverBullet.com> (last
accessed May 30, 2021).

1 the general public. These uniform representations were and are published on Internet
2 sites, including Amazon.com, and on television. Defendant touts the hoses to have a
3 “DURABLE OUTER SHELL” and “exclusive . . . outer casing” that “won’t snag, tear, or
4 wear.”¹¹ Defendant also touts that the hose “Grows to 25, 50 75 or 100 Feet!”

5 28. Proper testing of the Silver Bullet Hoses by Defendant would have revealed
6 the hoses are not durable and do indeed tear.

7 29. Silver Bullet Hoses do not conform to Defendant’s numerous
8 misrepresentations.

9 **Defendant’s Knowledge of and Notice of the Defects.**

10 30. Since at least 2009, Defendant has been aware of the Silver Bullet Hose
11 defects.

12 31. At minimum, three class action lawsuits were filed against Telebrands
13 concerning the Silver Bullet Hose defects and leaks, similar in nature to the claims
14 alleged here. *See Alex Arreguin Jr. v. Telebrands*, Case No. CIVRS1307798, Sup. Ct. of
15 Cal. (San Bernadino County) (complaint filed on November 6, 2009, and 2014
16 Settlement Agreement and Release,¹² page 4, states allegations concerning “false and
17 misleading statements in its labeling and advertising of the Covered Products, including
18 that the product was defective, and that they suffered injury as a result of those alleged
19 statements”); *Inocencio v. Telebrands Corp.*, L-4378-16, Sup. Ct. of N.J. (Bergen
20 County) (amended complaint filed on August 31, 2016, and 2016 Settlement Agreement
21 and Release,¹³ page 1, states allegations concerning “false and misleading claims about
22 the durability, construction, and suitability of the Pocket Hose products as garden
23 hoses”); *Klemballa v. Telebrands Corp.*, 14-cv-01245 (D.N.J.) (complaint filed in 2014).

24 _____
25 ¹¹ <https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/dp/B07JCD8TG7>;
26 *see also* <https://mypockethosesilverBullet.com/?ref=mypockethosesilverBullet.com> (last
27 accessed May 30, 2021).

28 ¹² [https://www.truthinadvertising.org/wp-content/uploads/2014/04/Arreguin-v.-
Telebrands-settlement-agreement-.pdf](https://www.truthinadvertising.org/wp-content/uploads/2014/04/Arreguin-v.-Telebrands-settlement-agreement-.pdf) (last accessed May 30, 2021).

¹³ [https://www.truthinadvertising.org/wp-content/uploads/2016/12/Stipulation-of-
Settlement.pdf](https://www.truthinadvertising.org/wp-content/uploads/2016/12/Stipulation-of-Settlement.pdf) (last accessed May 30, 2021).

1 32. In addition, consumers have made detailed online complaints about the
2 Silver Bullet Hose. These complaints include dates, details about the defect and negative
3 reactions to how Defendant handled them. All of this information put Defendant on
4 notice concerning the Silver Bullet Hoses' defects. One purchaser summed up the Silver
5 Bullet as "basically a balloon in a sock." A sampling of these online complaints are as
6 follows [sic throughout]:

7 **a. Kenneth A. Burt on Amazon, May 14, 2019¹⁴**

8 Very disappointed as when I put a nozzle on it and turned the pressure up on
9 the faucet the hose burst & is now junk. Would NOT recommend this hose to
ANYONE!

10 **b. Sasha Doo on Amazon, June 3, 2019¹⁵**

11 I ordered this hose as I liked the features, especially that it was safe to drink
12 out of. The first one leaked between the hose and threaded part that attaches
13 to the spigot. I returned it and asked for a replacement thinking this was just
14 a fluke. Unfortunately, the replacement did the same thing so I returned that
one without trying for a 3rd time. So disappointing. I don't think it deserves
any stars but couldn't post without it.

15 **c. Consumer Advocate on Amazon, June 26, 2019¹⁶**

16 LEAKED profusely from the minute I turned water on. Yes, all the gaskets
17 were in place and I've owned MANY of this type of hose but NEVER seen
one leak like this.

18 FASTEST return to Amazon I may ever make.

19 P.S. This hose also lacks a shutoff valve which most other expandable hoses
include.

23 ¹⁴ [https://www.amazon.com/gp/customer-](https://www.amazon.com/gp/customer-reviews/R2QDQRZJG2QHO2/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7)
24 [reviews/R2QDQRZJG2QHO2/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG](https://www.amazon.com/gp/customer-reviews/R2QDQRZJG2QHO2/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7)
25 [7](https://www.amazon.com/gp/customer-reviews/R2QDQRZJG2QHO2/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7) (last accessed December 11, 2020).

26 ¹⁵ [https://www.amazon.com/gp/customer-](https://www.amazon.com/gp/customer-reviews/R2EOVFLAMI8VEG/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJJS)
27 [reviews/R2EOVFLAMI8VEG/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJ](https://www.amazon.com/gp/customer-reviews/R2EOVFLAMI8VEG/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJJS)
28 [JS](https://www.amazon.com/gp/customer-reviews/R2EOVFLAMI8VEG/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJJS) (last accessed December 11, 2020).

¹⁶ [https://www.amazon.com/gp/customer-](https://www.amazon.com/gp/customer-reviews/R3N0ZLSE27XA7O/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJJS)
[reviews/R3N0ZLSE27XA7O/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJ](https://www.amazon.com/gp/customer-reviews/R3N0ZLSE27XA7O/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJJS)
[S](https://www.amazon.com/gp/customer-reviews/R3N0ZLSE27XA7O/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJJS) (last accessed December 11, 2020).

1 **d. Hans Gunder on Amazon, July 13, 2019¹⁷**

2 Hands down the worst product I've ever purchased. First use and it is leaking
3 like a sieve from BOTH connections. My time is too valuable to return, but it
is my civic duty to warn others. Straight to the trash can.

4 **e. Steven Kozuch on Amazon, August 1, 2019¹⁸**

5 I purchased this hose to use while bathing dogs. It is not dragged around the
6 yard or pulled on. I bathed three dogs. (my water pressure is 75 psi. I received
7 it July 31 2019 and it is being returned August 1, 2019. This is how
disappointing this purchase is.

8 When I started to bath the danes - the hose would sit longer while scrubbing
9 the dog. By the third dane - just from the pressure sitting in the hose - the hose
10 separated from the connector. I read other reviews people saying this hose
split or burst the first couple uses - I assumed they abused the hose - WRONG
this thing cannot take normal water pressure.

11 **f. Michael F. on Amazon, May 14, 2020¹⁹**

12 Leaking from the first moment I turned it on. Really looks poorly constructed.
13 Feel like I just bought marketing and not a product. Look elsewhere for a hose
14 and skip this one. TV ads look great, but product is just more cheap junk in
reality. (Or buy one and maybe you will get lucky)

15 **g. Gary P Nowicki, July 8, 2020²⁰**

16 Hose is garbage, you'll be lucky to get a week out of it ... Bought the 75 foot
17 hose and used it for about a week. Sprung a leak while under no duress (no
18 sharp rocks, kinks or other reason). Called Telebrands/Bulbhead for a
19 replacement. They are going to send a replacement once I ship back my hose
at my expense. Would STRONGLY not recommend buying this product. It's
basically a balloon in a sock.

20 ¹⁷ [https://www.amazon.com/gp/customer-](https://www.amazon.com/gp/customer-reviews/R2CC43IKV5J6LQ/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJJS)
21 [reviews/R2CC43IKV5J6LQ/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJJS](https://www.amazon.com/gp/customer-reviews/R2CC43IKV5J6LQ/ref=cm_cr_othr_d_rvw_ttl?ie=UTF8&ASIN=B07JQZWJJS)
22 (last accessed December 11, 2020).

23 ¹⁸ [https://www.amazon.com/gp/customer-](https://www.amazon.com/gp/customer-reviews/R3K21XYRMDYZ3L/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7)
24 [reviews/R3K21XYRMDYZ3L/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG](https://www.amazon.com/gp/customer-reviews/R3K21XYRMDYZ3L/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7)
25 [7](https://www.amazon.com/gp/customer-reviews/R3K21XYRMDYZ3L/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7) (last accessed December 11, 2020).

26 ¹⁹ [https://www.amazon.com/gp/customer-](https://www.amazon.com/gp/customer-reviews/R2WFFD3ESOAKEK/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7)
27 [reviews/R2WFFD3ESOAKEK/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG](https://www.amazon.com/gp/customer-reviews/R2WFFD3ESOAKEK/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7)
28 [7](https://www.amazon.com/gp/customer-reviews/R2WFFD3ESOAKEK/ref=cm_cr_dp_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7) (last accessed December 11, 2020).

²⁰ [https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/product-](https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/product-reviews/B07JCD8TG7/ref=cm_cr_arp_d_viewopt_kywd?ie=UTF8&reviewerType=all_reviews&pageNumber=1&filterByKeyword=telebrand)
[reviews/B07JCD8TG7/ref=cm_cr_arp_d_viewopt_kywd?ie=UTF8&reviewerType=all_r](https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/product-reviews/B07JCD8TG7/ref=cm_cr_arp_d_viewopt_kywd?ie=UTF8&reviewerType=all_reviews&pageNumber=1&filterByKeyword=telebrand)
[eviews&pageNumber=1&filterByKeyword=telebrand](https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/product-reviews/B07JCD8TG7/ref=cm_cr_arp_d_viewopt_kywd?ie=UTF8&reviewerType=all_reviews&pageNumber=1&filterByKeyword=telebrand) (last accessed December 23,
2020).

1 **h. Nathan H Early, July 19, 2020²¹**

2 It's not very durable ... Overall, this is a great concept for a hose. Lightweight,
3 compact, and generally an improvement over the classic green hard rubber
4 hoses. Durability is lacking, though. Had this hose for only a month before it
5 sprang a leak. I imagine it's only a matter of a week before it explodes like a
6 similar, lower quality version I replaced with this hose. For context, I use this
7 thing once or twice a week, never leave it under pressure, and store it on a
8 wall mount in the shade.



14 **i. Housefulofpets on Amazon, July 24, 2020²²**

15 Update - I contacted BulbHead (after going on the Silver Bullet™ website to
16 find that their "contact us" page was empty, then contacting through the form
17 on the Bulb Head website and not receiving a response, I finally found a
18 customer service email address posted on another site) and was told the hose
19 is warrantied for 5 years, but I would have to pay to ship it (approx \$10) and
20 pay a service fee of \$6.99, and if they decide the tear doesn't fit their warranty
21 requirements, they won't replace it or return my damaged hose.

22 I've had this hose for a little over a month, and it suddenly started gushing
23 water from under the sleeve at the nozzle end. It's not a part that can be
24 tightened, and it must be torn at the seam.

25 ²¹ https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/product-reviews/B07JCD8TG7/ref=cm_cr_getr_d_paging_btm_next_5?ie=UTF8&reviewerType=all_reviews&pageNumber=5 (last accessed December 23, 2020).

26 ²² https://www.amazon.com/gp/customer-reviews/RLL7MAON9MVID/ref=cm_cr_ar_p_d_rvw_ttl?ie=UTF8&ASIN=B07JCD8TG7 (last accessed December 11, 2020).

1 **j. Eran Ben-Levi, July, 28, 2020²³**

2 A hose with great features but cheaply made! ... I love how light this hose is
3 and how you can easily move it around/store it. Unfortunately, my Silver
4 Bullet hose burst after only one month of using it! The material used is very
5 flimsy and weak. Advice: Shut off the water right away after you're done,
6 otherwise if you step away even for a few minutes your hose will burst and
7 cause damage!



17
18 **k. Lewis B. on Highya.com, August 9, 2020²⁴**

19 I purchased two 50' hoses, one broke after a week. It's been 6 weeks since I've
20 spoken to someone. Never received a replacement. Since then, the other broke
21 and now no one answers the phone. This place is going out of business. It's a
22 total scam, all they do is sell you the hose and once it breaks you will never
23 get another one. There is no way to contact them anymore. No phone, no
24 email. They just try to sell you more junk that will break!

25
26 ²³ https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/product-reviews/B07JCD8TG7/ref=cm_cr_getr_d_paging_btm_next_12?ie=UTF8&reviewerType=all_reviews&pageNumber=12 (last accessed December 11, 2020).

27
28 ²⁴ <https://www.highya.com/pocket-hose-silver-Bullet-reviews> (last accessed December 11, 2020).

1 **l. Janet on Walmart.com, August 18, 2020²⁵**

2 Save your money and avoid this item!! I have bought 2 of these and both were
3 used only a couple times, both of them split inside and now they are junk!!
4 60.00 WASTED

4 **m. J.B. on Highya.com, August 24, 2020²⁶**

5 This hose leaks badly at ALL connections, does not expand or retract, has no
6 pressure at all. The water just dribbles out of the end of the hose. This is the
7 worst hose I have ever used. Two 25' sections cost me over \$40 and when
8 advertised I was supposed to get 1 hose for free with a nozzle on each one,
9 only 1 hose had the nozzle. This hose is crap and I'm sending it back. This
10 hose isn't worth \$5, don't get duped like I did.

9 **n. John on Walmart.com, August 28, 2020²⁷**

10 Absolute garbage. I'd give it zero stars if I could. I'd also give their company
11 zero stars for terrible customer service. DO NOT BUY THIS PIECE OF
12 JUNK. I promise you'll regret it if you do, it didn't last 2 days.

12 **o. Unnamed review on Home Depot Website, August 30, 2020²⁸**

13 I bought a similar hose year several years back from home depot, it was
14 absolutely horrible, I was one of many that had returned this product, the
15 employee that helped me admitted it was garbage, and was pretty sure they
16 would stop selling it. A few months ago, I saw the new silver Bullet™ version,
17 thinking, oh Home Depot has integrity and would never sell this garbage
18 again, well I have to tell you, they are selling this crap once again, water
19 instantly leaked out, till eventually, it no longer runs through the hose. Thanks
20 home depot, unfortunately I threw away the receipt, and am stuck with this
21 worthless piece of crap.

19 **p. "CM" on the Home Depot website, September 7, 2020²⁹**

20 I purchased the 50 ft version and within 2 months with LIMITED use the

21 ²⁵ <https://www.walmart.com/reviews/product/747544973?sort=rating-asc> (last accessed
22 December 11, 2020).

23 ²⁶ <https://www.highya.com/pocket-hose-silver-Bullet-reviews> (last accessed December
24 11, 2020).

24 ²⁷ <https://www.walmart.com/reviews/product/747544973?sort=rating-asc> (last accessed
25 December 11, 2020).

25 ²⁸ [https://www.homedepot.com/p/Pocket-Hose-Silver-Bullet-1-05-in-Dia-x-50-ft-
26 Standard-Duty-Expandable-Water-Hose-13397-6/306703479](https://www.homedepot.com/p/Pocket-Hose-Silver-Bullet-1-05-in-Dia-x-50-ft-Standard-Duty-Expandable-Water-Hose-13397-6/306703479) (last accessed December
27 11, 2020).

27 ²⁹ [https://www.homedepot.com/p/Pocket-Hose-Silver-Bullet-1-05-in-Dia-x-50-ft-
28 Standard-Duty-Expandable-Water-Hose-13397-6/306703479](https://www.homedepot.com/p/Pocket-Hose-Silver-Bullet-1-05-in-Dia-x-50-ft-Standard-Duty-Expandable-Water-Hose-13397-6/306703479) (last accessed December
11, 2020).

product already had a hole in it. Avoid this completely.

1
2 **q. Amazon Customer, September 9, 2020³⁰**

3 IT JUNK !!! ... I BOUGHT 2 OF THESE AND 1 GOT A HOLE AND
4 SPRUNG A LEAK AFTER JUST 2 WEEKS, IT WAS REPLACED AT NO
5 CHARGE BUT NOW THE 2ND DID THE SAME AND RETURN
6 WINDOW IS CLOSED. JUST JUNK



22 **r. Amazon Customer, September 22, 2020³¹**

23 No matter how careful you are it will get a hole ... Hole in hose after not even
24 a season. I've had these hoses before and they usually last about two years.

25 ³⁰ https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/product-reviews/B07JCD8TG7/ref=cm_cr_getr_d_paging_btm_next_28?ie=UTF8&reviewerType=all_reviews&pageNumber=28 (last accessed December 23, 2020).

27 ³¹ https://www.amazon.com/Pocket-Hose-Original-Silver-BulbHead/product-reviews/B07JCD8TG7/ref=cm_cr_getr_d_paging_btm_next_10?ie=UTF8&reviewerType=all_reviews&pageNumber=10 (last accessed December 23, 2020).

1 This one we handled with utmost delicate care... still got a hole, for no reason.
2 Utter ripoff. Amazon of course won't accept return because after 30 days they
3 throw up their hands and pretend they have nothing to do with your purchase



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11
12 **s. Cindy M. on Highya.com, October 13, 2020³²**

13 I bought two 25 ft, 3/4-inch hoses for \$40.97 and both sprung leaks within
14 less 15 minutes of use. I couldn't believe it and unfortunately I didn't open
15 them up until the 30 days had passed. Finding a customer service number was
16 impossible to even see if something could be done, the most expensive hose
in history.

17 **t. James K. on Highya.com, October 13, 2020³³**

18 I bought the hose and hooked to the spigot and the first time my wife tried to
use it blew apart. I only had it for 2 months.

19 **u. William on Walmart.com, October 31, 2020³⁴**

20 Absolutely NOT DURABLE! Owned 3 of these and they all fail with random
21 leaks that pop up somewhere within the hose after a few months (if not
22 sooner). I've tried this a few times thinking maybe I got a dud. But I'm done
with this brand. Absolute garage quality.

23
24
25 ³² <https://www.highya.com/pocket-hose-silver-Bullet-reviews> (last accessed December
26 11, 2020).

27 ³³ <https://www.highya.com/pocket-hose-silver-Bullet-reviews> (last accessed December
28 11, 2020).

³⁴ <https://www.walmart.com/reviews/product/747544973?sort=rating-asc> (last accessed
December 11, 2020).

v. **“Chef” on the home depot website, November 4, 2020³⁵**

I bought this 100 ft hose In April to use with my electric power washer. I thought it would help eliminate my need to keep moving the machine. Initially it did exactly that. I stored the machine with the hose removed in my garage. In October I connected the machine to do some fall cleaning. To my surprise the hose disintegrated and broke off. I reviewed the warranty and it’s only good for 30 days. It’s a good idea for a hose but for \$50 it needs to be made with better parts.

w. **“VG29” on the home depot website, November 6, 2020³⁶**

This hose is cheaply made- it is always too forceful and then after a few months of light use, it burst :(

33. Defendant knowingly and intentionally concealed that Silver Bullet Hoses fail and leak when promoting the product on their website and in advertisements.

34. Defendant has ignored customers’ complaints and concerns and has failed to implement any changes to the Silver Bullet Hose to remedy the product defects.

Defendant’s Actions Have Injured Plaintiff and the Class.

35. Defendant knew and failed to disclose that the Silver Bullet Hose is not properly designed, tested, or developed to withstand tearing, warping, and leaking. The Silver Bullet Hose reached the consuming public, including Plaintiff, without substantial correction of its defects and without warning of the latent defects alleged here.

36. Defendant continues to advertise and sell the Silver Bullet Hose, without disclosing to Plaintiff and members of the Classes, that the Silver Bullet Hose is defectively formulated and designed. This information would be material to a reasonable consumer in deciding whether to purchase the product, and Defendant had a duty to disclose these facts.

37. Defendant did not provide warnings with the Silver Bullet Hose or otherwise

³⁵ <https://www.homedepot.com/p/Pocket-Hose-Silver-Bullet-1-05-in-Dia-x-50-ft-Standard-Duty-Expandable-Water-Hose-13397-6/306703479> (last accessed December 11, 2020).

³⁶ <https://www.homedepot.com/p/Pocket-Hose-Silver-Bullet-1-05-in-Dia-x-50-ft-Standard-Duty-Expandable-Water-Hose-13397-6/306703479> (last accessed December 11, 2020).

1 warn consumers of the problems Defendant knew existed. To this day, Defendant has
2 concealed its knowledge of the Silver Bullet Hose defects from the public. Furthermore,
3 to this day, Defendant has not issued a recall.

4 38. The Silver Bullet Hose, which fails after a few uses, does not perform in
5 accordance with the reasonable expectations of Plaintiff and members of the Classes.

6 39. Had Defendant disclosed the truth about the inadequate design, reliability
7 and performance of the Silver Bullet Hose, Plaintiff and members of the Classes would
8 not have purchased the Silver Bullet™ Hose.

9 40. Because the defects in the Silver Bullet Hose are latent and not detectable
10 until manifestation, Plaintiff and the members of the Classes were not reasonably able to
11 discover Silver Bullet Hoses were defective, even with the exercise of due diligence.

12 41. As a result of Defendant's misconduct, Plaintiff and members of the Classes
13 have suffered actual damages and will continue to do and require Plaintiff and members
14 of the Classes to expend money to repair or replace their Silver Bullet Hoses.

15 42. The damages suffered by Plaintiff and members of the Classes were not
16 foreseeable from the perspective of Plaintiff and the Class, and Defendant did not warn
17 Plaintiff and the Class that the Silver Bullet Hoses would fail.

18 43. Defendant has failed adequately to compensate Plaintiff and the Class for
19 damages suffered as a result of the defective Silver Bullet Hoses.

20 44. It is unlikely that most members of the Classes could afford to seek recovery
21 against Defendant on their own. A class action is therefore the only viable, economical,
22 and rational means for members of the Classes to recover from Defendant for the
23 damages Defendant has caused.

24 **PLAINTIFF'S CLAIMS ARE NOT BARRED BY THE**
25 **STATUTE OF LIMITATIONS**

26 45. Defendant knew the Silver Bullet Hose was defective prior to the time of
27 sale and intentionally and wrongfully concealed material information concerning its
28 products from Plaintiff, members of the Class and the general public, all the while
continually marketing and promoting Silver Bullet Hoses. Defendant's acts of fraudulent

1 concealment include failing to disclose that Silver Bullet Hoses were defectively
2 designed and/or developed and would deteriorate.

3 46. Because Silver Bullet Hose defects are latent and not detectable until
4 manifestation, Plaintiff and members of the Class were not reasonably able to discover
5 the Silver Bullet Hose was defective and unreliable until recently, despite their exercise
6 of due diligence.

7 47. Therefore, the applicable statutes of limitation have been tolled with respect
8 to any claims that Plaintiff or the members of the Classes have brought or could have
9 brought as a result of the unlawful or fraudulent course of conduct described herein.

10 48. Defendant had a duty to disclose the Silver Bullet Hose defects and that it
11 would fail long before the expected use period. Nonetheless, Defendant never disclosed
12 the defects to Plaintiff and the Classes.

13 49. As a result, Defendant is estopped from pleading any statute of limitations
14 defense. Defendant actively concealed and misrepresented to Plaintiff and the members
15 of the Classes essential facts that underlay Plaintiff's and the members of the Classes'
16 claims. Therefore, Defendant prevented Plaintiff and the members of the Classes from
17 learning about these claims earlier. Had Plaintiff and the Classes been aware of the facts
18 which Defendant misrepresented and concealed, they could have acted to prevent damage
19 to themselves.

20 **CLASS ACTION ALLEGATIONS**

21 50. Plaintiff brings this action as a class action pursuant to Rule 23 of the
22 Federal Rules of Civil Procedure on behalf of themselves and the classes. This action
23 satisfies requirements set forth in Rule 23(a) and Rule 23(b)(3).

24 51. Plaintiff advances this action on behalf of the following classes (the
25 "Classes"):

26 Nationwide Class: All individuals and entities in the United
27 States who purchased Silver Bullet Hoses, not directly from
28 Defendant, that were developed and marketed by Defendant.
Excluded from the Nationwide Class are Defendant, its legal
representatives, assigns and successors and any entity in which

1 Defendant has a controlling interest. Also excluded is the judge
2 to whom this case is assigned and any member of the judge's
immediate family and judicial staff.

3 California Class: All individuals and entities in the State of
4 California who purchased Silver Bullet Hoses, not directly from
5 Defendant, that were developed and marketed by Defendant.
6 Excluded from the California Class are Defendant, its legal
7 representatives, assigns and successors and any entity in which
8 Defendant has a controlling interest. Also excluded is the judge
to whom this case is assigned and any member of the judge's
immediate family and judicial staff.

9 Claims for personal injury are specifically excluded from the Classes.

10 52. Numerosity (Rule 23(a)(1)). Although the actual size of the Classes is
11 uncertain, Plaintiff is informed and believes that the Classes are comprised of at least
12 many thousands of property owners, and that the Silver Bullet Hoses have been sold to
13 thousands of customers making joinder impractical. The disposition of the claims of
14 these members of the Classes in a single class action will provide substantial benefits to
15 all parties and to the Court.

16 53. Commonality (Rule 23(a)(2)). There exist questions of law and fact
17 common to all members of the Classes. Common questions include, but are not limited
18 to, the following:

- 19 a. Whether the Silver Bullet Hose is subject to premature failure well in advance
20 of its represented useful life for a water hose;
- 21 b. Whether the Silver Bullet Hose is not suitable for use;
- 22 c. Whether Defendant knew, or should have known, of the Silver Bullet Hoses'
23 defects before making it available for purchase and use by Plaintiff and
24 members of the Classes;
- 25 d. Whether Defendant failed to disclose to Plaintiff and members of the Classes
26 the defective nature of the Silver Bullet Hose;
- 27 e. Whether Defendant, by making misleading representations of material facts
28 regarding the Silver Bullet Hose qualities, omitted material facts regarding the

1 particular susceptibility of the Silver Bullet hose to warp, develop pin-holes,
2 and leak;

- 3 f. Whether Defendant's practices, by repeatedly concealing the true nature of the
4 Silver Bullet Hose defects, violated common laws and statutes.
- 5 g. Whether Defendant owed a duty to Plaintiff and members of the Classes to
6 exercise reasonable and ordinary care in developing, testing, designing,
7 producing, and marketing the Silver Bullet Hose;
- 8 h. Whether Defendant breached its duties to Plaintiff and members of the Classes
9 by developing, designing, producing, marketing, advertising, and selling
10 defective the Silver Bullet Hose to Plaintiff and members of the Classes;
- 11 i. Whether Defendant had a duty to Plaintiff and members of the Classes to
12 disclose the true nature of the Silver Bullet hose;
- 13 j. Whether the facts concerning the Silver Bullet Hose not disclosed by Defendant
14 to Plaintiff and members of the Classes are material facts;
- 15 k. Whether Defendant knew, or should have known the Silver Bullet Hose would
16 prematurely fail, is not suitable for use as a hose and is otherwise not as
17 represented by Defendant;
- 18 l. Whether Defendant improperly breached warranties;
- 19 m. Whether Plaintiff and members of the Classes are entitled to compensatory
20 damages, restitution, and the amounts thereof respectively;
- 21 n. Whether Defendant should be declared financially responsible for notifying all
22 members of the Classes of the defective Silver Bullet Hose and for the costs and
23 expenses of repair and replacement of all defective hose materials and for
24 providing restitution of monies paid and inadequate value given;
- 25 o. Whether Defendant should be ordered to disgorge, for the benefit of members
26 of the Classes, all or part of their ill-gotten profits received from the sale of
27 defective the Silver Bullet Hose and/or to make full restitution to Plaintiff and
28 members of the Classes; and

1 p. Whether Defendant should be enjoined from continuing to market the Silver
2 Bullet Hoses using misleading misrepresentations and omission of material
3 facts.

4 54. Typicality (Rule 23(a)(3)). The claims of the representative Plaintiff are
5 typical of the claims of members of the Classes, in that the representative Plaintiff, like
6 all members of the Classes, purchased a defective Silver Bullet Hose that failed
7 prematurely. The representative Plaintiff, like all members of the Classes, has suffered a
8 common injury: He paid for a defective product that he would not have purchased had he
9 known the truth about it. The factual basis of Defendant's misconduct is common to all
10 members of the Classes.

11 55. Adequacy (Rule 23(a)(4)). Plaintiff will fairly and adequately represent and
12 protect the interests of the Class. Plaintiff has retained counsel with substantial
13 experience in prosecuting consumer class actions, including actions involving defective
14 building products, failure to disclose material information regarding product performance
15 and violation of consumer protection statutes. Plaintiff and his counsel are committed to
16 vigorously prosecuting this action on behalf of the Classes and have the financial
17 resources to do so. Neither Plaintiff nor his counsel have any interests adverse to those of
18 the Classes.

19 56. Predominance of Common Questions (Rule 23(b)(3)). Common questions
20 of law and fact predominate over any questions involving individualized analysis.
21 Fundamentally, there are no material questions of fact or law that are not common to
22 members of the Classes. The performance of the Silver Bullet Hoses relative to their
23 represented qualities is a common question, as is the Defendant's knowledge regarding
24 the Silver Bullet Hoses performance and Defendant's uniform omission to members of
25 the Classes of these material facts. Common questions of law include whether
26 Defendant's conduct violates consumer protection statutes and other laws, and the
27 members of the Classes' entitlement to damages and remedies.

28 \\\

1 practices in violation of California Civil Code sections 1770(a)(5), (a)(7), and (a)(9)
2 when Defendant failed to disclose that Silver Bullet Hoses warp, tear, develop pin-holes,
3 leak and suffer other defects complained of by Plaintiff and members of the Classes.
4 Defendant further violated the CLRA when it falsely represented the Silver Bullet Hose
5 was of a particular standard or quality. Defendant represents that Silver Bullet Hoses
6 contain a “DURABLE OUTER SHELL” and that “Silver Bullet’s™ exclusive Bullet
7 Shell outer casing won’t snag, tear, or wear.” Plaintiff and Class Member’s relied on
8 Defendant’s representations.

9 63. Defendant’s deceptive practices were specifically designed to induce
10 Plaintiff and members of the Classes to purchase the Silver Bullet Hose. Defendant
11 engaged in marketing efforts as detailed in the general allegations, to reach members of
12 the Classes, their agents, and/or third parties on which they relied to persuade them to
13 purchase Silver Bullet Hoses developed and marketed by Defendant.

14 64. To this day, Defendant continues to engage in unlawful practices in violation
15 of the CLRA. Defendant continues to conceal the defective nature of the Silver Bullet
16 Hose and have omitted to disclose, on inquiry from Plaintiff and members of the Classes,
17 the Silver Bullet Hose’s defective propensities.

18 65. Plaintiff served Defendant with notice of its CLRA violations by serving
19 notice on May 5, 2021. More than thirty days have passed and Defendant has failed to
20 remedy the defects as requested. A copy of the notice is attached to this Complaint as
21 Exhibit A.

22 WHEREFORE, Plaintiff on behalf of himself and for all others similarly situated,
23 demands a permanent injunction be issued against Defendant to refrain from continued
24 advertising of the Silver Bullet Hose that omits material facts about product performance,
25 injunctive relief forcing Defendant to replace and repair all Silver Bullet Hoses for the
26 members of the Classes, plus costs and attorneys’ fees pursuant to California Civil Code
27 section 1780(d).

28 \\\

SECOND CAUSE OF ACTION

**Violation of California Unfair Competition Law- Unlawful Business Practice
(On Behalf of the Nationwide Class and the California Class)**

1
2
3 66. Plaintiff incorporates by reference the allegations contained in paragraphs 1
4 through 59 of this Complaint.

5 67. California Business and Professions Code section 17200 *et seq.* prohibits
6 acts of unfair competition, which includes unlawful business practices.

7 68. Defendant engaged in unlawful business practices in failing to disclose the
8 Silver Bullet Hose fails prematurely. Specifically, Defendant violated the California
9 Consumers Legal Remedies Act (CLRA), California Civil Code section 1750 *et seq.*, and
10 the Song-Beverly Consumer Warranty Act, California Civil Code section 1790 *et seq.*, as
11 set forth herein.

12 69. Defendant's deceptive practices constitute an unlawful business practice in
13 that the practices were specifically designed to induce Plaintiff, members of the Classes,
14 and their agents or third parties upon whom Plaintiff and members of the Classes relied to
15 provide appropriate guidance regarding suitable water hoses, to purchase on members of
16 the Classes' behalf the Silver Bullet Hose and use it.

17 70. To this day, Defendant have engaged and continue to engage in unlawful
18 business practices by concealing the defective nature of the Silver Bullet Hose and have
19 knowingly misrepresented to members of the Classes the Silver Bullet Hose possesses
20 qualities and characteristics they do not have.

21 71. As a direct and proximate cause of Defendant's unfair and unlawful methods
22 of competition and unfair, deceptive, or unlawful acts or practices, Plaintiff and members
23 of the Classes have suffered actual damages. The Silver Bullet Hose has failed and will
24 continue to prematurely fail due to its poor development, design, and unsuitability for its
25 intended purpose, which will require (or has already required) Plaintiff and members of
26 the Classes to incur costs to prematurely repair and/or replace it.

27 72. As a proximate result of their unlawful, unfair, or fraudulent practices,
28 Defendant has been unjustly enriched and should be required to make restitution to the

1 Plaintiff and members of the Classes pursuant to sections 17203 and 17204 of the
2 California Business & Professions Code.

3 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated,
4 demands judgment against Defendant, for restitution and/or disgorgement of funds paid
5 to Defendant by Plaintiff and members of the Classes to purchase the Silver Bullet Hose
6 or in the form of repair and/or replacement of the defective Silver Bullet Hoses.

7 **THIRD CAUSE OF ACTION**
8 **Violation of Unfair Competition Law – Unfair Business Practice**
9 **(On Behalf of the Nationwide Class and the California Class)**

10 73. Plaintiff incorporates by reference the allegations contained in paragraphs 1
11 through 59 of this Complaint.

12 74. Defendant engaged in an unfair business practice by knowingly failing to
13 disclose material facts concerning the Silver Bullet Hose.

14 75. Defendant’s “unfair” practices were designed to induce Plaintiff and
15 members of the Classes, or their agents, and/or third parties upon which Plaintiff and
16 members of the Classes relied to procure appropriate hoses, to purchase the Silver Bullet
17 Hose and recommend the use of the Silver Bullet Hose.

18 76. To this day, Defendant has failed to disclose facts concerning the Silver
19 Bullet Hose performance, facts that would be and are material to the consumer or those
20 third parties, on which consumers relied to procure appropriate hoses.

21 77. As a direct and proximate cause of Defendant’s unfair methods of
22 competition and unfair or deceptive acts or practices, Plaintiff and members of the
23 Classes have suffered actual damages. The Silver Bullet Hose will prematurely fail due
24 to inadequate product testing poor design and/or development techniques, which will
25 require Plaintiff and members of the Classes to incur costs to prematurely repair and/or
26 replace hoses.

27 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated,
28 demands judgment against Defendant, for restitution and/or disgorgement of funds paid
to Defendant by Plaintiff and members of the Classes to purchase the Silver Bullet Hose

1 or in the form of repair and/or replacement of the defective Silver Bullet Hoses.

2 **FOURTH CAUSE OF ACTION**
3 **Breach of Implied Warranty**
4 **(On Behalf of the Nationwide Class and the California Class)**

5 78. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 59 of this Complaint.

7 79. Defendant designed, developed, manufactured, and sold the Silver Bullet
8 Hose knowing that Plaintiff and members of the Classes would use it.

9 80. Defendant is a merchant of the Silver Bullet Hose and marketed, promoted,
10 and sold it to the consuming either directly or through its authorized dealers or retailers.
11 Defendant expected the consuming public, including Plaintiffs and members of the
12 Classes, to use the Silver Bullet Hose as a water hose and such use was reasonably
13 foreseeable.

14 81. At the time Defendant or its agents sold the Silver Bullet Hoses, they were
15 not in merchantable condition, were not fit for the ordinary purpose for which water
16 hoses are used, and were likely to fail within the first few uses.

17 82. Defendant warranted to Plaintiff and members of the Classes that the Silver
18 Bullet™ Hose was of a quality that would pass without objection in the trade and was at
19 least fit for the ordinary purposes for which such goods were used, and in all other
20 respects were of merchantable quality.

21 83. Plaintiff and members of the Classes relied on that implied warranty.

22 84. As alleged here, Defendant concealed and failed to disclose the true nature
23 of the quality of the Silver Bullet Hose and failed to adequately warn Plaintiff and the
24 Classes of problems associated with Silver Bullet Hose use.

25 85. Defendant breached their implied warranties of merchantability because the
26 Silver Bullet Hose was not of merchantable quality, was defectively designed, was unfit
27 for the ordinary purposes for which it was designed and used, and was likely to fail
28 within the first few uses.

86. The Product was unmerchantable due to a latent Defect that was present at

1 the time of sale and could not reasonably have discovered sooner.

2 87. Plaintiff and the Classes notified Defendant of the defective nature of the
3 Silver Bullet Hose and that Defendant breached these warranties within a reasonable time
4 of discovery.

5 88. As a direct and proximate result of Defendant's breaches of the implied
6 warranty of merchantability and fitness for a particular purpose, Plaintiff and members of
7 the Classes have been damaged in an amount to be proven at trial.

8 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
9 demands judgment against Defendant, and each of them, for damages in an amount to be
10 proven at trial.

11 **FIFTH CAUSE OF ACTION**
12 **Breach of Implied Warranty of Merchantability,**
13 **Song-Beverly Act, Civ. Code § 1790 *et seq.***
14 **(On Behalf of the Nationwide Class and the California Class)**

15 89. Plaintiff incorporates by reference the allegations contained in paragraphs 1
16 through 59 of this Complaint.

17 90. Plaintiff asserts this claim for violation of the Song-Beverly Act, Civ. Code
18 § 1790 on behalf of himself and the members of the Classes.

19 91. This cause of action is brought for breach of implied warranties of
20 merchantability and fitness on all new consumer goods sold at retail, pursuant to the
21 Song-Beverly Act, Civ. Code § 1790, *et seq.*

22 92. Cal. Civ. Code § 1791.1(a) states: "Implied warranty of merchantability" or
23 "implied warranty that goods are merchantable" means that the consumer goods meet
24 each of the following:

25 93. Pass without objection in the trade under the contract description.

26 94. Are fit for the ordinary purposes for which such goods are used.

27 95. Are adequately contained, packaged, and labeled.

28 96. Conform to the promises or affirmations of fact made on the container or
label.

1 97. The Silver Bullet Hose is a "consumer good" within the meaning of Civ.
2 Code § 1791(a), Plaintiff and members of the Classes are "buyers of consumer goods"
3 within the meaning of Civ. Code § 1791(b), and Defendant is a "retail seller" and
4 "manufacturer" within the meanings of Civ. Code § 1791(j) and (l).

5 98. Defendant's warranty of merchantability and fitness for a particular purpose
6 arose out of and/or was related to its manufacture and sales of the Silver Bullet Hose to
7 consumers. Defendant impliedly warranted that the Silver Bullet Hose was in
8 merchantable condition and fit for the ordinary purpose for which vehicles are used.

9 99. As set forth more fully above, Defendant has failed to comply with its
10 obligations under its implied warranties of merchantability and fitness. Defendant knew
11 or had reason to know of the specific use for which the Silver Bullet Hoses were
12 purchased.

13 100. Contrary to the applicable implied warranties, the Silver Bullet Hoses the
14 time of sale and thereafter were not fit for its ordinary and intended purpose of providing
15 Plaintiff and members of the Classes with a useable hose, would not pass without
16 objection in the trade, were not adequately labeled, and did not conform to the promises
17 and affirmation on its labels. Instead, the Silver Bullet Hoses are defective.

18 101. The alleged Defect is inherent and was present in each Silver Bullet Hose at
19 the time of sale.

20 102. Defendant was provided notice of the Defect by numerous consumer
21 complaints made on sales platform websites such as Amazon.com, websites of other
22 retailers selling its products (e.g., Home Depot, Walmart), Defendant's Face Book page,
23 lawsuits, and through its own testing. Affording Defendant a reasonable opportunity to
24 cure its breach of implied warranties would be unnecessary and futile here because
25 Defendant has known of and concealed the Defect and, Plaintiff is informed and believes
26 that Defendant has refused to repair or replace the Silver Bullet Hose free of charge
27 within a reasonable time.

28 103. Defendant breached its implied warranties in violation of Cal. Civ. Code §

1 1791 *et seq.*

2 104. As a direct and proximate result of Defendant's breach of its implied
3 warranties, Plaintiff and members of the class have been damaged in an amount to be
4 proven at trial.

5 105. Plaintiff and the other members of the Classes have suffered and will
6 continue to suffer damages as a result of Defendant's failure to comply with its warranty
7 obligations. Plaintiff and the Class are, therefore, entitled to recover damages under the
8 Song-Beverly Act, including damages pursuant to Civ. Code §§ 1791(d) and 1794.

9 106. Plaintiff and members of the class have been excused from performance of
10 any warranty obligations as a result of Defendant' conduct described here.

11 107. Plaintiff and members of the class seek actual damages, costs, attorneys'
12 fees, and statutory damages as a result of Defendant' willful conduct alleged here.

13 Plaintiff and members of the class also seek reimbursement or replacement of the
14 defective Silver Bullet Hose, and all other relief available under Cal Civ. Code § 1794.

15 108. The applicable statute of limitations for the implied warranty claim has been
16 tolled by the discovery rule and/or fraudulent concealment.

17 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
18 demands judgment against Defendant, and each of them, for damages in an amount to be
19 proven at trial.

20 **SIXTH CAUSE OF ACTION**

21 **Unjust Enrichment**

22 **(On Behalf of the Nationwide Class and the California Class)**

23 109. Plaintiff incorporates by reference the allegations contained in paragraphs 1
24 through 59 of this Complaint.

25 110. As the intended and expected result of its conscious wrongdoing, Defendant
26 has profited and benefited from the purchase of the Silver Bullet™ Hose by Plaintiff and
27 the Classes. Plaintiff and Classes' payments for the Silver Bullet™ Hose flowed to
28 Defendant.

111. Defendant have voluntarily accepted and retained these profits and benefits,

1 derived from Plaintiff and the Classes, with full knowledge and awareness that, as a result
2 of its misconduct, Plaintiff and the Classes were not receiving products of the quality,
3 nature, fitness or value that had been represented by Defendant, and that Plaintiff and the
4 Classes, as reasonable consumers, expected.

5 112. Defendant have been unjustly enriched by their fraudulent and deceptive
6 withholding of benefits from Plaintiff and the Classes, at the expense of Plaintiff and the
7 Classes.

8 113. Defendant's retention of these profits and benefits is inequitable.

9 114. Plaintiff and the Classes seek the disgorgement and restitution of
10 Defendant's wrongful profits, revenue, and benefits, plus interest, to the extent and in the
11 amount deemed appropriate by the Court, and such other relief as the Court deems just
12 and proper to remedy Defendant's unjust enrichment.

13 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
14 demands judgment against Defendant, and seek the disgorgement and restitution of
15 Defendant's wrongful profits, revenue and benefits, plus interest, to the extent and in the
16 amount deemed appropriate by the Court, and such other relief as the Court deems just
17 and proper to remedy Defendant's unjust enrichment.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays that the Court enter judgment against Defendant
20 and in favor of Plaintiff, and to award the following relief:

- 21 (a) Certification of the Classes with Plaintiff appointed as class representatives and the
22 undersigned appointed as Class Counsel;
- 23 (b) A declaration that Defendant is financially responsible for notifying all members of
24 the Classes of the problems with the Silver Bullet Hose;
- 25 (c) Injunctive relief requiring Defendant to replace and/or repair all the Silver Bullet
26 Hoses owned by the Classes, and enjoining Defendant from continuing to pursue
27 the policies, acts and practices described in this Complaint;
- 28 (d) A declaration that Defendant must disgorge, for the benefit of the Classes, all or

1 part of its ill-gotten profits received from the sale of the defective the Silver Bullet
2 Hose, and/or to make full restitution to Plaintiff and the members of the Classes;

- 3 (e) An award of all actual, general, special, incidental, statutory, treble, or other
- 4 multiple, punitive and consequential damages under statutory and common law as
- 5 alleged in this Complaint, in an amount to be determined at trial, except that
- 6 Plaintiff does not seek damages under the CLRA yet;
- 7 (f) An award to the Classes for economic injury due to the price premium that they
- 8 paid at or following the point of sale;
- 9 (g) An award of pre-judgment and post-judgment interest at the maximum rate
- 10 allowable by law;
- 11 (h) An award of costs and attorneys’ fees, as allowed by law, and/or from a common
- 12 fund created hereby; and
- 13 (i) Orders granting such other and further relief as may be appropriate.

14 **JURY TRIAL DEMAND**

15 Plaintiff hereby demands a jury trial for all individual and Class claims so triable.

16 Dated: June 14, 2021

By: /s/ Michael F. Ram
Michael F. Ram

17
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19 **COMPLEX LITIGATION GROUP**

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*Attorneys for Plaintiff and the Proposed
Classes*

AFFIDAVIT OF VENUE PURSUANT TO CIVIL CODE SECTION 1780(d)

I, Michael F. Ram, declare as follows:

1. I am an Attorney at Morgan & Morgan, Complex Litigation Group and one of the attorneys working on this case.

2. Pursuant to California Civil Code section 1780(d), this action has been filed in this county because Defendant is doing business in this county, and a substantial portion of the transaction, events or omissions giving rise to the claims occurred in this county.

I declare the foregoing to be true under penalty of perjury. Executed one Jun 9, 2021 at San Francisco, California.

/s/ Michael F. Ram

Michael F. Ram