

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“*Settlement Agreement*” or “*Agreement*”) is entered into by and between plaintiff Rosemarie Rivali, individually, and in her representative capacity on behalf of all others similarly situated (“*Plaintiff*”), on the one hand, and defendant Shutterfly, LLC (“*Shutterfly*” or “*Defendant*”), on the other (collectively, the “*Parties*” or, singularly, a “*Party*”).

RECITALS

A. On April 1, 2022, Rosemarie Rivali filed a putative class action lawsuit against Shutterfly entitled, *Rivali v. Shutterfly, LLC et al.*, No. 2:22-cv-02175-RGK-GJS (C.D. Cal.) (the “*Federal Court Action*”), asserting false and/or deceptive advertising claims based on allegations that Defendant’s advertisement of discounts on merchandise in its e-commerce retail store, Shutterfly.com, improperly leads consumers to believe that they are receiving a discount on their purchases. The case was assigned to the Honorable R. Gary Klauser.

B. On May 27, 2022, Defendant filed a Motion to Dismiss and a Motion to Compel Arbitration. Thereafter, on June 6, 2022, Plaintiff filed a Non-Opposition to the Motion to Compel Arbitration. The Court denied Shutterfly’s Motion to Dismiss without prejudice and granted the Motion to Compel Arbitration on June 28, 2022.

C. Prior to commencement of arbitration proceedings, Plaintiff and Shutterfly conducted an investigation of the facts and analyzed the relevant legal issues in regard to the claims asserted in the complaint and Shutterfly’s potential defenses.

D. The Parties participated in a two-day mediation with Shirish Gupta on August 4, 2022, and August 8, 2022.

E. As a result of the progress made at the mediation session and the diligent efforts of the Parties’ mediator, the Parties reached a prospective class-wide agreement. Under the terms of the settlement, Plaintiff agreed to dismiss the Federal Court Action and re-file her claims in the Superior Court of California, County of San Diego (the “*Action*”), asserting similar false and/or deceptive advertising claims on behalf of the same Class (as defined below) and based on allegations that Defendant’s advertisement of discounts on merchandise on its website improperly leads consumers to believe that they are receiving a discount on their purchases.

F. Plaintiff and her Counsel believe that the claims asserted in the Complaint (defined below) have merit. Shutterfly has denied, and continues to deny, any and all allegations of wrongdoing alleged in the Federal Court Action and the Action and believes the claims asserted by Plaintiff are without merit. Nonetheless, the Parties have concluded that litigation could be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement to limit further expense, inconvenience, and uncertainty. The Parties also have considered the uncertainties of trial and the benefits to be obtained under the proposed Settlement, and have considered the costs, risks,

and delays associated with the prosecution of this complex and time-consuming litigation and the likely appeals of any rulings in favor of either Plaintiff or Shutterfly.

G. It is now the intention of the Parties, and the objective of this Settlement Agreement, to avoid the costs of trial and settle and dispose of, fully and completely, any and all claims and causes of action in the Action.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, Plaintiff, the Class (defined below) and Shutterfly, agree to the Settlement of the Action, subject to Court approval, under the following terms and conditions.

1. DEFINITIONS. In addition to the definitions included in the Recitals above, and in later sections of the Agreement, the following shall be defined terms for purposes of this Settlement Agreement. Some of the definitions in this Section use terms that are defined later in the section. All defined terms are capitalized and listed in alphabetical order:

1.1 As used herein, the term “**Action**” means the lawsuit styled *Rosemarie Rivali v. Shutterfly, LLC*, filed in the Superior Court of California, County of San Diego following the dismissal of the Federal Court Action.

1.2 As used herein, the term “**Claim**” means a request made by a Class Member in order to receive a Voucher pursuant to the procedures stated in Section 3.5.

1.3 As used herein, the term “**Claim Form**” means the form a Class Member must complete and submit to receive a Voucher under this Settlement Agreement. The Claim Form must be substantially similar to the form attached hereto as **Exhibit E**.

1.4 As used herein, the term “**Claim-in-Class Member**” means any Class Member who timely submits a complete and sufficient Claim Form and does not validly request exclusion from the Class.

1.5 As used herein, the term “**Claimant**” means any Class Member who submits a Claim Form under this Agreement.

1.6 As used herein, the term “**Claims Administrator**” means a reputable vendor of Plaintiff’s choosing, and any successors to that entity, to administer the Notice, Claims, and Settlement relief distribution process provided for in the Settlement Agreement.

1.7 As used herein, the term “**Claims Administrator Costs**” means all costs incurred by the Claims Administrator, including the cost of providing Notice to the Class and administering the Settlement.

1.8 As used herein, the terms “**Class**” and “**Class Members**” mean “All persons, within the United States, who, within the Class Period, purchased from Shutterfly’s e-commerce website (www.shutterfly.com), one or more products at discounts from an advertised reference price and

who have not received a refund or credit. Excluded from the Class is Shutterfly's Counsel, Shutterfly's officers, directors and employees, and the judge presiding over the Action."

1.9 As used herein, the term "***Class Period***" means: April 1, 2018, through the date that the Court enters a Preliminary Approval Order.

1.10 As used herein, the term "***Class Released Claims***" means all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which Class Members have or may have, against the Released Parties, arising out of, or relating to, any of the acts, omissions or other conduct by Shutterfly that has been, or could have been, alleged or otherwise referred to in the Complaint, or any preceding version thereof filed in the Action, in connection with Plaintiff's claims related to the advertisement of prices by Shutterfly, or any of its subsidiaries or affiliates, at Shutterfly's e-commerce retail store, Shutterfly.com.

1.11 As used herein, the term "***Class Releasers***" means Plaintiff and all Class Members who do not timely and sufficiently request to be excluded from the Class and the proposed Settlement, and each of their respective successors, assigns, legatees, heirs, spouses (to the extent spouses claim a community property interest), and personal representatives.

1.12 As used herein, the term "***Complaint***" means the Complaint Plaintiff will file in the Action, asserting claims on behalf of Plaintiff and the Class (using the same definition as Section 1.8 above) in connection with Shutterfly's pricing of merchandise in its e-commerce retail store, Shutterfly.com. The Complaint must be substantially similar to the form attached as **Exhibit H**.

1.13 As used herein, the term "***Court***" means the Superior Court of California for the County of San Diego.

1.14 As used herein, the term "***Defendant***" means Shutterfly, LLC.

1.15 As used herein, the terms "***Defendant's Counsel***" and "***Shutterfly's Counsel***" mean the law firm of Greenberg Traurig, LLP.

1.16 As used herein, the term "***Direct Benefit Class Member***" means any Class Member who either does not make a Claim or whose claim is rejected and does not validly request exclusion from the Class.

1.17 As used herein, the term "***Direct Benefit Voucher***" or "***Direct Benefit Vouchers***" means an electronic voucher for five dollars (\$5.00) good for use on shutterfly.com. Direct Benefit Vouchers will apply to the purchase prices that Shutterfly offers to the general public, will be transferable to others without restriction, and will be usable in conjunction with an available free shipping code. Direct Benefit Vouchers will not be usable with other voucher or discount codes, will expire after one year, and will have no residual value if the amount redeemed is less than the Direct Benefit Voucher amount.

1.18 As used herein, the term “*Email Notice*” means the legal notice summarizing the proposed Settlement terms, as approved by Class Counsel, Shutterfly’s Counsel, and the Court, to be provided to Class Members via electronic mail pursuant to Section 3.3(b) below. The Email Notice must be substantially similar to the form attached hereto as **Exhibit C**.

1.19 As used herein, the term “*Fairness Hearing*” means the hearing(s) to be held by the Court in the Action to consider and determine whether the proposed Settlement, as contained in this Settlement Agreement, should be approved as fair, reasonable, and adequate, and whether the Final Order and Judgment approving the Settlement contained in this Settlement Agreement should be entered.

1.20 As used herein, the term “*Federal Court Action*” refers to the lawsuit brought by Plaintiff against Shutterfly in the Central District of California bearing Case No. 2:22-cv-02175-RGK-GJS (C.D. Cal.), which lawsuit will be voluntarily dismissed without prejudice.

1.21 As used herein, the terms “*Final Order*” and “*Order Granting Final Approval of Class Settlement*” mean the Court order granting final approval of the Settlement in the Action following the Fairness Hearing. The proposed Final Order that Plaintiff submits to the Court for approval must be substantially similar to the form attached hereto as **Exhibit F**.

1.22 As used herein, the term “*Final Settlement Date*” means two court days after the Final Order and Judgment become “final.” For the purposes of this section, the Final Order and Judgment will become “final” on the date upon which either of the following events occurs: (i) if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed, the expiration of sixty-one (61) calendar days after notice of the entry of the Final Order and Judgment in the Action is served on the Parties; or (ii) in the event that an appeal or other effort to obtain review has been initiated, the date after any and all such appeals or other review(s) have been finally concluded in favor of the Final Order and Judgment, any mandates have been returned to the Court, and the Final Order and Judgment, and the ruling on any objection thereto, are no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing *en banc*, petitions for *certiorari*, or otherwise.

1.23 As used herein, the term “*Full Notice*” means the full legal notice of the proposed Settlement terms, as approved by Class Counsel, Shutterfly’s Counsel, and the Court, to be provided to Class Members at the Settlement Website pursuant to Section 3.3(a) below. The Full Notice must be substantially similar to the form attached hereto as **Exhibit B**.

1.24 As used herein, the terms “*Judgment*” and “*Final Judgment*” mean a document labeled by the Court as such and that has the effect of a judgment. The proposed Judgment that Plaintiff will submit to the Court for entry must be substantially similar to the form attached hereto as **Exhibit G**.

1.25 As used herein, the term “*Named Plaintiff*” and “*Plaintiff*” means Rosemarie Rivali in her individual capacity only.

1.26 As used herein, the term “*Notice*” means the legal notice summarizing the proposed Settlement terms, as approved by Class Counsel, Shutterfly’s Counsel, and the Court, to be

provided to Class Members, and includes Email Notice, Full Notice and Publication Notice, as applicable.

1.27 As used herein, the terms “*Plaintiff’s Counsel*” and “*Class Counsel*” mean the law firms of Lynch Carpenter, LLP and Keller Postman LLC.

1.28 As used herein, the terms “*Preliminary Approval Order*” or “*Preliminary Approval and Provisional Class Certification Order*” mean the order provisionally certifying the Class for Settlement purposes only, approving and directing Notice, and setting the Fairness Hearing. The proposed Preliminary Approval Order that Plaintiff will submit to the Court for its approval must be substantially similar to the form attached hereto as **Exhibit A**.

1.29 As used herein, the term “*Publication Notice*” means a legal notice directing Class Members to the Settlement Website, as approved by Class Counsel, Shutterfly’s Counsel, and the Court, to be provided to Class Members via print media pursuant to Section 3.3(d) below. The Publication Notice must be substantially similar to the form attached hereto as **Exhibit D**.

1.30 As used herein, the term “*Qualifying Purchase*” means a purchase from Shutterfly’s e-commerce retail store, Shutterfly.com, of one or more products offered at a stated discount from an advertised reference price during the Class Period, which was not returned by, or on behalf of, the purchaser.

1.31 As used herein, the term “*Released Parties*” means Shutterfly and each of its direct or indirect parents, members, wholly or majority-owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of their present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under, or in concert with it, or any of them.

1.32 As used herein, the term “*Response Deadline*” means the deadline by which Class Members must submit a Claim Form, deliver objections, or deliver requests for exclusion. The Response Deadline shall be no later than ninety (90) calendar days after issuance of the Class Notice.

1.33 As used herein, the term “*Settlement*” means the Settlement of the Action and Class Released Claims on the terms embodied in this Settlement Agreement.

1.34 As used herein, the term “*Settlement Website*” means the website that shall be created for Settlement administration purposes and administered by the Claims Administrator.

1.35 As used herein, the term “*Unknown Claims*” means, *with respect to the Class Released Claims only*, Plaintiff and the Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY

HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

As part of this Agreement, Plaintiff and the Class Members state that they fully understand that the facts on which the Settlement Agreement is to be executed may be different from the facts now believed by Plaintiff, the Class Members, and Class Counsel to be true, and expressly accept and assume the risk of this possible difference in facts and agree that the Settlement Agreement will remain effective despite any difference in facts. Further, Plaintiff and the Class Members agree that this waiver is an essential and material term of this release and the Settlement that underlies it, and that without such waiver the Settlement would not have been accepted.

1.36 As used herein, the term “*Voucher*” or “*Vouchers*” means a voucher good for a purchase through Shutterfly’s e-commerce retail store, Shutterfly.com, for twenty-five dollars (\$25.00) off a single purchase (no minimum purchase). The Vouchers will apply to the purchase prices that Shutterfly offers to the general public, will be transferable to others without restriction, and will be usable in conjunction with an available free shipping code. Vouchers will not be usable with other voucher or discount codes, will expire after one year after the date of issuance, and will have no residual value if the amount redeemed is less than the Voucher amount.

2. SETTLEMENT TERMS.

2.1 Award to the Class. Shutterfly shall issue:

- (a) To each Claim-in-Class Member, one (1) Voucher; and
- (b) To each Direct Benefit Class Member one (1) Direct Benefit Voucher.

2.2 Distribution of Vouchers to Claim-in-Class Members. If the Court approves the Settlement of this Action, Shutterfly, through the Claims Administrator, shall distribute the Vouchers to the email address that Claim-in-Class Members designated on their Claim Form within sixty (60) calendar days of the Final Settlement Date.

2.3 Distribution of Direct Benefit Vouchers. If the Court approves the Settlement of this Action, Shutterfly, through the Claims Administrator, shall distribute the Direct Benefit Vouchers to the last known email address for all Direct Benefit Class Members within sixty (60) calendar days of the Final Settlement Date. Class Members who receive Notice need not do anything in response to the Notice and will automatically receive a Direct Benefit Voucher, so long as they have not submitted a valid and sufficient Claim Form or timely and validly excluded themselves from the Class.

2.4 Injunctive Relief. Beginning ninety days after the Final Settlement Date, Shutterfly will agree not to violate the California consumer protection statutes CAL. BUS. & PROF. CODE §§ 17200, *et seq.*, CAL. BUS. & PROF. CODE §§ 17500, *et seq.*, CAL. CIV. CODE §§ 1750, *et seq.* with respect to how it displays prices for products on shutterfly.com. This injunction shall expire two years and ninety days after the Final Settlement Date.

2.5 Attorneys' Fees, Costs, and Individual Settlement Award. The Parties acknowledge that Plaintiff must petition the Court for approval of any award to Class Counsel for attorneys' fees, costs and an Individual Settlement Award. The Parties agree that Class Counsel will not seek an award greater than two million and four hundred thousand dollars (\$2,400,000.00) total for attorneys' fees, costs, Class administration costs, and an Individual Settlement Award. Shutterfly agrees not to object to Class Counsel's request for up to a maximum payment of two million and four hundred thousand dollars (\$2,400,000.00). If the Court approves the Settlement of this Action and an award of attorneys' fees, costs, and an Individual Settlement Award, unless the Court orders a different timetable, Shutterfly agrees to pay the amount approved by the Court to Class Counsel upon the occurrence of both of the following events: (i) the Final Settlement Date, and (ii) Class Counsel delivery to Shutterfly of the relevant W-9 Form(s). Unless the Court orders a different timetable, any such payment shall be made by twenty-one (21) calendar days after the occurrence of the later of these events and shall be made to the law firm of Lynch Carpenter, LLP. Lynch Carpenter, LLP shall have control over, and responsibility to distribute, any payment of fees and costs to any other attorney or law firm that may claim entitlement to fees and costs under this Settlement or as a result of the Action. Lynch Carpenter, LLP shall also have control over, and responsibility to distribute, any payment of an Individual Settlement Award to Named Plaintiff. No interest shall be paid on the attorneys' fees, costs and Individual Settlement Award.

2.6 Individual Settlement Award to Named Plaintiff. The Parties acknowledge that Named Plaintiff must petition the Court for approval of any award to Named Plaintiff for an incentive award (the "*Individual Settlement Award*"). Shutterfly agrees not to object to Named Plaintiff's request for an Individual Settlement Award. Named Plaintiff will seek twelve thousand five hundred dollars (\$12,500.00) as an Individual Settlement Award.

2.7 Reduction in Named Plaintiff's Individual Settlement Award or Class Counsel's Attorneys' Fees. Named Plaintiff's Individual Settlement Award and Class Counsel's attorneys' fees and costs are to be paid separate and apart from the award to the Class. A reduction by the Court or by an appellate court of either shall not affect any of the Parties' other rights and obligations under the Settlement Agreement.

2.8 No Tax Liability. Under no circumstances will Shutterfly or Shutterfly's Counsel have any liability for taxes or tax expenses under this Settlement Agreement. Named Plaintiff and/or Class Counsel are responsible for any taxes on any recovery or award. Nothing in this Settlement Agreement, or statements made during the negotiation of its terms, shall constitute tax advice by Shutterfly or Shutterfly's Counsel.

2.9 Settlement Implementation Costs. Class Counsel shall bear the costs of providing Notice to the Class in the manner prescribed in Section 3.3 of this Settlement Agreement and the costs associated with independent administration of benefits by the Claims Administrator.

2.10 Release as to All Class Members. Effective immediately upon the Final Order and Judgment becoming final (as described in Section 1.21-22 above), Class Releasors, and each of them, hereby waive and fully, finally and forever release and discharge any and all Class Released Claims (including Unknown Claims) against all Released Parties, and each of them.

2.11 General Release by Named Plaintiff. In addition to the releases made by the Class Members set forth in Section 2.10 above, and in exchange for the consideration provided to Named Plaintiff in this Agreement (including the Individual Settlement Award), effective immediately upon the Final Order and Judgment becoming final (as described in Section 1.22 above), Named Plaintiff, and each of her successors, assigns, legatees, heirs, spouses, and personal representatives, hereby also waives and fully, finally and forever generally releases and discharges the Released Parties, and each of them, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent.

In addition, Named Plaintiff, and each of Named Plaintiff's respective successors, assigns, legatees, spouses, heirs, and personal representatives, expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Named Plaintiff, and each of her respective successors, assigns, legatees, spouses, heirs, and personal representatives, fully understands that the facts on which the Settlement Agreement is to be executed may be different from the facts now believed by Named Plaintiff and Class Counsel to be true, and expressly accepts and assumes the risk of this possible difference in facts and agrees that the Settlement Agreement will remain effective despite any difference in facts. Further, Named Plaintiff, and each of her respective successors, assigns, legatees, heirs, and personal representatives, agree that this waiver is an essential and material term of this release and the Settlement that underlies it, and that without such waiver the Settlement would not have been accepted.

2.12 No Admission of Liability or Wrongdoing. This Settlement Agreement reflects the Parties' compromise and Settlement of disputed claims. This Settlement Agreement's constituent provisions, and any and all drafts, communications, and discussions relating thereto, shall not be construed as, or deemed to be, evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting Class certification) by any person, including Shutterfly, and shall not be offered or received in evidence, or requested in discovery in this Action, or any other action or proceeding, as evidence of an admission or concession. Shutterfly has denied, and continues to deny, each of the claims and contentions alleged by Plaintiff in the Action. Shutterfly has repeatedly asserted, and continues to assert, defenses thereto, and has expressly denied, and continues to deny, any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

3. CLASS SETTLEMENT PROCEDURES.

3.1 Cooperation to Obtain Court Approval. The Parties will jointly take all reasonable steps necessary to secure the Court's Approval of the Settlement and this Settlement Agreement.

3.2 Preliminary Approval and Provisional Class Certification. Plaintiff shall file her motion for preliminary approval of the Settlement Agreement as soon as feasibly possible. The motion for preliminary approval of the Class Action Settlement and provisional Class certification shall request the Court to:

- (a) preliminarily approve this Settlement Agreement.
- (b) preliminarily approve the form, manner, and content of the Full Notice, Email Notice, Publication Notice, and Claim Form described in Sections 3.3 and 3.5 below, and attached hereto as **Exhibits B - E**;
- (c) set the date and time of the Fairness Hearing;
- (d) provisionally certify the Class under California Rules of Court, rule 3.769(d), for Settlement purposes only;
- (e) stay all proceedings in the Action against Shutterfly until the Court renders a final decision on approval of the Settlement and sets a briefing schedule for the papers in support of the Final Order;
- (f) conditionally appoint Named Plaintiff as the Class representative for Settlement purposes only; and
- (g) conditionally appoint the law firms of Lynch Carpenter LLP, and Keller Postman LLC as Class Counsel for Settlement purposes only.

The proposed Preliminary Approval and Provisional Class Certification Order shall be substantially similar to the form attached hereto as **Exhibit A**. Class Counsel shall draft the motion papers and give Shutterfly's Counsel drafts of the motion and proposed order for preliminary approval and provisional Class certification to review 5 court days before the motion's filing and service date/deadline. Shutterfly shall be permitted, but not required, to file its own brief or statement of non-opposition in support of the Preliminary Approval and Provisional Class Certification Order. The Parties agree that, pending the hearing on the contemplated motion for preliminary approval of the Settlement Agreement and provisional Class certification order: (i) if Shutterfly has not already filed a responsive pleading, Shutterfly shall have an extension of time to answer or otherwise respond to the Complaint in the Action, and; (ii) the Parties shall not propound further discovery. In the event the Court denies preliminary approval of the Settlement Agreement, the Parties agree they will meet and confer regarding when Shutterfly's answer or other responsive pleading to the Complaint in the Action will be due, and a schedule for conducting discovery.

3.3 Class Notice. Subject to the Court entering the Preliminary Approval Order, the Parties agree that Class Counsel and its retained Claims Administrator will provide the Class with Notice of the proposed Settlement by the following methods:

(a) **Settlement Website.** The Claims Administrator will post the Full Notice on an Internet website (“Internet Posting”) specifically created for the Settlement of this Action. The Full Notice shall be substantially similar to the form attached hereto as **Exhibit B**. The Internet Posting will also contain the Claim Form, instructions for valid exclusion requests, Complaint, Settlement Agreement, and Preliminary Approval Order. Within seven (7) court days of when Class Counsel files a motion for attorneys’ fees, and costs and an Individual Settlement Award, the Internet Posting will also post the fees and costs motion. The Internet Posting shall be operative starting on or before thirty (30) calendar days after entry of the Preliminary Approval Order. The Internet Posting shall remain active at least until the Final Settlement Date.

(b) **Email Notice.** Using information available to it, Shutterfly shall provide last known valid email addresses to the Claims Administrator for Shutterfly’s customers who may be Class Members. The Claims Administrator will send Email Notice that will be substantially similar to the form attached hereto as **Exhibit C** and will provide the web address of the Internet Posting and an email and mailing address to contact the Claims Administrator. Class Counsel, through the Claims Administrator, will provide the Email Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order. The Parties will request the Court authorize the issuance of Email Notice under this Section to those Class Members who have previously opted out of receiving emails from Shutterfly through any applicable loyalty program, advertisement, or otherwise, so as to ensure notice is provided. The Claims Administrator shall deploy digital targeted advertisements on Social Media directed towards bounced email addresses.

(c) **Publication Notice.** Unless otherwise ordered by the Court, within thirty (30) calendar days after entry of the Preliminary Approval Order, Class Counsel, through the Claims Administrator, will publish the Publication Notice in a quarter (¼) page advertisement of the Settlement in USA Today, San Francisco Chronicle and San Diego Union Tribune. The text of the Publication Notice will be substantially similar to the form attached hereto as **Exhibit D**.

3.4 Proof of Notice. No later than ten (10) calendar days before the Fairness Hearing, Class Counsel and the Claims Administrator will serve upon Shutterfly a declaration confirming that Notice to the Class has been provided in accordance with Section 3.3 of this Settlement Agreement.

3.5 Claims Procedure.

(a) **Claim-in-Class Members.** Class Members must submit a complete, valid, and sufficient Claim Form on or before the Response Deadline in order to be included in the distribution of the twenty five dollar (\$25.00) Vouchers. The Claim Form shall require the Class Member to confirm via checkbox as follows: “Between April 1, 2018 and [date of preliminary approval], I made one or more purchases on Shutterfly.com in part because

they were advertised as discounted prices. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.” Class Members who submit a complete, valid and sufficient Claim Form and do not request to exclude himself or herself from the Settlement will receive via email a Voucher no later than sixty (60) calendar days after the Final Settlement Date.

(b) Direct Benefit Class Members. Class Members who either do not submit a Claim Form by the Response Deadline or whose claim is rejected, and have not validly excluded themselves from the Settlement, will receive a Direct Benefit Voucher via email no later than sixty (60) calendar days after the Final Settlement Date.

(c) Date of Submission. The Claim Form, may be submitted electronically through the Settlement Website or by United States mail. The delivery date of a Claim Form is deemed to be the date the Claim Form is received by the Claims Administrator electronically through the Settlement Website, as evidenced by the electronic transmission receipt, or, if the Claim Form is submitted by the United States mail, the date the Claim Form is deposited in the United States Mail, as evidenced by the postmark.

3.6 Right to Verify Claim Forms and to Prevent Duplicate and Fraudulent Claims.

The Claims Administrator shall review all submitted Claim Forms for completeness, legibility, validity, accuracy, and timeliness. The Claims Administrator may employ adequate and reasonable procedures and standards to prevent the approval of duplicative and fraudulent Claims. The Claims Administrator may contact any Claimant to request additional information and documentation, including, but not limited to, information and documentation sufficient to allow the Claims Administrator to: (i) verify that the information set forth in, or attached to, a Claim Form is accurate, and the Claimant is a Class Member; and (ii) determine the validity of any Claim and/or whether any Claim is duplicative or fraudulent. The Claims Administrator’s decision, including the Claims Administrator’s decision regarding whether a Claimant is a Class Member, and whether a Claim is valid and timely, whether a Claim is duplicative or fraudulent, shall be non-appealable, final, and binding upon the Parties and the Claimant.

3.7 Right to Verify and Prevent Duplicate, Counterfeit and Fraudulent Vouchers/Direct Benefit Vouchers. Shutterfly and/or the Claims Administrator may review any Voucher or Direct Benefit Voucher presented at Shutterfly’s e-commerce retail store to determine whether it is valid and has not expired, and to prevent the use of duplicate, counterfeit, and fraudulent Vouchers or Direct Benefit Vouchers. Shutterfly and/or the Claims Administrator reserve the right to decline any Voucher or Direct Benefit Voucher that Shutterfly and/or the Claims Administrator believes is invalid, has expired, is a duplicate, is counterfeit, or is fraudulent. In the event that a Voucher or Direct Benefit Voucher is declined and the Claimant disputes the decision, Shutterfly or, if the Claims Administrator declined the Voucher or Direct Benefit Voucher, the Claims Administrator, will meet in good faith in an attempt to resolve the dispute.

3.8 Objections. Any Class Member who has not submitted a timely written exclusion request pursuant to Section 3.9 below, and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, must file written objections with the Court, with copies delivered to the Claims Administrator, Shutterfly’s Counsel and Class Counsel on or before the Response Deadline.

(a) The delivery date of any written objection is deemed to be the date the objection is deposited in the U.S. Mail, as evidenced by the postmark. It shall be the objector's responsibility to ensure receipt of any objection by the Claims Administrator, Shutterfly's Counsel and Class Counsel.

(b) Any written objections must contain: (i) the name and case number of the Action; (ii) the Class Member's full name, address, telephone number, and email address(es) he or she believes was used to make a Qualifying Purchase; (iii) the words "Notice of Objection" or "Formal Objection"; (iv) in clear and concise terms, the legal and factual arguments supporting the objection; (v) facts supporting the person's status as a Class Member (e.g., the date and location of his/her Qualifying Purchase(s) and description of item(s) purchased); (vi) the Class Member's signature and the date; and (vii) the following language immediately above the Class Member's signature and date: "I declare under penalty of perjury under the laws of the State of California that the foregoing statements regarding class membership are true and correct to the best of my knowledge."

(c) Any Class Member who submits a written objection, as described in this section, has the option to, but is not required to, appear at the Fairness Hearing, either in person or through personal counsel, hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees. However, Class Members (with or without their attorneys) intending to make an appearance at the Fairness Hearing must include on a timely and valid objection a statement substantially similar to "Notice of Intention to Appear." If an objecting Class Member (either with or without his or her attorney, or through his or her attorney acting on his or her behalf) intends to speak at the Fairness Hearing in support of the objection, the Class Member's objection must state this intention in a "Notice of Intention to Appear" served on the Claims Administrator, Class Counsel and Shutterfly's Counsel no later than fifteen (15) calendar days before the Fairness Hearing. If the objecting Class Member intends to appear at the Fairness Hearing with or through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Fairness Hearing and include the attorney(s)' name, address, phone number, email address, and the state bar(s) to which counsel is admitted in the Notice of Intention to Appear. If the objecting Class Member (or the Class Member's counsel) intends to request the Court to allow the Class Member to call witnesses at the Fairness Hearing, such request must be made in the Class Member's written objection, which must also contain a list of any such witnesses and a summary of each witness's expected testimony. Only Class Members who submit timely objections, including Notices of Intention to Appear, may speak at the Fairness Hearing. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorneys' fees and costs.

3.9 Exclusion from the Class. Class Members may elect not to be part of the Class and not to be bound by this Settlement Agreement. To make this election, a Class Member must send a signed letter or postcard to the Claims Administrator, postmarked no later than the Response Deadline, stating: (i) the name and case number of the Action; (b) the full name, address, and telephone number of the person requesting exclusion, as well as the email address(es) he or she

believes was used to make a Qualifying Purchase; and (c) a statement that he or she does not wish to participate in the Settlement. No later than seven (7) calendar days before the filing date for Plaintiff motion in support of the Final Order and Judgment, the Claims Administrator shall serve on Class Counsel and Shutterfly's Counsel a list of Class Members who have timely and validly excluded themselves from the Class.

3.10 Final Order and Judgment. Before the Fairness Hearing, Plaintiff shall apply for Court approval of a proposed Final Order and Judgment, substantially similar to the form attached hereto as **Exhibits F-G**. Class Counsel shall draft the motion papers. Shutterfly shall be permitted, but is not required, to file its own brief or statement of non-opposition in support of the Final Order and Judgment. Subject to the Court's approval, the Final Order and Judgment shall, among other things:

- (a) finally approve the Settlement Agreement as fair, reasonable and adequate;
- (b) finally certify the Class for Settlement purposes only, pursuant to California Code of Civil Procedure § 382;
- (c) find that the Notice and the Notice dissemination methodology complied with the Settlement Agreement, California Code of Civil Procedure § 382, California Rules of Court, rules 3.766 and 3.769, the California Constitution and United States Constitution;
- (d) issue orders related to the relief provided for in the Settlement Agreement, including distribution of the Vouchers, payment of Plaintiff's Individual Settlement Award, and payment of Class Counsel's fees and costs;
- (e) incorporate the releases set forth in the Settlement Agreement;
- (f) dismiss the Action with prejudice; and
- (g) retain jurisdiction over the Action and the Parties relating to the administration, consummation, and/or enforcement of the Agreement and/or the Final Order and Judgment, and for any other necessary purpose.

3.11 Judgment and Enforcement. The Parties agree that should the Court grant final approval of the proposed Settlement and enter Judgment, the Judgment shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of this Settlement Agreement.

4. Nullification of Settlement Agreement.

4.1 Shutterfly's Right to Revoke. Shutterfly has the right in its sole and exclusive discretion to terminate and withdraw from the Settlement at any time prior to the Fairness Hearing if: (i) the Court makes an order inconsistent with any of the terms of this Settlement Agreement (except for an order reducing the Class Counsel's award of attorneys' fees and costs or the Individual Settlement Award); or (ii) any court following the signing of this Settlement Agreement, but before the Fairness Hearing, certifies, whether on a conditional basis or not, a

class, collective, or representative action involving a claim described in the Action by potential Class Members covered by this Settlement; or (iii) more than one thousand (1000) Class Members timely and validly opt out of the Settlement; or (iv) Plaintiff breaches the Settlement Agreement.

4.2 Effect of Agreement if Settlement Is Not Approved. This Settlement Agreement was entered into only for the purpose of Settlement. If any of the following events occur, then this Settlement Agreement shall be deemed null and void *ab initio* and the Parties shall be deemed restored to their respective *positions status quo ante*, and as if this Settlement Agreement was never executed: (i) Shutterfly invokes its right to revoke pursuant to Section 4.1 above; (ii) the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Judgment on any modifications of this Settlement Agreement that are not acceptable to all Parties; (iii) the Court does not approve the Settlement or enter the Final Order and Judgment; or (iv) the Final Settlement Date does not occur for any reason. If any of the afore-described events occurs, then: (i) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, including, but not limited to, vacating conditional certification of the Class, conditional appointment of Named Plaintiff as Class representative, and conditional appointment of Plaintiff's Counsel as Class Counsel; (ii) the Action will revert to the status that existed before Named Plaintiff filed her motion for approval of the Preliminary Approval Order; and (iii) no term or draft of this Settlement Agreement, or any part of the Parties' Settlement discussions, negotiations or documentation will have any effect, or be admissible into evidence, for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement or enter the Final Order and Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Shutterfly shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Settlement Agreement, or other papers or proceedings related to the Settlement, shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action.

5. ADDITIONAL PROVISIONS.

5.1 Change of Time Periods. All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class.

5.2 Fair, Adequate, and Reasonable Settlement. The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached after extensive negotiations, including two mediation sessions conducted with the assistance of JAMS Mediator Shirish Gupta.

5.3 Real Parties in Interest. In executing this Settlement Agreement, the Parties warrant and represent that, except as provided herein, neither Class Released Claims nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.

5.4 Voluntary Agreement. This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

5.5 Binding on Successors. This Settlement Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

5.6 Parties Represented by Counsel. The Parties hereby acknowledge that they have been represented in negotiations for, and in the preparation of, this Settlement Agreement by independent counsel of their own choosing, that they have read this Settlement Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and of its legal effect.

5.7 Authorization. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the Class Released Claims and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

5.8 Entire Agreement. This Settlement Agreement and attached exhibits contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Settlement Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement Agreement.

5.9 Construction and Interpretation. Neither the Parties nor any of the Parties' respective attorneys shall be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

5.10 Headings and Formatting of Definitions. The various headings used in this Settlement Agreement are solely for the convenience of the Parties and shall not be used to interpret this Settlement Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

5.11 Exhibits. The exhibits to this Settlement Agreement are integral parts of the Settlement Agreement and Settlement and are hereby incorporated and made a part of this Settlement Agreement as though fully set forth in the Settlement Agreement.

5.12 Modifications and Amendments. No amendment, change, or modification of this Settlement Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel.

5.13 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles.

5.14 Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things

reasonably necessary in connection with the performance of its obligations hereunder to carry out the express intent of the Parties hereto.

5.15 Agreement Constitutes a Complete Defense. To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement.

5.16 Execution Date. This Settlement Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

5.17 Continuing Jurisdiction. On and after the Final Settlement Date, the Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Settlement Agreement.

5.18 Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

5.19 Recitals. The Recitals are incorporated by this reference and are part of the Settlement Agreement.

5.20 Inadmissibility. This Settlement Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Settlement Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Order and Judgment.

5.21 No Conflict Intended. Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

5.22 Disposal of the Class List. Within six (6) months after the Final Settlement Date and completion of the administration, or in the event the Settlement is terminated pursuant to Section 4, all originals, copies, documents, transcriptions, iterations, or drafts of the contact information for Class Members or any portion thereof shall be returned to Shutterfly by the Claims Administrator.

5.23 Notices. Any Notice, instruction, application for Court approval or application for Court orders sought in connection with the Settlement Agreement or other document to be given by any Party to any other Party in connection therewith, shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Shutterfly, to the attention of Shutterfly's Counsel, and if to Class Members, to the attention of Class Counsel on their behalf.

CLASS COUNSEL	SHUTTERFLY'S COUNSEL
Todd D. Carpenter, Esq. James B. Drimmer, Esq. LYNCH CARPENTER, LLP 1350 Columbia Street Suite 603 San Diego, CA 92101 Warren Postman, Esq. KELLER POSTMAN LLC 1100 Vermont Ave, N.W., 12 th Floor Washington DC 20005	Robert J. Herrington, Esq. GREENBERG TRAUERIG 1840 Century Park East Suite 1900 Los Angeles, CA 90067

5.24 List of Exhibits: The following exhibits are attached to this Settlement Agreement:

- Exhibit A: [Proposed] Preliminary Approval and Provisional Class Certification Order
- Exhibit B: Full Notice
- Exhibit C: Email Notice
- Exhibit D: Publication Notice
- Exhibit E: Claim Form
- Exhibit F: [Proposed] Order Granting Final Approval of Class Settlement
- Exhibit G: [Proposed] Final Judgment
- Exhibit H: Complaint

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective Counsel of record, have so AGREED.

Dated: _____

ROSEMARIE RIVALI

Dated: 4/27/2023

Sharon Segev

SHUTTERFLY, LLC

By: Sharon Segev
Title: Chief Legal & People Officer

CLASS COUNSEL	SHUTTERFLY'S COUNSEL
<p>Todd D. Carpenter, Esq. James B. Drimmer, Esq. LYNCH CARPENTER, LLP 1350 Columbia Street Suite 603 San Diego, CA 92101</p> <p>Warren Postman, Esq. KELLER POSTMAN LLC 1100 Vermont Ave, N.W., 12th Floor Washington DC 20005</p>	<p>Robert J. Herrington, Esq. GREENBERG TRAUERIG 1840 Century Park East Suite 1900 Los Angeles, CA 90067</p>

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Dated: 4/14/2023

DocuSigned by:


 ROSEMARIE RIVALI

Dated: _____

SHUTTERFLY, LLC

By: _____

Title: _____