

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>

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: 4/14/2023

DocuSigned by:


 ROSEMARIE RIVALI

Dated: _____

SHUTTERFLY, LLC

By: _____

Title: _____

EXHIBIT A
[PROPOSED] PRELIMINARY APPROVAL AND PROVISIONAL CLASS CERTIFICATION
ORDER

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiff,

v.

SHUTTERFLY, LLC, a Delaware Limited
Liability Company, and DOES 1 – 50,
inclusive,

Defendant.

Case No.

**[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS SETTLEMENT AND
PROVISIONAL CLASS CERTIFICATION**

On _____ (month) ____ (day), 2023, this Court heard Plaintiff Rosemarie Rivali’s unopposed motion for preliminary approval of class settlement and provisional class certification. This Court reviewed the motion, including the Settlement Agreement and Release (the “Settlement Agreement”). Based on this review and the findings below, the Court finds good cause to grant the motion.¹

FINDINGS:

1. The Settlement Agreement appears to be the product of serious, informed, non-collusive negotiations with Defendant Shutterfly, LLC (“Shutterfly”), and falls within the range of possible approval as fair, reasonable and adequate.

2. The Full Notice, Email Notice, Publication Notice, and Claim Form (attached to the Settlement Agreement), (a) constitute the best such forms and notice practicable under the

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement
[PROPOSED] ORDER RE PRELIMINARY APPROVAL OF SETTLEMENT & PROVISIONAL CLASS CERTIFICATION
ACTIVE 685637416v9

1 circumstances; (b) the method for providing notice to Class Members set forth in the Settlement
2 Agreement constitutes valid, due, and sufficient notice to all members of the Class; and (c) the
3 Notices and Notice plan set forth in the Agreement comply fully with the requirements of California
4 Code of Civil Procedure § 382, California Rules of Court, rules 3.766 and 3.769, the California and
5 United States Constitutions, and other applicable law.

6 3. For Settlement purposes only, the Class is so numerous that joinder of all Class
7 Members is impracticable.

8 4. For Settlement purposes only, Plaintiff’s claims are typical of Class claims.

9 5. For Settlement purposes only, there are questions of law and fact common to the
10 Class, which predominate over any questions affecting only individual Class Members.

11 6. For Settlement purposes only, Class Certification is superior to other available
12 methods for the fair and efficient adjudication of the controversy.

13 **IT IS ORDERED THAT:**

14 1. **Settlement Approval.** The Settlement Agreement, including the Full Notice, Email
15 Notice, Publication Notice and Claim Form, attached to the Settlement Agreement as Exhibits B-E
16 are preliminarily approved.

17 2. **Provision of Class Notice.** Class Counsel through the Claims Administrator will
18 notify Class Members of the Settlement in the manner specified under Section 3.3 of the Settlement
19 Agreement.

20 3. **Claim for a Voucher.**

21 (a) **Claim-in-Class Members.** Class Members must submit a complete, valid,
22 and sufficient Claim Form on or before the Response Deadline in order to be included in
23 the distribution of the twenty five dollar (\$25.00) Vouchers. The Claim Form shall require
24 the Class Member to confirm via checkbox as follows: “Between April 1, 2018 and [date
25 of preliminary approval], I made one or more purchases on Shutterfly.com in part because
26 they were advertised as discounted prices. I declare under penalty of perjury under the laws
27 of the State of California that the foregoing is true and correct.” Class Members who submit
28 a complete, valid and sufficient Claim Form and do not request to exclude himself or herself

1 from the Settlement will receive via email a Voucher no later than sixty (60) calendar days
2 after the Final Settlement Date.

3 (b) **Direct Benefit Class Members.** Class Members who either do not submit a
4 Claim Form by the Response Deadline or whose claim is rejected, and have not validly
5 excluded themselves from the Settlement, will receive a Direct Benefit Voucher (\$5.00) via
6 email no later than sixty (60) calendar days after the Final Settlement Date.

7 4. The Claims Administrator shall review all submitted Claim Forms for completeness,
8 legibility, validity, accuracy, and timeliness. The Claims Administrator may employ adequate and
9 reasonable procedures and standards to prevent the approval of duplicative and fraudulent Claims.
10 The Claims Administrator may contact any Claimant to request additional information and
11 documentation, including, but not limited to, information and documentation sufficient to allow the
12 Claims Administrator to: (a) verify that the information set forth in or attached to a Claim Form is
13 accurate and the Claimant is a Class Member; and (b) determine the validity of any Claim and/or
14 whether any Claim is duplicative or fraudulent.

15 5. **Objection to Settlement.** Class Members who have not submitted a timely written
16 exclusion request pursuant to Paragraph 7 below and who want to object to the Settlement
17 Agreement must file written objections with the Court, with copies delivered to the Claims
18 Administrator, Class Counsel, and Shutterfly's Counsel no later than ninety (90) calendar days after
19 issuance of the Class Notices. The delivery date is deemed to be the date the objection is deposited
20 in the U.S. Mail as evidenced by the postmark. It shall be the objector's responsibility to ensure
21 receipt of any objection by the Claims Administrator, Shutterfly's Counsel and Class Counsel on or
22 before the deadline. The objection must include: (a) the name and case number of the Action; (b) the
23 objecting Class Member's full name, address, telephone number, and the email address(es) he or
24 she believes was used to make a Qualifying Purchase; (c) the words "Notice of Objection" or
25 "Formal Objection"; (d) in clear and concise terms, the legal and factual arguments supporting the
26 objection; (e) facts supporting the objector's status as a Class Member (e.g., the date of his/her and
27 description of the item(s) purchased); (f) the objecting Class Member's signature and the date; and
28 (g) the following language immediately above the objecting Class Member's signature and date: "I

1 declare under penalty of perjury under the laws of the State of California that the foregoing
2 statements regarding class membership are true and correct to the best of my knowledge.” Any Class
3 Member who submits a written objection, as described in this section, has the option to appear at the
4 Fairness Hearing, either in person or through personal counsel hired at the Class Member’s expense,
5 to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed
6 Settlement, or to the award of attorneys’ fees. Class Members, or their attorneys, intending to make
7 an appearance at the Fairness Hearing, however, must include on a timely and valid objection a
8 statement substantially similar to “Notice of Intention to Appear.” If the objecting Class Member
9 intends to appear at the Fairness Hearing through counsel, he or she must also identify the attorney(s)
10 representing the objector who will appear at the Fairness Hearing and include the attorney(s) name,
11 address, phone number, email address, and the state bar(s) to which counsel is admitted. If the
12 objecting Class Member intends to request the Court allow the Class Member to call witnesses at
13 the Fairness Hearing, such request must be made in the Class Member’s written objection, which
14 must also contain a list of any such witnesses and a summary of each witness’s expected testimony.
15 Only Class Members who submit timely objections containing Notices of Intention to Appear or
16 their counsel may speak at the Fairness Hearing.

17 **6. Failure to Object to Settlement.** Class Members who fail to object to the
18 Settlement Agreement in the manner specified in paragraph 5 above will: (a) be deemed to have
19 waived their right to object to the Settlement Agreement; (b) be foreclosed from objecting (whether
20 by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement;
21 and (c) not be entitled to speak at the Fairness Hearing.

22 **7. Requesting Exclusion.** Class Members who want to be excluded from the
23 Settlement must send a signed letter or postcard to the Claims Administrator stating: (a) the name
24 and case number of the Action; (b) the full name, address, and telephone number of the person
25 requesting exclusion, as well as the email address(es) he or she believes was used to make a
26 Qualifying Purchase; and (c) a statement that the person does not wish to participate in the
27 Settlement, postmarked no later than ninety (90) calendar days after issuance of the Class Notices.
28

1 8. **Provisional Certification.** The Class is provisionally certified as All persons,
2 within the United States, who, within the Class Period, purchased from Shutterfly’s e-commerce
3 website (www.shutterfly.com), one or more products at discounts from an advertised reference price
4 and who have not received a refund or credit. Excluded from the Class is Shutterfly’s Counsel,
5 Shutterfly’s officers, directors and employees, and the judge presiding over the Action.

6 9. **Conditional Appointment of Class Representative and Class Counsel.** Plaintiff
7 Rosemarie Rivali is conditionally certified as the Class representative to implement the Parties’
8 Settlement in accordance with the Settlement Agreement. The law firms of Lynch Carpenter, LLP
9 and Keller Postman LLC are conditionally appointed as Class Counsel. Plaintiff and Class Counsel
10 must fairly and adequately protect the interests of the Class.

11 10. **Termination.** If the Settlement Agreement terminates for any reason, the following
12 will occur: (a) Class Certification will be automatically vacated; (b) Plaintiff will stop functioning
13 as Class representative; (c) Class Counsel will stop functioning as Class Counsel; (d) this Action
14 will revert to its previous status in all respects as it existed immediately before the Parties executed
15 the Settlement Agreement, with the exception of Plaintiff’s filing of the Complaint; and (e) the
16 Parties will meet and confer regarding pleading deadlines, a discovery schedule, and a case timeline,
17 and all case deadlines will be stayed until the Court holds a Case Management Conference and issues
18 an appropriate schedule. This Order will not waive or otherwise impact the Parties’ rights or
19 arguments.

20 11. **No Admissions.** Nothing in this Order is, or may be construed as, an admission or
21 concession on any point of fact or law by or against any Party.

22 12. **Stay of Dates and Deadlines.** All discovery and pretrial proceedings and deadlines
23 are stayed and suspended until further notice from the Court, except for such actions as are necessary
24 to implement the Settlement Agreement and this Order.

25 13. **Further Procedures.** Counsel for the Parties are hereby authorized to agree to
26 utilize all reasonable procedures in connection with the administration of the Settlement which are
27 not materially inconsistent with either this Order or the terms of the Settlement Agreement.

28

1 14. **Fairness Hearing.** On _____ (month) ____ (day), 2023, at _____, this
 2 Court will hold a Fairness Hearing to determine whether the Settlement Agreement should be finally
 3 approved as fair, reasonable, and adequate. Based on the date of this Order and the date of the
 4 Fairness Hearing, the following are the certain associated dates in this Settlement:

Event	Timing
Last day for Class Counsel, through the Class Administrator, to send Email and/or Mail Notice, start operating Settlement Website, and begin to provide Publication Notice	30 calendar days after entry of this Order
Last day for Plaintiff to file fee petition	120 calendar days after entry of this Order
Last day for Class Members to file a Claim, request exclusion or object to the Settlement	90 calendar days after issuance of Class Notices
Last day for Parties to file briefs in support of the Final Order and Judgment	10 days before Fairness Hearing

12
 13 This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs,
 14 the updated hearing date shall be posted on the Settlement Website, but other than the website
 15 posting, Shutterfly will not be required to provide any additional notice to Class Members.

16
 17 DATED: _____

_____ San Diego Superior Court Judge

EXHIBIT B
FULL NOTICE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiff,

v.

SHUTTERFLY, LLC, a Delaware Limited
Liability Company, and DOES 1 – 50,
inclusive,

Defendant.

Case No.

IF YOU MADE PURCHASES FROM SHUTTERFLY.COM BETWEEN
APRIL 1, 2018 AND [MONTH] [DAY], [YEAR], YOU MAY BE ELIGIBLE TO
RECEIVE A **VOUCHER FOR UP TO \$25 OFF ANY ONLINE PURCHASE**
USABLE TOWARD FUTURE PURCHASES AT SHUTTERFLY.COM.

A STATE COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

A settlement (“Settlement”) has been proposed in the class action lawsuit referenced above pending in the Superior Court of California, County of San Diego (“Action”). If the Court gives final approval to the Settlement, Shutterfly, LLC (“Shutterfly”) will provide, for each Class Member² who made a Qualifying Purchase during the Class Period and properly and timely completes and submits a Claim Form, one Voucher which may be applied for up to \$25.00 toward any purchase at Shutterfly.com. Class Members who do nothing in response to the Notice may receive one Direct Benefit Voucher which may be applied for up to \$5.00 toward any purchase at Shutterfly.com.

Your legal rights are affected whether you act or don’t act. Read this notice carefully.

² Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Settlement Agreement, available [HERE](#)

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
SUBMIT A CLAIM FORM	If you received direct Notice of this Settlement via email or otherwise and made one or more Qualifying Purchase(s) between April 1, 2018 and ____, 2023 (the “Class Period”): you will receive one (1) Voucher after completion of a Claim Form. Visit the Settlement Website, located at _____, to obtain a Claim Form.	Deadline: _____
EXCLUDE YOURSELF	If you exclude yourself from the Settlement, you will not receive a Voucher under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Shutterfly for the allegations in the Action ever again.	Deadline: _____
OBJECT	You may file a written objection telling the Court why you object to (i.e., don’t like) the Settlement and think it shouldn’t be approved. Submitting an objection does not exclude you from the Settlement.	Deadline: _____
GO TO THE “FAIRNESS HEARING”	The Court will hold a “Fairness Hearing” to consider the Settlement, the request for attorneys’ fees and costs of the lawyers who brought the Action, and the Named Plaintiff’s request for a service award for bringing the Action. You may, but are not required to, speak at the Fairness Hearing about any objection you filed to the Settlement. If you intend to speak at the Fairness Hearing, you must also submit a “Notice of Intention to Appear” indicating your intent to do so.	Hearing Date and Time: _____
DO NOTHING	If you received direct Notice of this Settlement via email and made one or more Qualifying Purchase(s) during the Class Period: if you do nothing, and the Court approves the Settlement, you will receive one (1) Direct Benefit Voucher in the amount of \$5.00. You will also give up your right to object to the Settlement and you will not be able to be part of any other lawsuit about the legal claims in this Action.	N/A

- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.
- The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

WHAT THIS NOTICE CONTAINS

BACKGROUND INFORMATION ##

- 1. Why did I get this notice?
- 2. What is this lawsuit about?
- 3. Why is this a class action?
- 4. Why is there a Settlement?
- 5. How do I know if I am part of the Settlement?
- 6. I'm still not sure if I am included.

THE PROPOSED SETTLEMENT..... ##

- 7. What relief does the Settlement provide to the Class Members?

HOW TO RECEIVE A VOUCHER – SUBMITTING A CLAIM FORM..... ##

- 8. How can I get a Voucher(s)?
- 9. When will I get my Voucher(s)?

THE LAWYERS IN THIS CASE AND THE NAMED PLAINTIFF ##

- 10. Do I have a lawyer in this case?
- 11. How will the lawyers be paid?
- 12. Will the Named Plaintiff receive any compensation for her efforts in bringing this Action?

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS..... ##

- 13. What am I giving up to obtain relief under the Settlement?

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT..... ##

- 14. How do I exclude myself from the Settlement?

HOW TO OBJECT TO THE SETTLEMENT..... ##

- 15. How do I tell the Court that I disagree with the Settlement?
- 16. What is the difference between excluding myself and objecting to the Settlement?

FAIRNESS HEARING..... ##

- 17. What is the Fairness Hearing?
- 18. When and where is the Fairness Hearing?
- 19. May I speak at the hearing?

ADDITIONAL INFORMATION..... ##

- 20. How do I get more information?
- 21. What if my address or other information has changed or changes after I submit a Claim Form?

BACKGROUND INFORMATION

1. *Why did I get this Notice?*

You received this Notice because a Settlement has been reached in this Action. You might be a member of the Settlement Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), see Section 20 below.

2. *What is this lawsuit about?*

Plaintiff Rosemarie Rivali (the “Named Plaintiff”) filed a lawsuit (the “Action”) against Shutterfly, LLC (“Shutterfly”), on behalf of herself and all others similarly situated. The Action alleges that Shutterfly engaged in deceptive advertising by advertising purportedly improper discounts on merchandise sold in its e-commerce store, Shutterfly.com.

Shutterfly denies each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. Shutterfly further denies that any Class Member is entitled to any relief and, other than for Settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court’s opinion on the merits or the lack of merits of the Named Plaintiff’s claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 20 below.

3. *Why is this a class action?*

In a class action lawsuit, one or more people called “Named Plaintiff(s)” (in this Action, Rosemarie Rivali) sue on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The company sued in this Action, Shutterfly, LLC, is called the Defendant.

4. *Why is there a Settlement?*

The Named Plaintiff has made claims against Shutterfly. Shutterfly denies that it has done anything wrong or illegal and admits no liability. The Court has **not** decided that the Named Plaintiff or Shutterfly should win this Action. Instead, both sides agreed to the Settlement. That way, they avoid the cost of a trial, and the Class Members will receive relief now rather than years from now, if at all.

5. *How do I know if I am part of the Settlement?*

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement: All persons, within the United States, who, within the Class Period (April 1, 2018 until the date of the Preliminary Approval Order), 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.

6. *I'm still not sure if I am included.*

If you are still not sure whether you are included, you can write the Claims Administrator for free help. The email address of the Claims Administrator is _____ and the U.S. postal (mailing) address is _____.

THE PROPOSED SETTLEMENT

7. *What relief does the Settlement provide to the Class Members?*

Shutterfly has agreed to provide each Class Member who timely submits a valid Claim Form by the Response Deadline, one (1) Voucher which may be applied for up to \$25.00 toward any purchase at Shutterfly.com.

Shutterfly has further agreed to provide to each Class Member who does not submit a Claim Form by the Response Deadline one (1) Direct Benefit Voucher which may be applied for up to \$5.00 toward any purchase at Shutterfly.com.

Both Vouchers and 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. They will not be usable with other voucher or discount codes, will expire after one year after issuance, and will have no residual value if the amount redeemed is less than the voucher amount.

**HOW TO RECEIVE A MERCHANDISE CERTIFICATE –
SUBMITTING A CLAIM FORM**

8. *How can I get a Voucher(s)?*

If you received Notice of this Settlement and wish to receive a Voucher for \$25.00, you must complete a Claim Form.

If you choose to do nothing, and do not object or exclude yourself from the Settlement, you will automatically receive a Direct Benefit Voucher for \$5.00

A Claim Form is available by clicking [HERE](#) or on the Internet at the website _____. The Claim Form may be submitted electronically or by postal mail. Read the instructions carefully, fill out the Claim Form, and postmark it by _____ or submit it online on or before 11:59 p.m. (Pacific) on _____.

9. *When will I get my Voucher(s)?*

As described in Sections 17 and 18 below, the Court will hold a hearing on _____ at _____, to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It's always uncertain when the appeals will be resolved, and resolving them can take time, perhaps more than a year. You can check on the progress of the case on the website dedicated to the Settlement at _____. *Please be patient.*

THE LAWYERS IN THIS CASE AND THE NAMED PLAINTIFF

10. *Do I have a lawyer in this case?*

The Court has ordered that the law firms of Lynch Carpenter, LLP and Keller Postman LLC ("Class Counsel") will represent the interests of all Class Members. You will not be separately charged for these lawyers' services. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. *How will the lawyers be paid?*

Shutterfly has agreed to pay Class Counsel's attorneys' fees, costs, and an Individual Settlement Award up to \$2,400,000.00, subject to approval by the Court. You will not be required to pay any attorneys' fees or costs. Please see paragraphs 2.5 and 2.6 of the Settlement Agreement, available [HERE](#), for additional details.

12. *Will the Named Plaintiff receive any compensation for their efforts in bringing this Action?*

The Named Plaintiff will request a service award of up to \$12,500 total for her service as Class representative and her efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to the Named Plaintiff.

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

13. *What am I giving up to obtain relief under the Settlement?*

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Shutterfly. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Shutterfly regarding the claims in the Action. The Settlement Agreement, available on the Internet at the website _____ contains the full terms of the release.

14. How do I exclude myself from the Settlement?

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send a signed letter or postcard stating: (a) the name and case number of the Action; (b) your full name, address, telephone number, and any email address(es) you may have used making purchases on shutterfly.com; and (c) a statement that you do not wish to participate in the Settlement, postmarked no later than _____ to the Claims Administrator at:

Rivali v. Shutterfly Settlement, No. _____
c/o _____

If you timely request exclusion from the Class, you will be excluded from the Class, you will not receive a Voucher or a Direct Benefit Voucher under the Settlement, you will not be bound by the Judgment entered in the Action, and you will not be precluded from prosecuting any timely, individual claim against Shutterfly based on the conduct complained of in the Action.

15. How do I tell the Court that I disagree with the Settlement?

At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to consider Class Counsel’s request for an award of attorneys’ fees and costs, and the Individual Settlement award to the Named Plaintiff.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must file a written objection with the Court and deliver copies of the written objection to the Claims Administrator, Class Counsel, and Shutterfly’s Counsel at the address set forth below no later than (*i.e.*, postmarked by) _____.

Rivali v. Shutterfly Settlement, No. _____
c/o _____

Any written objections must contain: (a) the name and case number of the Action; (b) the Class Member’s full name, address, telephone number, and email address(es) he or she believes was used to make a Qualifying Purchase; (c) the words “Notice of Objection” or “Formal Objection”; (d) in clear and concise terms, the legal and factual arguments supporting the objection; (e) facts supporting the person’s status as a Class Member (e.g., the date and location of his/her Qualifying Purchases and description of the item(s) purchased); (f) the Class Member’s signature and the date; and (g) 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.” You may, but need not, submit your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorneys’ fees and costs.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.

If you submit a written objection, you may appear at the Fairness Hearing, either in person or through personal counsel hired at your expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees. You are not required, however, to appear. If you, or your attorney, intend to make an appearance at the Fairness Hearing, you must include on your timely and valid objection a statement substantially similar to "Notice of Intention to Appear."

If you intend to appear at the Fairness Hearing through counsel, you must also identify the attorney(s) representing you 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 your counsel is admitted. Also, if you intend to request the Court to allow you to call witnesses at the Fairness Hearing, such request must be made in your written objection, which must also contain a list of any such witnesses and a summary of each witness's expected testimony.

16. *What is the difference between excluding myself and objecting to the Settlement?*

Objecting is simply telling the Court that you disagree with something about the Settlement. You can object only if you do not exclude yourself from the Settlement. Excluding yourself is telling the Court that you don't want to be part of the Settlement.

If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

FAIRNESS HEARING

17. *What is the Fairness Hearing?*

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for a service award to the Representative Plaintiff. You may attend, but you do not have to.

18. *When and where is the Fairness Hearing?*

On _____, 2023 at _____ Pacific Standard Time, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Hon. _____ in Courtroom ____ of the Superior Court of California, County of San Diego, located at 325 S. Melrose Dr, Vista, CA 92081. The hearing may be postponed to a different date or time or location without notice. Please check _____ for any updates about the Settlement generally, or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement Website will be the only way you will be informed of the change.

19. *May I speak at the hearing?*

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. As described above in Section 15, you may speak at the Fairness Hearing only if (a) you have timely submitted an objection, and (b) you have timely and validly provided a Notice of Intent to Appear.

If you have requested exclusion from the Settlement, you may not speak at the hearing.

ADDITIONAL INFORMATION

20. *How do I get more information?*

To see a copy of the Settlement Agreement, the Court’s Preliminary Approval Order, Class Counsel’s application for attorneys’ fees and costs, and the operative Complaint filed in the Action, please visit the Settlement Website located at: _____. Alternatively, you may contact the Claims Administrator at the email address: _____ or the U.S. postal (mailing) address: _____.

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file, you should visit <https://roa.sdccourt.ca.gov/roa/> or the Clerk’s office at 325 South Melrose Dr., Vista, CA 92081. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

21. *What if my address or other information has changed or changes after I submit a Claim Form?*

It is your responsibility to inform the Claims Administrator of your updated information. You may do so at the address below:

Rivali v. Shutterfly Settlement, No. _____

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

Dated: _____, 2023

By: Order of the Superior Court of California

HONORABLE _____
SUPERIOR COURT JUDGE

EXHIBIT C
EMAIL NOTICE

To: _____
From: _____
Re: LEGAL NOTICE OF SETTLEMENT OF CLASS ACTION

IF YOU MADE PURCHASES FROM SHUTTERFLY.COM BETWEEN APRIL 1, 2018 AND [MONTH] [DAY], [YEAR], YOU MAY BE ELIGIBLE TO RECEIVE **A VOUCHER FOR UP TO \$25 OFF ANY ONLINE PURCHASE** USABLE TOWARD FUTURE PURCHASES AT SHUTTERFLY.COM.

Why did I get this Notice? A settlement (“Settlement”) has been proposed in a class action lawsuit pending in the Superior Court of California, County of San Diego (“Court”) titled *Rosemarie Rivali, et al. v. Shutterfly, LLC* (the “Action”). According to available records, you might be a “Class Member.” The purpose of this Email Notice is to inform you of the Action and the Settlement so that you may decide what steps to take in relation to it.

What is the Action about? The Action was filed against Shutterfly, LLC (“Shutterfly” or “Defendant”) by Plaintiff Rosemarie Rivali alleging Shutterfly engaged in deceptive advertising by advertising improper discounts on merchandise sold in its e-commerce store, Shutterfly.com. Shutterfly denies wrongdoing and liability and both sides disagree on how much, if anything, the Class could have recovered after trial. **No court has decided which side is right. But both sides agreed to provide benefits to Class Members and resolve the Action.**

Am I a Class Member? You are a “Class Member” if you purchased from Shutterfly’s e-commerce website (www.shutterfly.com), one or more products at discounts from an advertised reference price and have not received a refund or credit for your purchase(s) during the Class Period (**April 1, 2018 until the date of the Preliminary Approval Order**). Excluded from the Class is Shutterfly’s Counsel, Shutterfly’s officers, directors and employees, and the judge presiding over the Action.

What relief does the Settlement provide? Shutterfly has agreed to provide each Class Member who timely submits a valid Claim Form by the Response Deadline, one (1) Voucher which may be applied for up to \$25.00 toward any purchase at Shutterfly.com.

Shutterfly has further agreed to provide to each Class Member who does not submit a Claim Form by the Response Deadline one (1) Direct Benefit Voucher which may be applied for up to \$5.00 toward any purchase at Shutterfly.com.

Both Vouchers and 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. They will not be usable with other voucher or discount codes, will expire after one year after issuance, and will have no residual value if the amount redeemed is less than the voucher amount.

What are my other options? If you don't want to be legally bound by the Settlement, you must exclude yourself by _____, or you won't be able to sue Shutterfly about the legal claims in the Action ever again. If you exclude yourself, you cannot receive a Voucher(s) from this Settlement. If you stay in the Settlement, you may object to it by _____. The detailed Notice available at _____ explains how to request exclusion or object. The Court will hold a hearing on _____ at _____ to consider whether to approve the Settlement, and a request by the lawyers representing all Class Members (Lynch Carpenter, LLP and Keller Postman LLC) for \$2,400,000 in attorneys' fees, costs, and Individual Settlement Award for the Named Plaintiff (Rosemarie Rivali) who will request for \$12,500 for her service. You may ask to appear at the hearing, but you don't have to.

More information? For complete information about the Settlement, to view the Settlement Agreement, related Court documents and Claim Form, and to learn more about how to exercise your various options under the Settlement, visit _____. You may also write to the Claims Administrator at the email address: _____ or the postal address: _____.

EXHIBIT D
PUBLICATION NOTICE

LEGAL NOTICE

IF YOU MADE PURCHASES FROM SHUTTERFLY.COM BETWEEN APRIL 1, 2018 AND [MONTH] [DAY], [YEAR], YOU MAY BE ELIGIBLE TO RECEIVE A **VOUCHER FOR UP TO \$25 OFF ANY ONLINE PURCHASE** USABLE TOWARD FUTURE PURCHASES AT SHUTTERFLY.COM.

A settlement (“Settlement”) has been proposed in a class action lawsuit pending in the Superior Court of California, County of San Diego (“Court”) titled *Rosemarie Rivali, et al. v. Shutterfly, LLC* (the “Action”). The Action was filed against Shutterfly, LLC (“Shutterfly” or “Defendant”) by Plaintiff Rosemarie Rivali alleging Shutterfly engaged in deceptive advertising by advertising improper discounts on merchandise sold in its e-commerce store, Shutterfly.com. Shutterfly denies wrongdoing and liability and both sides disagree on how much, if anything, the Class could have recovered after trial. **No court has decided which side is right. But both sides agreed to provide benefits to Class Members and resolve the Action.**

Am I a Class Member? You are a “Class Member” if you purchased from Shutterfly’s e-commerce website (www.shutterfly.com), one or more products at discounts from an advertised reference price and have not received a refund or credit for your purchase(s) during the Class Period (**April 1, 2018 until the date of the Preliminary Approval Order**). Excluded from the Class is Shutterfly’s Counsel, Shutterfly’s officers, directors and employees, and the judge presiding over the Action.

What relief does the Settlement provide? Shutterfly has agreed to provide each Class Member who timely submits a valid Claim Form by the Response Deadline, one (1) Voucher which may be applied for up to \$25.00 toward any purchase at Shutterfly.com.

Shutterfly has further agreed to provide to each Class Member who does not submit a Claim Form by the Response Deadline one (1) Direct Benefit Voucher which may be applied for up to \$5.00 toward any purchase at Shutterfly.com.

Both Vouchers and 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. They will not be usable with other voucher or discount codes, will expire after one year after issuance, and will have no residual value if the amount redeemed is less than the voucher amount.

What are my other options? If you don't want to be legally bound by the Settlement, you must exclude yourself by _____, or you won't be able to sue Shutterfly about the legal claims in the Action ever again. If you exclude yourself, you cannot receive a Voucher(s) from this Settlement. If you stay in the Settlement, you may object to it by _____. The detailed Notice available at _____ explains how to request exclusion or object. The Court will hold a hearing on _____ at _____ to consider whether to approve the Settlement, and a request by the lawyers representing all Class Members (Lynch Carpenter, LLP and Keller Postman LLC) for \$2,400,000 in attorneys' fees, costs, and Individual Settlement Award for the Named Plaintiff (Rosemarie Rivali) who will request for \$12,500 for her service. You may ask to appear at the hearing, but you don't have to.

More information? For complete information about the Settlement, to view the Settlement Agreement, related Court documents and Claim Form, and to learn more about how to exercise your various options under the Settlement, visit _____. You may also write to the Claims Administrator at the email address: _____ or the postal address: _____.

EXHIBIT E
CLAIM FORM

RIVALI v. SHUTTERFLY, LLC CLAIM FORM

YOU MUST SUBMIT YOUR CLAIM FORM NO LATER THAN _____.

PERSONAL INFORMATION. Please legibly print or type the following information requested below. *This information will be used to deliver your Voucher(s) and communicate with you if any problems arise with your Claim.*

Name (first, middle, and last): _____

Residential Street Address: _____

City, State, and ZIP code: _____

Email Address (including those used for purchases on Shutterfly.com since April 1, 2018): _____

Telephone Number: (____) _____

CONFIRMATION OF CLASS MEMBERSHIP. I declare that 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.

The Claims Administrator and/or Shutterfly may verify your Claim.

ACKNOWLEDGEMENT. I have received Notice of the Class Settlement in this Action and I am a member of the Class of persons described in the Notice. I agree to release all the claims, known and unknown, stated in Section 2.8 of the Settlement Agreement. I submit to the jurisdiction of the Superior Court of California, County of San Diego, with regard to my Claim and for purposes of enforcing the release of claims stated in the Settlement Agreement. I am aware that I can obtain a copy of the Full Notice and Settlement Agreement at _____ or by writing the Claims Administrator at the email address: _____ or the postal address: _____. I agree to furnish additional information to support this Claim if required to do so.

IF SUBMITTED ELECTRONICALLY:

I agree that by submitting this Claim Form I certify under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge and that checking this box constitutes my electronic signature on the date of its submission.

IF SUBMITTED BY U.S. MAIL:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Dated: _____

Signature: _____

EXHIBIT F
[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiff,

v.

SHUTTERFLY, LLC, a Delaware Limited
Liability Company, and DOES 1-50, inclusive,

Defendant.

Case No.

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS SETTLEMENT**

On _____ (month) ____ (day), 2023, this Court heard Plaintiff Rosemarie Rivali’s motion for final approval of the Class¹ Settlement. This Court reviewed: (a) the motion and the supporting papers, including, the Settlement Agreement and Release (“Settlement Agreement”); (b) any objections filed with, or presented to, the Court; (c) the Parties’ responses to any objections; and (d) counsels’ arguments. Based on this review and the findings below, the Court found good cause to grant the motion.

FINDINGS:

1. Upon review of the record, the Court hereby finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable, and therefore approves it.

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

1 2. The Court also finds that extensive arm's-length negotiations have taken place, in
2 good faith, between Class Counsel and Shutterfly' Counsel resulting in the Settlement Agreement.
3 Parts of these negotiations were presided over by the experienced JAMS Mediator, Shirish Gupta.

4 3. The Settlement Agreement provides substantial value to the Class in the form of
5 Vouchers and Direct Benefit Vouchers.

6 4. Class Counsel provided Notice to Class Members in compliance with the
7 Settlement Agreement, due process, and California Rules of Court, rules 3.766 and 3.769(f). The
8 Notices: (i) fully and accurately informed Class Members about the Action and Settlement;
9 (ii) provided sufficient information so that Class Members could decide whether to accept the
10 benefits offered, opt-out and pursue their own remedies, or object to the Settlement; (iii) provided
11 procedures for Class Members to submit written objections to the proposed Settlement, to appear
12 at the Fairness Hearing, and to state objections to the proposed Settlement; and (iv) provided the
13 time, date, and place of the final Fairness Hearing.

14 5. The Parties adequately performed their obligations under the Settlement
15 Agreement.

16 6. For the reasons stated in the Preliminary Approval and Provisional Class
17 Certification Order, and having found nothing in any submitted objections that would disturb these
18 previous findings, this Court finds and determines that the proposed Class, as defined below, meets
19 all of the legal requirements for class certification, for Settlement purposes only, under California
20 Code of Civil Procedure § 382.

21 7. An award of \$2,400,000 in attorneys' fees, costs and an Individual Settlement
22 Award to Class Counsel is fair and reasonable in light of the nature of this Action, Class Counsel's
23 experience and efforts in prosecuting this Action, and the benefits obtained for the Class.

24 8. Incentive award to Named Plaintiff Rosemarie Rivali of \$12,500 is fair and
25 reasonable in light of: (a) Named Plaintiff's risks (including financial, professional, and emotional)
26 in commencing this Action as the Class Representative; (b) the time and effort spent by Named
27 Plaintiff in litigating this Action as the Class Representative; and (c) Named Plaintiff's public
28 interest service.

1 **IT IS ORDERED THAT:**

2 1. **Class Members.** The Class Members are defined as:

3 All persons, within the United States, who, within the Class Period (April 1, 2018
4 until the date of Preliminary Approval), purchased from Shutterfly's e-commerce
5 website (www.shutterfly.com), one or more products at discounts from an
6 advertised reference price and who have not received a refund or credit. Excluded
7 from the Class is Shutterfly's Counsel, Shutterfly's officers, directors and
8 employees, and the judge presiding over the Action.

9 2. **Binding Effect of Order.** This Order applies to all claims or causes of action settled
10 under the Settlement Agreement, and binds all Class Members, including those who did not
11 properly request exclusion under Paragraph 7 of the Preliminary Approval and Provisional Class
12 Certification Order. This order does not bind persons who submitted timely and valid requests for
13 exclusion.

14 3. **Release.** Named Plaintiff and all Class Members who did not properly request
15 exclusion are: (a) deemed to have released and discharged Shutterfly from all claims arising out of,
16 or asserted in, this Action and claims released under the Settlement Agreement; and (b) barred and
17 permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these
18 claims. The full terms of the release described in this paragraph are set forth in Sections 1.10, 1.35,
19 2.10, 2.11 of the Settlement Agreement and are specifically incorporated herein by this reference.

20 4. **Class Relief.** Shutterfly shall provide each Class Member who timely submits a
21 valid Claim Form by the Response Deadline, one (1) Voucher. Shutterfly shall provide to each Class
22 Member who does not submit a Claim Form by the Response Deadline one (1) Direct Benefit
23 Voucher.

24 5. **Attorneys' fees and costs.** Class Counsel is awarded \$2,400,000 in fees, costs, and
25 Class administration costs. Payment shall be made pursuant to the timeline stated in Section 2.5 of
26 the Settlement Agreement.

27 6. **Incentive Awards.** Named Plaintiff Rosemarie Rivali is awarded \$12,500 total as
28 an Individual Settlement Award. Payment shall be made pursuant to the timeline stated in
Section 2.5 of the Settlement Agreement.

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7. **Court's Jurisdiction.** Pursuant to the Parties' request, the Court will retain jurisdiction over this Action and the Parties until final performance of the Settlement Agreement.

DATED: _____ SUPERIOR COURT JUDGE

EXHIBIT G
[PROPOSED] FINAL JUDGMENT

1 presiding over the Action. All persons who satisfy the Class definition above are “Class Members.”
2 However, persons who timely submitted valid requests for exclusion are not Class Members.

3 2. In the Order Granting Final Approval of Class Settlement, the Court found that the
4 Notice to Class Members provided through email (for Class Members for whom Shutterfly had a
5 valid email address) and print advertisement was made in compliance with Section 3.3 of the
6 Settlement Agreement, due process, and California Rules of Court, rules 3.766 and 3.769(f).

7 3. Plaintiff Rosemarie Rivali is awarded \$12,500 as an Individual Settlement Award.

8 4. Class Counsel (Lynch Carpenter, LLP and Keller Postman LLC) is awarded
9 \$2,400,000 in attorneys’ fees, costs and Class administration costs.

10 5. Shutterfly shall provide each Class Member who timely submits a valid Claim
11 Form by the Response Deadline and who does not exclude themselves from the Settlement, one (1)
12 Voucher. Shutterfly shall provide to each Class Member who does not submit a Claim Form by the
13 Response Deadline, and who does not exclude themselves from the Settlement, one (1) Direct
14 Benefit Voucher.

15 6. All Class Members who did not validly and timely request to be excluded from the
16 Settlement, and each of their respective successors, assigns, legatees, spouses, heirs, and personal
17 representatives, shall waive and forfeit, and be deemed to have fully, finally and forever released
18 and discharged all manner of action, causes of action, claims, demands, rights, suits, obligations,
19 debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs,
20 expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed
21 or contingent, which they have or may have, arising out of or relating to any of the acts, omissions
22 or other conduct that have or could have been alleged or otherwise referred to in the Complaint, or
23 any preceding version thereof filed in the Action, including any and all claims related in any way
24 to the advertisement of prices by Shutterfly or any of its subsidiaries or affiliates (including
25 Unknown Claims, as defined in Section 1.35 of the Settlement Agreement) (collectively, “Class
26 Released Claims,” as defined in Section 1.10 of the Settlement Agreement) against Shutterfly and
27 each of its direct or indirect parents, wholly or majority-owned subsidiaries, affiliated and related
28 entities, predecessors, successors and assigns, partners, privities, and any of their present and former

1 directors, officers, employees, shareholders, agents, representatives, attorneys, accountants,
2 insurers, and all persons acting by, through, under or in concert with it, or any of them (collectively
3 “Released Parties”).

4 As used in this release, the term “Unknown Claims” *means with respect to the Class*
5 *Released Claims only* (as defined in Section 1.10 of the Settlement Agreement), Plaintiff and the
6 Class Members expressly waive and relinquish, to the fullest extent permitted by law, the
7 provisions, rights and benefits of Section 1542 of the California Civil Code, and any other similar
8 provision under federal or state law, which provides:

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

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

22 7. In addition to the releases made by the Class Members set forth above, Rosemarie
23 Rivali makes the additional following general release of all claims, known or unknown: Rosemarie
24 Rivali and her successors, assigns, legatees, spouses, heirs, and personal representatives release and
25 forever discharge the Released Parties, from all manner of action, causes of action, claims,
26 demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages,
27 charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or
28 unknown, in law or equity, fixed or contingent.

In addition, Rosemarie Rivali and her successors, assigns, legatees, spouses, heirs, and
personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the

1 provisions, rights and benefits of Section 1542 of the California Civil Code, and any other similar
2 provision under federal or state law, which provides:

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

9 Rosemarie Rivali fully understands that the facts on which the Settlement Agreement is to
10 be executed may be different from the facts now believed by Rosemarie Rivali and her Counsel to
11 be true, and expressly accepts and assumes the risk of this possible difference in facts, and agrees
12 that the Settlement Agreement will remain effective despite any difference in facts. Further,
13 Rosemarie Rivali agrees that this waiver is an essential and material term of this release and the
14 Settlement that underlies it, and that without such waiver the Settlement would not have been
15 accepted.

16 8. All Class Members are bound by this Final Judgment, by the Order Granting Final
17 Approval of Class Settlement, and by the terms of the Settlement Agreement.

18 NOW, THEREFORE, the Court, finding that no reason exists for delay, hereby directs the
19 Clerk to enter this Final Judgment forthwith.

20 DATED: _____ SUPERIOR COURT JUDGE

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EXHIBIT H
COMPLAINT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Todd Carpenter, (CA 234464), 1350 Columbia Street, Ste. 603 San Diego, California 92101 James Drimmer, (CA 196890), 1350 Columbia Street, Ste. 603 San Diego, California 92101 TELEPHONE NO: (619) 762-1910 FAX NO. (Optional): E-MAIL ADDRESS (Optional): Todd@lcllp.com; jim@lcllp.com ATTORNEY FOR (Name): Rosemarie Rivali	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 325 South Melrose Drive MAILING ADDRESS: 325 South Melrose Drive CITY AND ZIP CODE: Vista, 92081 BRANCH NAME: North County	CASE NUMBER:
PLAINTIFF: Rosemarie Rivali DEFENDANT: Shutterfly, LLC <input checked="" type="checkbox"/> DOES 1 TO 50 _____ inclusive	
COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): _____ Pecuniary loss according to proof for Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): unfair business practices <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify): _____	
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	

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

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

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

3. Each plaintiff named above is a competent adult

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

(1) a corporation qualified to do business in California

(2) an unincorporated entity (describe):

(3) a public entity (describe):

(4) a minor an adult

(a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) other (specify):

(5) other (specify):

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

(1) a corporation qualified to do business in California

(2) an unincorporated entity (describe):

(3) a public entity (describe):

(4) a minor an adult

(a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) other (specify):

(5) other (specify):

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

SHORT TITLE:

Rivali v. Shutterfly, LLC

CASE NUMBER:

4. Plaintiff (*name*):
is doing business under the fictitious name (*specify*):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

- a. **except** defendant (*name*): Shutterfly, LLC

(1) a business organization, form unknown

(2) a corporation

(3) an unincorporated entity (*describe*):

(4) a public entity (*describe*):

(5) other (*specify*):
Delaware Limited Liability Company

- c. **except** defendant (*name*):

(1) a business organization, form unknown

(2) a corporation

(3) an unincorporated entity (*describe*):

(4) a public entity (*describe*):

(5) other (*specify*):

- b. **except** defendant (*name*):

(1) a business organization, form unknown

(2) a corporation

(3) an unincorporated entity (*describe*):

(4) a public entity (*describe*):

(5) other (*specify*):

- d. **except** defendant (*name*):

(1) a business organization, form unknown

(2) a corporation

(3) an unincorporated entity (*describe*):

(4) a public entity (*describe*):

(5) other (*specify*):

Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. Doe defendants (*specify Doe numbers*): 1-50 _____ were the agents or employees of other named defendants and acted within the scope of that agency or employment.

b. Doe defendants (*specify Doe numbers*): _____ are persons whose capacities are unknown to plaintiff.

7. Defendants who are joined under Code of Civil Procedure section 382 are (*names*):

8. This court is the proper court because

a. at least one defendant now resides in its jurisdictional area.

b. the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.

c. injury to person or damage to personal property occurred in its jurisdictional area.

d. other (*specify*):

9. Plaintiff is required to comply with a claims statute, **and**

a. has complied with applicable claims statutes, **or**

b. is excused from complying because (*specify*):

SHORT TITLE:

Rivali v. Shutterfly, LLC

CASE NUMBER:

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

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

The Plaintiff seeks to certify the following class:

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

11. Plaintiff has suffered

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

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

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

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

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

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

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

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

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

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

Date:

Todd D. Carpenter

(TYPE OR PRINT NAME)



/s Todd D. Carpenter

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE:

Rivali v. Shutterfly, LLC

CASE NUMBER:

First

(number)

CAUSE OF ACTION FraudATTACHMENT TO Complaint Cross-Complaint

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

FR- 1. Plaintiff (name): Rosemarie Rivali

alleges that defendant (name): Shutterfly, LLC

on or about (date): March 21, 2022

defrauded plaintiff as follows:

FR-2. **Intentional or Negligent Misrepresentation**a. Defendant made representations of material fact as stated in Attachment FR-2.a as follows:

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

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

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

c. When defendant made the representations,

 defendant knew they were false, or defendant had no reasonable ground for believing the representations were true.

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

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

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

b. Defendant concealed or suppressed material facts

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

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

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SHORT TITLE: Rivali v. Shutterfly, LLC	CASE NUMBER:
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First _____
(number)

CAUSE OF ACTION Fraud

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

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

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

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

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

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

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

FIR - 7. Other:

SHORT TITLE:

Rivali v. Shutterfly, LLC

CASE NUMBER:

Second

(number)

CAUSE OF ACTION FraudATTACHMENT TO Complaint Cross-Complaint

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

FR- 1. Plaintiff (name): Rosemarie Rivali

alleges that defendant (name): Shutterfly, LLC

on or about (date): March 21, 2022

defrauded plaintiff as follows:

FR-2. **Intentional or Negligent Misrepresentation**a. Defendant made representations of material fact as stated in Attachment FR-2.a as follows:

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

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

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

c. When defendant made the representations,

 defendant knew they were false, or defendant had no reasonable ground for believing the representations were true.

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

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

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

b. Defendant concealed or suppressed material facts

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

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

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SHORT TITLE: Rivali v. Shutterfly, LLC	CASE NUMBER:
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Second _____
(number)

CAUSE OF ACTION Fraud

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

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

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

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

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

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

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

FIR - 7. Other:

SHORT TITLE:

Rivali v. Shutterfly, LLC

CASE NUMBER:

Third

(number)

CAUSE OF ACTION FraudATTACHMENT TO Complaint Cross-Complaint

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

FR- 1. Plaintiff (name): Rosemarie Rivali

alleges that defendant (name): Shutterfly, LLC

on or about (date): March 21, 2022

defrauded plaintiff as follows:

FR-2. **Intentional or Negligent Misrepresentation**a. Defendant made representations of material fact as stated in Attachment FR-2.a as follows:

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

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

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

c. When defendant made the representations,

 defendant knew they were false, or defendant had no reasonable ground for believing the representations were true.

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

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

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

b. Defendant concealed or suppressed material facts

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

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

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SHORT TITLE: Rivali v. Shutterfly, LLC	CASE NUMBER:
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Third
(number)

CAUSE OF ACTION Fraud

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

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

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

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

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

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

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

FIR - 7. Other: