

FILED
Clerk of the Superior Court
AUG 25 2023
By: M. Garland

**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,

Defendants.

Case No. 37-2023-00019221-CU-BT-NC

[E-FILE]

CLASS ACTION

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

On August 25, 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 circumstances; (b) the method for providing notice to Class Members set forth in the Settlement Agreement constitutes

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

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

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

7 4. For Settlement purposes only, Plaintiff's claims are typical of Class claims.

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

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

12 **IT IS ORDERED THAT:**

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

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

18 3. **Claim for a Voucher.**

19 **Claim-in-Class Members.** Class Members must submit a complete, valid, and sufficient
20 Claim Form on or before the Response Deadline in order to be included in the distribution of the
21 twenty five dollar (\$25.00) Vouchers. The Claim Form shall require the Class Member to confirm
22 via checkbox as follows: "Between April 1, 2018 and [date of preliminary approval], I made one
23 or more purchases on Shutterfly.com in part because they were advertised as discounted prices. I
24 declare under penalty of perjury under the laws of the State of California that the foregoing is true
25 and correct." Class Members who submit a complete, valid and sufficient Claim Form and do not
26 request to exclude himself or herself from the Settlement will receive via email a Voucher no later
27 than sixty (60) calendar days after the Final Settlement Date.

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

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

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

1 the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense,
2 to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed
3 Settlement, or to the award of attorneys' fees. Class Members, or their attorneys, intending to make an
4 appearance at the Fairness Hearing, however, must include on a timely and valid objection a statement
5 substantially similar to "Notice of Intention to Appear." If the objecting Class Member intends to appear
6 at the Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the
7 objector who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number,
8 email address, and the state bar(s) to which counsel is admitted. If the objecting Class Member intends to
9 request the Court allow the Class Member to call witnesses at the Fairness Hearing, such request must be
10 made in the Class Member's written objection, which must also contain a list of any such witnesses and a
11 summary of each witness's expected testimony. Only Class Members who submit timely objections
12 containing Notices of Intention to Appear or their counsel may speak at the Fairness Hearing.

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

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

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

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

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

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

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

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

22 14. **Fairness Hearing.** On January 19 (month) 4 (~~day~~) 2023, at 1:30 p.m., this Court
23 will hold a Fairness Hearing to determine whether the Settlement Agreement should be finally approved
24 as fair, reasonable, and adequate. Based on the date of this Order and the date of the Fairness Hearing, the
25 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 60 CMP

60 (C.A.C.)

Event	Timing
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

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

DATED: August 25, 2023

Cynthia A. Freeland
 Cynthia A. Freeland
 San Diego Superior Court Judge