

BURSOR & FISHER, P.A.

Neal J. Deckant (State Bar No. 322946)
Julia K. Venditti (State Bar No. 332688)
1990 North California Boulevard, 9th Floor
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
Email: ndeckant@bursor.com
jvenditti@bursor.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

8/22/2024 3:51:00 PM

Clerk of the Superior Court
By N. Lopez ,Deputy Clerk

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

HEATHER VILLEGAS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CRICUT, INC.,

Defendant.

Case No. 37-2023-00009047-CU-FR-CTL

**PLAINTIFF’S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Judge: Hon. Blaine Bowman
Date: October 11, 2024
Time: 8:30 a.m.
Dept.: C-74

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on **October 11, 2024**, at **8:30 a.m.**, in Department C-74 of
4 the above captioned Court, located at 330 West Broadway, San Diego, CA 92101, Plaintiff Heather
5 Villegas will move, and hereby does move, for preliminary approval of a proposed class action
6 settlement (the “Settlement”) in this Action.

7 Defendant Cricut, Inc. does not oppose this motion.

8 This Motion is made on the grounds that all parties in this action have executed a class
9 Settlement Agreement, the terms of which are fair, reasonable, and fall within the range of possible
10 approval, and that preliminary approval of the Settlement is therefore proper because each
11 requirement of California law have been met. *See* Cal. Rules of Court, rule 3.769; Cal. Civ. Code §
12 382. Plaintiff asks the Court to enter the accompanying [Proposed] Order Preliminarily Approving
13 Class Action Settlement (the “[Proposed] Preliminary Approval Order”), which authorizes the
14 certification of a Settlement Class for settlement purposes only, the dissemination of notice of the
15 settlement to potential class members, and the establishment of a hearing date for the consideration
16 of final approval of the Settlement and related deadlines.

17 The Motion is based on the Declaration of Julia K. Venditti (the “Venditti Decl.”) and the
18 exhibits attached thereto, including the Class Action Settlement Agreement and Release (the
19 “Settlement Agreement” or “Settlement”); the Declaration of Heather Villegas (the “Villegas
20 Decl.”); the [Proposed] Preliminary Approval Order submitted herewith; the Memorandum of
21 Points and Authorities filed herewith; the pleadings and papers on file in this Action; and such other
22 evidence and argument as may subsequently be presented to the Court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 22, 2024

Respectfully submitted,

BURSOR & FISHER, P.A.

By: 
Julia K. Venditti

Neal J. Deckant (State Bar No. 322946)
Julia K. Venditti (State Bar No. 332688)
1990 North California Boulevard, 9th Floor
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
Email: ndeckant@bursor.com
jvenditti@bursor.com

Attorneys for Plaintiff and the Putative Class

TABLE OF CONTENTS

PAGE(S)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

I.	INTRODUCTION	9
II.	FACTUAL AND PROCEDURAL BACKGROUND	11
	A. California’s Automatic Renewal Law	11
	B. Plaintiff’s Allegations.....	11
	C. The Mediation	12
III.	LEGAL STANDARD	13
IV.	THE COURT SHOULD GRANT PRELIMINARY APPROVAL	15
	A. The Settlement Should Be Preliminarily Approved Because It Falls Within The Range Of Possible Approval.....	15
	1. The Settlement Provides Substantial Benefits.....	15
	2. The Release Is Fairly Tailored To The Claims	17
	B. The Proposed Settlement Class Should Be Certified	17
	1. An Ascertainable Class Exists.....	18
	2. There Is A Well-Defined Community Of Interest In The Questions Of Law And Fact Involved.....	19
	a. Predominant Questions Of Law And Fact Exist	19
	b. The Class Representative’s Claims Are Typical Of The Claims Of The Other Class Members	20
	c. Adequacy	20
	d. Superiority Of The Class Action Device.....	21
	C. The Notice Satisfies The Requirements Of California Law.....	21
V.	CONCLUSION	22

TABLE OF AUTHORITIES

PAGE(S)

CASES

1

2

3

4 *7-Eleven Owners for Fair Franchising v. Southland Corp.*
(2000) 85 Cal.App.4th 1135..... 14

5 *Alaniz v. California Processors, Inc.*
(N.D. Cal. 1976) 73 F.R.D. 269 13, 15

6

7 *Amchem Prod., Inc. v. Windsor*
(1997) 521 U.S. 591 21

8

9 *Bradach v. Pharmavite, LLC*
(9th Cir. 2018) 735 Fed. Appx. 251 18

10 *Boyd v. Bechtel Corp.*
(N.D. Cal. 1979) 485 F. Supp. 610..... 15

11

12 *Cassesse v. Washington Mutual, Inc.*
(E.D.N.Y. 2008) 255 F.R.D. 89..... 19

13

14 *Chapman v. Skype Inc.*
(2013) 220 Cal. App. 4th 217..... 18

15 *City of Detroit v. Grinnell Corp.*
(2d Cir. 1974) 495 F.2d 448 14

16

17 *Classen v. Weller*
(1983) 145 Cal.App.3d 27 20

18

19 *Clothesrigger v. GTE Corp.*
(1987) 191 Cal.App.3d 605 21

20 *Cohorst v. BRE Properties, Inc.*
(S.D. Cal. Nov. 14, 2011) 2011 WL 7061923..... 17

21

22 *Collins v. Rocha*
(1972) 7 Cal. 3d 232..... 19

23 *Consumer Privacy Cases*
(2009) 175 Cal.App.4th 545..... 16

24

25 *Cotton v. Hinton*
(5th Cir. 1977) 559 F.2d 1326..... 14

26

27 *Daniels v. Centennial Group, Inc.*
(1993) 16 Cal.App.4th 467 20

28

1 *Dickey v. Advanced Micro Devices, Inc.*
 (N.D. Cal. Jan. 17, 2019) 2019 WL 251488..... 18

2 *Dunk v. Ford Motor Company*
 3 (1996) 48 Cal.App.4th 1794..... 13

4 *Duran v. Obesity Research Inst., LLC*
 5 (2016) 1 Cal.App.5th 635..... 22

6 *Green v. Obledo*
 (1981) 29 Cal.3d 126..... 13

7 *Hartless v. Clorox Co.*
 8 (S.D. Cal. 2011) 273 F.R.D. 630..... 16

9 *In re Bluetooth Headset Prods. Liab. Litig.*
 10 (9th Cir. 2011) 654 F.3d 935..... 17

11 *In re M.L. Stern Overtime Litig.*
 (S.D. Cal. Apr. 13, 2009) 2009 WL 995864 15

12 *Johns v. Bayer Corp.*
 13 (S.D. Cal. 2012) 280 F.R.D. 551 18

14 *Jones v. Farmers Insurance Exchange*
 15 (2014) 221 Cal.App.4th 986..... 20

16 *Krommenhock v. Post Foods, LLC*
 (N.D. Cal. 2020) 334 F.R.D. 552 18

17 *Kullar v. Foot Locker Retail, Inc.*
 18 (2008) 168 Cal.App.4th 116..... 13

19 *Lealao v. Beneficial California, Inc.*
 20 (2000) 82 Cal.App.4th 19, 33..... 16

21 *Malibu Outrigger Bd. of Governors v. Superior Court*
 (1980) 103 Cal.App.3d 573 13

22 *McAdams v. Monier, Inc.*
 23 (2010) 182 Cal. App. 4th 174..... 18

24 *McGhee v. Bank of America*
 (1976) 60 Cal.App.3d 442 20

25 *Newman v. Stein*
 26 (2d Cir. 1972) 464 F.2d 689 14

27 *Noel v. Thrifty Payless, Inc.*
 28 (2019) 7 Cal. 5th 955..... 19

1	<i>Officers for Justice v. Civil Service Comm'n</i>	15
	(9th Cir. 1982) 688 F.2d 615	
2	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.</i>	13
3	(E.D. Pa. 1970) 323 F. Supp. 364, 372.....	
4	<i>Pichardo v. Carmine's Broadway Feast Inc.</i>	19
5	(S.D.N.Y. Sept. 26, 2016) 2016 WL 5338551	
6	<i>Rebney v. Wells Fargo Bank</i>	13
	(1990) 220 Cal.App.3d 1117	
7	<i>Reyes v. San Diego Cnty. Bd. of Supervisors</i>	21
8	(1987) 196 Cal.App.3d 1263	
9	<i>Richmond v. Dart Industries</i>	19
10	(1981) 29 Cal.3d 462	
11	<i>Rodriguez v. W. Publ'g Corp.</i>	17
	(9th Cir. 2009) 563 F.3d 948	
12	<i>Turcios v. Carma Lab'ys, Inc.</i>	19
13	(C.D. Cal. 2014) 296 F.R.D. 638.....	
14	<i>Vasquez v. Superior Ct.</i>	18, 19
15	(1971) 4 Cal. 3d 800	
16	<i>Walker v. Life Ins. Co. of the Sw.</i>	18
	(9th Cir. 2020) 953 F.3d 624	
17	<i>Wershba v. Apple Computer</i>	18
18	(2001) 91 Cal.App.4th 224	
19	STATUTES	
20	Bus. & Prof. Code § 17200	9
21	Bus. & Prof. Code § 17500	9
22	Bus. & Prof. Code § 17600	9
23	Civ. Code § 1671	18
24	Civ. Code § 1750.....	6
25	Code of Civ. Proc. § 382	18
26	RULES	
27	Cal. Rules of Court, rule 3.769.....	10, 13, 21
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fed. R. Civ. P. 23(e) 13

OTHER AUTHORITIES

2 Newberg on Class Actions § 11.27 18

2 Newberg on Class Actions § 11.28 20

Manual for Complex Litigation § 23.11 (3d ed. 1995) 14

Manual for Complex Litigation § 30.4 (3d ed. 1995) 13

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this putative class action, Plaintiff Heather Villegas (“Plaintiff”) alleges that Defendant
4 Cricut, Inc. (“Defendant” or “Cricut”) has failed to comply with California’s Automatic Renewal
5 Law (“ARL”), Bus. & Prof. Code §§ 17600, *et seq.*, which imposes detailed information, notice,
6 and consent requirements on businesses that make automatic renewal or continuous service offers to
7 California consumers.¹ Plaintiff now moves for preliminary approval of the class action settlement
8 in this case. The Class Action Settlement Agreement and Release (the “Settlement Agreement” or
9 “Settlement”) and its exhibits are attached as **Exhibit 1** to the concurrently-filed Declaration of Julia
10 Venditti (“Venditti Decl.”).²

11 The settlement at hand consists of an all-cash non-reversionary “common fund” in the
12 amount of \$625,000 (the “Class Settlement Fund”). *See* Settlement ¶ 5. The Settlement also
13 includes injunctive relief which requires Cricut to send written notice to all California subscription
14 consumers of its updated terms and services, which shall include all information required by the
15 ARL. *Id.* ¶ 35. In addition to the Class Settlement Fund and injunctive relief, Defendant has agreed
16 to pay attorneys’ fees and expenses up to \$220,000, subject to Court approval, and reimbursement
17 of costs to the Settlement Administrator up to \$50,000 – representing a total cash settlement value
18 of \$895,000. *Id.* ¶¶ 36, 41-42. Class Members who submit a timely and valid claim will receive a
19 *pro rata* portion of the \$625,000 settlement fund, following the deduction of the stipend to the class
20 representative, which shall not exceed \$5,000 (attorneys’ fees and notice costs do not derogate from
21 class member recovery). *Id.* ¶ 34. Plaintiff seeks to represent a class of “all California residents,
22 from January 1, 2018, through the date of the Preliminary Approval Order, who incurred renewal
23 fee(s) in connection with Cricut’s offerings for paid Cricut Subscriptions.” *Id.* ¶ 28.

24 _____
25 ¹ Specifically, Plaintiff alleges (1) violation of California’s Unfair Competition Law, Bus. & Prof.
26 Code §§ 17200, *et seq.*, based upon, among other things, violations of the ARL; (2) conversion;
27 (3) violation of California’s False Advertising Law, Bus. & Prof. Code §§ 17500, *et seq.*;
28 (4) violation of California’s Consumers Legal Remedies Act, Civ. Code §§ 1750, *et seq.*; (5) unjust
enrichment/restitution; (6) negligent misrepresentation; and (7) fraud.

²All other exhibits and declarations referenced in this brief are also attached as exhibits to the
Venditti Declaration.

1 Defendant vigorously denies the allegations, and continued litigation poses risks to Plaintiff
2 and the Class whom she seeks to represent. While there have been several prior class actions
3 challenging auto-renewal fees, they have been met with mixed success. Absent settlement, the
4 parties would engage in costly discovery, and Defendant would oppose class certification, move for
5 summary judgment, litigate the case at trial, and appeal any victory for Class Members. Victory for
6 the Defendant at any one of those steps would deprive putative Class Members of any relief.

7 The parties conducted a full-day, mediation session in-person on October 25, 2023, with
8 Judge Richard Kramer (Ret.) of JAMS, reaching the material terms of the settlement with the
9 assistance of the mediator, and conducted many months of follow-up settlement discussions as they
10 formulated the Settlement Agreement. Before the mediation, Cricut provided Plaintiff's counsel
11 with requested information regarding Cricut's business operations to facilitate Plaintiff's counsel's
12 evaluation of the strength of the Class's alleged causes of action. The mediation resulted in a
13 settlement that provides substantial monetary benefits to the proposed Class, as discussed herein.
14 This is an outstanding recovery, particularly taking into account the risks to Plaintiff and putative
15 Class Members going forward. Despite these risks, the Settlement provides a guaranteed \$625,000
16 worth of monetary benefits to Class Members – and \$895,000 in total cash settlement benefits, after
17 accounting for payment of attorneys' fees and claims administration costs. The Settlement also
18 provides meaningful injunctive relief for the benefit of Cricut's California subscription consumers.

19 The Court should have no hesitation finding that the Settlement falls within the range of
20 possible approval. For the reasons set forth below, the settlement is fair and reasonable, and
21 warrants preliminary approval. Defendant does not oppose this motion. Accordingly, Plaintiff
22 respectfully requests that the Court (1) grant preliminary approval of the proposed Settlement; (2)
23 conditionally certify the settlement class under Code of Civil Procedure section 382 and California
24 Rule of Court 3.769 in connection with the settlement process; (3) appoint Bursor & Fisher, P.A., as
25 Class Counsel; (4) appoint Plaintiff Villegas as the Class Representative for the Settlement Class;
26 (5) approve the Notice Plan described in the Settlement and direct its distribution; and (6) schedule a
27 hearing for final approval.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. California’s Automatic Renewal Law**

3 On December 1, 2010, the California Legislature enacted the ARL under California Senate
4 Bill 340 with the intent to “end the practice of ongoing charging of consumer credit or debit cards or
5 third-party payment accounts without the consumers’ explicit consent for ongoing shipments of a
6 product or ongoing deliveries of service.” *See* Class Action Complaint (“Compl.”) ¶ 26 (citing
7 statement of legislative intent). In 2018, the California Legislature passed California’s Senate Bill
8 313, which amended the ARL to increase consumer protections for orders that contain free trial and
9 promotional pricing, and subscription agreements entered into online. *See id.* Thus, the ARL’s core
10 requirements are that: (1) businesses must clearly and conspicuously disclose automatic renewal
11 terms of any offer, as defined by the statute; (2) they must obtain a consumer’s affirmative consent,
12 and (3) they must provide consumers with an acknowledgment containing the terms of the
13 automatically renewing offer and cancellation information. *See id.* ¶ 27.

14 **B. Plaintiff’s Allegations**

15 Defendant is an American corporation that markets and sells computer-controlled cutting
16 machines designed for home crafters to California consumers via auto-renewal membership
17 programs (collectively, the “Cricut Subscriptions” or “Cricut Access”), which can be accessed either
18 through Defendant’s website at <https://www.cricut.com> (the “Cricut Website”) or its mobile
19 applications (the “Cricut Apps”). *See id.* ¶ 1. Cricut Access is an automatically renewing “monthly
20 or yearly subscription that unlocks access to unlimited use of a growing library of beautiful fonts,
21 images and projects in Design Space[,]” among other things. *See id.* Cricut’s machines can only be
22 used in tandem with Defendant’s software, called Design Space, via the Cricut Website or the
23 Cricut Apps. *See id.*

24 Plaintiff alleges that the Cricut Access subscriptions are in violation of the ARL. *See id.*
25 Specifically, Plaintiff alleges that when consumers sign up a Cricut Subscription through the Cricut
26 Website or App, Defendant actually enrolls consumers in an automatically renewing subscription
27 that results in monthly or annual charges to the consumer’s payment method; Plaintiff further

1 alleges that Defendant engages in this auto-renewal scheme without first providing California
2 consumers the requisite disclosures and authorizations required under the ARL. *See id.*
3 Furthermore, Plaintiff alleges that every violation of the ARL constitutes an “unlawful” practice
4 under the UCL. *See id.* ¶¶ 84-98. And because Defendant’s ARL violations involve
5 misrepresentations and/or omissions of material fact, Plaintiff contends Defendant also violated the
6 FAL and CLRA. *See id.* ¶¶ 84-98, 105-21. On that basis, Plaintiff also brought common law claims
7 against Defendant for conversion, unjust enrichment, negligent misrepresentation, and fraud. *See*
8 *id.* ¶¶ 99-104; *see also id.* ¶¶ 122-139.

9 Plaintiff filed her Complaint on March 3, 2023, and service was completed that same day.
10 Defendant filed its Answer on March 30, 2023. The parties submitted a Case Management
11 Conference Statement on July 20, 2023, and attended a Case Management Conference on August 4,
12 2023. Around that time, the parties agreed to endeavor to mediate their claims.

13 C. The Mediation

14 On October 25, 2023, the parties conducted a mediation session with Judge Richard Kramer
15 (Ret.) of JAMS. *See Venditti Decl.* ¶¶ 6-8. Before his retirement, Judge Kramer served as a judge
16 in San Francisco Superior Court for nearly two decades, including presiding over cases in the
17 Complex department for his last 13 years on the bench. Judge Kramer’s tenure as a judge followed
18 24 years of law practice as a commercial litigator. Judge Kramer has overseen hundreds of class
19 action lawsuits in California courts during his career and is one of the most experienced mediators
20 for class action settlements in the field today. *See id.* ¶ 6. The mediation was held at the JAMS
21 offices of San Francisco, and counsel for Plaintiff and Defendant attended in-person. *See id.* ¶ 8.
22 The mediation lasted a full day and was hotly-negotiated by skilled counsel, with numerous offers
23 and counter-offers being made with Judge Kramer serving as an intermediary. *See id.* The parties
24 also exchanged mediation statements, and Cricut provided discovery materials sufficient to show
25 the size of the putative class, the number of Cricut charges at issue, and the amount in controversy.
26 *See id.* ¶ 7. At the end of their mediation, the parties executed a binding settlement term sheet and
27 continued to negotiate the terms of the Settlement Agreement, resulting in additional months of
28

1 follow-up settlement discussions. *See id.* ¶ 8. The Settlement Agreement was fully executed as of
2 May 10, 2024. *See id.* ¶ 9.

3 **III. LEGAL STANDARD**

4 A class action settlement requires court approval, after notice to the class members. *See*
5 *Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79; Cal.
6 Rules of Court, rules 3.769(a), (f); Fed. R. Civ. P. 23(e).³ The trial court has broad discretion to
7 determine whether a class settlement is fair. *See Rebney v. Wells Fargo Bank* (1990) 220
8 Cal.App.3d 1117, 1138. The trial court’s decision whether to approve a class settlement is reviewed
9 on appeal under a deferential abuse of discretion standard. *See Kullar v. Foot Locker Retail, Inc.*
10 (2008) 168 Cal.App.4th 116, 128.

11 Approval of class action settlements involves a two-step process. The Court starts with a
12 preliminary determination whether the proposed settlement appears to be fair and is “within the
13 range of possible approval.” *Alaniz v. California Processors, Inc.* (N.D. Cal. 1976) 73 F.R.D. 269,
14 273, *cert. denied sub nom. Beaver v. Alaniz* (1978) 439 U.S. 837. If so, notice can be sent to class
15 members and the Court can schedule a final approval hearing where a more in-depth review of the
16 settlement terms will take place. *See Manual for Complex Litigation* § 30.4 (3d ed. 1995) at 236-
17 38. Preliminary approval is merely a prerequisite to incurring the expense for notice so that “the
18 proposed settlement . . . may be submitted to the members of the prospective class for their
19 acceptance or rejection.” *Philadelphia Housing Authority v. American Radiator & Standard*
20 *Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 372. It does not require an answer to the ultimate
21 question of whether the proposed settlement is fair and adequate, for that determination occurs only
22 after notice of the settlement has been given to the members of the Settlement Class. *See Dunk v.*
23 *Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.

24 Nevertheless, a review of the standards applied in determining whether a settlement should
25 be given *final* approval is helpful during the preliminary approval phase. First, there is the strong

26 _____
27 ³ In resolving issues relating to class actions, the California courts frequently look to Rule 23 of the
28 Federal Rules of Civil Procedure, and to federal cases decided thereunder, for guidance. *See Green*
v. Obledo (1981) 29 Cal.3d 126, 145-46.

1 judicial policy of encouraging compromises, particularly in class actions. *See* Manual for Complex
2 Litigation § 23.11 (3d ed. 1995) at 166 (“Beginning with the first [pretrial] conference, and from
3 time to time throughout the litigation, the court should encourage the settlement process.”); *see also*
4 *Cotton v. Hinton* (5th Cir. 1977) 559 F.2d 1326, 1331 (“Particularly in class action suites, there is an
5 overriding public interest in favor of settlements”).

6 Second, a consideration in evaluating the fairness of a proposed settlement is the likelihood
7 of recovery balanced against the benefits of settlement. Such a comparison, however, must be
8 tempered by recognition that compromise involves concessions by all parties. “The trial court
9 should not make a proponent of a proposed settlement ‘justify each term of settlement against a
10 hypothetical or speculative measure of what concessions might have been gained; inherent in
11 compromise is a yielding of absolutes and an abandoning of highest hopes.” *Cotton v. Hinton*,
12 *supra*, 559 F.2d at 1330. Indeed, “the trial judge, absent fraud, collusion, or the like, should be
13 hesitant to substitute its own judgment for that of counsel.” *Ibid*. Thus, “the role of a court in
14 passing upon the propriety of the settlement of a derivative or other class action is a delicate one,”
15 taking into consideration “the uncertainties of law and fact in any particular case and the
16 concomitant risks and costs necessarily inherent in taking any litigation to completion.”
17 *Newman v. Stein* (2d Cir. 1972) 464 F.2d 689, 691-93, *cert. denied*, 409 U.S. 1039.

18 Third, there are no firm rules for evaluating a settlement. Not even the size of the recovery
19 relative to claimed damages is absolutely determinative. Thus, in *City of Detroit*, an objection was
20 asserted on the grounds that the settlement’s benefits were only 12% of the recovery sought. The
21 court rejected this contention: “The fact that a proposed settlement may only amount to a fraction of
22 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
23 inadequate and should be disapproved.” *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d
24 448, 455. The court continued: “In fact there is no reason, at least in theory, why a satisfactory
25 settlement could not amount to a hundredth or even a thousandth part of a single percent of the
26 potential recovery.” *Id.* at n.2. *Accord 7-Eleven Owners for Fair Franchising v. Southland Corp.*
27 (2000) 85 Cal.App.4th 1135, 1150.

1 Factors to be considered by the court in evaluating a proposed settlement may include,
2 among others, some or all of the following: the experience and views of counsel; the risks,
3 complexity, expense and likely duration of continued litigation; the strengths of plaintiff’s case; the
4 amount offered in settlement; and the stage of proceedings. *See Officers for Justice v. Civil Service*
5 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied*, 459 U.S. 1217 (1983).

6 In preliminarily evaluating the adequacy of a proposed settlement, particular attention should
7 be paid to the process of settlement negotiations. Where negotiations were conducted by
8 experienced class action counsel, assisted by a respected mediator, counsel’s assessment and
9 judgment are entitled to a presumption of reasonableness, and the court is entitled to rely heavily
10 upon their opinion. *See Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 622-23; *see also*
11 *In re M.L. Stern Overtime Litig.* (S.D. Cal. Apr. 13, 2009) 2009 WL 995864, at *5 (granting
12 preliminary approval and stating that “the settlement was reached with the supervision and
13 assistance of an experienced and well-respected independent mediator”).

14 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

15 **A. The Settlement Should Be Preliminarily Approved Because It** 16 **Falls Within The Range Of Possible Approval**

17 **1. The Settlement Provides Substantial Benefits**

18 The Settlement clearly falls “within the range of possible approval.” *Alaniz v. California*
19 *Processors, Inc., supra*, 73 F.R.D. at 273. As detailed below, the proposed Settlement provides a
20 package of benefits in the amount of \$625,000 in payments to Class Members, plus up to \$220,000
21 in attorneys’ fees and up to \$50,000 in claims administration costs – for a total in \$895,000 in
22 settlement benefits.

23 The settlement calls for Settlement Class Members who timely submit valid Claim Forms to
24 receive a *pro rata* share, in cash, of the \$625,000 Class Settlement Fund, after deducting any stipend
25 to the named Plaintiff approved by the Court, which shall not exceed \$5,000. *See* Settlement ¶ 34.
26 In other words, Settlement Class Members shall be paid according to the following formula:
27 “(\$625,000 – stipend approved by the Court to be paid to Plaintiff) / Total number of valid, timely
28

1 Claim Forms submitted.” *Id.* The Class Settlement Fund is non-reversionary, and as such the full
2 \$625,000 will be paid to the Plaintiff and Settlement Class Members. *See id.* ¶ 5.

3 Additionally, the cost of providing notice to the class and handling claims administration is
4 considered part of the package of benefits to the class. *See, e.g., Hartless v. Clorox Co.* (S.D. Cal.
5 2011) 273 F.R.D. 630, 645. Here, the Settlement Agreement calls for direct notice and claims
6 administration to be paid by Defendant, in an amount up to \$50,000. *See* Settlement ¶ 41; *see also*
7 *id.* ¶¶ 46-51. This amount is to be paid *in addition to* the \$625,000 in monetary relief to be
8 distributed to the Settlement Class and will not derogate from class member recovery. *See id.* ¶ 42.

9 Furthermore, when calculating the total value provided by a settlement agreement,
10 California courts include the requested attorneys’ fees and costs when calculating the total value of
11 the settlement fund, because “those fees are still best viewed as an aspect of the class’ recovery.”
12 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 33. Thus, “the sum of the two
13 amounts ordinarily should be treated as a settlement fund for the benefit of the class” *Consumer*
14 *Privacy Cases* (2009) 175 Cal.App.4th 545, 554 (citation omitted). Here, subject to the Court’s
15 approval, Defendant will pay Plaintiff’s counsel fees and costs up to \$220,000, separately from any
16 funds made available to Class Members. Settlement ¶ 36. As with notice and claims administration
17 costs, the attorneys’ fees to Plaintiff’s counsel is to be paid *in addition to* the \$625,000 in monetary
18 relief to the Settlement Class and will not derogate from their recovery. *See id.* ¶ 42.

19 Finally, the settlement also provides substantial prospective benefits to Cricut’s California
20 consumers through the injunctive relief that it provides. Specifically, the settlement requires Cricut
21 to provide written notice to its California consumers of updated terms of service. *See id.* ¶ 35.

22 The value of the Settlement is outstanding in light of the risks and complexity of the case,
23 the expense and likely duration of continued litigation, and the stage of proceedings. As discussed
24 above, while there have been several prior class actions challenging auto-renewal fees under the
25 ARL, they have been met with mixed success. A previous case brought against Cricut on similar
26 theories, as an example, was dismissed with no recovery. Absent settlement, the parties would
27 engage in costly discovery, and Defendant would oppose class certification, move for summary
28

1 judgment, litigate the case at trial, and appeal any victory for Class Members. Victory for the
2 Defendant at any one of those steps would deprive putative Class Members of any relief. No matter
3 what the outcome, absent settlement, this case would likely consume trial and appellate court
4 resources for years.

5 The process of settlement negotiations further supports approval of the Settlement. “For
6 example, voluntary mediation before a retired judge [] [is] highly indicative of fairness.” *Cohorst v.*
7 *BRE Properties, Inc.* (S.D. Cal. Nov. 14, 2011) 2011 WL 7061923, at *12 (internal quotation marks
8 omitted); *see also In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 946
9 (“[The] presence of a neutral mediator [is] a factor weighing in favor of a finding of non-
10 collusiveness.”); *Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 965 (“We put a good
11 deal of stock in the product of an arms-length, non-collusive, negotiated resolution”). Here, the
12 negotiations were conducted by experienced class action counsel, with significant assistance from
13 an experienced mediator, Hon. Richard Kramer (Ret.). As discussed previously, Judge Kramer
14 brought his decades of experience with class resolutions to bear in helping the parties reach a
15 resolution. *See Venditti Decl.* ¶ 6. Thus, counsel’s assessment and judgment are entitled to a
16 presumption of reasonableness.

17 **2. The Release Is Fairly Tailored To The Claims**

18 The release contained in the Settlement Agreement is fairly tailored to the claims that were or
19 could be asserted in the lawsuit based upon the facts alleged in the operative complaint. Under the
20 Settlement Agreement, “Released Claims” means “all claims ... that arise out of or are reasonably
21 related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences
22 that were directly or indirectly alleged or referred to in the Action.” Settlement ¶ 22. The released
23 parties are “Cricut, and all of each of its parents, subsidiaries, divisions, affiliates, predecessors,
24 heirs, executors, administrators, representatives, agents, attorneys, partners, assigns employees,
25 officers, directors, and successors.” *Id.* ¶ 23.

26 **B. The Proposed Settlement Class Should Be Certified**

27 The Settlement Class consists of: “all California residents, from January 1, 2018, through the
28

1 date of the Preliminary Approval Order, who incurred renewal fee(s) in connection with Cricut’s
2 offerings for paid Cricut Subscriptions. For the avoidance of doubt, to fall within the definition of
3 Settlement Class, a Person must have purchased a Cricut Subscription, incurred renewal fee(s) on
4 such Cricut Subscription between January 1, 2018, and the date of the Preliminary Approval, and
5 been a California resident when the Person incurred such renewal fee(s).” Settlement ¶ 28.

6 California courts often certify a settlement class for the purpose of approving a settlement.
7 *See Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224. Civ. Code § 382 establishes a two-
8 step analysis for determining whether class certification is appropriate: There must be an
9 ascertainable class and a well-defined community of interest in the questions of law and fact at
10 issue. *See Vasquez v. Superior Ct.* (1971) 4 Cal. 3d 800, 809, 484 P.2d 964. The Settlement Class
11 satisfies this standard. Indeed, where, as here, the plaintiff brings false advertising claims pursuant
12 to the UCL, CLRA, and/or FAL, seeking relief for injuries resulting from the defendant’s uniform
13 misrepresentations and/or omissions, courts have consistently granted class certification. *See, e.g.,*
14 *McAdams v. Monier, Inc.* (2010) 182 Cal. App. 4th 174, 182, 184 (certification appropriate where
15 defendant “made a single material misrepresentation to class members that consisted of a failure to
16 disclose a particular fact regarding its roof tiles”); *accord Krommenhock v. Post Foods, LLC* (N.D.
17 Cal. 2020) 334 F.R.D. 552, 565; *Dickey v. Advanced Micro Devices, Inc.* (N.D. Cal. Jan. 17, 2019)
18 2019 WL 251488, at *6; *Johns v. Bayer Corp.* (S.D. Cal. 2012) 280 F.R.D. 551, 558-59; *see also*
19 *Bradach v. Pharmavite, LLC* (9th Cir. 2018) 735 Fed. Appx. 251, 255 (“CLRA and UCL claims are
20 [i]deal for class certification . . .”); *Walker v. Life Ins. Co. of the Sw.* (9th Cir. 2020) 953 F.3d 624,
21 627-28; *Chapman v. Skype Inc.* (2013) 220 Cal. App. 4th 217, 229. Further, “[w]hen the court has
22 not yet entered a formal order determining that the action may be maintained as a class action, the
23 parties may stipulate that it be maintained as a class action for the purpose of settlement only.” 2
24 *Newberg on Class Actions* (“Newberg”) § 11.27 (4th ed. 2002). The Court should follow suit here.

25 1. An Ascertainable Class Exists

26 Ascertainability is satisfied when the class definition is “sufficient to allow a member of [the
27 class] to identify himself or herself as having a right to recover based on the [class] description.”

1 *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal. 5th 955, 980. Here, the manner in which the class is
2 defined enables an objective determination of whether a person is or is not a member. Indeed, as
3 consumers must enroll in the Cricut Subscriptions via the Cricut Website or App and submit their
4 payment information, Defendant is aware of the identity of each and every Settlement Class
5 Member. *See* Compl. ¶ 3. And, based on the information provided by Cricut, the Settlement Class
6 is sufficiently numerous to warrant class certification. *See Turcios v. Carma Lab'ys, Inc.* (C.D. Cal.
7 2014) 296 F.R.D. 638, 645 (“Courts have held that numerosity is satisfied when there are as few as
8 39 potential class members.”).

9 **2. There Is A Well-Defined Community Of Interest In The**
10 **Questions Of Law And Fact Involved**

11 The community of interest requirement consists of (1) predominant questions of law or fact,
12 (2) class representatives whose claims and defenses are typical of the class, and (3) plaintiffs who
13 can adequately represent the class. *See Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 470.

14 The proposed Settlement Class satisfies each of these requirements.

15 **a. Predominant Questions Of Law And Fact Exist**

16 The “predominance” requirement does not mean that all questions of law or fact must be
17 common to every class member. Indeed, a single common question will satisfy the rule. *Collins v.*
18 *Rocha* (1972) 7 Cal. 3d 232, 238, 497 P.2d 225. Likewise, a class action is appropriate even if each
19 member of the class may at some point be required to make an individual showing as to his or her
20 eligibility for recovery or as to the amount of his or her damages. *Vasquez*, 4 Cal. 3d at 815–816.

21 Here, the common, overriding issues in this litigation are whether Defendant’s auto-renewal
22 charges comply with the ARL. “Courts considering similar claims of unlawful payment policies
23 routinely certify classes based on evidence of a common policy.” *Pichardo v. Carmine’s Broadway*
24 *Feast Inc.* (S.D.N.Y. Sept. 26, 2016) 2016 WL 5338551, at *3; *see also Cassesse v. Washington*
25 *Mutual, Inc.* (E.D.N.Y. 2008) 255 F.R.D. 89, 98 (certifying a class of consumers who “who paid or
26 will be demanded to pay prohibited fees”). Since Plaintiff alleges that Defendant engaged in a
27 common course of conduct, predominance is met.

1 ***b. The Class Representative’s Claims Are Typical Of***
2 ***The Claims Of The Other Class Members***

3 A plaintiff’s claims are “typical” of the class members’ claims where they stem from the
4 same practice and are based on the same legal theories. *See Classen v. Weller* (1983) 145
5 Cal.App.3d 27, 46. “[T]he typicality requirement may be satisfied even if there are factual
6 distinctions between the claims of the named plaintiffs and those of the class members [or]
7 differences in the amount of damages claimed” *Id.* The typicality requirement is met here
8 because Plaintiff assert the same legal claims as the Class Members, arising from the same facts –
9 she paid and was assessed auto-renewal charges that she alleges violates the ARL, in the same
10 manner as all Settlement Class Members. *See Daniels v. Centennial Group, Inc.* (1993) 16
11 Cal.App.4th 467, 473.

12 ***c. Adequacy***

13 Next, “Plaintiffs seeking class certification have the burden of proving the adequacy of their
14 representation by a member of the putative class.” *Jones v. Farmers Insurance Exchange* (2014)
15 221 Cal.App.4th 986, 998. The “adequacy” requirement is satisfied where Plaintiff’s counsel are
16 experienced, qualified, and capable, and the Plaintiff’s interests are not antagonistic to the interests
17 of the Class Members. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450
18 (“Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct the
19 proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.”).
20 Moreover, adequacy is presumed where a fair settlement was negotiated at arm’s length. *See*
Newberg § 11.28, at 11-59.

21 Plaintiff’s counsel and Plaintiff here have vigorously and competently pursued the Class
22 Members’ claims, and there is no reason to believe that Plaintiff has interests that are antagonistic to
23 the Class Members’ interest. Indeed, Plaintiff – like every Settlement Class Member in this case –
24 enrolled in a Cricut Subscription that automatically renewed during the Class Period. *See* Villegas
25 Decl. ¶ 2; Compl. ¶ 7. Plaintiff and Class Members thus have the same interest in recovering the
26 damages to which they are entitled. Plaintiff does not have any interest antagonistic to those of the
27 proposed Settlement Class, and her pursuit of this litigation is clear evidence of that. *See* Villegas

1 Decl. ¶ 9; *see also id.* ¶¶ 5-10. Plaintiff’s counsel also are highly experienced class-action attorneys,
2 with particular expertise in class actions involving alleged ARL violations. *See* Venditti Decl. ¶¶
3 12-13. A copy of Bursor & Fisher’s resume is attached as **Exhibit 2** to the Venditti Declaration.

4 ***d. Superiority Of The Class Action Device***

5 Class adjudication provides substantial benefits to the litigants and the Court and is the
6 superior way to resolve the controversy. *See Reyes v. San Diego Cnty. Bd. of Supervisors* (1987)
7 196 Cal.App.3d 1263, 1271. Class actions are favored in consumer cases such as this one. *See*
8 *Clothesrigger v. GTE Corp.* (1987) 191 Cal.App.3d 605, 610. The class device permits all claims to
9 be resolved only once, with binding effect. The alternative is for each Class Member to file a
10 separate case. But such small claims would not be economically feasible. Thus, absent
11 certification, most Class Members could never seek redress. That would be unjust. Certification of
12 a Settlement Class here is the best way to “achieve economies of time, effort and expense, and
13 promote uniformity of decision as to persons similarly situated, without sacrificing procedural
14 fairness” *Amchem Prod., Inc. v. Windsor* (1997) 521 U.S. 591, 615.

15 **C. The Notice Satisfies The Requirements Of California Law**

16 Both the forms of Notice (Exs. B and C to the Settlement Agreement) and the procedure
17 proposed for disseminating notice meet the requirements of California law, including Cal. Rules of
18 Court, Rule 3.769(f) (“The notice must contain an explanation of the proposed settlement and
19 procedures for class members to follow in filing written objections to it and in arranging to appear at
20 the settlement hearing and state any objections to the proposed settlement.”). The Notices
21 accurately inform Class Members of the salient terms of the Settlement, the Settlement Class to be
22 certified, the final approval hearing date, and the rights of all parties, including the rights to file
23 objections and to opt out of the Class.

24 Class Counsel has selected Analytics Consulting LLC (“Analytics”) to act as the Settlement
25 Administrator. Analytics is a prominent and well-respected claims administrator that has handled
26 thousands of class action settlements and has the expertise to provide the best practicable notice in
27 the circumstances and to ensure a smooth claims process. *See* Venditti Decl. ¶ 12. Analytics will

1 implement the Settlement and Notice Plan agreed to by the Parties. The Parties selected the
2 Settlement Administrator after Plaintiff solicited a bid from Analytics, which estimated that the cost
3 of implementation of the notice plan would be approximately \$49,363. *See id.*

4 Notice should be “reasonably calculated, under all the circumstances, to apprise interested
5 parties of the pendency of the action and afford them an opportunity to present their objections.”
6 *Duran v. Obesity Research Inst., LLC* (2016) 1 Cal.App.5th 635, 647. The Settlement’s notice are
7 contained in Paragraphs 46 through 51 of the Settlement Agreement. Notice will be provided using
8 a three-pronged approach to be conducted by the Settlement Administrator: direct notice by email or
9 U.S. Mail to all Class Members whose email or mailing addresses Defendant can identify in its
10 records (after updating by use of the National Change of Address Registry), along with a Settlement
11 Website containing all key documents from the case, including the Notice documents, the
12 Settlement, and the Claim Form to the case website. *See* Settlement ¶¶ 47-48.

13 The Settlement Agreement provides that Class Members will have 45 days to submit a
14 Claim Form from the date that notice goes out. *See id.* ¶ 2. The Claim Form will be available for
15 downloading and may be completed and submitted online at the Settlement Website or submitted
16 via U.S. Mail. *See id.* ¶ 52. Thus, the form of Notice and the proposed Notice procedures amply
17 satisfy the requirements of due process.

18 **V. CONCLUSION**

19 For the foregoing reasons, Plaintiff requests that the Court grant preliminary approval to the
20 Settlement and enter the Preliminary Approval Order in the form submitted.

1 Dated: August 22, 2024

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3 By: 
4 _____
5 Julia K. Venditti

6 Neal J. Deckant (State Bar No. 322946)
7 Julia K. Venditti (State Bar No. 332688)
8 1990 North California Boulevard, 9th Floor
9 Walnut Creek, CA 94596
10 Telephone: (925) 300-4455
11 Facsimile: (925) 407-2700
12 Email: ndeckant@bursor.com
13 jvenditti@bursor.com

14 *Attorneys for Plaintiff and the Putative Class*