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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 MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARD

Judge: Hon. Blaine Bowman
Date: April 11, 2025
Time: 8:30 a.m.
Dept.: C-74

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **April 11, 2025**, at **8:30 a.m.**, in Department C-74 of the above captioned Court, located at 330 West Broadway, San Diego, CA 92101, Plaintiff Heather Villegas ("Plaintiff" or "Class Representative") will move, and hereby does move, for an Order: (1) approving the payment of attorneys' fees, costs, and expenses in the amount of $220,000, equal to approximately 24.6 percent of the total cash value of the settlement fund; (2) granting Plaintiff an incentive award of $5,000 in recognition of her efforts on behalf of the Settlement Class; and (3) awarding such other and further relief as the Court deems reasonable and just.

This Motion is made on the grounds that the attorneys' fees, costs, and expenses were reasonably incurred, and that the legal requirements for an award of fees, costs, expenses and incentive awards have been satisfied.

This Motion is based on this Notice of Motion; the accompanying Memorandum of Points and Authorities; the Declaration of Julia K. Venditti (the "Venditti Decl.") and the exhibits attached thereto, including the Class Action Settlement Agreement and Release (the "Settlement Agreement" or "Settlement"); the Declaration of Heather Villegas (the "Villegas Decl."); the pleadings and papers on file in this action; and such other evidence and argument as may subsequently be presented to the Court.

Dated: January 2, 2025

Respectfully submitted,

BURSOR & FISHER, P.A.

By: 
Julia K. Venditti

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I. INTRODUCTION

The Class Action Settlement Agreement (the "Settlement Agreement" or "Settlement") between Plaintiff Heather Villegas ("Plaintiff" or the "Class Representative") and Defendant Cricut, Inc. ("Defendant" or "Cricut") (together with Plaintiff, the "Parties"), if finally approved, resolves Plaintiff's and the Class Members' claims against Peacock stemming from alleged violations of California's Automatic Renewal Law ("ARL"), Cal. Bus. & Prof. Code §§ 17600, *et seq*. On October 18, 2024, the Court granted preliminary approval to the Settlement, which has a total cash settlement value of $895,000. *See* Declaration of Julia K. Venditti ("Venditti Decl."), Ex. 1 ("Settlement Agreement") ¶¶ 5, 36, 41-42.[1]

The Settlement provides an exceptional result for the Class by delivering immediate cash to the approximately 284,000 California residents who, from January 1, 2018, through October 18, 2024, incurred renewal fee(s) in connection with Cricut's offerings for paid Cricut Subscriptions. *See* Venditti Decl. 28; *see also* Settlement ¶ 28. Under the terms of the Settlement, Cricut will establish a non-reversionary, **all-cash** "common fund" in the amount of $625,000 (the "Class Settlement Fund"), which will be used to pay all approved claims by Class Members, as well as a Court-approved incentive award of up to $5,000 to Plaintiff in recognition of her efforts on behalf of the Settlement Class. *See* Settlement ¶¶ 5, 34. Settlement Class Members wishing to receive cash must timely submit a valid Claim Form to the Settlement Administrator by the Claims Deadline. *See id.* ¶ 34. Settlement Class Members who do so will receive a *pro rata* portion of the $625,000 Settlement Fund, following the deduction of the class representative incentive payment. *See id*. ¶¶ 34, 38. Additionally, Defendant has agreed to separately pay attorneys' fees and expenses up to $220,000, subject to Court approval, and has agreed to pay up to $50,000 to the Settlement Administrator for the costs of claims and settlement administration. *See id*. ¶¶ 36, 41-42. Altogether, these amounts represent a total cash settlement value of $895,000. *See id*.

[1]The Class Action Settlement Agreement and Release (the "Settlement Agreement" or "Settlement") and its exhibits are attached as **Exhibit 1** to the concurrently-filed Declaration of Julia Venditti ("Venditti Decl."). All other exhibits and declarations referenced in this brief are also attached as exhibits to the Venditti Declaration.

Furthermore, in connection with the settlement, Defendant has agreed to send written notice to all California consumers of Cricut Subscriptions via e-mail, if available, with a link to updated terms and services, which shall include all information required by California's ARL, Bus. & Prof. Code §§ 17600, *et seq*. *See id*. ¶ 35. Cricut shall provide written certification to Class Counsel that such notice was sent. *See id*. This prospective relief will benefit Class Members for years to come.

Obtaining this exceptional relief came with significant risks. As of the date Plaintiff filed her Complaint against Defendant in this matter, there was little, if any, binding authority interpreting the ARL's requirements of "visual proximity" and "affirmative consent" under Section 17602(a) of the ARL (neither of which are defined by statute), or case law applying the gift provision under Section 17603 or the good faith safe harbor provision under Section 17604(b) of the ARL. Thus, the scope of the statute was in dispute. Moreover, only one court had issued an opinion on a contested class certification motion based on ARL violations, *see Robinson v. OnStar, LLC* (S.D. Cal. Jan. 22, 2020) 2020 WL 364221, and only one ARL case has progressed through summary judgment, *see Ingalls v. Spotify USA, Inc.* (N.D. Cal. Jul. 17, 2017) 2017 WL 3021037. As a result, in pursuing class-wide relief based on Defendant's alleged ARL violations, Plaintiff endured significant risk and battled through hard-fought litigation involving complex factual investigation into Cricut's disclosure practices and dispositive motion practice on novel legal issues. In light of these risks, when the Parties thought that there was a potential for resolution, they sought the assistance of a well-respected mediator. That is, rather than put Cricut's arguments to the test at the class certification and summary judgment stages, Plaintiff elected to achieve meaningful, immediate relief for her fellow Class Members. The instant settlement was only reached with the assistance of Judge Richard Kramer (Ret.), an experienced neutral affiliated with JAMS, after a full-day mediation session on October 25, 2023, and months of follow-up settlement discussions. Thus, obtaining the exceptional settlement relief did not come easily.

Given the exceptional relief obtained by the Parties, Plaintiff respectfully requests, pursuant to Cal. Code Civ. Proc. §§ 382 and 1021.5, that the Court approve attorneys' fees, costs, and expenses of $220,000, equivalent to approximately 24.6 percent of the Settlement's maximum total

cash value, notice and administration expenses of $50,000, as well as an incentive award of $5,000 for Plaintiff for her services as class representative. Courts in this Circuit routinely approve fee requests for up to 25 percent of a settlement fund, and higher.[2] Thus, Class Counsel's request here for 24.6% in attorneys' fees, inclusive of litigation costs, is within the range of reasonableness, and it is supported by a lodestar cross-check. *See supra*; *see also* Venditti Decl. Ex. 2 (Bursor & Fisher's detailed billing diaries for this case). As such, the Court should approve the requested fee and incentive award, as well as notice and administration expenses of $50,000.

II. FACTUAL AND PROCEDURAL BACKGROUND

A brief summary of California's ARL, the litigation performed by Class Counsel for the Settlement Class's benefit, and the beneficial terms of the Settlement provide necessary context to the reasonableness of the requested fee and incentive awards. These issues are discussed in depth in Plaintiff's Motion for Preliminary Approval, filed August 22, 2024, and in the accompanying Declaration of Julia K. Venditti (the "Venditti Decl.").

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE APPROVED

The requested award for attorneys' fees, costs, and expenses of $220,000, which represents 24.6 percent of total cash value of the Settlement, is reasonable and should be approved in full.

When a class action case results in relief for the class, whether by settlement or by contested judgment, class counsel is entitled to a reasonable fee for services rendered, as approved by the Court and expenses reasonably incurred in obtaining relief. *See In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 552; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 254-

[2] *See, e.g.*, *Lealao v. Benefit Cal.* (2000) 82 Cal.App.4th 19, 36 ("The fee award … represents … less than the 25% commonly used"); *Lafitte v. Robert Half Intern. Inc.* (Cal.Super. Apr. 10, 2013) 2013 WL 9973202, at *2 (awarding attorneys' fees equal to "33.33% of the Gross Settlement Amount"); *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495 (affirming 33.33% fee award); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("Using the percentage of the benefits to class claimants as a benchmark, class counsel's … final fee award was 27.9 percent of the benefits. This is not out of line with class action fee awards calculated using the percentage-of-the-benefit method: 'Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.'") (citation omitted); *Turman v. Parent* (Cal. Ct. App., July 6, 2022) 2022 WL 2448115, at *8–9 (affirming "attorney fee award … that equaled 40 percent of the gross settlement amount").

255; *Lealao*, 82 Cal.App.4th at 26-34; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34-48. The Settlement requires Defendant to pay Class Counsel attorneys' fees and expenses awarded by the Court, up to $220,000. *See* Settlement ¶ 36. Class Counsel are entitled to an award of attorneys' fees under three alternative theories: (1) as a matter of contract under the Settlement; (2) pursuant to the statutory fee-shifting provisions of the CLRA, Cal. Civ. Code §§ 1750, *et seq*.; and/or (3) under the "private attorney general" doctrine, codified at Code of Civil Procedure § 1021.5. The Court should direct Defendant to pay Class Counsel the full amount of attorneys' fees and expenses.

A. Defendant Is Contractually Obligated To Pay Attorneys' Fees To Class Counsel

As discussed above, Defendant is contractually obligated to pay attorneys' fees and expenses. *See* Settlement ¶ 36. The promise to pay attorneys' fees was negotiated at arm's length with the assistance of a distinguished mediator, Judge Richard Kramer (Ret.), only *after* the other substantive settlement terms had been resolved. *See* Venditti Decl. ¶¶ 10, 14, 17. It was an essential term of the Settlement agreement that Defendant pay Class Counsel's fees, rather than having them deducted from the class recovery. California courts traditionally defer to fee agreements between parties if the agreement is otherwise valid. *Melendres v. City of Los Angeles* (1975) 45 Cal.App.3d 267, 282-83 ("…absent any legal factors voiding such agreement, or overriding equitable reasons that would have the same effect, when the parties do contract for fees it should govern the court's decision."); Cal. Civ. Proc. Code § 1021 (fees may be "left to the agreement" of the parties).

B. Class Counsel Are Entitled To Attorneys' Fees Under The CLRA

Plaintiff brought claims against Defendant under the CLRA. An award of fees to a plaintiff who prevails on CLRA claims is mandatory under Civil Code § 1780(d), which provides: "The court shall award court costs and attorneys' fees to a prevailing plaintiff in litigation filed pursuant to this section." In this case, the Class has recovered $625,000 in benefits for the Class. Indisputably, the Class is the "prevailing party." Therefore, a fee award to Class Counsel is mandatory under the CLRA.

C. Class Counsel Are Entitled To Attorneys' Fees Under Cal. Civ. Proc. § 1021.5

Yet a third basis for an award of fees is Cal. Civ. Proc. § 1021.5, which provides for recovery of reasonable attorneys' fees to a successful party in actions furthering important rights affecting the public interest where: "(a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, […] are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any." *Id*. Although § 1021.5 is phrased in permissive terms (the court "may" award), the scope of discretion under the statute is limited. A full award of fees is mandatory if the required elements are found to exist, absent "special circumstances" justifying a different result. *See Lyons v. Chinese Hosp. Ass'n* (2006) 136 Cal.App.4th 1331, 1344 & n.8. Here, all of these conditions are met, and Class Counsel are entitled to recover attorneys' fees pursuant to that statute.

1. Plaintiff Is The Successful Party

Plaintiff is the "successful party" under § 1021.5. A plaintiff need not obtain a judgment in their favor to be a successful party. Rather, a plaintiff is "successful" where they obtain the relief sought in the lawsuit, whether through a voluntary change in a defendant's conduct, a settlement, or otherwise. *Hogar Dulce Hogar v. Community Development Commission* (2007) 157 Cal.App.4th 1358. Here, Plaintiff obtained monetary and injunctive relief, as she sought in her complaint.

2. The Settlement Furthers An Important Right Affecting The Public Interest

This action furthered important rights affecting the public interest. This requirement is viewed broadly to encompass any litigation that furthers a legislative or constitutional goal. California undoubtedly has a strong interest in incentivizing lawyers to bring complex litigation under the ARL.[3] Here, the litigation furthered the Legislature's intention "to end the practice of

[3] *See, e.g.*, *Lopez v. Stages of Beauty, LLC* (S.D. Cal. 2018) 307 F.Supp.3d 1058, 1071 ("The purpose of the ARL is to protect consumers from unwittingly consenting to automatic renewals or subscription orders.") (citation omitted); *Kissel v. Code 42 Software, Inc.* (C.D. Cal. Apr. 14, 2016) 2016 WL 7647691, at *4-5 ("[T]he ARL was clearly enacted to protect consumers from 'the oppressive use of superior bargaining power' when entering into subscription or purchasing agreements.") (citation omitted).

ongoing charging of consumer credit or debit cards or third party payment accounts without the consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of service." Cal. Bus. & Prof. Code § 17600 (statement of legislative intent). Moreover, consumer protection actions such as this one have "long been judicially recognized to be vital to the public interest." *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1418; *see also Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 703 (§ 1021.5 fee award for UCL claim).

3. The Settlement Confers A Significant Benefit On The General Public Or A Large Class Of Persons

Section 1021.5 requires that the action have resulted in a significant benefit to the general public or a large class of persons. The Settlement will result in benefits to several hundred thousand Class Members, as well as to future Cricut customers who will be put on notice of Cricut's terms and services, which shall include all information required by California's ARL, Cal. Bus. & Prof. Code §§ 17600, *et seq.*as a result of the Settlement.

4. Necessity And Financial Burden Of Private Enforcement

Section 1021.5 fees are not recoverable if public enforcement had already been commenced or would have shortly taken place. *See In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1215 (availability of fees "looks to the adequacy of public enforcement"). But that is not the case here. No public agency sought to alter Defendant's practices or to recover the alleged unauthorized fees charged to Cricut subscription consumers. In addition, Defendant's practices of allegedly charging its subscribers unauthorized fees had been unchanged for several years prior to Plaintiff filing this case. Without Plaintiff filing this case, Class Members would not have recovered, and Defendant's practices would have remained unchanged.

5. Fees Are Not Paid Out Of Recovery

The last element under § 1021.5 is that "fees should not in the interest of justice be paid out of the recovery." Where a fund has been created to reimburse consumers for wrongful charges, courts routinely conclude that this factor has been met. *See Beasley*, 235 Cal.App.3d at 1418. Moreover, since a portion of the benefit obtained here is in the form of a $625,000 common fund

and injunctive relief, attorneys' fees must out of necessity come from a different source—in this case, the agreement by Defendant to pay attorneys' fees so awarded by the Court.

IV. THE AMOUNT OF FEES PROVIDED FOR IN THE SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. The Amount Of The Fees Is Appropriate Under The Percentage Of The Benefit Approach

Where class benefits are readily valued in monetary terms, a percentage of those benefits is an appropriate measure of a reasonable fee. *See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480, 506 ("[t]he percentage of fund method survives in California class action cases, and the trial court did not abuse its discretion in using it[.]") (quotation omitted). "Regardless of whether attorneys' fees are determined using the lodestar method or awarded based on a percentage-of-the-benefit analysis under the common fund doctrine, the ultimate goal … is the award of a reasonable fee to compensate counsel for their efforts, irrespective of the method of calculation." *In re Consumer Privacy Cases*, 175 Cal.App.4th at 557-58 (quotation omitted). Generally, a fee award between 20% and 30% of the settlement benefit is considered reasonable. *See Lealao*, 82 Cal.App.4th at 26-34, 36 (identifying the requested attorneys' fees as "significantly less than the 25% commonly used"). However, this is not an absolute rule under California law. Where warranted, courts have awarded fees as high as 40%. *See, e.g.*, *Turman*, 2022 WL 2448115, at *8–9.[4] It is not improper to address fees as a percentage of the benefits where a settlement provides for direct payment of fees by a defendant to class counsel.[5]

Here, the total value of the Settlement benefits is $895,000. The amount of fees (inclusive

[4] *See also, e.g.*, *Roos v. Honeywell Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1496 (affirming 37.5 percent fee award); *Lafitte v. Robert Half Intern. Inc.* (Cal.Super.Apr. 10, 2013) 2013 WL 9973202, at *2 (awarding attorneys' fees equal to "33.33% of the Gross Settlement Amount"); *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495 (affirming 33.33% fee award); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn.11 (awarding 27.9% in fees).

[5] *See Lealao*, 82 Cal.App.4th at 31-32 ("[T]he percentage-of-the-benefit approach has been extended to cases in which (1) the 'fund' that results from an adjudication or settlement is not deposited in a separate account; (2) the value of the 'fund' depends on the number of valid claims presented or is imprecise for other reasons; and (3) attorney fees are not deducted from monies made available to the class, but are paid by the defendant directly. All that has been required in many such cases is that the benefits received by the class, or the range thereof, can be monetized without undue speculation.").

of expenses) counsel seeks is $220,000. An award of that total fee would represent roughly 24.6 percent of the total value of the Settlement. In fact, the true percentage Class Counsel seeks is even smaller than that because the $220,000 fee that Class Counsel is in the aggregate; Class Counsel is not seeking a separate award of costs and expenses in addition to that amount. The percentage sought falls well within the range of reasonable attorneys' fees awarded in other cases involving similar recoveries in California and across the nation. *See, e.g.*, *id*. at 36; *supra* note 2.

B. Alternatively, The Amount Of The Fee Award Is Appropriate Under The Lodestar-And-Multiplier Approach

The other method used by California courts to determine the amount of fees is the "lodestar" method. *See, e.g.*, *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134. Under this approach, an initial "lodestar" is calculated by multiplying the reasonable hours expended in the action by a reasonable hourly rate for each attorney expending that time. *See Lealao*, 82 Cal.App.4th at 26. Once the court has calculated the lodestar, it may increase or decrease it by applying a positive or negative "multiplier" to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented. *See* Richard M. Pearl, *California Attorney Fee Awards* (3d ed.2017) § 10.3.

Here, as of January 2, 2025, Bursor & Fisher, P.A. ("Bursor" or "Class Counsel") has billed a total of 328.6 hours, which at their current hourly rates amounts to a current total lodestar of $198,215.00. *See* Venditti Decl. 31; *see also id*., Ex. 2. Therefore—after deducting the $16,251.22 in out-of-pocket costs and expenses Bursor has reported in connection with the prosecution of this case thus far, *see id*., Ex. 3 (itemized list of costs and expenses through 1/2/2025) from the requested award of $220,000—the requested fee award reflects a 1.02 times multiplier on Class Counsel's regular hourly rates, which, as discussed below, is well within the range of reasonableness under the circumstances of this case. Further, Class Counsel anticipates spending an extra 50-75 hours in securing final approval and judgment, including handling issues that may arise with the notice campaign, answering class member questions, responding to any objections, appearing at the final approval hearing, and handling any appeals, if applicable. This future work

should be considered in the initial lodestar calculation.[6] Taking into account these additional hours, Class Counsel anticipates that the requested fee award would amount to a 0.85 to 0.9 multiplier at Class Counsel's blended average billing rate of $552.08. As discussed below, such a multiplier is reasonable given the complexity of the litigation, the hours and resources devoted to this litigation, the outstanding results achieved, and the significant risk of non-payment.

1. Class Counsel Spent A Reasonable Number Of Hours On This Litigation

The starting point for the determination of the reasonable number of hours meriting compensation is, of course, the evidence of the actual number of hours spent on the litigation. *Horsford v. Board of Trustees* (2005) 132 Cal.App.4th 359, 396. "The line between over- and under-preparation is difficult to police, and so the Ninth Circuit has cautioned against second-guessing a winning attorney's judgment about the time necessary to present a winning case." *Dragu v. Motion Picture Indus. Health Plan* (N.D. Cal. 2016) 159 F. Supp. 3d 1121, 1129 (citation omitted). Class Counsel worked very efficiently. A single law firm, Bursor & Fisher, P.A., served as Class Counsel. Class Counsel have submitted their detailed daily billing records showing what work was done by whom. *See* Venditti Decl., Ex. 2. These records confirm Bursor & Fisher's efficient billing. For example, Bursor & Fisher strives to assign as much work as possible to less senior lawyers who bill at lower hourly rates in order to minimize fees for the class. Accordingly, most of the hours billed to this case reflects the work of Bursor associates. Furthermore, Defendant

[6] *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.* (9th Cir. 2018) 746 Fed. Appx. 655, 659 (holding that "[t]he district court did not err in including projected time in its lodestar cross-check; the court reasonably concluded that class counsel would, among other things, defend against appeals and assist in implementing the settlement"); *Perez v. Rash Curtis & Associates* (N.D. Cal. Apr. 17, 2020) 2020 WL 1904533, at *20 (including future time in lodestar analysis because "[t]he Court recognizes that class counsel will indeed incur continued fees in both the appeal of this case and the subsequent litigation"); *Reyes v. Bakery Confectionery Union & Indus. Int'l Pension Fund* (N.D. Cal. 2017) 281 F. Supp. 3d 833, 856 (including, over the defendants' objection, "125 anticipated future hours" to be spent on "communicating with the settlement administrator and responding to inquiries from class members" in the lodestar calculation); *Corzine v Whirlpool Corp.* (N.D. Cal. Dec. 31, 2019) 2019 WL 7372275, at *11 (including "an estimate of 250 hours for future work to complete Settlement's claims process through 2026" in the lodestar calculation); *Hausfel v. Cohen Milstein Sellers & Toll, PLLC* (E.D. Penn. Nov. 30, 2009) 2009 WL 4798155, at *17 (holding that "[w]here attorneys provide additional services post-settlement … courts should award fees for those services").

was represented by very able counsel. Plaintiff was able to obtain critical information through informal discovery, and settlement was reached only after a mediation, and extensive negotiations amongst counsel. Given the complexity of the case, the nature of the litigation, and the difficulty of the settlement negotiations, the number of hours Class Counsel spent was reasonable.

2. Class Counsel's Hourly Rates Are Reasonable

The hourly rates for each of the lawyers who staffed the case, which are set forth in the accompanying Venditti Declaration, are reasonable and commensurate with rates approved in other class actions litigated in this County. In general, California law requires less documentation of comparable rates than federal law. *See Davis v. City of San Diego* (2003) 106 Cal.App.4th 893, 903 (affirming rate awarded even though no evidence other than counsel's own statements presented; rejecting federal standard in favor of more lenient California standard). Regardless, courts have repeatedly held rates commensurate with Class Counsel's rates to be fair and reasonable in the context of class actions. *See, e.g.*, *Stuart v. Radioshack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645, at *6 (approving of a $708 average rate in class action). Here, Class Counsel's combined blended rate is $552.08—well within the local market's range of reasonableness.[7]

3. All Relevant Factors Support Applying A Multiplier To Class Counsel's Lodestar

The lodestar analysis is not limited to the initial mathematical calculation of class counsel's base fee. *See Morales v. City of San Rafael* (9th Cir. 1996) 96 F.3d 359, 363-64. Rather, Class Counsel's actual lodestar may be enhanced according to those factors that have not been "subsumed within the initial calculation of hours reasonably expended at a reasonable rate." *Hensley v. Ekerhart* (1983) 461 U.S. 424, 434 n.9 (citation omitted); *see also Morales*, 96 F.3d at 364. In a historical review of numerous class action settlements, the Ninth Circuit found that lodestar

[7] *See, e.g.*, *Dawson v. Hitco Carbon Composites, Inc.* (C.D. Cal. Nov. 25, 2019) 2019 WL 7842550, at *9 ("The 2018 Real Rate Report offers several relevant data points for fees in the Central District. In Los Angeles, partners have an hourly rate ranging from $450 to $955, and associates from $382 to $721."); *Waldbuesser v. Northrop Grumman Corp.* (2017) 2017 WL 9614818, at *5 n.2 ("last year three courts approved rates of $998 for attorneys with at least 25 years of experience"); *Roberti v. OSI Sys., Inc.* (C.D. Cal. Dec 8, 2015) 2015 WL 8329916, at *7 (approving hourly rates of $525 to $975); *Miller v. Wise Co., Inc.* (C.D. Cal. Feb. 11, 2020) (approving $900 hourly rate); *Flores v. Barr* (C.D. Cal. Nov. 12, 2019) 2019 WL 7171539, at *4 (approving $950 hourly rate).

multipliers normally range from 0.6 to 19.6. *See Vizcaino v. Microsoft Corp*. (9th Cir. 2002) 290 F.3d 1043, 1051 n.6. State and federal courts often approve multipliers of greater than 4. For instance, in recent years, District Judge Yvonne Gonzalez Rogers explicitly approved a multiplier of between 13.4 to 18.5 in a case where Bursor & Fisher was also class counsel. *See Perez*, 2020 WL 1904533, at *20-21.[8] As shown below, the amount sought is reasonable in light of, *inter alia*, the procedural and substantive issues raised by this litigation and the contingent risks borne by Class Counsel in prosecuting the case with no assurance of any compensation.

Factors generally considered in applying a multiplier include: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the requisite legal skill necessary; (4) the preclusion of other employment due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the circumstances; (8) the amount at controversy and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See generally Serrano*, 20 Cal.3d at 49.

Most, if not all, of these factors are present in this case and support the award of a multiplier. First, this case required considerable time, skill, and labor, as described in the declaration of Class Counsel filed herewith. Class Counsel has been working on this case since January 2022, when it began investigating Defendant's violations of the ARL. *See* Venditti Decl. ¶ 4. The theory of liability was relatively novel, and developed case law regarding the ARL is sparse. *See id*. ¶¶ 4-7. For instance, as of the date Plaintiff filed her Complaint against Defendant in this matter, there was little, if any, binding authority interpreting the ARL's requirements of "visual proximity" and "affirmative consent" under Section 17602(a) (neither of which are defined by statute), the gift provision under Section 17603 of the ARL, or the good faith safe harbor provision under Section 17604(b) of the ARL. *See id*. ¶¶ 6-7. Thus, the scope of the statute was, and remains, in dispute.

[8] *See also, e.g.*, *Perera v. Chiron Corp.* (N.D. Cal. 1999, 2000) Civ. No. 95-20725-SW (approving multiplier of 9.14); *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig*. (N.D. Ohio 2003) 268 F. Supp. 2d 907, 938 (approving 19.8 multiplier); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.* (E.D. Pa. May 19, 2005) 2005 WL 1213926, at *18 (awarding multiplier of 15.6)

See id. As a result, Class Counsel's investigation was extensive and involved in-depth research into, among other things, industry practices regarding automatic renewal offers, Defendant's billing practices, the legislative history of the ARL, the assertion of predicate claims for ARL violations under California's consumer protection statutes, application of the ARL's provisions, and the requirements of statutory standing under California law. *See id*. ¶ 7. As described in detail in the accompanying Venditti Declaration, Class Counsel also expended considerable time and labor on the settlement negotiation, approval, and administration processes. *See id*. ¶¶ 10-15.

Next, the novelty and difficulty of the questions presented in this action are also significant factors supporting application of a lodestar multiplier. Specifically, this case involved California's ARL, which is in its nascent stages of litigation. *See id*. ¶¶ 4-7. Briefing the relevant issues required both an examination of the statute's text using traditional canons of statutory interpretation and a review of the statute's legislative history. The complexity of the case and skill required are apparent where, for example, the Parties would have likely argued over whether Cricut's automatic renewal offer terms and disclosures were presented in "visual proximity" to the request for consent on the subscription page, and whether Defendant obtained Plaintiff's and Class Members' "affirmative consent" despite the fact that the subscription agreement contained no mechanism that required consumers to expressly manifest their assent to the automatic renewal offer terms associated with subscriptions. *See id*.[9] Thus, the novelty and difficulty of the questions presented in this action support application of a multiplier.

For the same reasons, the magnitude, complexity of the litigation, and skill required also support applying a lodestar multiplier in this case. As described, litigation under the ARL presents difficult questions. Counsel must be well-versed in the law and prepared to deal with the unusual aspects of such litigation to successfully prosecute a case like this one. Class Counsel is intimately familiar with class actions under Cal. Bus. & Prof. Code §§ 17600. *See, e.g*., Venditti Decl. ¶ 40.

[9] Similarly, the Parties have opposing views as to whether Defendant's Cricut subscriptions qualify as "goods, wages, merchandise, or products" and are therefore subject to the gift provision under Section 17603 of the ARL, which in turn would give rise to disputes among the Parties concerning the proper measure of class-wide damages. *See id*. ¶ 5. Moreover, Defendant would likely challenge Plaintiff's ability to establish statutory standing on her own behalf and/or on behalf of the putative Class. *See id*. ¶ 7.

Not only did Class Counsel avoid any major pretrial failures, but Class Counsel also positioned the case for an excellent resolution.

A multiplier is also appropriate because of the contingent risk Class Counsel assumed. Indeed, Class Counsel undertook large risks in filing and pursuing this case. Class Counsel represented Plaintiff and the Class on a full contingent fee basis. *See id*. ¶ 31. As a result, Class Counsel have not received any compensation for their services to date, and they have spent $16,251.22 on the prosecution of the case to date and have litigated it from inception without any assurance of compensation for their work. *See id*. ¶¶ 31-34. Significantly, the risk of non-payment in a case handled on a contingent basis justifies augmentation of a lodestar. Indeed, the Supreme Court has noted it as "one of the most common fee enhancers[.]" *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 579. For this reason, positive multipliers in these circumstances are frequently granted. *See Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 66 (2.5 multiplier).

Most critically, a multiplier is appropriate because of the results achieved. *See In re Nat'l Collegiate Athletic Assoc. Athletic Grant-in-Aid Cap Antitrust Litig.* (N.D. Cal. Dec. 6. 2017) 2017 WL 6040065, at *7 ("Foremost among these considerations, however, is the benefit obtained for the class."). As discussed herein, the Settlement provides a substantial and immediate cash benefit to the Settlement Class. Additionally, as described above, the Settlement will also cause Defendant to change their subscription practices to comply with the ARL. Class Counsel achieved these results despite Defendant being represented by very skilled counsel.

As noted in *Wershba*, a multiplier can range "up to 4 or even higher." This is certainly a case where an upward multiplier is warranted. After all, the $220,000 in fees and costs sought by Class Counsel represents only 24.6 percent of the total monetary value of the Settlement. Class Counsel should be awarded for resolving this case efficiently, without bloated staffing, and without overbilling—not punished.

V. LITIGATION COSTS AND EXPENSES WERE REASONABLY INCURRED

To date, Class Counsel incurred out-of-pocket costs and expenses in the aggregate amount of $16,251.22 in prosecuting this litigation on behalf of the class. *See* Venditti Decl. ¶ 34. Those

expenses are itemized in the declaration submitted to the Court herewith. *See id*., Ex. 3. The Court should authorize their reimbursement from the Class recovery. California law allows recovery of pre-settlement litigation costs in the context of a class action settlement fund. *See Serrano*, 20 Cal. 3d at 35. Class Counsel is entitled to reimbursement for standard out-of-pocket expenses that an attorney would ordinarily bill a fee-paying client. *See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19. The incurred costs include deposition fees, court filing fees, courier charges, travel costs, postage fees, and other related costs. *See* Venditti Decl., Ex. 3 (an itemized listing of each out-of-pocket expense incurred by Bursor & Fisher in connection with this case).

VI. THE PROPOSED INCENTIVE AWARD TO THE CLASS REPRESENTATIVE IS REASONABLE AND SHOULD BE APPROVED

The Settlement provides that, subject to the Court's approval, Plaintiff Heather Villegas will receive an incentive award in the amount of up to $5,000 in recognition of her time and efforts on behalf of the Class. *See* Settlement ¶ 38. Incentive awards for class representatives are common in class actions, where the class representative's personal claims alone would never justify the effort required to prosecute complex litigation.[10] Incentive awards compensate the class representatives for actual costs in time, money, and the disruption of life incurred in the prosecution of the litigation. Such awards also encourage future plaintiffs to come forward and vindicate the rights of other injured parties despite having little to gain personally from their claims. *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th at 1394-95. The Class Representative in this case merits this award, and Class Counsel recommends approval of the award. *See* Venditti Decl. ¶¶ 43-45; Declaration of Heather Villegas ("Villegas Decl.") ¶¶ 3-10.

In this case, the participation of Plaintiff Heather Villegas was critical to the ultimate success of the case. *See* Venditti Decl. ¶ 43. Ms. Villegas spent "many dozens of hours" protecting the interests of the Class through her involvement in this case. *See* Villegas Decl. ¶ 10. Plaintiff assisted Class Counsel in investigating her claims by, *inter alia*, detailing her Cricut subscription account history and the automatic renewal charges that she paid in connection therewith; describing

[10] *See, e.g., In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-95 (approving $10,000 incentive payments to class representatives).

to Class Counsel her relationship as a subscriber with Defendant, the nature of the renewal charges associated with Cricut, her sign-up process and any associated disclosures, and a history of the charges she paid; supplying supporting documentation; and aiding in drafting the Complaint. *See id*. ¶¶ 3-4, 6. During the course of this litigation, Plaintiff kept in regular contact with her lawyers, conferring with them regularly by phone and e-mail to discuss the status of the case, case strategy, anticipated motions, forthcoming discovery issues, mediation, and the prospects of settlement. *See id*. ¶¶ 5, 7. Further, Plaintiff searched and preserved documents likely to be requested in formal discovery and was prepared to testify at deposition and trial, if necessary. *See id*. ¶ 6. Finally, Plaintiff was actively consulted during the process of negotiating the settlement, and she kept herself fully informed and involved regarding the Parties' mediation and settlement efforts. *See id*. ¶ 7. She also carefully reviewed the Settlement Agreement and discussed the material terms with her attorneys prior to signing. *See id*. On these facts, the requested incentive payment of $5,000 is fair and reasonable. Moreover, the requested $5,000 is well within the range of incentive awards approved by other courts in California courts.[11] The Class therefore requests, and Class Counsel recommends, that the Court approve the payment of an incentive award in the amount of $5,000 to Plaintiff Villegas. Notably, no Class Members objected to Plaintiff's receipt of this award.

VII. CONCLUSION

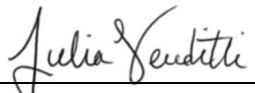
For the foregoing reasons, the Court should approve the provisions of the Settlement authorizing an award of attorneys' fees and expenses to Class Counsel in the amount of $220,000, payable by Defendant, and an award of $5,000 as an incentive award for Plaintiff Villegas. An award of these amounts is reasonable in light of the skill and persistence displayed by Class Counsel, the risk and delay undertaken as a result of counsel's contingent representation of the Class and the benefits conferred by the Settlement on the Class Members.

[11] *See, e.g.*, *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393-95 (approving $10,000 incentive payments to class representatives); *see also Loreto v. General Dynamics Information Technology, Inc.* (S.D. Cal., Feb. 2, 2022) 2022 WL 3013029, at *13 ("[T]he $10,000 award Plaintiff seeks is within the range of reasonableness, as courts have awarded service payments more than $10,000 in … class actions that conclude in settlement agreements."); *Guerrero v. United States Gypsum Company* (S.D. Cal., Dec. 30, 2022) 2022 WL 18026330, at *8 ("[T]he Court finds that a $5,000 Service Award is warranted.").

Dated: January 2, 2025

Respectfully submitted,

BURSOR & FISHER, P.A.

By: 
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