

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

**Tal Nelkin and Melissa Cuevas v. Kroto Inc. d/b/a iCanvas and
iCanvasArt, and Leonid Oks**

Nelkin v. Kroto · No. 2:23-cv-08241-KK-MAA · Decided March 31, 2025

OPINION

Tal Nelkin v. Kroto, Inc.

PER CURIAM.

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA

10 TAL NELKIN and MELISSA Case No.: 2:23-cv-08241-KK-MAA 11 CUEVAS, individually
and on behalf of all similarly situated persons, ORDER AND FINAL JUDGMENT 12

GRANTING FINAL APPROVAL OF

13 Plaintiffs, CLASS SETTLEMENT, CERTIFYING

SETTLEMENT CLASS, AND

14

v. AWARDING ATTORNEYS' FEES,

15 COSTS, AND SERVICE AWARDS

KROTO INC. d/b/a iCanvas and [DKT. 66] 16 iCanvasArt; and LEONID OKS, 17 Defendants.

Assigned to Hon. Kenly Kiya Kato 18 19 20 21 22 23 24 25 26 27 1 This matter is before the
Court on Plaintiffs' Unopposed Motion for Final 2 Approval of Class Settlement, Attorneys' Fees,
Costs, and Service Awards ("Motion"). 3 The Court has considered and reviewed the Motion
along with its accompanying 4 declarations and other materials, and the Injunctive Relief Class
Settlement Agreement 5 and its exhibits (the "Settlement Agreement" or "Agreement"). The Court
has also 6 considered the arguments of counsel and the pleadings and records in this case. As part
7 of the Settlement Agreement, Defendants Kroto Inc. and Lenoid Oks ("Defendants") 8 agree to
the certification of the Settlement Class for settlement purposes only. 9 For the reasons below, the
Court GRANTS the Motion, finally certifies the 10 Settlement Class, awards reasonable
attorneys' fees, costs, and service awards, and 11 enters Final Judgment.

12 I. FACTUAL AND PROCEDURAL BACKGROUND

13 This action was filed on October 2, 2023 and the operative Second Amended 14 Complaint
("SAC") (Dkt. 29) was filed on May 3, 2024. In the SAC, Plaintiffs allege 15 that Defendants
advertised misleading time-limited discounts and reference prices that 16 led consumers to

purchase the products believing they were getting a good deal. 17 Plaintiffs allege violations of California consumer protection statutes and common law 18 claims, namely, the California Unfair Competition Law (Bus. & Prof. Code § 17200 et seq.), the California False Advertising Law (Bus. & Prof. Code § 17500 et seq.), the 20 Consumer Legal Remedies Act (Cal. Civ. Code § 1750 et seq.), misrepresentation and 21 concealment, and unjust enrichment. 22 The parties engaged in litigation over a twelve-month period relating to the facts 23 and legal issues in this action. The parties participated in a full-day private mediation 24 on April 9, 2024 with Bruce Friedman, Esq. of JAMS, but the mediation was 25 unsuccessful. Prior to the mediation, the parties exchanged informal discovery and 26 prepared mediation briefs that discussed the claims and defenses in detail. The parties 27 thereafter exchanged disclosures, engaged in motion practice and in formal discovery. 1 On June 24, 2024, the Court denied Defendants' Motion to Dismiss or Alternatively 2 Transfer. Dkt. 40. The parties then resumed settlement discussions, resulting in the 3 instant settlement. 4 Before, during, and after the settlement discussions, the parties had an arms'- 5 length exchange of sufficient information to permit Plaintiffs and Class Counsel to 6 evaluate the claims and defenses and to meaningfully conduct informed settlement 7 discussions. Defendants produced formal and informal discovery, including historical 8 marketing, advertised discounts, pricing policies, and marketplace comparisons. Class 9 Counsel represent that they spent significant time and effort analyzing these records 10 and the underlying facts. 11 On January 16, 2025, the Court granted preliminary approval of the Settlement.

12 Dkt. 65.

13 II. THE SETTLEMENT

14 A. The Settlement Class 15 The Settlement Agreement contemplates certification of the following 16 Settlement Class for settlement purposes only: 17 All persons in California who purchased one or more Products from www.iCanvas.com or www.iCanvasArt.com, during the Class Period, at a 18 discount from a higher reference price. 19 Excluded from the Settlement Class are governmental entities; counsel of record 20 (and their respective law firms) for the Parties; Defendants and any of their 21 parents, affiliates, subsidiaries, independent service providers and all of their respective employees, officers, and directors; and the presiding judge in the 22 Action or judicial officer presiding over the matter, and all of their immediate 23 families and judicial staff. 24 Agreement ¶ 2.18. 25 The "Products" refers to "any and all products offered on www.iCanvas.com and 26 www.iCanvasArt.com, including but not limited to wall art and décor, canvas art prints, 27 posters, fine art papers, frames, and customized artwork offered on www.iCanvas.com 1 and iCanvasArt.com." Id. ¶ 2.14. The "Class Period" is "January 1, 2016 through the 2 date the Preliminary Approval Order is entered." Id. ¶ 2.3. The Preliminary Approval 3 Order was entered January 16, 2025. 4 B. Injunctive Relief Benefits 5 Under the Agreement, a stipulated injunction will be entered requiring 6 Defendants to modify the advertising at issue in this case. Id. ¶ 3. The iCanvas website 7 will include revised pricing terminology and added disclosures. On individual product 8 listing pages where a strikethrough

price or reference price is displayed, Defendants 9 agree to define and explain the strikethrough price or reference price using an adjacent 10 hyperlink entitled “Details” or similar. Clicking on the hyperlink will explain the 11 meaning of the strikethrough price or reference price. Id. ¶ 3.3. 12 Further, if the advertised reference price refers to the actual or estimated price 13 charged by competing retailers for similar (but not identical) products, then Defendants 14 will replace the term “REG” with “Comparable Value,” “Estimated Value,” or another 15 similar term. Defendants agree not use the term “REG” without qualification unless the 16 “REG” price refers to a price charged on www.iCanvas.com for the same product. Id. 17 ¶ 3.2. 18 C. Release 19 In exchange for the injunctive relief described in the Agreement, Settlement 20 Class Members will release their claims for injunctive relief. Id. ¶¶ 2.15-2.17, 5.1. The 21 class release does not affect any potential claims of Settlement Class Members for 22 money damages, and expressly “exclud[es] claims to monetary relief of any kind.” Id. 23 ¶ 2.15. The release is repeated in relevant part below: 24 “Released Claims” means and refers to any and all right to injunctive relief, regardless of legal basis (i.e., constitutional, federal, state, local, or 25 administrative) and on account of any and all claims, suits, obligations, or 26 cause of actions of every kind and/or nature whatsoever, whether now known or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, 27 at law or in equity, which any Releasing Party now has or may have, which in 1 discounts for the Products; (ii) the advertised comparison between the sale prices and regular prices for the Products; and/or (iii) the claims or allegations 2 asserted in the operative Complaint filed in this Action. For clarity, the 3 Released Claims are limited to injunctive relief and exclude claims to monetary relief of any kind. 4 5 Id. 6 D. No Class Notice Program 7 Because the Agreement releases only the rights of the Settlement Class to seek 8 injunctive relief pursuant to Fed. R. Civ. P. 23(b)(2) and requires no release of any 9 monetary remedies or statutory damages by Settlement Class Members, notice to 10 Settlement Class Members and opt-out rights are not necessary. Id. ¶ 7.1. See *Padilla v. Whitewave Foods Co.*, No. 2:18-CV-09327-SB-JC, 2021 WL 4902398, at *4 (C.D. 12 Cal. May 10, 2021) (granting preliminary approval of injunctive relief settlement and 13 explaining “[I]n a Rule 23(b)(2) class action for injunctive relief, notice may be given 14 but is not required.”) (quotation marks omitted); *Padilla v. Whitewave Foods Co.*, No. 15 2:18-CV-09327-SB-JC, 2021 WL 4902387, at *1-3 (C.D. Cal. July 15, 2021) (granting 16 final approval of settlement releasing claims for injunctive relief, holding no notice 17 required, and awarding \$220,000 attorneys’ fees, plus costs and service awards); *Kline v. Dymatize Enterprises, LLC*, No. 15-CV-2348-AJB-RBB, 2016 WL 6026330, at *6 19 (S.D. Cal. Oct. 13, 2016) (same); *Lilly v. Jamba Juice Co.*, 2015 WL 1248027, *8-9 20 (N.D. Cal. March 8, 2015) (same). 21 E. Attorneys’ Fees and Costs, and Class Representative Service Awards 22 The Settlement Agreement contemplates Class Counsel petitioning the Court for 23 attorneys’ fees and costs incurred by Class Counsel. The Settlement Agreement 24 provides that Class Counsel may seek up to \$195,000 for attorneys’ fees and costs. 25 Class Counsel will also petition the Court for \$5,000 to each of the two named Plaintiffs 26 as service awards to compensate them for their time

and effort in the Action. 27

1 III. LEGAL STANDARD

2 “[I]n the context of a case in which the parties reach a settlement agreement prior 3 to class certification, courts must peruse the proposed compromise to ratify both the 4 propriety of the certification and the fairness of the settlement.” *Staton v. Boeing Co.*, 5 327 F.3d 938, 952 (9th Cir. 2003).

6 Rule 23 requires the Court to determine whether the Settlement is “fair, 7 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). To assess the fairness of a class 8 settlement, Ninth Circuit courts consider factors including: (1) the strength of the 9 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of future 10 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the 11 amount offered in settlement; (5) the extent of discovery completed and the stage of 12 the proceedings; (6) the experience and views of counsel; (7) the presence of a 13 governmental participant; and (8) the reaction of class members to the proposed 14 settlement. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015) 15 (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

16 The 2018 revisions to Rule 23 similarly provide that courts should consider 17 whether: 18 (A) the class representatives and class counsel have adequately represented the 19 class; 20 (B) the proposal was negotiated at arm’s length; 21 (C) the relief provided for the class is adequate, taking into account: 22 (i) the costs, risks, and delay of trial and appeal; 23 (ii) the effectiveness of any proposed method of distributing relief to the 24 class, including the method of processing class-member claims; 25 (iii) the terms of any proposed award of attorney’s fees, including timing 26 of payment; and 27 (iv) any agreement required to be identified under Rule 23(e)(3); and 1 (D) the proposal treats class members equitably relative to each other. 2 Fed. R. Civ. P. 23(e)(2).

3 IV. FINDINGS AND ORDERS

4 1. Capitalized terms not otherwise defined herein shall have the same 5 meaning as set forth in the Settlement Agreement. 6 2. Settlement Agreement. The Settlement Agreement and the settlement set 7 forth therein are finally approved. The Settlement Agreement is incorporated herein. 8 3. Final Settlement Approval. The Court has considered all relevant factors 9 for determining the fairness of the settlement and has concluded that all such factors 10 weigh in favor of granting final approval. In particular, the Court finds that the 11 settlement was reached following meaningful discovery and investigation conducted 12 by Plaintiffs; that the settlement is the result of serious, informed, adversarial, and 13 arm’s-length negotiations between the parties; and that the terms of the settlement are 14 in all respects fair, adequate, and reasonable. 15 4. In so finding, the Court has considered the evidence presented, including 16 the strength of Plaintiffs’ case; the risk, expense, and complexity of the claims 17 presented; the likely duration of further litigation; whether the injunctive relief 18 proposed by the settlement accomplishes Plaintiffs’ litigation objectives; the extent of 19 investigation and discovery completed; and the experience

and views of counsel. The 20 parties have provided the Court with sufficient information about the nature and 21 magnitude of the claims being settled, as well as the impediments to recovery, to make 22 an independent assessment of the reasonableness of the terms to which the parties have 23 agreed. 24 5. No Admission of Liability. The Settlement Agreement is not an admission 25 by Defendants or by any other released party, nor is this Order a finding of the validity 26 of any allegations or of any wrongdoing by Defendants or any other released party. 27 Neither this Order, the Settlement Agreement, nor any document referred to herein, nor 1 any action taken to carry out the Settlement Agreement, may be construed as, or may 2 be used as, an admission of any fault, wrongdoing, omission, concession, or liability 3 whatsoever by or against Defendants or any released party. 4 6. Certification of the Settlement Class for Purposes of Settlement. The 5 Court further finds, upon enhanced scrutiny, that certification of the Settlement Class 6 is warranted for purposes of settlement. See Fed. R. Civ. P. 23(e)(1)(B)(ii). The Court 7 finally certifies the following class: 8 All persons in California who purchased one or more Products from www.iCanvas.com or www.iCanvasArt.com, during the Class Period, at a 9 discount from a higher reference price. 10 Excluded from the Settlement Class are governmental entities; counsel of record 11 (and their respective law firms) for the Parties; Defendants and any of their 12 parents, affiliates, subsidiaries, independent service providers and all of their respective employees, officers, and directors; and the presiding judge in the 13 Action or judicial officer presiding over the matter, and all of their immediate 14 families and judicial staff. 15 The Class Period is January 1, 2016 through January 16, 2025. 16 17

7. Rule 23(a) Considerations. Pursuant to Fed. R. Civ. P. 23(a), the Court 18 finds for settlement purposes that: (a) the Settlement Class certified herein consists of 19 thousands of persons, and joinder of all such persons would be impracticable; (b) there 20 are questions of law and fact that are common to the Settlement Class; (c) the claims 21 of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent 22 for purposes of settlement; (d) a class action on behalf of the Class is superior to other 23 available means of adjudicating this dispute; and (e) Plaintiffs and Class Counsel are 24 adequate representatives of the Settlement Class. 25

8. Rule 23(b) Considerations. The Court finds that final certification of the 26 Settlement Class is appropriate under Fed. R. Civ. P. 23(b)(2). First, California law 27 provides for injunctive relief, and Plaintiffs seek such relief in their complaint. Second, 1 the injunctive relief sought applies generally to the class, as Plaintiffs seek an order 2 from the Court requiring Defendants to comply with the relevant consumer protection 3 laws by making changes to its advertising. This relief redresses the classwide injury of 4 allegedly misleading advertising, relief that would otherwise be unobtainable absent an 5 injunction. 6 9. Class Representatives. Plaintiffs Tal Nelkin and Melissa Cuevas are 7 suitable representatives, and are hereby finally appointed the Class Representatives for 8 the Settlement Class. The Court finds that Plaintiffs' investment and commitment to 9 the litigation and its outcome ensured adequate and zealous advocacy for the 10

Settlement Class, and that their interests are aligned with those of the Settlement Class 11 10. Class Counsel. The Court finally appoints Alexander E. Wolf and Milberg 12 Coleman Bryson Phillips Grossman PLLC as Settlement Class Counsel. The Court 13 finds that counsel have experience litigating, certifying, and settling class actions, and 14 will serve as adequate counsel for the Settlement Class. 15 11. No Class Notice Ordered. “When a class is certified under Rule 23(b)(2) 16 and only provides for injunctive relief, no notice of class certification is required.” 17 Kline, No. 15-CV-2348-AJB-RBB, 2016 WL 6026330, at *6; Padilla, 2021 WL 18 4902398, at *4 (same). Here, notice to the Settlement Class of the settlement is not 19 necessary because under the settlement, the Settlement Class releases only those claims 20 they may have for injunctive relief—relief they will receive through the settlement— 21 but not claims for money damages. The Court therefore previously exercised its 22 discretion and did not direct notice because the settlement does not alter the unnamed 23 class members’ legal rights. Dkt. 65; Lilly, 2015 WL 1248027, at *8–9 (concluding 24 that class notice of settlement not necessary because “even if notified of the settlement, 25 the settlement class would not have the right to opt out from the injunctive settlement 26 and the settlement does not release the monetary claims of class members”). 27 1 12. Class Action Fairness Act Notice. Notice to government officials was 2 given pursuant to 28 U.S.C. § 1715. 3 13. Releases. The releases set forth in Paragraph 5 of the Settlement 4 Agreement are expressly incorporated herein. The releases are effective as of the Final 5 Effective Date, and the Releasing Parties shall have absolutely and unconditionally 6 released and forever discharged the Released Parties from the Released Claims. In 7 addition, the Released Parties are hereby forever barred and enjoined from prosecuting 8 the Released Claims against the Released Parties. 9 14. Given the injunctive nature of the settlement, there is no right for the 10 Settlement Class members to opt out or otherwise exclude themselves from the 11 Settlement Agreement. All Settlement Class Members are bound by the Settlement 12 Agreement and the Final Approval Order, including the releases. 13 15. Attorneys’ Fees and Expenses. The Court finds that an award of attorneys’ 14 fees in the amount of \$185,410.42 and reimbursement of costs and expenses in the 15 amount of \$9,589.58 (for a combined total of \$195,000) to Class Counsel is fair and 16 reasonable; and therefore, approves such award. This award shall be paid pursuant to 17 the schedule in the Settlement Agreement. 18 16. Service Awards. The Court finds that a Service Award in the amount of 19 \$5,000 to each of the two Class Representatives is fair and reasonable; and therefore, 20 approves such payment. These awards shall be paid to the Class Representatives 21 pursuant to the schedule in the Settlement Agreement. 22 17. Dismissal with Prejudice. This Action is dismissed with prejudice. 23 18. Jurisdiction. Consummation of the Settlement Agreement shall proceed as 24 described in the Settlement Agreement, and the Court reserves jurisdiction over the 25 subject matter and each Party to the settlement with respect to the interpretation and 26 implementation of the Settlement Agreement for all purposes, including enforcement 27 1 of any of the terms thereof at the instance of any Party and resolution of any disputes 2 || that may arise relating to the implementation of the settlement or this Order. 3 19. The

Parties are directed to implement the Settlement Agreement in 4 || accordance with its terms. The Clerk shall close this file. 5

6 IT IS SO ORDERED. (JS-6)

7 || Dated: March 31, 2025 ee 10

HONORABLE KENLY KIYA □□□□□

12 Unites States District Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28