

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

VERNITA MIRACLE-POND and  
SAMANTHA PARAF, individually and on  
behalf of all others similarly situated,

*Plaintiffs,*

v.

SHUTTERFLY, INC.,

*Defendant.*

Case No. 2019CH07050

Judge: Hon. Raymond W. Mitchell

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“**Agreement**”) is entered into as of this 5th day of May, 2021, by Plaintiffs Vernita Miracle-Pond and Samantha Paraf (“**Plaintiffs**”), individually and on behalf of the Settlement Class as defined below, by and through Class Counsel, and Defendant Shutterfly LLC and Shutterfly, Inc. (collectively, “**Defendant**” or “**Shutterfly**”). Plaintiffs and Defendant are each referred to herein as a **Party**, and collectively, as the **Parties**.

**RECITALS**

WHEREAS, on June 11, 2019, Plaintiffs Vernita Miracle-Pond and Samantha Paraf filed a class action captioned *Miracle-Pond, et al. v. Shutterfly, Inc.*, Case No. 2019CH07050 (Cir. Ct. Cook Cnty.) (the “**Action**”), in the Circuit Court of Cook County, Illinois, alleging claims for damages and other legal and equitable remedies resulting from Defendant’s alleged illegal collection, storage, and use of Plaintiffs’ and other similarly situated individuals’ biometric identifiers and biometric information (collectively, “biometrics”) without informed written consent, and in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”).

WHEREAS, on July 12, 2019, Defendant removed the Action from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. § 1441(a), 1446, and 1453, on the ground that federal jurisdiction exists under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2)(A), and the case was docketed at Case No. 1:19-cv-04722 (N.D. Ill. July 12, 2019) (the “Federal Action”).

WHEREAS, Defendant filed a Motion to Dismiss on October 3, 2019 (ECF No. 16), Plaintiffs filed their Opposition on November 8, 2019 (ECF No. 36), and Defendant filed a Reply on December 5, 2019 (ECF No. 45).

WHEREAS, Defendant filed a Motion to Compel Arbitration and Stay Litigation on October

3, 2019 (ECF No. 19), Plaintiffs filed their Opposition on November 8, 2019 (ECF No. 37), and Defendant filed a Reply on December 5, 2019 (ECF No. 46).

WHEREAS, Plaintiffs filed a Motion for Curative Measures to Remediate Effects of Defendant's Improper Communications with Plaintiff and Putative Class Members ("**Curative Measures Motion**") on November 26, 2019 (ECF No. 38), Defendant filed its Opposition on January 10, 2020 (ECF No. 47), and Plaintiffs filed their Reply on January 30, 2020 (ECF No 49).

WHEREAS, pursuant to the District Court's May 15, 2020 Order (ECF No. 67), Plaintiffs' Curative Measures Motion was denied and Plaintiff Miracle-Pond's claims were referred to arbitration. A Demand for Arbitration was submitted to the American Arbitration Association on behalf of Plaintiff Miracle-Pond on October 9, 2020. The District Court's May 15, 2020 Order also stayed its consideration of Shutterfly's motion to dismiss, which applied to both Plaintiff Miracle-Pond's claims and Plaintiff Paraf's claims. *See* ECF No. 67. On September 17, 2020, the District Court denied Shutterfly's motion to dismiss without prejudice;

WHEREAS, the following discovery on Plaintiff Paraf's claims occurred: (1) on March 2, 2020, the Parties exchanged Rule 26(a) initial disclosures; and (2) on March 31, 2020, Shutterfly produced approximately 100,000 pages of discovery. *See* ECF No. 50-1 at 5-6 (Joint Status Report describing the Parties' agreement regarding Shutterfly's production of this discovery). Plaintiffs also served a First Set of Requests for Production on behalf of both Plaintiffs Miracle-Pond and Paraf on February 8, 2020;

WHEREAS, on November 2, 2020, the Parties exchanged amended Rule 26(a)(1) initial disclosures, and Shutterfly responded to Plaintiff Samantha Paraf's First Set of Requests for Production. On November 2, 2020, Shutterfly also served its First Requests for the Production of Documents and First Set of Interrogatories to Ms. Paraf, who responded to both sets of discovery requests on December 22, 2020. *See* ECF No. 92 (Joint Status Report regarding the status of discovery and settlement discussions). On November 9, 2020, Defendant filed a Motion to Dismiss (ECF No. 85) and Memorandum in Support (ECF No. 86). On December 7, 2020, Plaintiff filed a Memorandum of Law In Opposition to Motion to Dismiss (ECF No. 88). On December 28, 2020, Defendant filed a Reply In Support of Motion to Dismiss (ECF No. 91);

WHEREAS, on October 8, 2020, the Parties participated in a mediation before the Hon. Peter D. Lichtman (Ret.) at Signature Resolutions and thereafter continued to engage in settlement conferences on a regular basis and exchanged several rounds of confidential settlement correspondence;

WHEREAS, on February 19, 2021, the Action was remanded by stipulation of the Parties (ECF No. 96) to the Circuit Court of Cook County, Illinois, County Department, Chancery Division, where the Parties intend to present their settlement for approval; and

WHEREAS, while Plaintiffs believe the claims in the Action possess merit and while Defendant disputes such claims and does not acknowledge in any way any fault or liability, the Parties have agreed to enter into this Agreement as a compromise of Plaintiffs' and the Settlement Class Members' claims in order to resolve all controversy between them and to avoid the

uncertainty, risk, expense, and burdens of protracted litigation that would be involved in prosecuting and defending the Action.

NOW, THEREFORE, subject to Court approval and the other conditions set forth herein, it is hereby AGREED by the Parties that, in consideration of the undertakings, promises, and payment set forth in this Agreement and upon the entry by the Court of a Final Order and Judgment approving the settlement and directing the implementation of the terms and conditions of this Agreement, the Action shall be settled and compromised upon the terms and conditions set forth herein.

## 1. DEFINITIONS

As used in this Agreement and the attached exhibits, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall be defined as set forth below:

**1.1 “Action”** means the case captioned *Miracle-Pond, et al. v. Shutterfly, Inc.*, Case No. 2019CH07050.

**1.2 “Administration Expenses”** shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with Class Members, establishing the Settlement Website, and disbursement of payments to the Settlement Class Members.

**1.3 “Approved Claims”** shall mean complete and timely claims submitted by Settlement Class Members that have been approved for payment by the Settlement Administrator.

**1.4 “BIPA”** shall mean the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.*

**1.5 “Business Days”** shall mean, for a period expressed in “business days,” the number of calendar days identified in the period, excluding the day of the event that triggers the period, that are not Saturdays, Sundays, or legal holidays.

**1.6 “Claim Form”** shall mean the form that Settlement Class Members may submit to obtain compensation under this Settlement, which shall be substantially in the form attached hereto as **Exhibit 1**.

**1.7 “Claims Deadline”** shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted electronically to be considered timely, and which shall be a date approximately seventy-five (75) calendar days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, the Notice, and the Claim Form.

**1.8 “Class” or “Settlement Class”** shall include all Illinois residents who appear in a photograph maintained on Shutterfly at any time between June 11, 2014 and the date of final approval. Excluded from the Class are: (a) any Judge, Magistrate, or mediator presiding over this

action and members of their families; (b) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

**1.9 “Class Member” or “Settlement Class Member”** means a person who falls within the definition of the Class, as defined in Section 2.2 of this Agreement, and who does not submit a valid request for exclusion.

**1.10 “Class Counsel”** means collectively the law firms of Ahdoot & Wolfson, PC, Carey Rodriguez Milian, LLP, and Carlson Lynch, LLP.

**1.11 “Class Representatives” or “Plaintiffs”** shall mean Plaintiffs Vernita Miracle-Pond and Samantha Paraf.

**1.12 “Court”** shall mean the Circuit Court of Cook County, Illinois, Chancery Division, the Honorable Raymond W. Mitchell presiding (or any other Circuit Court of Cook County Judge assigned to the Action).

**1.13 “Days”** shall mean, for a period expressed in “days,” the number of calendar days identified in the period, excluding the day of the event that triggers the period, but including the last day of the period except when the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

**1.14 “Defendant” or “Shutterfly”** means Shutterfly LLC and Shutterfly, Inc.

**1.15 “Defendant’s Counsel”** means Mayer Brown LLP.

**1.16 “Effective Date”** means the date on which the Final Order and Judgment becomes “Final,” which shall be one business day after the latest of the following events: (a) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Order and Judgment approving the Settlement Agreement; (b) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee and Expense Award, the date of completion, in a manner that finally affirms and leaves in place the Final Order and Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (c) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

**1.17 “Fee and Expense Award”** means the amount of attorneys’ fees and reimbursement of costs and expenses awarded by the Court to Class Counsel to compensate them for conferring the benefits upon the Settlement Class under this Agreement and for their professional time, fees, advances, and expenses incurred in connection with this Action and the Settlement.

**1.18 “Final Approval Hearing”** means the hearing to be conducted by the Court in connection with the final determination that the Agreement is fair, reasonable, and adequate and in the best interests of the Class as a whole, and which shall be on a date at least ninety (90) days after entry of the Preliminary Approval Order, or such other date approved by the Court.

**1.19 “Final Order and Judgment”** means an order that is entered by the Court and in a form that is mutually agreeable to the Parties and as set forth in Section 13 of this Agreement, and approves this Agreement as fair, reasonable, and adequate and in the best interests of the Class as a whole, and makes such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.

**1.20 “Net Settlement Fund”** means the balance remaining in the Settlement Fund after payment of (a) Settlement Administration Expenses, (b) any Service Awards to the Class Representatives, and (c) any Fee and Expense Award to Class Counsel.

**1.21 “Notice”** means the notices of this proposed Settlement and Final Approval Hearing, which are to be disseminated to the Class substantially in the manner set forth in this Settlement Agreement and approved by the Court, fulfilling the requirements of Due Process, and are substantially in the form of **Exhibits 2** through **4** attached hereto.

**1.22 “Notice Date”** means the date by which the Notice is disseminated to the Class, which shall be a date no later than thirty (30) days after entry of Preliminary Approval.

**1.23 “Objection/Exclusion Deadline”** means the date by which a written objection to the Settlement or a request for exclusion by a person within the Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after the request for the Fee and Expense Award is filed with the Court and posted to the Settlement Website, or such other date as ordered by the Court.

**1.24 “Preliminary Approval Order”** means the Court’s Order granting preliminary approval of this Agreement, approving the Notice of Proposed Class Action Settlement and the manner of providing notice to the Class, and setting forth a schedule for briefing regarding the fairness of the settlement, deadlines for submitting exclusion requests and objections, and the date of the Final Approval Hearing, in a form as agreed to by the Parties.

**1.25 “Released Claims”** means any and all claims or causes of action of any kind, whether known or unknown (including “Unknown Claims” as defined below), fixed or contingent, accrued or not accrued, matured or not yet matured, asserted or unasserted, suspected or unsuspected, including without limitation those related to unknown and unsuspected injuries as well as unknown and unsuspected consequences of known or suspected injuries, that the Releasing Parties now own or hold, or have owned or held at any time prior to the Effective Date of this Agreement, arising from or related to Plaintiffs’ allegations or the alleged collection, storage, sale, monetization or derivation of revenue or profit from, or dissemination of alleged biometric or personal data, including all claims that were brought or could have been brought in the Action, including claims for any violation of BIPA, and further including, without limitation, any claim that Shutterfly does not comply with BIPA, or any other law or provision, with respect to the

implementation of facial recognition technology.

**1.26 “Released Parties”** means Shutterfly, Inc. and Shutterfly LLC and their direct and indirect corporate parents, subsidiaries, affiliates, principals, investors, owners, members, controlling shareholders, trustees, estates, heirs, executors, administrators, partners, and joint venturers, along with the officers, directors, shareholders, employees, attorneys, representatives, agents, insurers, successors, predecessors, and assigns of such persons or entities.

**1.27 “Releasing Parties”** means Plaintiffs and the Class Members and their respective present or past heirs, executors, estates, administrators, trustees, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

**1.28 “Service Awards”** means such funds as may be awarded by the Court to the Class Representatives in recognition of their time, effort and service to the Settlement Class, expenses in pursuing the Action or in otherwise fulfilling their obligations and responsibilities as the Settlement Class Representatives.

**1.29 “Settlement” or “Settlement Agreement”** means this Settlement Agreement and the settlement embodied in this Settlement Agreement, including all attached Exhibits (which are an integral part of this Settlement Agreement and Release and are incorporated herein in their entirety by reference).

**1.30 “Settlement Amount”** means Six Million Seven Hundred Fifty Thousand Dollars and No Cents (\$6,750,000.00) to be paid by Shutterfly and is the total amount that Shutterfly may be obligated to pay in consideration of the settlement of all Plaintiffs and Class Members’ Released Claims, if the relevant terms and conditions of this Agreement are met.

**1.31 “Settlement Administrator”** means a qualified third-party agent or administrator agreed to be selected by the Parties and approved and appointed by the Court in the Preliminary Approval Order to administer the Settlement, including certain aspects of the Notice, Settlement Website, as well as the processing of Approved Claims as Settlement Payments to Class Members as set forth in this Agreement.

**1.32 “Settlement Fund”** means the non-reversionary cash fund that shall be funded by Shutterfly in the total amount of the Settlement Amount (*i.e.* Six Million Seven Hundred Fifty Thousand Dollars and No Cents (\$6,750,000.00)) and any other funds held in escrow by the Settlement Administrator pursuant to this Settlement Agreement, including accrued interest. The following shall be paid from the Settlement Fund: All Settlement Payments as a result of Approved Claims made by Class Members, Settlement Administration Expenses, any Service Awards to the Class Representatives, and any Fee and Expense Award to Class Counsel.

**1.33 “Settlement Payment”** means the payments to be made in response to Approved Claims. Each individual who submits an Approved Claim will receive a pro rata portion of the Net Settlement Fund.



**1.34 “Settlement Website”** means the website to be created, launched, and maintained by the Settlement Administrator, which will provide access to relevant case documents including the Notice, Claim Form, and other relevant documents.

**1.35 “Unknown Claims”** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement, or seek exclusion from the Class. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Section.

## **2. SETTLEMENT PURPOSES ONLY**

**2.1** For the purposes of this Settlement only, the Parties stipulate and agree that: (a) the Class shall be certified in accordance with the definition contained in Section 2.2, below; (b) Plaintiffs shall represent the Class for settlement purposes and shall be appointed as the Class Representatives; and (c) Plaintiffs’ Counsel shall be appointed as Class Counsel.

**2.2** Subject to Court approval, the following Class shall be certified for settlement purposes:

All Illinois residents who appear in a photograph maintained on Shutterfly at any time between June 11, 2014 and the date of final approval. Excluded from the class are: (a) any Judge, Magistrate, or mediator presiding over this action and members of their families; (b) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

**2.3** Defendant does not consent to certification of the Class for any purpose other than to effectuate this Settlement. If the Court does not enter the Final Order and Judgment or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or successfully challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that the Final Order and Judgment is not entered or if for any other reason final approval of the settlement does not occur, is successfully objected to, or successfully challenged on appeal: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the Settlement reflected in this Agreement, that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

**2.4** To the fullest extent permitted by law neither the fact of, nor any provision contained in, this Agreement or its attachments, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim or any fact alleged by Plaintiff in the Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant or admission by any of the Parties of the validity or lack thereof of any claim, allegation or defense asserted in this Action or in any other action.

### **3. SETTLEMENT RELIEF**

#### **3.1 Prospective Relief**

a. Without admitting any liability or that it is required by law to do so, Shutterfly agrees to take the following steps in connection with this Settlement:

1. Within ninety (90) days of the Preliminary Approval Order, Shutterfly shall provide a notice to Class Members whom Shutterfly can reasonably and reliably identify as Shutterfly account holders (“Class Member Users”). The notice shall disclose the data collected for Face Grouping, the purpose(s) of collecting the data, and the length of term of the collection. The notice shall be substantially in the form attached as **Exhibit 5**. The notice may be included with other disclosures made to Class Member Users, but shall be clearly set apart from any other content that is unrelated to Face Grouping. The notice will provide a mechanism for Class Member Users to affirmatively consent to the Face Grouping feature, but Class Member Users may also dismiss the notice without taking affirmative action. Shutterfly shall then set the Face Grouping setting to “off,” and will permanently delete any Face Grouping data, for Class Member Users who have not affirmatively consented to Face Grouping within one hundred eighty (180) days of the Preliminary Approval Order.

2. Within one hundred eighty (180) days of the Preliminary Approval Order, Shutterfly will publish a supplemental retention schedule and guidelines for permanently



destroying Face Grouping data created for Illinois Shutterfly users within three (3) years of their last interaction with Shutterfly. At Shutterfly's discretion, such retention schedule and guidelines may be included within the disclosures about Face Grouping that appear in Shutterfly's Online Privacy and Security Policy, or at another location on Shutterfly's website.

b. If requested by Shutterfly as part of the preliminary or final approval of the Settlement, the Parties will jointly petition the Court for approval of these commitments.

c. The Prospective Relief set forth in this Section shall be incorporated in the Final Order and Judgment of the Court.

### **3.2 Establishment of Settlement Fund**

a. Shutterfly agrees to pay the total sum of Six Million Seven Hundred Fifty Thousand Dollars and No Cents (\$6,750,000.00) (as defined above, the Settlement Amount) to create the Settlement Fund. The Settlement Fund shall be used to pay all Settlement Payments as a result of Approved Claims made by Class Members, Settlement Administration Expenses, any Service Awards to the Class Representatives, and any Fee and Expense Award to Class Counsel. The Settlement Fund represents the total extent of Defendant's monetary obligations under the Settlement Agreement, and neither Defendant nor any Released Party shall have any obligation to make any further payments into the Settlement Fund or any financial responsibility or obligation relating to the settlement beyond the Settlement Fund.

b. No portion of the Settlement Fund shall revert back to or be refunded to Shutterfly after the Settlement becomes Final (as this term is defined in Section 1.16).

c. Within fifteen (15) business days after the later of (a) entry of the Preliminary Approval Order and (b) receipt from the Settlement Administrator of detailed wire instructions and a completed W-9 form, Shutterfly agrees to and shall cause the sum of Five Hundred Thousand Dollars and No Cents (\$500,000.00) to be deposited in an interest-bearing bank escrow account established and administered by the Settlement Administrator (the "Escrow Account"). The Escrow Account shall be held in a Qualified Settlement Fund (defined below) in interest-bearing bank account deposits with commercial banks with excess capital exceeding One Hundred Million Dollars and No Cents (\$100,000,000.00), with a rating of "A" or higher by S&P and in an account that is fully insured by the United States Government or the FDIC.

d. The Settlement Administrator shall notify the Parties in the event that Administration Expenses incurred prior to the Final Order and Judgment are greater than Four Hundred and Fifty Thousand Dollars and No Cents (\$450,000.00). Shutterfly shall then cause an additional sum to be deposited into the Escrow Account as may be necessary in the reasonable estimate of the Settlement Administrator to satisfy the total anticipated Administration Expenses.

e. Within seven (7) business days after the Final Order and Judgment, Shutterfly agrees to and shall cause the remainder of the Settlement Amount (*i.e.* \$6,750,000.00, minus \$500,000.00 (deposited pursuant to Section 3.2(c)) and any additional sums deposited into the Escrow Account pursuant to Section 3.2(d)) to be deposited into the Escrow Account. In no

event shall Shutterfly be required to pay any amounts in excess of the Settlement Amount under any circumstances.

f. All interest on the funds in the Escrow Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Administrator is responsible for the payment of all Taxes.

g. The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1 at all times after the creation of the Escrow Account. All Taxes shall be paid out of the Escrow Account. Defendant’s Counsel, Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold Shutterfly, Defendant’s Counsel, Plaintiffs, and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

h. For the purpose of the Internal Revenue Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the “administrator” of the Settlement Fund. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in the previous paragraph) shall be consistent with this paragraph and in all events shall reflect that all taxes (including the Taxes, any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

i. The Settlement Administrator shall maintain control over the Settlement Fund and shall be responsible for all disbursements. The Settlement Administrator shall not disburse any portion of the Settlement Fund except as provided in this Agreement and with the written agreement of Class Counsel and Defendant’s Counsel or by order of the Court.

j. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement or further order of the Court.

k. Refund Upon Termination. In the event that the Court does not enter the Final Order and Judgment or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or successfully challenged on appeal, the remaining Settlement Fund (including accrued interest), less (a) any Administration Expenses actually incurred, and (b) any amounts and Taxes incurred or due and owing and payable from the Settlement Fund in accordance with this Agreement, shall be refunded to Shutterfly.

### **3.3 Distribution of Settlement Fund**

a. Class Members shall have until the Claims Deadline to submit a Claim Form. Each Class Member with an Approved Claim shall be entitled to a Settlement Payment from

the Settlement Fund equal to the Class Member's *pro rata* share of the Settlement Fund after Administrative Expenses, any Service Awards, and any Fee and Expense Award have been deducted from the Settlement Fund.

b. Within forty-five (45) days after the Effective Date, or such other date as the Court may set, the Settlement Administrator shall send Settlement Payments from the Settlement Fund by check or electronic deposit, as elected by the Class Member with an Approved Claim. Each payment issued to a Class Member via check will state on the face of the check that it will become null and void unless cashed within ninety (90) days after the date of issuance.

**3.4** In the event that an electronic deposit to a Class Member is unable to be processed, the Settlement Administrator shall attempt to contact the Class Member within thirty (30) days to correct the problem.

**3.5** To the extent that a check issued to a Class Member is not cashed within ninety (90) calendar days after the date of issuance or an electronic deposit is unable to be processed within ninety (90) days of the first attempt, such funds shall remain in the Settlement Fund and shall be apportioned *pro rata* to participating Class Members in a second distribution, if practicable. To the extent that any second distribution is impracticable or second-distribution funds remain in the Settlement Fund after an additional ninety (90) days, such funds shall revert to the American Civil Liberties Union of Illinois, as approved by the Court.

**3.6** No amount paid by Defendant into the Settlement Fund shall revert to Defendant unless the Settlement is terminated in accordance with Section 14. In no event shall any such amount be paid to any Class Counsel except for the amount of an approved Fee and Expense Award.

#### **4. PRELIMINARY APPROVAL AND FINAL APPROVAL**

**4.1** This Agreement shall be subject to approval of the Court. As set forth in Section 14, Butterfly shall have the right to terminate the Agreement if the Court does not approve the material aspects of the Agreement.

**4.2** Plaintiffs, through Class Counsel, shall file an unopposed motion for entry of an Order Conditionally Certifying the Settlement Class, granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, approving the Class Notice and Claim Form, appointing Class Counsel and Plaintiffs as the Class Representatives, and for entry of the Preliminary Approval Order. The Preliminary Approval Order shall seek a Final Approval Hearing date and approve the Notices and Claim Form for dissemination in accordance with the Notice Program set forth in Section 6.1. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Final Order and Judgment set forth below and do not limit or impair the rights of the Class.

**4.3** The Parties shall request that the Final Approval Hearing be scheduled at least

ninety (90) days after entry of the Preliminary Approval Order and that the Court approve the Settlement of the Action as set forth herein.

**4.4** At least fourteen (14) days before the Final Approval Hearing, or by another date if directed by the Court, Plaintiffs shall move for: (a) final approval of the Settlement; (b) final appointment of the Class Representatives and Class Counsel; and (c) final certification of the Settlement Class, including for the entry of a Final Approval Order, and file a memorandum in support of the motion for final approval.

**4.5** Defendant may file a separate brief in support of the Court's entry of the Preliminary Approval Order or the Final Order and Judgment, but is not obligated to do so.

## **5. SETTLEMENT ADMINISTRATION**

**5.1** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by providing Notice and processing Claim Forms in a reasonable, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Without limiting the foregoing, the Settlement Administrator shall:

a. Receive requests to be excluded from the Class and promptly provide Class Counsel and Defendant's Counsel copies thereof. If the Settlement Administrator receives any exclusion forms after the deadline for submission of such forms, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

b. Provide weekly reports to Class Counsel regarding the number of Claim Forms received and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator;

c. Make available for inspection by Class Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice; and

**5.2** The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud, including by cross-referencing Approved Claims with the Class Notice List. The Settlement Administrator shall determine whether a Claim Form submitted by a Class Member is an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator by the Claims Deadline, or fourteen (14) days after the Settlement Administrator sends the email or regular mail notice to the Settlement Class Member

regarding the deficiencies in the Claim Form, whichever is later. In the event the Settlement Administrator receives such information after the deadline set forth in this subsection, then any such claim shall be denied. The Settlement Administrator may contact any person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form. Class Counsel and Defendant's Counsel shall both have the right to challenge the acceptance or rejection of a Claim Form submitted by a Class Member by the Settlement Administrator. The Settlement Administrator shall follow any joint decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed submitted Claim Form. Where Class Counsel and Defendant's Counsel disagree as to the validity of a submitted Claim Form, the Settlement Administrator will resolve the dispute and the Claim Form will be treated in the manner designated by the Settlement Administrator.

## **6. NOTICE TO THE CLASS**

**6.1 Notice Program.** The Notice Program shall be approved by the Court in the Preliminary Approval Order and shall consist of the following:

a. Class Notice List. To facilitate the notice and claims administration process, to the extent reasonably available in its records, Defendant will provide to the Settlement Administrator, in an electronically searchable and readable format, a Class Notice List that includes reasonably available contact information, including names and e-mail and physical billing addresses, for all known Settlement Class Members. Defendant shall provide the Class Notice List to the Settlement Administrator no later than fourteen (14) days after the entry of the Preliminary Approval Order.

- i. Class Member Information Solely for Purposes of Notice. Any information relating to Settlement Class Members provided to the Settlement Administrator pursuant to this Agreement shall be provided solely for the purpose of providing Notice to Settlement Class Members and allowing them to recover under this Agreement; shall be kept in strict confidence by the Parties, their counsel, and the Settlement Administrator; shall not be disclosed to any third party; shall be destroyed after all distributions to Settlement Class Members have been made; and shall not be used for any other purpose.
- ii. The Settlement Administrator shall perform any further investigations deemed appropriate by the Settlement Administrator, including using the National Change of Address ("NCOA") database maintained by the United States Postal Service, in an attempt to identify current mailing addresses for individuals or entities whose names are provided by Defendant.

b. Timing of Class Notice. Notice shall be provided as set forth in this Agreement within thirty (30) days of the entry of the Preliminary Approval Order.

c. Content of Class Notice. The Notice shall be substantially in the form of

**Exhibits 2 and 3** attached hereto. The Notice shall advise Settlement Class Members of their rights, including the right to be excluded from the Class, comment upon, and/or object to the Settlement Agreement, any of its terms, or the request for the Fee and Expense Award. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline, the person making an objection: (i) files his/her objection with the Clerk of Court; (ii) files copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court; and (iii) sends copies of such papers *via* United States mail, hand delivery, or overnight delivery to both Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement.

d. Forms of Class Notice. The Notice shall be presented in multiple forms and presented through multiple media, as set forth below.

i. Direct Notice. No later than the Notice Date, and to be substantially completed within ten (10) days thereafter, or at such other time as may be ordered by the Court, the Settlement Administrator shall commence distribution of individual direct notice to Person(s) believed to be included in the definition of the Settlement Class as follows:

(a) For any such Person for whom an email address is available, the Settlement Administrator shall email the Class Notice, substantially in the form attached as **Exhibit 3** ("Summary Notice"), with a link to a Spanish language version;

(b) For any such Person for whom an email address is not available, and to the extent that a physical address is available, the Settlement Administrator will send the Post Card Summary Notice in the form attached as **Exhibit 2** by U.S. mail, postage prepaid;

(c) If any notice that has been emailed is returned as undeliverable, the Settlement Administrator shall attempt two other email executions and then attempt post mail service, to the extent a current mailing address is available;

(d) for any notice that has been post mailed and returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail; and

(e) Neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail individual notices that have been post mailed as provided in Sections 6.1(d)(1)(b) through (d).

ii. Notice via Internet Campaigns. Defendant shall place a hyperlink to the Settlement Website on Defendant's website in the event direct email notice as described in Sections 6.1(d)(i)(a) and (c) above fails to be successfully delivered to at least 90% of the unique Persons identified on the Class Notice List ("Direct Email Reach Rate"). The Settlement



Administrator shall determine the Direct Email Reach Rate and shall report the results in writing to Class Counsel and Defendant's Counsel. Defendant may target the delivery of the hyperlink on Defendant's website to Persons on the Class Notice List who did not receive direct email notice. The hyperlink shall be accompanied by the following statement: "Illinois residents: If your face appears in a photograph on Shutterfly you may be entitled to a payment from a Class Action Settlement." In addition, the Settlement Administrator shall design and conduct an internet advertisement publication notice program, which must be approved by the Parties and the Court. This internet advertisement publication notice shall commence no later than twenty-one (21) days after entry of the Preliminary Approval Order and shall continue through the Claims Deadline.

iii. Publication Notice. No later than the Notice Date, the Settlement Administrator shall arrange for the publication of the Publication Notice in the online and offline versions of not less than three widely circulated newspapers in the state of Illinois to be displayed for at least three (3) non-consecutive days (not in the same week), beginning no later than fourteen (14) days after the Notice Date. Such publication notice shall use the same font and imagery as Defendant's website.

iv. Settlement Website. No later than the Notice Date, the Settlement Administrator shall establish and maintain a Settlement Website that contains information about the Settlement, including an electronic copy of the Long Form Class Notice (substantially in the form of **Exhibit 4**), the Settlement Agreement, and all material Court filings related to the Settlement. Settlement Class Members shall be able to submit Claim Forms via the Settlement Website. The URL of the Settlement Website shall be [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com).

v. Prior to the Notice Date, the Settlement Administrator shall establish a toll-free telephone number, which will be staffed by the Settlement Administrator, to assist in answering questions from Settlement Class Members. The toll-free number shall provide a voice response unit with message and interactive voice response (IVR) capabilities. Any scripts, FAQs or other materials for such purpose shall be made available for review and comment by Counsel for Defendant and Class Counsel prior to their use.

## **7. SUBMISSION AND EVALUATION OF CLAIMS**

**7.1** All claims must be submitted to the Settlement Administrator via the Claim Form, and must be submitted by the Claims Deadline, either electronically *via* the Settlement Website or by U.S. Mail, postmarked on or before the Claims Deadline.

**7.2** The Claim Form shall be substantially in the form attached as **Exhibit 1** and shall require the person submitting the form to provide:

- a. His or her full name, mailing address, and contact telephone number, as well as an optional email address;
- b. An affirmation that the person is a member of the Settlement Class; and
- c. A signature and affirmation of the truth of the contents of the Claim Form.

**7.3** The Claim Form shall further state that: (a) each Settlement Class Member may submit only one Claim Form and may otherwise receive compensation from Shutterfly for settlement of the Released Claims only once, and (b) each Settlement Class Member who timely submits a valid Claim Form will be entitled to receive a cash payment in an equal sum to be determined on a *pro rata* basis from the Settlement Fund, following deduction of all applicable expenses, including administration and notice costs and attorneys' fees, and that as a result the amount received by each Class Member will depend on the number of valid claimants.

**7.4** Every Claim Form that is timely submitted as required by Section 7.1 and that is fully completed with the information required by Section 7.2 shall be considered a valid Claim Form, but shall remain subject to the approval and verification procedures set forth in Section 5.2. Any Claim Form that lacks the requisite information shall be deemed to be incomplete and ineligible for payment. For any partially-completed Claim Form, the Settlement Administrator shall attempt to contact the Settlement Class Member who submitted the Claim Form at least once by e-mail or, if no email address is available, by regular U.S. mail (a) to inform the Settlement Class Member of any error(s) and/or omission(s) in the Claim Form and (b) to give the Settlement Class Member one opportunity to cure any errors and/or omissions in the Claim Form. The Settlement Class Member must cure the error(s) and/or omission(s) by the Claims Deadline, or fourteen (14) days after the Settlement Administrator sends the email or regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form, whichever is later. If the Settlement Class Member cures the error(s) and/or omission(s) by the deadline set forth in this subsection, his or her Claim Form will be considered a valid Claim Form.

**7.5** Counsel for the Parties shall meet and confer in an effort to resolve any disputes over any challenged claims. If the challenges are not withdrawn or resolved, the decision of the Settlement Administrator will be upheld.

**7.6** The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within five (5) business days of the last such payment.

## **8. OPT-OUT RIGHTS**

**8.1** Except for those persons who properly request exclusion as described below, all members of the Class will be deemed Settlement Class Members for all purposes under this Agreement. Any person who properly requests exclusion shall not be entitled to relief or other benefits under this Agreement, shall not be entitled to object to any aspect of this Agreement, and shall not be affected by this Agreement.

**8.2** A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked, or submitted electronically *via* the Settlement Website, or by submitting a request to an email address established for the purpose of receiving exclusion requests, on or before the Objection/Exclusion Deadline. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a hand written signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not electronically submitted or postmarked as required

herein and within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. The request for exclusion must be personally hand-signed only by the person requesting exclusion.

**8.3** Settlement Class Members must submit their request for exclusion individually. So-called “mass” or “class” exclusions or opt outs, whether filed by third parties on behalf of a “mass” or “class” of Settlement Class Members or multiple Settlement Class Members where no personal statement has been signed by each and every individual Settlement Class Member, shall not be allowed.

**8.4** Settlement Class Members who submit a timely request for exclusion or opt out may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Stipulation of Settlement.

**8.5** Settlement Class Members who submit a valid and timely Claim Form, but also submit an otherwise valid and timely request for exclusion or opt out, will be deemed to remain Settlement Class Members and their request for exclusion or opt out will be void and invalid.

**8.6** The Parties shall have the right to challenge the timeliness and validity of any exclusion request. Class Counsel shall also have the right to effectuate the withdrawal of any exclusion filed in error and any exclusion that a person wishes to withdraw for purposes of participating in the Settlement as set forth in this Agreement. A list reflecting all individuals who timely and validly exclude themselves from the Settlement Class shall be filed with the Court at the time of the motion for final approval of the Settlement, and the Court shall determine whether any contested exclusion request is valid.

**8.7** Within seven (7) days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide to the Parties a list of all persons who opted out by validly requesting exclusion.

## **9. OBJECTIONS TO THE SETTLEMENT**

**9.1** The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be valid and entertained by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline, the person making an objection: (a) files his/her objection with the Clerk of Court; (b) files copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court; and (c) sends copies of such papers *via* United States mail, hand delivery, or overnight delivery to Class Counsel and Defendant’s Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement.

**9.2** Any Settlement Class Member who intends to object to the Settlement must include

in any such objection: (a) his/her full name, address and current telephone number; (b) the case name and number of this Action; (c) proof that he/she is in the Settlement Class; (d) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (e) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last five years; and (f) the objector's signature. If represented by counsel, in addition to the information set forth in (a) through (f) above, the objecting Settlement Class Member's counsel shall identify the case style, court, and case number for all objections it has filed to other class action settlements in the last five years. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must state as much the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

**9.3** Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Agreement shall not be permitted to object to the approval of the Settlement Agreement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

**9.4** Settlement Class Members cannot both object to and exclude themselves from this Settlement Agreement. Any Settlement Class Member who attempts to both object to and exclude themselves from this Settlement Agreement will be deemed to have excluded themselves and will forfeit the right to object to this Settlement Agreement or any of its terms. If a Settlement Class Member returns both a Claim Form and a written request for exclusion, the request for exclusion shall be deemed void and of no force and effect, and the Claim Form shall be processed under the terms of this Settlement Agreement.

## **10. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT**

**10.1** This Agreement shall be the sole and exclusive remedy for every Class Member with respect to any and all Released Claims. Upon entry of the Final Order and Judgment, each member of the Settlement Class shall be barred from initiating, asserting, or prosecuting any claim that is released by operation of this Agreement and the Final Order and Judgment. In the event any member of the Settlement Class attempts to prosecute an action in contravention of the Final Order and Judgment and this Agreement, counsel for any of the Parties may forward this Agreement and the Final Order and Judgment to such Class Member and advise him, her, or it of the releases provided pursuant to this Agreement. If so requested by Defendant or Defendant's Counsel, Class Counsel shall provide this information to the Settlement Class Member.

**10.2** Upon entry of Final Order and Judgment, the Action shall be dismissed with prejudice. Settlement Class Members may not commence or actively prosecute actions on any Released Claims against Defendant once the Final Order and Judgment is entered.

**10.3** The Court will retain exclusive and continuing jurisdiction over the action and all Parties to interpret and enforce the terms, conditions, and obligations of this Agreement.

## **11. RELEASES**

**11.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

**11.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

**11.3** Upon the Effective Date, the Released Parties shall by operation of the Final Order and Judgment have, fully, finally, and forever released, relinquished, and discharged all claims against Plaintiffs, the Class, and Class Counsel that arise out of or relate in any way to the commencement, prosecution, settlement or resolution of the Action, except for claims to enforce the terms of the Settlement or for breach of the Settlement Agreement.

**11.4** Upon the Effective Date, the Released Parties covenant and agree that they, and each of them, will forever refrain from asserting, instituting, maintaining, prosecuting, continuing to maintain or prosecute, or threatening or attempting to assert, institute, maintain, or prosecute the Released Claims, in whole or in part, against the Released Parties.

## **12. SERVICE AWARDS AND CLASS COUNSEL'S ATTORNEYS' FEES, COSTS AND EXPENSES**

**12.1** In recognition of the time and effort the named Plaintiffs expended in pursuing the claims resulting in this Settlement and fulfilling their obligations and responsibilities as Settlement Class Representatives, and of the benefits conferred on all Settlement Class Members by the Settlement, Class Counsel may ask the Court for the payment of a Service Award of no more than Five Thousand Dollars and No Cents (\$5,000.00) per Class Representative, to be paid from the Settlement Fund to each of them. Shutterfly shall not oppose or appeal any such application that does not exceed Five Thousand Dollars and No Cents (\$5,000.00) for each Class Representative. Class Counsel may apply for such an application on or before twenty-one (21) days prior to the Objection/Exclusion Deadline. If the Court awards the Service Awards, the Settlement Administrator shall deliver to Class Counsel checks, each in the amount of the Service Awards, made payable to each of the Class Representatives who has been awarded a Service Award, within fifteen (15) days after (a) the date a completed W-9 form for each Class Representative is provided to the Settlement Administrator, or (b) the Effective Date, whichever is later.

**12.2** Class Counsel shall request, and Shutterfly shall not oppose, a Fee and Expense Award by which Class Counsel seeks fees not to exceed 35% of the Settlement Fund or Two Million Three Hundred Sixty-Two Thousand Five Hundred Dollars and No Cents (\$2,362,500.00), plus reasonable costs and expenses incurred by Class Counsel, to be paid by the Settlement Administrator from the Settlement Fund. Class Counsel shall file their application for such an award on or before twenty-one (21) days prior to the Objection/Exclusion Deadline. The Fee and Expense Award, to the extent awarded by the Court, shall be paid subject to Section 12.4 below.



Shutterfly shall not oppose, object to, appeal, or otherwise comment on, any such fee, cost and expense application in which the Fee portion of the award does not exceed Two Million Three Hundred Sixty-Two Thousand Five Hundred Dollars and No Cents (\$2,362,500.00).

**12.3** The Fee and Expense Award shall be paid by the Settlement Administrator from the Settlement Fund within five (5) days after the earlier of (a) the Effective Date, but no sooner than the provision to Defendant's Counsel of a completed and fully executed W-9 Form for the payee(s) of the Fee and Expense Award as designated by Class Counsel, or (b) the date on which all of the following conditions have occurred: (i) payment by Shutterfly of the Settlement Amount into the Escrow Account in accordance with Section 3.2(e), (ii) the entry of the Court's order so awarding the Fee and Expense Award, (iii) provision to Counsel for Defendant of a completed and fully executed W-9 Form for the payee(s) of the Fee and Expense Award as designated by Class Counsel, and (iv) provision to Counsel for Defendant of a fully executed Stipulated Undertaking by Class Counsel, substantially in the form attached hereto as **Exhibit 6**.

**12.4** In the event that (a) the Final Order and Judgment is reversed, vacated, modified, and/or remanded for further proceedings or otherwise disposed of in any manner other than one resulting in an affirmance, and (b) Class Counsel have been paid the Fee and Expense Award, then Class Counsel (or, as applicable, any and all successor(s) or assigns of their respective firms) shall, within ten (10) business days of such event, repay to Shutterfly or any of its successors or assigns, as designated in the sole discretion of Shutterfly or Defendant's Counsel, the full amount of the Fee and Expense Award paid to them, without interest. In the event that (a) the Final Order and Judgment is not reversed, vacated, or modified on appeal, but the Fee and Expense Award is reduced, and (b) Class Counsel have been paid the Fee and Expense Award, then Class Counsel (or, as applicable, any and all successor(s) or assigns of their respective firms) shall, within ten (10) business days of such event, repay to the Settlement Administrator, for deposit into the Settlement Fund, the amount by which the Fee and Expense Award has been reduced, without interest. Class Counsel (or, as applicable, any and all successor(s) or assigns of their respective firms) shall be jointly and severally liable for repayment of all or any portion of the Fee and Expense Award as set forth in this paragraph.

**12.5** Class Counsel expressly disclaim any and all right to collect attorneys' fees and expenses from any Person in excess of the amount awarded by the Court, as provided in Section 12.2 above, and agree, upon demand, to execute a release of any Person's obligation to pay such sums. Class Counsel is responsible for distributing any award of attorneys' fees and expenses among themselves. Shutterfly shall not be liable for any claims ensuing from the division of the Fee and Expense Award among Class Counsel.

**12.6** Class Counsel shall have the sole and absolute discretion to allocate any Fee and Expense Award among themselves. Shutterfly shall have no liability or other responsibility for allocation of any such Fee and Expense Award, and, in the event that any dispute arises relating to the allocation of fees or expenses, Class Counsel agree to hold Shutterfly harmless from any and all such liabilities, costs, and expenses of such dispute.

**12.7** The Parties negotiated the attorneys' fees to be sought by Class Counsel only after reaching an agreement upon the relief provided herein to the Settlement Class.



**12.8** The Settlement is not conditioned upon the Court's approval of the fees or expenses sought by Class Counsel or the Service Awards sought by the Class Representatives. Any appellate proceedings relating solely to the award of attorneys' fees and expenses and/or the Service Awards shall not delay the effectuation of the Releases contained herein.

### **13. FINAL ORDER AND JUDGMENT**

**13.1** The Parties shall jointly seek entry of Final Order and Judgment that is mutually agreeable to the Parties and is as described in this Section 13. The dismissal orders, motions or stipulation to implement this Section shall, among other things, provide for a dismissal with prejudice and waiver of any rights of appeal.

**13.2** The Final Order and Judgment shall, among other things:

a. Approve the Settlement Agreement and the proposed Settlement as fair, reasonable and adequate as to, and in the best interests of, the Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and the Releasing Parties with respect to the Released Claims;

b. Find that the Notice implemented pursuant to the Agreement: (i) constitutes the best practicable notice under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object to the Settlement or exclude themselves from the Class, and to appear at the Final Approval Hearing; and (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice;

c. Find that the Class Representatives and Class Counsel adequately represent the Class for purposes of entering into and implementing the Agreement;

d. Dismiss the Action (including all individual claims and Class claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

e. Incorporate the Releases set forth above, make the Releases effective as of the Effective Date, and forever discharge the Released Parties from the Released Claims as set forth herein;

f. Permanently bar and enjoin all Class Members who have not properly sought exclusion from the Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

g. Without affecting the finality of the Final Order and Judgment for purposes

of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Order and Judgment, and for any other necessary purpose;

h. Incorporate any other provisions, as the Court deems necessary and just; and

i. Find that pursuant to 735 ILCS 5/2-1301, there is no just reason for the delay of entry of final judgment with respect to the foregoing.

#### **14. MODIFICATION OR TERMINATION OF THE AGREEMENT**

**14.1** The performance of this Agreement is expressly contingent upon entry of the Final Order and Judgment. If the Court substantially denies the relief requested in the motion for Final Approval and does not issue the Final Order and Judgment as set forth in this Agreement following conclusion of the Final Approval Hearing, the Agreement will be terminated, having no force or effect whatsoever, and shall be null and void and will not be admissible as evidence for any purpose in any pending or future litigation in any jurisdiction.

**14.2** If the number of Settlement Class Members who timely and validly request exclusion from the settlement in accordance with Section 8 exceeds ten thousand (10,000), then Shutterfly may, in its sole discretion, notify Class Counsel in writing that it has elected to terminate this Settlement Agreement. Such notification of intent to terminate the Settlement Agreement must be provided no later than three (3) business days after the Settlement Administrator has delivered to the Parties a list of all persons who have opted out of the Settlement in accordance with Section 8.7. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*.

**14.3** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Final Order and Judgment, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Final Order and Judgment and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

**14.4** Terms and Intent of Agreement. This Agreement is entered into only for purposes of settlement. In the event that the Court enters an order preliminarily or finally approving the Settlement of the Action in a manner that is materially inconsistent with the terms and intent of this Agreement, the Parties shall meet and confer in good faith regarding any modifications made to the proposed order. If, after meeting and conferring in good faith, Defendant or Plaintiffs determine that the modifications materially alter the terms and intent of this Agreement, including but not limited to, because the modifications may materially increase Defendant's liability, decrease the benefits to the Settlement Class, or reduce or expand the scope of the releases of the Settlement Class, or if the Court refuses to grant Final Approval of this Agreement or the Effective Date does not come to pass, then either Party shall have the option to terminate this Agreement. Each Party reserves the right to prosecute or defend this Action in the event that this Agreement

does not become final and binding.

**14.5** In the event the terms or conditions of this Agreement, other than those pertaining to the Fee and Expense Award and/or Service Awards, are materially modified by any court, then either Party in its sole discretion may declare this Agreement null and void (with the exception of Sections 6, 7, and 14 herein) within ten (10) business days from the occurrence of any such material modification.

**14.6** In the event that a party exercises his/her/its option to withdraw from, rescind, revoke, and/or terminate this Agreement pursuant to any provision herein, then the Settlement proposed herein shall become null and void (with the exception of Sections 6, 7, and 14 herein) and shall have no legal effect and may never be mentioned at trial or in dispositive or class motions or motion papers (except as necessary to explain the timing of the procedural history of the Action), and the Parties will return to their respective positions existing immediately before the execution of this Agreement.

**14.7** Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any Administration Expenses, Taxes, or any expenses, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs and Defendant's future payment obligations, if any, shall cease.

**14.8** Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, then Defendant shall have no further obligations to pay the Settlement Fund and shall be responsible for only the Administration Expenses and Taxes actually incurred, which will be paid out of the Escrow Account, and for which Plaintiffs and Class Counsel are not liable.

## **15. MISCELLANEOUS PROVISIONS**

**15.1** This Agreement, including all attached exhibits, shall constitute the entire Agreement between the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements and understandings between the Parties. No representations, warranties or inducements have been made to any party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

**15.2** This Agreement may not be changed, modified or amended except in writing and signed by both Class Counsel and Defendant's Counsel, subject to Court approval if required.

**15.3** The Parties may agree, subject to approval of the Court where required, to reasonable extensions of time to carry out the provisions of this Agreement.

**15.4** Each Party represents and warrants that it enters into this Agreement of his, her, or its own free will. Each Party is relying solely on its own judgment and knowledge and is not relying on any statement or representation made by any other Party or any other Party's agents or attorneys concerning the subject matter, basis, or effect of this Agreement.

**15.5** This Agreement has been negotiated at arms' length by Class Counsel and Defendant's Counsel. In the event of any dispute arising out of this Agreement or in any proceeding to enforce any of the terms of this Agreement, no Party shall be deemed to be the drafter of this Agreement or of any particular provision or provisions, and no part of this Agreement shall be construed against any Party on the basis of that Party's identity as the drafter of any part of this Agreement.

**15.6** The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

**15.7** Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the Settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

b. is, may be deemed, or shall be used, offered or received against Defendant, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

c. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Order and Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

d. is, may be deemed, or shall be construed against Plaintiffs, the Class, the

Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

e. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, the Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

**15.8** The Parties agree to cooperate fully and to take all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

**15.9** This Agreement shall be binding upon and inure to the benefit of all Settlement Class Members, Defendant, and their respective representatives, heirs, successors and assigns.

**15.10** The headings of the sections of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

**15.11** This Agreement will be construed in accordance with the laws of the state of Illinois without reference to the conflicts of laws provisions thereof.

**15.12** If any provision, paragraph, section, subsection, or other portion of this Agreement is found to be void (except for Sections 3 & 11), all of the remaining provisions of this Agreement shall remain in full force and effect.

**15.13** The Parties each represent and warrant that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand covered by this Agreement.

**15.14** The signatories to this Agreement represent that they have been duly authorized to execute this Agreement on behalf of the Parties they purport to represent.

**15.15** The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Settlement Agreement.

**15.16** This Agreement may be executed by the Parties in one or more counterparts exchanged by hand, messenger, facsimile, or PDF as an electronic mail attachment, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**15.17** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

**[Remainder of Page Intentionally Left Blank]**



The undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

DATED: \_\_\_\_\_

ON BEHALF OF SHUTTERFLY LLC AND  
SHUTTERFLY, INC.

By: \_\_\_\_\_

DATED: 05/06/2021

ON BEHALF OF VERNITA MIRACLE-POND

By: Vernita Miracle-Pond

DATED: \_\_\_\_\_

ON BEHALF OF SAMANTHA PARAF

By: \_\_\_\_\_

DATED: \_\_\_\_\_

ON BEHALF OF CLASS COUNSEL

By: \_\_\_\_\_

The undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

DATED: \_\_\_\_\_

ON BEHALF OF SHUTTERFLY LLC AND  
SHUTTERFLY, INC.

By: \_\_\_\_\_

DATED: \_\_\_\_\_

ON BEHALF OF VERNITA MIRACLE-POND

By: \_\_\_\_\_

DATED: May 7, 2021

ON BEHALF OF SAMANTHA PARAF

By:  \_\_\_\_\_  
Samantha Paraf (May 7, 2021 07:04 CDT)

DATED: \_\_\_\_\_

ON BEHALF OF CLASS COUNSEL

By: \_\_\_\_\_

The undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

DATED: \_\_\_\_\_

ON BEHALF OF SHUTTERFLY LLC AND  
SHUTTERFLY, INC.

By: \_\_\_\_\_

DATED: \_\_\_\_\_

ON BEHALF OF VERNITA MIRACLE-POND

By: \_\_\_\_\_

DATED: \_\_\_\_\_

ON BEHALF OF SAMANTHA PARAF

By: \_\_\_\_\_

DATED: May 10, 2021

ON BEHALF OF CLASS COUNSEL

By: David P. Milian

The undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

DATED: \_\_\_\_\_

ON BEHALF OF SHUTTERFLY LLC AND  
SHUTTERFLY, INC.

By: \_\_\_\_\_

DATED: \_\_\_\_\_

ON BEHALF OF VERNITA MIRACLE-POND

By: \_\_\_\_\_

DATED: \_\_\_\_\_

ON BEHALF OF SAMANTHA PARAF

By: \_\_\_\_\_

DATED: 5-7-21

ON BEHALF OF CLASS COUNSEL

By:  \_\_\_\_\_

The undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

DATED: \_\_\_\_\_

ON BEHALF OF SHUTTERFLY LLC AND  
SHUTTERFLY, INC.

By: \_\_\_\_\_

DATED: \_\_\_\_\_

ON BEHALF OF VERNITA MIRACLE-POND

By: \_\_\_\_\_

DATED: \_\_\_\_\_

ON BEHALF OF SAMANTHA PARAF

By: \_\_\_\_\_

DATED: 5/10/2021

ON BEHALF OF CLASS COUNSEL


By: 

EXHIBIT 1



## SHUTTERFLY BIPA CLASS ACTION SETTLEMENT

*Miracle-Pond, et al. v. Shutterfly, Inc.*, Case No. 2019-CH-07050 (Cir. Ct. Cook Cty.)

### CLAIM FORM

**IF YOU ARE AN ILLINOIS RESIDENT AND APPEAR IN A PHOTOGRAPH MAINTAINED ON SHUTTERFLY AT ANY TIME BETWEEN JUNE 11, 2014 AND MONTH DAY, YEAR, YOU MAY BE ELIGIBLE FOR A PAYMENT AS PART OF THE SETTLEMENT OF THIS CASE.**

**TO RECEIVE A PAYMENT, YOU MUST COMPLETE THIS CLAIM FORM AND SUBMIT IT BY MONTH DAY, YEAR.**

**INSTRUCTIONS:** To complete this Claim Form, provide the requested information in Step 1; select a payment method and provide any requested information in Step 2; sign the certification in Step 3; and submit the Claim Form using one of the methods stated in Step 4. **You must complete and submit this claim form by Month Day, Year.**

**You may only submit one claim and duplicate claims will be rejected.** If your claim is approved, you will receive a payment representing a *pro rata* share of the Settlement Fund (the actual cash amount an individual will receive will depend on the number of valid claims submitted).

#### STEP 1 – CLAIMANT INFORMATION

*In the spaces below, print your (i) name, (ii) address, (iii) telephone number, and (iv) your email address (optional):*

Remember that you are only eligible for a claim if you are an Illinois resident and appear in a photograph maintained on Shutterfly at any time between June 11, 2014 and **Month Day, Year.**

**Name:** \_\_\_\_\_  
(First) (Middle Initial) (Last)

**Address:** \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zipcode)

**Telephone**

**Number:** (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

**Email address (optional):** \_\_\_\_\_

## STEP 2 – SELECT A PAYMENT METHOD

*Select the box of how you would like to receive your payment and provide the requested information:*

☐ **Check:** If you prefer to receive your payment *via* check, please provide your mailing address (if different from the address provided in Step 1).

**Mailing**

**Address:** \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zipcode)

☐ **Zelle:** If you prefer to receive your payment *via* Zelle, please provide the email address associated with your Zelle account.

**Email Address for Zelle:** \_\_\_\_\_

☐ **PayPal:** If you prefer to receive your payment *via* PayPal, please provide the email address associated with your PayPal account.

**Email Address for PayPal:** \_\_\_\_\_

☐ **Direct Deposit:** If you prefer to receive your payment *via* Direct Deposit, please provide the following information:

**Bank Name:** \_\_\_\_\_

**Account Holder:** \_\_\_\_\_

Account Number: \_\_\_\_\_

Routing Number: \_\_\_\_\_

### STEP 3 – CERTIFICATION

I \_\_\_\_\_, affirm that:  
(Full Name)

**I am an Illinois resident and appear in a photograph maintained on Shutterfly at any time between June 11, 2014 and Month Day, Year.**

*I affirm that the above statement is true and correct, and that this is the only Claim Form that I have submitted and/or will submit. I also understand, acknowledge and agree that I am eligible to submit only one Claim Form as part of this settlement. I understand that this Claim Form will be reviewed for authenticity and completeness.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### STEP 4 – METHODS OF SUBMISSION

***Please submit the completed Claim Form through one of the following methods:***

1. Online by visiting [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com). and completing an online Claim Form no later than Month Day, Year;

OR

2. By mailing via U.S. Mail a completed and signed Claim Form to the Settlement Administrator, postmarked no later than Month Day, Year, and addressed to:

*Miracle-Pond, et al. v. Shutterfly, Inc.,*  
Case No. 2019-CH-07050 (Cir. Ct. Cook Cty.)

P.O. Box \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

EXHIBIT 2





## If Your Face Appears in a Photograph On Shutterfly, You May Be Entitled to a Payment from a Class Action Settlement.

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

A \$6.75 million settlement has been reached in a class action lawsuit against Shutterfly, Inc. ("Shutterfly"), claiming that Shutterfly violated Illinois law by collecting and storing biometric data of individuals in Illinois without proper notice and consent as part of a feature called Face Grouping. Shutterfly denies it violated any law and the Court has not decided who is right.

**Who is Included?** You are a Class Member and are affected by this Settlement if you are an Illinois resident and appear in a photograph maintained on Shutterfly at any time between June 11, 2014 and **Month, Day, Year**.

**What Are the Settlement Terms?** Class Members who file valid claims will be eligible to receive a *pro rata* portion of the \$6,750,000 Settlement Fund, with the payment amount depending on the number of valid claims and deductions for Court-approved notice and settlement administration expenses, attorneys' fees, litigation costs and expenses, and service awards to the Class Representatives.

**How Can I Get a Payment?** The only way to get a payment is to submit a Claim Form. If you submit a Claim Form, you will give up the right to sue Shutterfly or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement. You must submit a Claim Form by **Month, Day, Year**.

**Your Other Options.** If you do not want to be legally bound by the Settlement, you must exclude yourself by \_\_\_\_\_, 2021. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website. You may object to the Settlement by \_\_\_\_\_, 2021. The Long Form Notice available on the website listed below explains how to exclude yourself or object. The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2021 to consider whether to approve the Settlement and a request for attorneys' fees of up to 35% of the Settlement Fund and for a Service Award of \$5,000 to each of the Class Representatives. Motions for these fees and expenses will be posted on the Settlement Website when they are filed with the Court. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to. The hearing may be held remotely at the Court's discretion. For more information, call or visit the website.

www.ShutterflyBIPASettlement.com

1-XXX-XXX-XXXX

**BUSINESS REPLY MAIL**

FIRST CLASS MAIL

PERMIT NO 581

PORTLAND OR

POSTAGE WILL BE PAID BY ADDRESSEE

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



Shutterfly BIPA Settlement  
c/o Shutterfly BIPA Settlement Administrator

\_\_\_\_\_

\_\_\_\_\_



EXHIBIT 3

## SUMMARY E-MAIL NOTICE

### IF YOUR FACE APPEARS IN A PHOTOGRAPH ON SHUTTERFLY YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

A **\$6.75 million settlement** has been reached in a class action lawsuit against Shutterfly, Inc. (“Shutterfly”), which claims that Shutterfly violated Illinois law by collecting and storing biometric data of individuals in Illinois without proper notice and consent as part of a featured called Face Grouping. Shutterfly denies it violated any law and the Court has not decided who is right. For more information or to submit a claim for payment please visit [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com)

- **Who is Included?** You are a Class Member and are affected by this Settlement if you are an Illinois resident and appear in a photograph maintained on Shutterfly at any time between June 11, 2014 and **Month, Day, Year**.
- **What Are the Settlement Terms?** Class Members who file valid claims will be eligible to receive a *pro rata* portion of the \$6,750,000 Settlement Fund, with the payment amount depending on the number of valid claims and deductions for Court-approved notice and settlement administration expenses, attorneys’ fees, litigation costs and expenses, and service awards to the Class Representatives.
- **How Can I Get a Payment?** The only way to get a payment is to submit a Claim Form. If you submit a Claim Form, you will give up the right to sue Shutterfly or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement. You must submit a Claim Form by **Month, Day, Year**.
- **Your Other Options.** If you do not want to be legally bound by the Settlement, you must exclude yourself by \_\_\_\_\_, 2021. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website at [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com). You may object to the Settlement by \_\_\_\_\_, 2021. The Long Form Notice available on the website explains how to exclude yourself or object. The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2021 to consider whether to approve the Settlement and a request for attorneys’ fees of up to 35% of the Settlement Fund, reimbursement of expenses, and for a Service Award of \$5,000 to each of the Class Representatives. Motions for these fees and expenses will be posted on the Settlement Website when they are filed with the Court. You may appear at the hearing, either yourself or through an attorney hired by you, but you don’t have to. The hearing may be held remotely at the Court’s discretion. For more information, call or visit the website.

EXHIBIT 4

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Miracle-Pond, et al. v. Shutterfly, Inc.*, Case No. 2019-CH-07050 (Cir. Ct. Cook Cty.)

### **IF YOU ARE AN ILLINOIS RESIDENT AND APPEAR IN A PHOTOGRAPH MAINTAINED ON SHUTTERFLY AT ANY TIME BETWEEN JUNE 11, 2014 AND MONTH DAY, YEAR, YOU MAY BE ENTITLED TO GET A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

*An Illinois State Court has authorized this Notice. This is not a solicitation from a lawyer.  
Please read this Notice carefully and completely.*

#### **THIS NOTICE OF A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

- A Settlement has been reached in a class action lawsuit against Shutterfly, Inc. (“Defendant” or “Shutterfly”), which claims that Shutterfly violated Illinois law by collecting and storing biometric data of individuals in Illinois who appear in photos maintained on Shutterfly without proper notice and consent. Shutterfly denies it violated any law. For more information, please visit [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com).
- You are a Class Member and are affected by this Settlement if you are an Illinois resident and appear in a photograph maintained on Shutterfly at any time between June 11, 2014 and Month Day, Year.
- Class Members who file valid claims will be eligible to receive a *pro rata* portion of the \$6,750,000 Settlement Fund. The actual cash amount an individual will receive will depend on the number of valid claims and deductions for Court-approved notice and settlement administration expenses, attorneys’ fees, litigation costs and expenses, and service awards to the Class Representatives.
- Your legal rights will be affected whether you act or do not act. You should read this entire Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM:</b> <b>Month Day, Year</b>	The only way to get a payment. If you submit a Claim Form, you will give up the right to sue Shutterfly or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement. You must submit a Claim Form by <b>Month, Day, Year</b> .
<b>EXCLUDE YOURSELF FROM THIS SETTLEMENT</b> <b>DEADLINE:</b> <b>Month Day, Year</b>	You may exclude yourself from the Settlement. If you do so, you will not receive any payment, but you will keep any rights to pursue your own lawsuit against Shutterfly or any Released Parties for the claims made in this case and released by this Settlement. To exclude yourself, you must submit a request to be excluded by <b>Month, Day, Year</b> .
<b>OBJECT TO OR COMMENT ON THE SETTLEMENT</b> <b>DEADLINE:</b> <b>Month Day, Year</b>	You may object to the Settlement by writing to the Court and informing it why you do not think the Settlement should be approved. You can also write the Court to provide comments or reasons why you support the Settlement. In either case, you will give up the right to sue Shutterfly or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement. If you choose to object, you must do so by <b>Month, Day, Year</b> .
<b>GO TO THE “FINAL APPROVAL” HEARING</b> <b>DATE:</b> <b>Month Day, Year</b>	You may attend the Final Approval Hearing where the Court may hear arguments concerning the approval of the Settlement. This hearing may be held remotely at the Court’s discretion. If you wish to speak at the Final Approval Hearing, you must make a request to do so in your written objection or comment, or you may appear at the Final Approval Hearing and request that the Court allow you to speak. You are <u>not</u> required to attend the Final Approval Hearing.
<b>DO NOTHING</b>	You will not receive a payment, and you will give up the right to sue Shutterfly or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. No Settlement benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

**This Settlement affects your legal rights even if you do nothing.**  
**Questions? Go to [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com) or call 1-888-888-8888.**



## BASIC INFORMATION

### 1. Why did I get this Notice?

A Court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to grant final approval of the Settlement. You may be eligible to receive a payment as part of the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge Raymond W. Mitchell of the Circuit Court of Cook County, Illinois is overseeing this class action. The case is known as *Miracle-Pond, et al. v. Shutterfly, Inc.*, Case No. 2019-CH-07050 (Cir. Ct. Cook Cty.) (the “Action”). The people who filed this lawsuit are called the “Plaintiffs” and the company they sued, Shutterfly, Inc., is called the “Defendant.”

### 2. What is this lawsuit about?

The Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), prohibits private companies from obtaining, collecting, storing, or using a person’s biometric identifiers and/or biometric information (collectively, “biometrics”), such as a scan of face geometry, without first providing such individual with certain written disclosures and obtaining written consent. BIPA also requires that private companies that possess biometrics publish a publicly available retention schedule.

The Plaintiffs claim that Shutterfly violated BIPA by obtaining, collecting and storing Illinois residents’ biometrics through the process of using facial recognition software to group similar faces together in photographs that have been uploaded by the same Shutterfly user, a feature called Face Grouping, without adequate prior notice and consent.

Shutterfly denies any wrongdoing and denies all other claims made in the Action. No court or other entity has made any judgment or other determination of any wrongdoing or that Shutterfly violated the law. By entering into the Settlement, Shutterfly is not admitting that it did anything wrong.

### 3. Why is this a class action?

In a class action, one or more people called the “Class Representatives” sue on behalf of all people who have similar claims. Together all of these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

The Class Representatives in this case are the Plaintiffs: Vernita Miracle-Pond and Samantha Paraf.

### 4. Why is there a Settlement?

The Plaintiffs and Shutterfly do not agree about the claims made in this Action. The Action has not gone to trial and the Court has not decided in favor of the Plaintiffs or Shutterfly. Instead, the Plaintiffs and Shutterfly have agreed to settle the Action. That way both sides avoid the cost and risks of trial, and Class Members will get Settlement benefits now rather than years from now, if at all. The Plaintiffs and the attorneys for the Class (“Class Counsel”) believe the Settlement is best for all Class Members because of the risks and uncertainty associated with continued litigation and the nature of the defenses raised by Shutterfly.

## WHO IS INCLUDED IN THE SETTLEMENT?

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

You are a Class Member, and you are affected by this Settlement, if you are an Illinois resident and appear in a photograph maintained on Shutterfly at any time between June 11, 2014 and Month Day, Year. If you received this notice by e-mail or U.S. mail, you may fit this description, and you may submit a Claim Form. If you did not receive this notice by e-mail or U.S. mail, but believe you fit this description, you may also submit a Claim Form.

**Note:** If you are a Shutterfly account holder, you should have received an email to the email address associated with your Shutterfly account. For more information, please visit at [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com).

**Questions? Go to [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com) or call 1-888-888-8888.**  
**This Settlement affects your legal rights even if you do nothing.**



**6. Are there exceptions to being included in the Settlement?**

Yes, the Settlement does not include: (1) any Judge, Magistrate, or mediator presiding over this Action and members of their families, (2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (3) Class Counsel, and (4) the legal representatives, successors or assigns of any such excluded persons.

**7. What if I am still not sure whether I am part of the Settlement?**

If you are still not sure whether you are a Class Member, you may go to the Settlement website at [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com), email the Settlement Administrator at [info@ShutterflyBIPASettlement.com](mailto:info@ShutterflyBIPASettlement.com), or call the Settlement Administrator's toll-free number at 1-888-888-8888.

**THE SETTLEMENT BENEFITS**

**8. What does the Settlement provide?**

Shutterfly has agreed to create a Settlement Fund totaling **\$6,750,000**, if the Settlement is approved by the Court. The following payments will come out of this fund: Settlement Payments as a result of Approved Claims made by Class Members, Settlement Administration Expenses, any Court-approved Service Awards to the Class Representatives, and any Court-approved attorneys' fees and expenses to Class Counsel.

In addition, Shutterfly has agreed to provide a notice to Class Members whom Shutterfly can reasonably and reliably identify as Shutterfly account holders ("Class Member Users"). The notice will disclose the data collected for Face Grouping, the purpose(s) of collecting the data, and the length of term of the collection. The notice will provide a mechanism for Class Member Users to choose whether to keep the Face Grouping feature "on" or set the feature to "off" for their account.

In addition, Shutterfly will publish a supplemental retention schedule and guidelines for permanently destroying Face Grouping data created for Illinois Shutterfly users within three (3) years of their last interaction with Shutterfly.

**9. How much will my payment be?**

If you are a member of the Class you may submit a Claim Form to receive a portion of the Net Settlement Fund. The Net Settlement Fund is the portion of the Settlement Fund that remains after Settlement Administration Expenses, any Court-approved Service Awards to the Class Representatives, and any Court-approved attorneys' fees and expenses to Class Counsel are deducted. The amount of your payment will depend on how many Class Members file valid claims and the amount of fees, costs, expenses, and awards deducted from the fund. Each Class Member who submits a valid claim will receive a proportionate share of the Net Settlement Fund. For example, in the event the Net Settlement Fund equals \$4 Million, and 30,000 Class Members submit a claim, the amount of the Claim per person will be approximately \$134. The Settlement Website will periodically be updated to provide the estimated payment amount based on the number of participating Class Members.

**10. How can I get a payment?**

If you are a Class Member and you want to receive a payment, you must complete and submit a valid Claim Form **no later than Month Day, Year**. Claim Forms can be found and submitted online through the Settlement Website, or through the mail. To submit a Claim Form online or to get a paper copy, go to [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com), email the Settlement Administrator at [info@ShutterflyBIPASettlement.com](mailto:info@ShutterflyBIPASettlement.com), or call the Settlement Administrator's toll-free number at 1-888-888-8888.

We encourage you to submit your claim electronically. Not only is submitting online easier and more secure, but it is completely free and takes only minutes. You will also be able to select the option of receiving your payment by check or electronically through Zelle, PayPal, and direct deposit.

**11. When will I get my payment?**

It may take more than one year for the Court to decide whether to approve the Settlement and for the Settlement to become final. Please be patient and check [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com) for updates. No benefits will be provided until the Court has approved the settlement and any appeals have been resolved. The "Effective Date," as explained more fully and defined in the Settlement Agreement, will then have been reached.

**Questions? Go to [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com) or call 1-888-888-8888.**

**This Settlement affects your legal rights even if you do nothing.**

Based on your selection on the Claim Form, you should receive a payment from the Settlement Administrator within 45 days after the Settlement has been finally approved and/or after any appeal process is complete, whichever occurs later. The hearing to consider final approval of the Settlement is scheduled for **Month Day, Year**. Even if the Court approves the Settlement there may be appeals. It is always uncertain whether and when appeals can be resolved, and resolving them can take time, perhaps more than a year.

All checks will expire and become void 90 days after they are issued. If appropriate, funds remaining from the initial round of uncashed checks or returned electronic payments may be used for a second distribution to participating Class Members and/or may be donated to one or more charity(ies) agreed on by the Parties and approved by the Court.

The Settlement Website will be updated to inform Class Members of the progress of the Settlement. Please be patient.

**12. What happens if my contact information changes after I submit a claim?**

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by calling 1-888-888-8888, emailing [info@ShutterflyBIPASettlement.com](mailto:info@ShutterflyBIPASettlement.com), or by writing to:

*Miracle-Pond, et al. v. Shutterfly, Inc.,*  
Case No. 2019-CH-07050 (Cir. Ct. Cook Cty.)  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

The deadline to submit a Claim Form is **Month Day, Year**.

### **REMAINING IN THE SETTLEMENT**

**13. What am I giving up to stay in the Class?**

Unless you exclude yourself, you are choosing to remain in the Class. If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit or Arbitration proceeding against Shutterfly and any of the Released Parties about the claims made in this case and released by the Settlement.

The specific rights you are giving up are called Released Claims (see next question).

**14. What are the Released Claims?**

If you are a Class Member, and you do not exclude yourself from the Settlement, and the Settlement becomes final, you will be releasing Shutterfly and any of the Released Parties from any liability regarding any and all claims associated with this case, as explained in the Settlement Agreement. You will give up your right to be part of any other lawsuit against Shutterfly and any of the Released Parties regarding the claims resolved by this Settlement and released by the Settlement Agreement. The specific claims you will release are described in sections 1.25-1.27 and 11.1-11.4 of the Settlement Agreement (available at [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com)) A copy of sections 1.25-1.27 and 11.1-11.4 of the Settlement Agreement, which sets out the claims released by you, if you are a Class Member, is attached to this Notice as Exhibit A.

### **THE LAWYERS REPRESENTING YOU**

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

Yes, the Court has appointed the law firms of Ahdoot & Wolfson, PC, Carey Rodriguez Milian, LLP, and Carlson Lynch, LLP as Class Counsel to represent you and the Class for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this Action.

**23. How will Class Counsel be paid?**

Pursuant to the Settlement Agreement, Class Counsel will file a motion asking the Court to award them attorneys' fees not to exceed 35% of the Settlement Fund (or \$2,362,500.00), plus reasonable costs and expenses incurred by Class Counsel. They will also ask the

**Questions? Go to [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com) or call 1-888-888-8888.**

**This Settlement affects your legal rights even if you do nothing.**

Court to approve \$5,000 Service Awards to each of the Class Representatives for participating in this Action and for their efforts in achieving the Settlement. The Court may award less than these amounts.

Class Counsel's application for attorneys' fees, costs, and expenses, and application for Service Awards will be made available on the Settlement Website at [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com) fourteen (14) days before the deadline for you to comment or object to the Settlement.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a Class Member and want to keep any right you may have to sue or continue to sue Shutterfly on your own at your own expense based on the claims raised in this Action or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting out” of – the Settlement.

### 24. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must submit a request in writing to exclude yourself from the Settlement. The request must be in writing and identify the case name *Miracle-Pond, et al. v. Shutterfly, Inc.*, Case No. 2019-CH-07050 (Cir. Ct. Cook Cty.); state your name and address; be physically hand- signed by you; and must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Miracle-Pond, et al. v. Shutterfly, Inc.*, Case No. 2019-CH-07050 (Cir. Ct. Cook Cty.).” You must either mail your request to be excluded from the Settlement Class to the post office box address below, or submit your request to be excluded through the link on the Settlement Website, or email your request to the following email address established for the purpose of accepting exclusions: \_\_\_\_@\_\_\_\_.com. To be valid, your exclusion must be received by the Settlement Administrator electronically, or if mailed to the address below postmarked, no later than **Month Day, Year**:

*Miracle-Pond, et al. v. Shutterfly, Inc.*,  
Case No. 2019-CH-07050 (Cir. Ct. Cook Cty.)  
P.O. Box \_\_\_\_  
\_\_\_\_, \_\_\_\_

You cannot exclude yourself by telephone or by e-mail. And you cannot exclude any other Class Member.

### 25. If I exclude myself, can I still get any of the Settlement benefits?

No. If you exclude yourself, you are telling the Court that you do not want to be part of the Settlement. You can only receive any of the Settlement benefits described in this notice if you stay in the Settlement.

### 26. If I do not exclude myself, can I sue the Shutterfly for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Shutterfly or any of the Released Parties for the claims made in this case and released by the Settlement. You must exclude yourself from this Action to start or continue with your own lawsuit or be part of any other lawsuit against Shutterfly or any of the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

## OBJECT TO OR COMMENT ON THE SETTLEMENT

### 27. How do I tell the Court that I do not like the Settlement?

If you are a Class Member, you can tell the Court that you do not agree with all or any part of the Settlement. You can give reasons why you think the Court should not approve the Settlement. To object, on or before **Month Day, Year**, you must mail or hand-deliver your written objection to the Settlement to Class Counsel and Counsel for Shutterfly at the addresses set forth below, and file, mail or hand-deliver your objection simultaneously to the Court, at the address below.

Your objection must (i) include your full name, current address, email address and telephone number, as well as the name, email address and telephone number of all attorneys representing you (if any); (ii) contain your original signature and the signature of your attorneys, if any; (iii) state whether you object to the Settlement, in whole or in part; (iv) set forth a statement of the legal and factual basis for your objection; (v) include a list of all cases, by name and case number, in which the you and/or your counsel has filed or in any way participated—financially or otherwise—in objecting to a class action settlement in the previous five (5) years; and (vi) provide copies of any documents that you wish to submit in support of your position.

**Questions? Go to [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com) or call 1-888-888-8888.**

**This Settlement affects your legal rights even if you do nothing.**

Clerk of the Circuit Court of Cook County – Chancery Division <i>Richard J. Daley Center, 8<sup>th</sup> Floor</i> 50 West Washington Street Chicago, Illinois 60602	Class Counsel c/o Shutterfly BIPA Settlement P.O. Box _____ _____, _____ <i>info@ShutterflyBIPASettlement.com</i>	Counsel for Shutterfly c/o Shutterfly BIPA Settlement P.O. Box _____ _____, _____ <i>info@ShutterflyBIPASettlement.com</i>
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**28. What is the difference between objecting and requesting exclusion?**

Objecting is simply telling the Court you do not like something about the Settlement. You can object only if you stay in the Class (that is, do not exclude yourself). Requesting exclusion is telling the Court you do not want to be part of the Class or the Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer affects you.

### THE FINAL APPROVAL HEARING

**29. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing on **Month Day, Year** at   :  **0**  **m.** before the Honorable Raymond W. Mitchell in Room 2601 at the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602. This hearing may be held remotely at the Court’s discretion. Check the settlement website for updates.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve: the Settlement; Class Counsel’s application for attorneys’ fees, costs and expenses; and the Service Awards to the Class Representatives. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing.

**Note:** The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, *www.ShutterflyBIPASettlement.com*.

**30. Do I have to come to the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection on time the Court will consider it.

**31. May I speak at the Final Approval Hearing?**

Yes. If you wish to, you may attend and speak at the Final Approval Hearing, whether or not you intend to object to the Settlement. If you, or your attorney, wish to appear and speak at the Final Approval Hearing, you must do the following prior to **Month Day, Year** (1) mail or hand-deliver to the Court a “Notice of Intention to Appear” in the Action to the address set forth in Paragraph 27, above; (2) provide copies of any exhibits or documents that you intend to present or use at the hearing; (3) provide a list of all witnesses that you intend to call to give evidence at the hearing; (4) take all other actions or make additional submissions as may be ordered by the Court; and (5) mail or hand-deliver any notice and any exhibits, lists or documents, to Class Counsel and Counsel for Shutterfly at the addresses set forth in Paragraph 27, above.

Your Notice of Intention to Appear must be received at the addresses set forth in Paragraph 27, no later than fourteen (14) days prior to the Final Approval Hearing. Please note that if you do not file a Notice of Intention, you may still appear at the Final Approval Hearing and request to address the Court.

## IF YOU DO NOTHING

### 32. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will not get any benefits from this Settlement. But, unless you exclude yourself, you will not be able to sue, or continue to sue, Shutterfly – as part of any other lawsuit – about the same legal claims that are being resolved by this Settlement.

## GETTING MORE INFORMATION

### 33. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at [info@ShutterflyBIPASettlement.com](mailto:info@ShutterflyBIPASettlement.com), by calling 888-888-8888 or by writing to *Miracle-Pond, et al. v. Shutterfly, Inc.*, Case No. 2019-CH-07050, P.O. Box \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. In the event of any conflict between this Notice and the Settlement Agreement, the Settlement Agreement shall be binding. Publicly filed documents can also be obtained by visiting the office of the Clerk of the Circuit Court of Cook County – Chancery Division, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

If you have questions you may contact Class Counsel at:

Ahdoot & Wolfson, PC  
c/o Shutterfly BIPA Settlement  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
[info@ShutterflyBIPASettlement.com](mailto:info@ShutterflyBIPASettlement.com)

Carlson Lynch, LLP  
c/o Shutterfly BIPA Settlement  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
[info@ShutterflyBIPASettlement.com](mailto:info@ShutterflyBIPASettlement.com)

Carey Rodriguez Milian, LLP  
c/o Shutterfly BIPA Settlement  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
[info@ShutterflyBIPASettlement.com](mailto:info@ShutterflyBIPASettlement.com)

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.  
THE COURT CANNOT ANSWER ANY QUESTIONS.**

**Questions? Go to [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com) or call 1-888-888-8888.  
This Settlement affects your legal rights even if you do nothing.**

## **EXHIBIT A**

### **SECTIONS 1.25-1.27 OF THE SETTLEMENT AGREEMENT**

#### **DEFINITIONS**

**1.25 “Released Claims”** means any and all claims or causes of action of any kind, whether known or unknown (including “Unknown Claims” as defined below), fixed or contingent, accrued or not accrued, matured or not yet matured, asserted or unasserted, suspected or unsuspected, including without limitation those related to unknown and unsuspected injuries as well as unknown and unsuspected consequences of known or suspected injuries, that the Releasing Parties now own or hold, or have owned or held at any time prior to the Effective Date of this Agreement, arising from or related to Plaintiffs’ allegations or the alleged collection, storage, sale, monetization or derivation of revenue or profit from, or dissemination of alleged biometric or personal data, including all claims that were brought or could have been brought in the Action, including claims for any violation of BIPA, and further including, without limitation, any claim that Shutterfly does not comply with BIPA, or any other law or provision, with respect to the implementation of facial recognition technology.

**1.26 “Released Parties”** means Shutterfly, Inc. and Shutterfly LLC and their direct and indirect corporate parents, subsidiaries, affiliates, principals, investors, owners, members, controlling shareholders, trustees, estates, heirs, executors, administrators, partners, and joint venturers, along with the officers, directors, shareholders, employees, attorneys, representatives, agents, insurers, successors, predecessors, and assigns of such persons or entities.

**1.27 “Releasing Parties”** means Plaintiffs and the Class Members and their respective present or past heirs, executors, estates, administrators, trustees, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

### **SECTIONS 11.1-11.4 OF THE SETTLEMENT AGREEMENT**

#### **RELEASES**

**11.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

**11.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

**11.3** Upon the Effective Date, the Released Parties shall by operation of the Final Order and Judgment have, fully, finally, and forever released, relinquished, and discharged all claims against Plaintiffs, the Class, and Class Counsel that arise out of or relate in any way to the commencement, prosecution, settlement or resolution of the Action, except for claims to enforce the terms of the settlement or for breach of the Settlement Agreement.

**Questions? Go to [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com) or call 1-888-888-8888.**

**This Settlement affects your legal rights even if you do nothing.**



**11.4** Upon the Effective Date, the Released Parties covenant and agree that they, and each of them, will forever refrain from asserting, instituting, maintaining, prosecuting, continuing to maintain or prosecute, or threatening or attempting to assert, institute, maintain, or prosecute the Released Claims, in whole or in part, against the Released Parties.

[Please note that capitalized terms that are not defined herein have the same meaning as ascribed to them in the Settlement Agreement (available at [www.ShutterflyBIPASettlement.com](http://www.ShutterflyBIPASettlement.com)), including as defined in sections 1.1-1.35 of the Settlement Agreement]

# EXHIBIT 5

## Notice to Illinois Users – Face Grouping

Please review the following information about face grouping and how we use it, so you can decide whether to keep this feature enabled for your account.

- With face grouping, when you upload photos of yourself, friends, family, or others, we use facial-recognition software to create a numerical representation of the faces detected in your photos and automatically group similar faces together.
- We use this feature to help you organize, tag, and create personalized products from your own photos. We don't sell face grouping data or share it with other Shutterfly users or third parties, and we won't ever suggest tags except the ones that you choose to create for your own face groups.
- We delete face grouping data if you disable the feature, which you can do at any time in your account settings, or when it has been more than three years since your last interaction with Shutterfly.
- If you have face grouping enabled, you are representing to us that you have obtained consent for the feature from the people who appear in your photos or, if they are under the age of 18, from their parent or legal guardian.

For most Shutterfly users, face grouping is currently enabled. However, if you have indicated in your account settings that you live in Illinois, we will be disabling face grouping for your account by **[[date]]** unless you ask us to keep the feature enabled after reviewing the information above.

["Keep Face Grouping Enabled"]

EXHIBIT 6

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

VERNITA MIRACLE-POND and  
SAMANTHA PARAF, individually and on  
behalf of all others similarly situated,

*Plaintiffs,*

v.

SHUTTERFLY, INC.,

*Defendant.*

Case No. 2019-CH-07050

Judge: Raymond W. Mitchell

**STIPULATED UNDERTAKING RE ATTORNEYS' FEES AND EXPENSES  
IN CONNECTION WITH PROPOSED CLASS ACTION SETTLEMENT**

Plaintiffs Vernita Miracle-Pond and Samantha Paraf ("Plaintiffs") and Defendant Shutterfly, Inc. ("Shutterfly"), by and through their undersigned counsel, stipulate and agree as follows:

WHEREAS, Plaintiffs, individually and on behalf of the Settlement Class, by and through Class Counsel, and Shutterfly, by and through its counsel, have entered into a Settlement Agreement ("Settlement Agreement") in the above captioned action to which this Stipulated Undertaking is an exhibit;

WHEREAS, all capitalized terms used herein, without definition, shall have the same meaning, force and effect given to them in the Settlement Agreement;

WHEREAS, Class Counsel and their respective law firms desire to give an undertaking for the repayment of the Fee and Expense Award, to the extent required by the Settlement Agreement.

NOW, THEREFORE, each of the undersigned Class Counsel, on behalf of themselves as individuals, as well as officers and principals or agents of their law firms, hereby submit themselves and their respective law firms to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

1. In the event that the Final Approval Order and Judgment entered in the Action is reversed, vacated, or modified on appeal, in whole or in part, Class Counsel shall, within ten (10) business days after the order reversing, vacating, or modifying the Final Approval Order and Judgment becomes final, repay to Shutterfly or any of its successors or assigns, as designated in the sole discretion of Shutterfly or Defendant's Counsel, the full amount of the Fee and Expense Award paid to Class Counsel, without interest. For purposes of clarity, the undertaking by each of the below-signed law firms is a joint and several one, with each law firm being responsible for the entirety of any required repayment.

2. In the event the Final Order and Judgment is not reversed, vacated, or modified on appeal, in whole or in part, but the Fee and Expense Award awarded by the Court is reduced, vacated, or modified on appeal, Class Counsel shall, within ten (10) business days after the order reducing, vacating, or modifying the Fee and Expense Award becomes final, repay to the Settlement Administrator, for deposit into the Settlement Fund, the Fee and Expense Award paid to Class Counsel in the amount reduced, vacated, or modified, without interest. For purposes of clarity, the undertaking by each of the below-signed law firms is a joint and several one, with each law firm being responsible for the entirety of any required repayment.

3. Any action that may be required thereafter may be addressed to this Court on shortened notice, but not less than five (5) court days.

4. This Undertaking and all obligations set forth herein shall expire upon finality of all appeals, if any, of the Final Approval Order and Judgment, or upon the Effective Date, whichever is earlier.

5. In the event Class Counsel fail to repay, as provided herein, any of the Fee and Expense Award that is owed pursuant to this Undertaking, the Court shall, upon application of Defendant and notice to Class Counsel, summarily issue orders, including but not limited to judgments and attachment orders against Class Counsel, and each of them, and may make appropriate findings for sanctions for contempt of court.

6. The undersigned Class Counsel stipulate, warrant, and represent that they are equity partners in their law firm and have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of their respective law firms.

7. This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Digital signatures shall be as effective as original signatures.

The undersigned declare under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure and under penalty of perjury under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

AGREED TO BY CLASS COUNSEL

AHDOOT & WOLFSON, PC

\_\_\_\_\_  
Robert Ahdoot

Date: \_\_\_\_\_

CAREY RODRIGUEZ MILIAN, LLP

\_\_\_\_\_  
David Milian

Date: \_\_\_\_\_

CARLSON LYNCH, LLP

\_\_\_\_\_  
Katrina Carroll

Date: \_\_\_\_\_



AGREED TO BY DEFENDANT'S COUNSEL

MAYER BROWN LLP

\_\_\_\_\_  
Matthew D. Provance

Date: \_\_\_\_\_