

1 **MELMED LAW GROUP P.C.**  
 Jonathan Melmed (SBN 290218)  
 2 jm@melmedlaw.com  
 Laura Supanich (SBN 314805)  
 3 lms@melmedlaw.com  
 Rebecca Harteker (SBN 349793)  
 4 rh@melmedlaw.com  
 5 1801 Century Park East, Suite 850  
 Los Angeles, California 90067  
 6 Phone: (310) 824-3828  
 7 Fax: (310) 862-6851

8 Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

9 *Additional Counsel Listed on Next Page*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 11 **FOR THE COUNTY OF SACRAMENTO**

12  
 13 GEORGIA GARCIA, an individual, on behalf of  
 14 herself, the State of California, as a private  
 attorney general, and on behalf of all others  
 15 similarly situated,

16 Plaintiff,

17 v.

18  
 19 SHUTTERFLY LIFETOUCH, LLC, a  
 20 Minnesota limited liability company; and DOES  
 21 1 TO 50,

22 Defendants.

Case No.: 23CV008460

**Settlement Agreement and Release of Class  
Action**

1 Alaya B. Meyers, Bar No. 199551  
ameyers@littler.com  
2 P. Dustin Bodaghi, Bar No. 271501  
dbodaghi@littler.com  
3 Alejandra Gallegos, Bar No. 340320  
agallegos@littler.com  
4 LITTLER MENDELSON, P.C.  
18565 Jamboree Road  
5 Suite 800  
Irvine, California 92612  
6 Telephone: 949.705.3000  
7 Fax No.: 949.724.1201

8 Attorneys for Defendant Shutterfly Lifetouch, LLC  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1           **1.3. APPLICABLE WAGE ORDERS**

2           “Applicable Wage Orders” shall mean the California Industrial Welfare Commission (“IWC”)  
3 Wage Orders applicable to the facts of this Action, including IWC Wage Orders 4-2001 and 17-2001  
4 and others that may be applicable. (Cal. Code of Regs., tit. 8, §§ 11040, 11170.)

5           **1.4. CLAIMS**

6           “Claims” shall mean the claims asserted in the Action.

7           **1.5. CLASS ATTORNEY FEES AND EXPENSES**

8           “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount  
9 attributable to attorney fees and litigation expenses. The Parties agree that Plaintiff may seek up to one-  
10 third of the Gross Settlement Amount (*i.e.*, Two Hundred and Fifty-Two Thousand, Four Hundred and  
11 Forty Dollars and No Cents (\$252,440.00)) as the fee-portion of the Class Attorney Fees and Expenses  
12 , as approved by the Court, and that Plaintiff may seek an award of costs and expenses up to an  
13 additional Twenty Thousand Dollars and No Cents (\$20,000.00). If the Escalator Provision described  
14 in Section 9.2., below, is triggered so as to increase the Gross Settlement Amount, the Parties agree  
15 that the fee portion of the Class Attorney Fees and Expenses that Plaintiff may seek will increase  
16 proportionally such that the total amount of attorneys’ fees remains one-third of the Gross Settlement  
17 Amount *after* any upward adjustment of the Gross Settlement Amount required by the Escalator  
18 Provision.

19           **1.6. CLASS COUNSEL**

20           “Class Counsel” shall mean Jonathan Melmed and Laura Supanich of Melmed Law Group P.C.

21           **1.7. CLASS MEMBER**

22           “Class Member” shall mean any person who is a prospective member of the Settlement Class,  
23 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-  
24 in-interest.

25           **1.8. CLASS NOTICE**

26           “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the  
27 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to  
28 Class Members along with the Share Form.

1           **1.9. CLASS PARTICIPANTS**

2           “Class Participants” shall mean all Class Members who do not timely request exclusion from  
3 the Class Settlement.

4           **1.10. CLASS PERIOD**

5           “Class Period” shall mean the period from September 13, 2022, through the date of preliminary  
6 approval of the settlement, except as set forth in the Escalator Provision in Section 9.2., below.

7           **1.11. CLASS REPRESENTATIVE**

8           “Class Representative” shall mean Plaintiff Georgia Garcia.

9           **1.12. CLASS SETTLEMENT**

10          “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is  
11 subject to Court approval.

12          **1.13. COMPLAINT**

13          “Complaint” shall mean the currently-operative complaint in the Action – specifically, the  
14 Second Amended Complaint filed with the Court by stipulation of the Parties on September 10, 2024.

15          **1.14. COURT**

16          “Court” shall mean the Superior Court of the State of California for the County of Sacramento.

17          **1.15. DEFENDANT**

18          “Defendant” shall mean Shutterfly Lifetouch, LLC.

19          **1.16. DEFENSE COUNSEL**

20          “Defense Counsel” shall mean Littler Mendelson, P.C., the attorneys representing Defendant.

21          **1.17. EFFECTIVE DATE**

22          “Effective Date” shall be the date by when all of the following have occurred: (a) the Court  
23 enters a Judgment on its Order Granting Final Approval of the Settlement; (b) the Judgment is final;  
24 and (c) ninety (90) days have passed and the period of time to appeal has lapsed. The Judgment is final  
25 as of the latest of the following occurrences: (a) if no participating Settlement Class Member objects  
26 to the Settlement, ninety (90) days after the Court enters Judgment and the time to appeal lapses; (b) if  
27 one or more participating Settlement Class Members objects to the Settlement, the day after the  
28

1 deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is  
2 filed, the day after the appellate court affirms the Judgment and issues a remittitur.

3 **1.18. EMPLOYEE’S TAXES AND REQUIRED WITHHOLDING**

4 “Employee’s Taxes and Required Withholding” shall mean the employee’s share of any and all  
5 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal  
6 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State  
7 Unemployment Tax Act (SUTA) on the portion of any Class Participant’s Individual Settlement  
8 Amount that constitutes wages. The Employee’s Taxes and Required Withholdings will be withheld  
9 from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

10 **1.19. EMPLOYER’S TAXES**

11 “Employer’s Taxes” shall mean and refer to Defendant’s share of payroll taxes (*e.g.*,  
12 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is  
13 owed on the portion of any Class Participant’s Individual Settlement Amount that constitutes wages.  
14 The Employer’s Taxes shall be separately paid by Defendant and shall not be paid from the Gross  
15 Settlement Amount or Net Settlement Amount.

16 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

17 “Final Approval and Fairness Hearing” shall mean the final hearing held to ascertain the  
18 fairness, reasonableness, and adequacy of the Class Settlement.

19 **1.21. GROSS SETTLEMENT AMOUNT**

20 “Gross Settlement Amount” is the agreed upon non-reversionary settlement amount totaling  
21 Seven Hundred Fifty-Seven Thousand Three Hundred and Twenty Dollars and No Cents (\$757,320.00)  
22 to be paid by Defendant in full settlement of the Released Claims asserted in this case, inclusive of the  
23 Administrative Expenses, the Employee’s Taxes and Required Withholdings, the Class Attorney Fees  
24 and Expenses, the Incentive Award, and the PAGA Payment. Defendant shall separately pay its share  
25 of the Employer’s Taxes in addition to the Gross Settlement Amount on the portion of each Individual  
26 Settlement Amount allocated as wages.

1           **1.22. HEARING ON PRELIMINARY APPROVAL**

2           “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary  
3 approval of the Class Settlement.

4           **1.23. INCENTIVE AWARD**

5           “Incentive Award” shall mean any additional monetary payment provided to the Class  
6 Representative for her efforts and risks on behalf of the Settlement Class in this Action.

7           **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

8           “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each  
9 Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement  
10 Amount does not include any portion of the PAGA Payment.

11           **1.25. NET SETTLEMENT AMOUNT**

12           “Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative  
13 Expenses; Class Attorney Fees and Expenses; seventy-five percent (75%) of the PAGA Payment; and  
14 Plaintiff’s Incentive Award.

15           **1.26. OPT-OUT**

16           “Opt-Out” shall refer to the process of submitting a timely and valid request for exclusion from  
17 the Class Settlement in accordance with the terms of the Class Notice and no later than the Response  
18 Deadline.

19           **1.27. OPT-OUTS**

20           “Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class  
21 Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

22           **1.28. PAGA NOTICE**

23           “PAGA Notice” shall mean the letter submitted by Plaintiff, through her counsel, to the LWDA  
24 on September 13, 2023 setting forth her proposed claims for recovery of penalties under the California  
25 Labor Code, as further amended by the most recent, second amended letter submitted by Plaintiff,  
26 through her counsel, to the LWDA on or about September 11, 2024.

1           **1.29. PAGA PAYMENT**

2           “PAGA Payment” means the penalties pursuant to the Private Attorneys General Act of 2004,  
3 codified at Labor Code sections 2698 through 2699.6 (“PAGA”), that the Parties have agreed is a  
4 reasonable sum to be paid in settlement and resolution of the PAGA claims included in the Action,  
5 which is Seventy-Five Thousand Seven Hundred and Thirty-Two Dollars and No Cents (\$75,732.00).  
6 The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be  
7 distributed as follows: seventy-five percent (75%) (*i.e.*, Fifty Six Thousand Seven Hundred Ninety-  
8 Nine Dollars and No Cents (\$56,799.00)) to the California Labor and Workforce Development Agency  
9 (“LWDA”) and twenty-five percent (25%) (*i.e.*, Eighteen Thousand Nine Hundred Thirty-Three  
10 Dollars and No Cents (\$18,933.00)) to the PAGA Settlement Participants. Class Counsel shall give  
11 timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699,  
12 subdivision (l)(2).

13           **1.30. PAGA PERIOD**

14           “PAGA Period” shall mean the period from September 13, 2022, through the date of  
15 preliminary approval of the Settlement Agreement, except as set forth in the Escalator Provision  
16 described in section 9.2, below.

17           **1.31. PAGA RELEASED CLAIMS**

18           “PAGA Released Claims” shall mean all claims for PAGA penalties that were alleged, or  
19 reasonably could have been alleged, during the PAGA Period based upon the facts stated in the Second  
20 Amended Complaint and the PAGA Notice including, but not limited to, any and all claims for PAGA  
21 penalties involving any allegations that Defendant failed to pay all wages due (including minimum  
22 wages, regular wages, sick pay, vacation, paid time off and overtime wages or double time wages);  
23 failed to properly accrue and pay sick leave; failed to provide legally-compliant meal and rest breaks  
24 and failed to pay premium pay for missed, late, interrupted or short meal and rest breaks; failed to pay  
25 overtime, meal period and/or rest break premium pay, and/or sick pay at the correct regular rate of pay;  
26 failed to comply with the One Day’s Rest In Seven Act; failed to timely pay all earned wages and  
27 compensation; failed to timely pay wages during employment; failed to reimburse necessary business  
28 expenses; failed to provide timely final pay; failed to maintain required records; recordkeeping



1 | violations; failed to properly pay sick pay and vacation time; and failed to provide accurate itemized  
2 | wage statements. The foregoing claims for PAGA penalties are based upon alleged violations of California  
3 | Labor Code sections 201, 201.6, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 227.3, 246, 256, 432.5,  
4 | 510, 512, 551, 552, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, and 2804,  
5 | and the applicable Wage Orders (Cal. Code of Regs., tit. 8, sections 11040 and 11170).

6 | **1.32. PAGA SETTLEMENT PARTICIPANTS**

7 | “PAGA Settlement Participants” shall mean all individuals who are or were employed by  
8 | Defendant as non-exempt employees in California during the PAGA Period. Defendant represents that,  
9 | as of the date of mediation, the PAGA Settlement Participants consisted of approximately 2,150  
10 | employees that worked a total of approximately 37,866 Pay Periods during the PAGA Period.

11 | **1.33. PARTIES**

12 | “Parties” shall mean Plaintiff and Defendant.

13 | **1.34. PLAINTIFF**

14 | “Plaintiff” shall mean Georgia Garcia.

15 | **1.35. PRELIMINARY APPROVAL DATE**

16 | “Preliminary Approval Date” shall mean the date upon which the Court enters an order  
17 | preliminarily approving this Settlement Agreement.

18 | **1.36. RELEASED CLASS CLAIMS**

19 | “Released Class Claims” shall mean all claims that were alleged, or reasonably could have been  
20 | alleged based on the factual allegations contained in the Second Amended Complaint, including, but  
21 | not limited to, California Labor Code sections 201, 201.6, 202, 203, 204, 210, 218.5, 221, 226, 226.3,  
22 | 226.7, 227.3, 246, 256, 432.5, 510, 512, 551, 552, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1,  
23 | 1198, 1198.5, 1199, 2800, 2802, and 2084, California Industrial Commission Wage Orders, California  
24 | Code of Regulations Title 8, sections 11050 and 11000, *et seq.*, and including all claims related to  
25 | alleged: (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Failure to Pay Vacation  
26 | Time and to Properly Accrue and Pay Sick Leave; (4) Rest Period Violations; (5) Meal Period  
27 | Violations; (6) Failure to Comply with the One Day’s Rest In Seven Act; (7) Failure to Maintain  
28 | Required Records; (8) Failure to Timely Pay Wages During Employment; (9) Failure to Pay All Wages

1 Earned and Unpaid at Separation; (10) Failure to Reimburse All Necessary Business Expenses; (11)  
2 Wage Statement Violations;; and (12) Unfair Competition. This further includes any and all other  
3 claims under California common law, the California Labor Code, and the California Business and  
4 Professions Code alleged in or that could have been alleged under the facts, allegations and/or claims  
5 pleaded in the Action. This expressly excludes PAGA Claims, which are separately released as set  
6 forth in Section 1.31. (PAGA Released Claims).

7 Other than as to Plaintiff, no other claims are released other than those specifically identified  
8 herein. By way of example, this Settlement Agreement will not release any Class Members for workers  
9 compensation, unemployment, or disability benefits of any nature. Nor does it release any claims,  
10 actions, or causes of action which may be possessed by Class Members other than Plaintiff under state  
11 or federal discrimination statutes, including, without limitation, the California Fair Employment and  
12 Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the  
13 California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, *et seq.*); the  
14 Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*); the Employee Retirement Income  
15 Security Act of 1974 (29 U.S.C. § 1001, *et seq.*); and all of their implementing regulations and  
16 interpretive guidelines.

### 17 **1.37. RELEASED PARTIES**

18 “Released Parties” shall mean (i) Defendant; (ii) each of Defendant’s past, present, and future  
19 direct and indirect parents; (iii) the respective past, present, and future direct and indirect subsidiaries  
20 and affiliates of any of the foregoing; (iv) the past, present, and future shareholders, directors, officers,  
21 agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants,  
22 representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and  
23 assigns of any of the foregoing; and (v) any individual or entity which could be jointly liable with  
24 any of the foregoing.

### 25 **1.38. RELEASING PARTIES**

26 “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their  
27 behalf or purporting to assert a claim under or through them, including, but not limited to, their  
28 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,

1 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,  
2 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

3 **1.39. RESPONSE DEADLINE**

4 “Response Deadline” shall mean the date forty-five (45) days following the date on which the  
5 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class  
6 Members may submit a request for exclusion and/or objection to Class Settlement.

7 **1.40. SETTLEMENT ADMINISTRATOR**

8 “Settlement Administrator” shall mean Apex Class Action Administration (or such other third-  
9 party administrator agreed on by the Parties) which the Parties have agreed will be responsible for  
10 administration of the Class Settlement and related matters.

11 **1.41. SETTLEMENT CLASS**

12 “Settlement Class” shall mean all individuals who are or were employed by Defendant as non-  
13 exempt employees in California during the Class Period. Defendant represents that, as of the time of  
14 mediation, the Settlement Class consisted of approximately 2,150 Class Members that worked a total  
15 of approximately 66,185 Workweeks (as defined below) .

16 **1.42. SHARE FORM**

17 “Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of  
18 **Exhibit 2** attached hereto, or as otherwise agreed upon by the Parties and approved by the Court, which  
19 is to be mailed to Class Members along with the Class Notice.

20 **2. FACTUAL AND PROCEDURAL BACKGROUND**

21 **2.1. PLAINTIFF’S CLAIMS**

22 Plaintiff, individually and in her representative capacity on behalf of the Settlement Class, and  
23 as a private attorney general on behalf of the State of California, has alleged the following violations:

24 **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and  
25 1194.2, and the Applicable Wage Orders; **(2)** failure to pay proper overtime wages in violation of Labor  
26 Code sections 510, 1197, and 1198, and the Applicable Wage Orders; **(3)** failure to pay all accrued  
27 vacation time in violation of Labor Code section 201, 202, and 227.3, and to properly accrue and pay  
28 sick leave in violation of Labor Code section 246; **(4)** failure to provide compliant rest periods and pay

1 missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Orders;  
 2 **(5)** failure to provide compliant meal periods and pay missed meal period premiums in violation of  
 3 Labor Code sections 226.7 and 512, and the Applicable Wage Orders; **(6)** failure to comply with the  
 4 One Day’s Rest in Seven Act in violation of Labor Code sections 551 and 552; **(7)** failure to maintain  
 5 accurate employment records in violation of Labor Code section 1174; **(8)** failure to pay timely wages  
 6 during employment in violation of Labor Code sections 204, 210; **(9)** failure to pay all wages due and  
 7 owing at separation in violation of Labor Code sections 201, 202, and 203; **(10)** failure to reimburse  
 8 business expenses in violation of Labor Code sections 2802 and 2804; **(11)** failure to provide complete  
 9 and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(12)** deceptive,  
 10 fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s  
 11 Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(13)** statutory penalties based on  
 12 the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6). Plaintiff asserts claims for violations  
 13 of California Labor Code sections 201, 201.6, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 227.3,  
 14 246, 256, 432.5, 510, 512, 551, 552, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,  
 15 1199, 2800, 2802, and 2084, California Industrial Commission Wage Orders, California Code of  
 16 Regulations Title 8, sections 11050 and 11000, *et seq.*

17 **2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

18 Class Counsel has conducted significant informal discovery during the prosecution of the  
 19 Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a  
 20 dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds of pages of  
 21 documents and other information produced by Plaintiff and Defendant; **(c)** analysis of employment  
 22 data from a sample of Class Members provided by Defendant; **(d)** an analysis of the legal positions  
 23 taken by Defendant; **(e)** investigation into the viability of class treatment of the claims asserted in the  
 24 Action; **(f)** analysis of potential class-wide damages, including information sufficient to understand  
 25 Defendant’s potential defenses to Plaintiff’s claims; **(g)** research of the applicable law with respect to  
 26 the claims asserted in the Complaint and the potential defenses thereto; and **(h)** assembling and  
 27 analyzing of data for calculating damages.

1 Class Counsel and the Class Representative have vigorously prosecuted this case, and  
2 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and  
3 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to  
4 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation  
5 with an experienced employment law mediator, David Phillips, Esq., which culminated in a settlement  
6 in principle, the terms of which are memorialized in this Settlement Agreement.

7 **2.3. REMEDIAL MEASURES**

8 As part of this settlement, Defendant has undergone, and will continue to undergo, a review of  
9 its policies and practices as to the Claims asserted in the Action, and has already undertaken and/or  
10 will undertake any appropriate changes or revisions of said policies and practices.

11 **2.4. INTENT OF THE CLASS SETTLEMENT**

12 The Class Settlement set forth herein intends to achieve the following: (1) entry of an order  
13 approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of the Released  
14 Parties from liability for any and all of the Released Claims; and (4) discharge of Defendant from  
15 liability for any and all claims arising out of the Action.

16 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

17 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the  
18 Parties agree to conditional class certification of the Settlement Class. The certification of the  
19 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by  
20 Defendant, including without limitation, that certification of a class for trial purposes is or would be  
21 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class  
22 treatment of any of the claims in the Action.

23 If the Settlement Agreement is not finally approved by the Court, the Effective Date is not  
24 achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and void as set  
25 forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab*  
26 *initio*, of no force or effect, and shall not constitute evidence or a binding determination that the  
27 requirements for certification of a class for trial purposes in this Action or in any other action which  
28 have been, are or can be, satisfied. Further, if the Agreement does not reach the Effective Date, Plaintiff

1 agrees that Plaintiff will not argue, claim, reference, or otherwise raise any preliminary approval of the  
2 Settlement Class in connection with any later proceeding before the Court. Additionally, if the  
3 Settlement Agreement is not finally approved by the Court, the Second Amended Complaint will be  
4 deemed null and void, and will have no force and effect.

5 **4. APPOINTMENT OF CLASS COUNSEL**

6 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree  
7 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the  
8 Class Settlement pursuant to this Settlement Agreement.

9 **5. CONSIDERATION**

10 **5.1. SETTLEMENT AMOUNT**

11 The Parties agree to settle this Action for the Gross Settlement Amount of Seven Hundred Fifty-  
12 Seven Thousand Three Hundred and Twenty Dollars and No Cents (\$757,320.00). There shall be no  
13 reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross Settlement  
14 Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration  
15 for the Class Settlement and will be made in full and final settlement of: the Released Claims, the Class  
16 Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the PAGA Payment (and  
17 any payments to individual PAGA Settlement Participants resulting from the PAGA Payment), and  
18 any other obligation of Defendant under this Settlement Agreement (other than the Employer's Taxes  
19 on the portion of the Net Settlement Amount allocated to the payment of wages).

20 After the Court issues an order preliminarily approving this Class Settlement, the Settlement  
21 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of  
22 the Class Settlement and procedures to Opt-Out, object, or participate in the Class Settlement as well  
23 as the Share Form, which shall identify the Class Member, the number of Workweeks (as defined  
24 below) worked by each Class Member, as well as the estimated amount of the Individual Settlement  
25 Amount the Class Member can expect to receive once the Class Settlement becomes effective on the  
26 Effective Date. Class Members shall be given the opportunity to challenge their Workweeks  
27 information.  
28

1           **5.2. INCENTIVE AWARD FOR PLAINTIFF**

2           Plaintiff may petition the Court to approve an Incentive Award in an amount up to Seven  
3 Thousand Five Hundred Dollars and No Cents (\$7,500.00) for Plaintiff to acknowledge her efforts on  
4 behalf of the Settlement Class in this Action, including assisting in the investigation and consulting  
5 with Class Counsel and providing crucial documents to Class Counsel. Defendant shall not oppose any  
6 request by Class Counsel for an Incentive Award in such an amount. Any Incentive Award approved  
7 by the Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to  
8 any distribution to which she may otherwise be entitled as a Class Participant. Any Incentive Award  
9 approved by the Court shall not be considered wages, and the Settlement Administrator shall issue to  
10 Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the payment of  
11 all taxes with respect to any Incentive Award approved by the Court and shall hold Defendant harmless  
12 from all liability with regard thereto.

13           **5.3. PAYMENT TO CLASS PARTICIPANTS**

14           Each Class Participant shall be eligible to receive payment of the Individual Settlement  
15 Amount, which is a share of the Net Settlement Amount based on the *pro rata* number of Workweeks  
16 for each Class Member during the Class Period as a proportion of all Workweeks for all Class  
17 Members. Each participating Settlement Class Member, including Plaintiff, shall be responsible for the  
18 payment of the Employee’s Taxes and Required Withholding with respect to his or her Individual  
19 Settlement Amount and shall hold Defendant harmless from any and all liability with regard thereto.

20           **5.4. PAYMENT TO PAGA SETTLEMENT PARTICIPANTS**

21           Each member of the PAGA Settlement Participants shall be entitled to receive a portion of the  
22 percentage of the PAGA Payment not distributed to the LWDA (*i.e.*, Eighteen Thousand Nine Hundred  
23 Thirty-Three Dollars and No Cents (\$18,933.00)). The portion of the PAGA Payment allocated to the  
24 PAGA Settlement Participants shall be distributed based on the *pro rata* number of pay periods worked  
25 by each particular PAGA Settlement Participant during the PAGA Period as a proportion of all pay  
26 periods worked by all members of the PAGA Settlement Participants. For purposes of this calculation,  
27 “pay periods” shall refer to all pay periods in which each PAGA Settlement Participant worked at least  
28

1 one shift, using Defendant's records where accessible and available or reasonable estimates where not  
2 readily accessible and/or available.

3 **5.5. TAX TREATMENT AND PAYMENT**

4 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual  
5 Settlement Amounts for Class Participants (including any payments to the Class Representative but  
6 exclusive of her Incentive Award), the Parties agree that twenty-five percent (25%) of each Individual  
7 Settlement Amount shall constitute payment in the form of wages (and each Class Participant will be  
8 issued an IRS Form W-2 for such payment to him or her), and seventy-five percent (75%) of each  
9 Individual Settlement Amount shall constitute penalties and interest (and each Class Participant will  
10 be issued an IRS Form 1099 for such payment to him or her). Prior to final distribution, the Settlement  
11 Administrator shall calculate the total Employee's Taxes and Required Withholding due as a result of  
12 the wage portion of Class Participants' anticipated Individual Settlement Amounts and such actual  
13 amount will be deducted from the Net Settlement Amount. Additionally, prior to the funding of the  
14 Gross Settlement Amount and final distribution, the Settlement Administrator shall calculate the total  
15 Employer's Taxes due on the wage portion of the Class Participants' Individual Settlement Amounts  
16 and issue instructions to Defendant to separately fund these tax obligations/withholdings. The Parties  
17 understand that Plaintiff and the Class Participants who receive any payment pursuant to this Settlement  
18 Agreement shall be solely responsible for all individual tax obligations.

19 With respect to the PAGA Payment and any payments made to PAGA Settlement Participants,  
20 all such payments shall be treated as payments owing for penalties and interest thereon and shall not  
21 be considered wages. The Settlement Administrator shall issue to the PAGA Settlement Participants  
22 an IRS Form 1099 reflecting such payment. The PAGA Settlement Participants shall be solely  
23 responsible for the payment of all taxes with respect to any PAGA payments made to them.

24 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

25 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any  
26 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus  
27 program sponsored by Defendant, if applicable. Such amounts will not form the basis for additional  
28 contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored



1 benefit plans, policies, or bonus programs, if applicable. Defendant will not treat the Class Settlement  
 2 payments as “compensation” for purposes of determining eligibility for, or benefit accrual within, any  
 3 benefit plans, policies, or bonus programs, or any other plan sponsored by Defendant, if applicable.

4 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

5 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for  
 6 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross  
 7 Settlement Amount (*i.e.*, Two Hundred Fifty-Two Thousand Four Hundred Forty Dollars and No Cents  
 8 (\$252,440.00)) and the award of costs and expenses up to an additional Twenty Thousand Dollars and  
 9 No Cents (\$20,000.00). Defendant agrees to not object to any such fee, cost, or expense application in  
 10 those amounts.

11 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the  
 12 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall  
 13 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall  
 14 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for  
 15 Class Attorney Fees and Expenses or the Court’s award of Class Attorney Fees and Expenses is less  
 16 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class  
 17 Attorney Fees and Expenses awarded.

18 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work  
 19 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to  
 20 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be  
 21 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;  
 22 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering  
 23 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may  
 24 be based on the “catalyst theory” and/or the “common fund doctrine.”

25 **6. SETTLEMENT ADMINISTRATION**

26 **6.1. COSTS AND EXPENSES**

27 All costs and expenses due to the Settlement Administrator in connection with its administration  
 28 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class

1 Members, processing Opt-Out requests and objections, distributing the portion of the PAGA Payment  
2 payable to the LWDA, distributing the portion of the PAGA Payment payable to the PAGA Settlement  
3 Participants, and calculating, administering and distributing Individual Settlement Amounts to the  
4 Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and is not  
5 expected to exceed Twenty Thousand Dollars and No Cents (\$20,000.00).

6 **6.2. PAYMENT BY DEFENDANT**

7 Defendant shall deposit the Gross Settlement Amount, plus the Employer's Taxes, in a lump  
8 sum payment to the Settlement Administrator within thirty (30) days of the Effective Date. In no event  
9 shall Defendant be obligated to pay or deposit with the Settlement Administrator more than Seven  
10 Hundred Fifty-Seven Thousand Three Hundred Twenty Dollars and No Cents (\$757,320.00), plus the  
11 Employer's Taxes, except where the Escalator Provision is triggered pursuant to Section 9.2. herein.

12 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

13 **7.1. THE SETTLEMENT ADMINISTRATOR**

14 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form  
15 (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of final order and  
16 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries  
17 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;  
18 determining individual payments to the PAGA Settlement Participants; maintaining the settlement  
19 funds in an appropriate interest-bearing account; preparing, administering, and distributing Individual  
20 Settlement Amounts to Class Participants; preparing, administering, and distributing individual  
21 payments to the PAGA Settlement Participants; distributing the portion of the PAGA Payment payable  
22 to the LWDA; issuing a final report; and performing such other duties as the Parties may direct.  
23 Additionally, the Settlement Administrator will handle all tax document preparation and reporting,  
24 including state and federal tax forms, if any.

25 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and  
26 Defense Counsel with summary information updating them as to the number of validated and timely  
27 objections and Opt-Out requests. The Settlement Administrator will provide Class Counsel and  
28 Defense Counsel via e-mail date-stamped copies of the original Opt-Out requests and objections no

1 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel  
2 with proof of mailing of the Class Notice, without listing individual Class Member names, which the  
3 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support  
4 of the Court's Final Approval and Fairness Hearing.

5 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement  
6 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary  
7 information regarding: (a) the total amount of final Individual Settlement Amounts of each Class  
8 Participant, without any identifying personal information; (b) the number of Class Participants to  
9 receive such payments, and (c) the final number of Opt-Outs and objections.

10 Administrative Expenses are not anticipated to exceed Twenty Thousand Dollars and No Cents  
11 (\$20,000.00). Prior to the calculation and distribution of the Individual Settlement Amounts, the  
12 Settlement Administrator shall calculate the total Administrative Expenses through the conclusion of  
13 their services and such actual amount will be deducted from the Gross Settlement Amount prior to the  
14 final calculation of the Individual Settlement Amounts.

15 **7.2. NOTICE TO CLASS MEMBERS**

16 Notice shall be provided to Class Members in the following manner: Within thirty (30) days  
17 after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with a list  
18 of Class Members and the PAGA Settlement Participants containing names, social security numbers,  
19 last-known addresses, phone numbers, and Workweek and pay period calculations where feasible, and  
20 dates of employment (*i.e.*, hire and termination dates) where not feasible (the "Database"). Class  
21 Counsel shall not receive a copy of this list.

22 Within twenty-eight (28) days following the receipt of the Database from Defendant, the  
23 Settlement Administrator shall determine the number of Workweeks worked by each Class Member,  
24 to the extent not already provided by Defendant, populate the data for each Class Member accordingly,  
25 and send each Class Member the Class Notice via first-class, United States mail.

26 The Class Notice will inform Class Members of their estimated share of the settlement and the  
27 number of Workweeks they worked during the Class Period. Class Members may dispute their  
28 Workweeks if they believe they worked more weeks in the Class Period than Defendant's records show

1 by submitting information to the Settlement Administrator no later than forty-five (45) days after being  
2 mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined  
3 Response Deadline. The Settlement Administrator will jointly work with the Parties to resolve the  
4 dispute in good faith. If the Parties cannot agree over the Workweeks to be credited, the Settlement  
5 Administrator shall make the decision based on the information presented by the Class Member and  
6 Defendant, with any final decision – if there is a remaining dispute – to be decided by the Court.

7 **7.3. OPT-OUT PROCEDURE**

8 Class Members who do not timely Opt-Out of the Class Settlement will be deemed to participate  
9 in the Class Settlement and shall become Class Participants without having to submit a claim form or  
10 take any other action. To Opt-Out of the Class Settlement, the Class Member must submit a letter or  
11 postcard to the Settlement Administrator by the Response Deadline. The Opt-Out request must state  
12 the Class Member’s name, address, telephone number, and signature. The Opt-Out request should state  
13 something substantially to the effect of:

14 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE  
15 *GEORGIA GARCIA V. SHUTTERFLY LIFETOUCH, LLC* LAWSUIT. I  
16 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT  
17 CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT  
18 OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT  
19 HAVE.”

20  
21 Any Opt-Out request that is not postmarked by the Response Deadline will be invalid. If, prior  
22 to the Response Deadline, any Class Notice mailed to a Class Member is returned as having been  
23 undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace  
24 search and seek an address correction for such Class Members, and a second Class Notice will be sent  
25 to any new or different address obtained. Such Class Members shall have an additional fourteen (14)  
26 days from the date of the mailing of the second Class Notice in which to Opt-Out, object, or dispute  
27 the information provided in the Share Form if the Response Deadline would have otherwise passed  
28 prior to fourteen (14) days from the date of the mailing of the second Class Notice.

1 It will be presumed that, if an envelope containing the Class Notice has not been returned within  
2 thirty (30) days of the mailing, the Class Member received the Class Notice. At least thirty (30) days  
3 prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class  
4 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard  
5 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall  
6 specify the number of Class Members to whom the Class Notice was sent and the number of Class  
7 Members to whom the Class Notice was not delivered, as well as information relating to the number  
8 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

9 If the Settlement Administrator determines that an Opt-Out request returned by a Class Member  
10 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency  
11 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an  
12 Opt-Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt-  
13 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt-Out request shall  
14 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

15 Class Participants will be bound by the Released Class Claims as set forth in this Settlement  
16 Agreement.

17 A request to Opt-Out of the Class Settlement shall *not* serve to exclude the Class Member from  
18 being a PAGA Settlement Participant. Opt-Outs shall still be entitled to their share of the PAGA  
19 Payment. Class Members who are also PAGA Settlement Participants shall have no right or ability to  
20 Opt-Out of the portion of this Settlement Agreement releasing PAGA claims.

21 **7.4. OBJECTION PROCEDURE**

22 The Class Notice shall inform the Class Members of their right to object to the Class Settlement  
23 if they do not Opt-Out. Any Class Participants who wish to object to the Class Settlement may submit  
24 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class  
25 Participants may object to the Settlement. The objection should include the case name and number and  
26 must set forth, in clear and concise terms, a statement of the reasons why the Class Member is objecting  
27 to the proposed Class Settlement, including the legal and factual arguments supporting the objection.  
28

1 If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through  
2 an attorney, they may do so at their own expense.

3 **7.5. NOTICE OF FINAL JUDGMENT**

4 Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and  
5 entered a final order certifying the Class for settlement purposes only and approving the Class  
6 Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to  
7 rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on  
8 its website at a web address to be included in the Class Notice.

9 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

10 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

11 The claims of all Class Members are settled for the Gross Settlement Amount of Seven Hundred  
12 Fifty-Seven Thousand Three Hundred and Twenty Dollars and No Cents (\$757,320.00). The following  
13 payments will be taken out of the Gross Settlement Amount:

- 14 1. The Administrative Expenses, estimated not to exceed Twenty Thousand Dollars and  
15 No Cents (\$20,000.00);
- 16 2. Class Counsel's attorney fees not to exceed Two Hundred Fifty-Two Thousand Four  
17 Hundred and Forty Thousand Dollars and No Cents (\$252,440.00);
- 18 3. Class Counsel's litigation costs and expenses not to exceed Twenty Thousand Dollars  
19 and No Cents (\$20,000.00);
- 20 4. The Incentive Award, not to exceed Seven Thousand Five Hundred Dollars and No  
21 Cents \$7,500.00; and
- 22 5. The portion of the PAGA Payment payable to the LWDA (*i.e.*, seventy-five percent  
23 (75%) of the PAGA Payment) of Fifty-Six Thousand Seven Hundred Ninety-Nine  
24 Dollars and No Cents (\$56,799.00).

25 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement  
26 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values  
27 provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement  
28

1 Administrator shall recalculate the final Net Settlement Amount based on the actual values of the  
2 amounts in each category.

3 **8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR**  
4 **CLASS PARTICIPANTS**

5 Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net  
6 Settlement Amount. The portion of the Net Settlement Amount shall be distributed *pro rata* based on  
7 the proportional number of Workweeks for each Class Member during the Class Period. For purposes  
8 of this Settlement Agreement, "Workweeks" shall consist of each week during the Class Period that  
9 each Class Member worked at least one shift, using Defendant's records where available and accessible  
10 and reasonable estimates where not readily available and/or accessible.

11 Defendant will provide the Settlement Administrator with the Database, and shall have no  
12 responsibility for deciding the validity of the Individual Settlement Amounts or any other payments  
13 made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the  
14 determination or payment of Employee's Taxes and Required Withholding, and shall have no liability  
15 for any errors made with respect to such Employee's Taxes and Required Withholding. Although the  
16 Settlement Administrator will calculate and pay the standard Employee's Taxes and Required  
17 Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf,  
18 Plaintiff and Class Participants represent and understand that they shall be solely responsible for any  
19 and all tax obligation associated with their respective Individual Settlement Amounts and Incentive  
20 Awards.

21 **8.3. CALCULATION OF THE PAYMENTS FOR THE PAGA SETTLEMENT**  
22 **PARTICIPANTS**

23 Each PAGA Settlement Participant shall be entitled to receive a portion of twenty-five percent  
24 (25%) of the PAGA Payment.

25 The portion of the PAGA Payment allocated to the PAGA Settlement Participants shall be  
26 distributed based on the *pro rata* number of pay periods worked by each particular PAGA Settlement  
27 Participant during the PAGA Period as a proportion of all pay periods worked by all PAGA Settlement  
28 Participants during the PAGA Period. Each PAGA Settlement Participant, including Plaintiff, shall be

1 responsible for the payment of the Employee's Taxes and Required Withholding with respect to their  
2 share of the PAGA Payment and shall hold Defendant harmless from any and all liability with regard  
3 thereto.

4 Defendant will provide the Settlement Administrator with the Database, and shall have no  
5 responsibility for deciding the validity of the individual payment amounts allocated to each PAGA  
6 Settlement Participant or any other payments made pursuant to this Settlement Agreement, shall have  
7 no involvement in or responsibility for the determination or payment of Employee's Taxes and  
8 Required Withholding, and shall have no liability for any errors made with respect to such Employee's  
9 Taxes and Required Withholding.

10 The PAGA Settlement Participants shall be solely responsible for any and all tax obligation  
11 associated with their respective shares of the PAGA Payment.

12 **8.4. TIME FOR PAYMENT OF CLASS ATTORNEY FEES AND EXPENSES**

13 The Settlement Administrator shall distribute to Class Counsel any Class Attorneys Fees and  
14 Expenses approved by the Court no later than seven (7) days after the funding of the Gross Settlement  
15 Amount.

16 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

17 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the  
18 Court no later than seven (7) days after the funding of the Gross Settlement Amount.

19 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

20 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment  
21 due to it and approved by the Court no later than seven (7) days after the funding of the Gross Settlement  
22 Amount.

23 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**  
24 **INDIVIDUAL SETTLEMENT AMOUNTS**

25 The Settlement Administrator shall make every effort to pay the Employee's Taxes and  
26 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail  
27 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the  
28 last-known address no later than seven (7) days after the funding of the Gross Settlement Amount. If



1 the Settlement Administrator is not able to do so within the time period set forth above, it shall so  
 2 inform Class Counsel and Defense Counsel and provide an approximate date by which the Employee's  
 3 Taxes and Required Withholding shall be paid and the Individual Settlement Amounts will be mailed.  
 4 Under no circumstances shall the Settlement Administrator distribute checks to Class Participants until  
 5 all Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the  
 6 remaining monetary obligations have been calculated and accounted for.

7 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class  
 8 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a  
 9 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the  
 10 estate of that Class Member and delivered to the executor or administrator of that estate, unless the  
 11 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code  
 12 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

13 **8.8. NON-CASHED SETTLEMENT CHECKS**

14 Any funds associated with checks that have not been cashed within one hundred eighty (180)  
 15 days will become void and the Individual Settlement Amount associated with the uncashed check will  
 16 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for  
 17 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. If  
 18 the Court requires a *cy pres* beneficiary, then the Parties shall mutually agree upon such beneficiary, subject  
 19 to approval by the Court.

20 The Parties agree that this disposition results in no "unpaid residue" within the meaning of  
 21 California Civil Procedure Code section 384, as the entire Net Settlement Amount will be paid out to  
 22 Class Participants, whether they all cash their Individual Settlement Amount checks. Therefore,  
 23 Defendant shall not be required to pay any interest on said amount. For the purposes of determining  
 24 whether Defendant has met its financial obligation to pay the Individual Settlement Payment,  
 25 Defendant will be deemed to have fulfilled its obligation upon the mailing of the check to the Class  
 26 Member by the Settlement Administrator, regardless of whether such Class Member subsequently  
 27 negotiates the check.

1 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

2 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

3 The Class Settlement and conditional class certification shall be considered null and void, and  
4 neither the Class Settlement, conditional class certification, nor any of the related negotiations or  
5 proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the  
6 same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with  
7 the Court, if any of the following occur: (a) the Court should for any reason fail to approve this  
8 Settlement Agreement in the form agreed to by the Parties; (b) the Court should for any reason fail to  
9 enter a judgment with prejudice of the Action, or (c) the approval of the Class Settlement and judgment  
10 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may  
11 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

12 **9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR**  
13 **PROVISION**

14 Defendant has the option to terminate the Settlement Agreement if more than five percent (5%)  
15 of the Settlement Class Opts-Out.

16 The Gross Settlement Amount is based on Defendant's estimate that there were approximately  
17 66,185 Workweeks from September 13, 2022 to August 1, 2024; and approximately 37,866 pay periods  
18 from September 13, 2022 to August 1, 2024. Should the qualifying Workweeks worked by the Class  
19 Members during the Class Period ultimately increase by more than ten percent (10%) (*i.e.*, if the  
20 Workweeks exceed 72,804) through the date of Preliminary Approval, Defendant, at its option, can  
21 either choose to: (1) cut off the end date for the Class Period as of the date on which the number of  
22 workweeks reached 72,804, or (2) increase the Gross Settlement Amount on a proportional basis equal  
23 to the percentage increase in number of Workweeks worked by the Class Members above the ten  
24 percent (10%) (*i.e.*, if there was an eleven percent (11%) increase in the number of Workweeks during  
25 the Class Period, Defendant would agree to increase the Gross Settlement Amount by one percent  
26 (1%)).

1           **9.3.    INVALIDATION**

2           Invalidation of any material portion of this Settlement Agreement shall invalidate the Class  
3 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions  
4 of the Class Settlement are to remain in full force and effect.

5           **9.4.    STAY ON APPEAL**

6           If a timely appeal from the approval of the Class Settlement and judgment is made, the judgment  
7 shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any  
8 other actions required by this Settlement Agreement until all appeal rights have been exhausted by  
9 operation of law.

10          **10.    MOTIONS FOR COURT APPROVAL**

11           **10.1.   SECOND AMENDED COMPLAINT**

12           The Parties' previous agreement and stipulation, based on the Memorandum of Understanding  
13 entered into between the Parties following mediation, that Plaintiff would file a Second Amended  
14 Complaint to assert class action claims and various Labor Code claims not presently asserted was for  
15 purposes of settlement only. If the Court does not grant preliminary and final approval of the  
16 Settlement, the Second Amended Complaint shall be deemed null and void, and the First Amended  
17 Complaint shall again be the operative pleading.

18           **10.2.   PRELIMINARY APPROVAL**

19           As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit  
20 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class  
21 Settlement. Class Counsel will provide Defense Counsel with a reasonable time period to review the  
22 draft Preliminary Approval pleadings. Each party shall cooperate to present the Class Settlement to the  
23 Court for preliminary approval in a timely fashion.

24           **10.3.   FINAL APPROVAL**

25           The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval  
26 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the  
27 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,  
28 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,

1 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent  
2 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.  
3 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may  
4 be required for the Court's determination. Class Counsel will provide Defense Counsel with a  
5 reasonable time period to review the draft Final Approval pleadings.

6 **11. RELEASES AND WAIVERS**

7 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

8 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released  
9 Parties, and each of them, of and from any and all Released Class Claims arising during the Class  
10 Period. It is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle,  
11 compromise, and discharge the Released Class Claims. Each of the Releasing Parties, including each  
12 Class Participant, will be bound by the release of Released Class Claims as a result of the Class  
13 Settlement and to the terms of the final judgment and the satisfaction of such judgment.

14 Class Participants will be deemed to have acknowledged and agreed that their claims for wages  
15 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes  
16 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged  
17 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement  
18 Amount. That section provides in pertinent part as follows:

19 "An employer shall not require the execution of a release of a claim or right on account  
20 of wages due, or to become due, or made as an advance on wages to be earned, unless  
21 payment of those wages has been made."  
22

23 **11.2. RELEASE OF CLAIMS BY PAGA SETTLEMENT PARTICIPANTS**

24 Upon the Effective Date, the PAGA Settlement Participants shall be deemed to release the  
25 Released Parties, and each of them, of and from any and all PAGA Released Claims arising during the  
26 PAGA Period. It is the desire of the Parties to fully, finally, and forever settle, compromise, and  
27 discharge the PAGA Released Claims. Each of the PAGA Settlement Participants will be bound by the  
28

1 release of PAGA Released Claims as a result of the Settlement and to the terms of the final judgment  
2 and the satisfaction of such judgment.

### 3 **11.3. RELEASE OF CLAIMS BY PLAINTIFF**

4 Plaintiff, on behalf of herself and her dependents, heirs and assigns, beneficiaries, devisees,  
5 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,  
6 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,  
7 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree  
8 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,  
9 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,  
10 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at  
11 law or in equity, which she may now have or may have after the signing of this Settlement Agreement,  
12 arising out of or in any way connected with her employment with Defendant including, the Released  
13 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all  
14 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement  
15 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,  
16 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII  
17 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age  
18 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the  
19 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget  
20 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the  
21 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California  
22 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California  
23 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,  
24 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory  
25 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of  
26 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of  
27 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,  
28 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter

1 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,  
2 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain  
3 and suffering, and attorneys' fees and costs, and Plaintiff hereby forever releases, discharges and agrees  
4 to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs  
5 arising out of the matters released in this Settlement Agreement.

6 Plaintiff specifically acknowledges that she is aware of and familiar with the provisions of  
7 California Civil Code section 1542, which provides as follows:

8 "A general release does not extend to claims that the creditor or releasing party does not  
9 know or suspect to exist in his or her favor at the time of executing the release and that,  
10 if known by him or her, would have materially affected his or her settlement with the  
11 debtor or released party."  
12

13 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and  
14 relinquishes all rights and benefits she may have under it, as well as any other statutes or common law  
15 principles of a similar effect. Plaintiff may hereafter discover facts in addition to or different from those  
16 which she now knows or believes to be true with respect to the subject matter of all the claims  
17 referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby does fully, finally,  
18 and forever settle and release any and all claims against the Released Parties, known or unknown,  
19 suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted  
20 upon any theory of law or equity without regard to the subsequent discovery of existence of such  
21 different or additional facts.

22 **11.4. CIRCULAR 230 DISCLAIMER**

23 Each party to this Settlement Agreement (for purposes of this section, the "Acknowledging  
24 Party"; and each party to this Agreement other than the Acknowledging Party, an "Other Party")  
25 acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written  
26 communication or disclosure between or among the parties or their attorneys and other advisers, is or  
27 was intended to be, nor shall any such communication or disclosure constitute or be construed or be  
28 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31

1 C.F.R. Part 10); (2) the Acknowledging Party (a) has relied exclusively upon her or its own  
2 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement  
3 Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any  
4 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any  
5 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that  
6 may be imposed on the Acknowledging Party; and (3) no attorney or advisor to any other party has  
7 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies  
8 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party  
9 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this  
10 Settlement Agreement.

11 **12. DUTIES OF THE PARTIES**

12 **12.1. MUTUAL FULL COOPERATION**

13 The Parties agree to cooperate fully with one another to accomplish and implement the terms  
14 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such  
15 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms  
16 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated  
17 by this Settlement Agreement and any other efforts that may become necessary by court order or  
18 otherwise, to effectuate this Settlement Agreement and the terms set forth herein.

19 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

20 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to  
21 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any  
22 legal challenge, whether by appeal or collateral attack.

23 **13. MISCELLANEOUS PROVISIONS**

24 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

25 Pending Court approval and other than as provided herein, if any of the material conditions set  
26 forth in this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the  
27 option of either Party, be ineffective, void, and of no further force and effect, and may not be used or  
28 be admissible in any subsequent proceeding, either in this Court or in any other court or forum. If either

1 Party decides to void the Settlement Agreement, then the Settlement Agreement and conditional class  
2 certification shall be considered void, and neither the Settlement Agreement, conditional class  
3 certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the  
4 Parties shall stand in the same position, without prejudice, as if this Settlement Agreement had been  
5 neither entered into nor filed with the Court. Unless otherwise set forth herein, should any Party choose  
6 to void the Class Settlement under this subsection, such Party shall be responsible for all Settlement  
7 Administrator fees and costs actually incurred.

8 **13.2. DIFFERENT FACTS**

9 The Parties acknowledge that, except for matters expressly represented herein, the facts in  
10 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out  
11 to be different from the facts now known by each party and/or its counsel, or believed by such Party or  
12 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or  
13 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective  
14 and binding despite such difference.

15 **13.3. NO PRIOR ASSIGNMENTS**

16 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,  
17 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any  
18 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged  
19 except as set forth herein.

20 **13.4. NON-ADMISSION**

21 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by  
22 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other  
23 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing  
24 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement  
25 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,  
26 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or  
27 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any  
28 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to



1 claims for unpaid wages or violations under California law. Nothing herein shall constitute an  
2 admission by Defendant that the Action was properly brought as a class or representative action other  
3 than for settlement purposes. To the contrary, Defendant has denied and continues to deny each and  
4 every material factual allegation and all Claims. To this end, the Class Settlement of the Action, the  
5 negotiation and execution of this Settlement Agreement, and all acts performed or documents executed  
6 pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not, shall not be  
7 deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the  
8 part of Defendant or of the truth of any of the factual allegations in the Complaint in the Action; and  
9 are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or  
10 omission on the part of Defendant in any civil, criminal, or administrative proceeding in any court,  
11 administrative agency, or other tribunal.

12 **13.5. NON-EVIDENTIARY USE**

13 Neither this Settlement Agreement nor any of its terms, nor any statements or conduct in the  
14 negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member  
15 (including any individual who requested to be excluded from the Settlement Class), Defendant, or its,  
16 her, his, or their respective counsel, in the Action, except as is reasonably necessary to effectuate the  
17 Settlement Agreement's purpose and terms. This Settlement Agreement may, however, be used by  
18 Defendant and the Released Parties to prove or defend against any claim released herein by any Class  
19 Member in any judicial, quasi-judicial, administrative, or governmental proceeding.

20 **13.6. MEDIA OR PRESS**

21 The Parties, and their respective counsel, recognize, accept, and agree that the Parties to this  
22 Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the Class  
23 Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and all  
24 matters relating to the litigation of the Action, including discovery proceedings therein, and evidence  
25 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

26 **13.7. NON-RETALIATION**

27 Defendant understands and acknowledges that it has a legal obligation to not retaliate against  
28 any Class Member who elects to participate in the Class Settlement or elects to Opt-Out of the Class

1 Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement  
2 Administrator and will not discourage Class Members who are employees, directly or indirectly, from  
3 making claims, Opting-Out, or objecting to the Class Settlement. None of the Parties, or their respective  
4 attorneys or agents, shall solicit or encourage any Class Members, directly or indirectly, to Opt-Out of  
5 the Class Settlement.

6 **13.8. CONSTRUCTION**

7 The Parties agree that the terms and conditions of this Settlement Agreement are the result of  
8 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement  
9 Agreement is not to be construed in favor of or against any party by reason of the extent to which any  
10 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this  
11 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the  
12 next business day.

13 **13.9. GOVERNING LAW**

14 This Settlement Agreement is intended to and shall be governed by the laws of the State of  
15 California, without regard to conflict of law principles, in all respects, including execution,  
16 interpretation, performance, and enforcement.

17 **13.10. NOTICES**

18 Except for Class Member notices required to be made by the Settlement Administrator, all  
19 notices or other communications required or permitted under this Settlement Agreement shall be in  
20 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S. mail,  
21 e-mail, or overnight delivery addressed to the address of the party appearing in this Settlement  
22 Agreement.

23 **13.11. CAPTIONS AND INTERPRETATIONS**

24 Section titles or captions contained herein are inserted as a matter of convenience and for  
25 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement  
26 or any provision thereof.

27  
28

1           **13.12. MODIFICATION**

2           This Settlement Agreement may not be changed, altered, or modified, except in writing signed  
3 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement  
4 Agreement has been granted by the Court, then any such amendments or modifications to this  
5 Settlement Agreement shall be approved by the Court.

6           **13.13. INTEGRATION CLAUSE**

7           This Settlement Agreement contains the entire agreement between the Parties relating to the  
8 Class Settlement of the Action and the transactions contemplated thereby, and all prior or  
9 contemporaneous agreements, understandings, representations, and statements, whether oral or written,  
10 and whether by a Party or such Party's legal counsel, are hereby superseded. No rights under this  
11 Settlement Agreement may be waived except in writing as provided above.

12           **13.14. SUCCESSORS AND ASSIGNS**

13           This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class  
14 Members (excluding only persons who timely Opt-Out) and their respective present and former heirs,  
15 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,  
16 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,  
17 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,  
18 successors, and assigns.

19           **13.15. CORPORATE SIGNATORIES**

20           Any person executing this Settlement Agreement or any such related document on behalf of a  
21 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all  
22 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute  
23 this Settlement Agreement or any such related document.

24           **13.16. EXECUTION IN COUNTERPARTS**

25           This Settlement Agreement shall become effective upon its execution by all of the undersigned.  
26 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall  
27 have the same force and effect as if all Settling Parties had signed the same instrument.  
28

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

**13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

**13.18. ACTION TO ENFORCE AGREEMENT**

In any suit or court action to enforce the terms of this Agreement, required by breach of the other Party, the prevailing party shall be entitled to recover her or its attorney fees and costs.

**14. EXECUTION**

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

**APPROVAL AND EXECUTION BY PARTIES**

**CLASS REPRESENTATIVE:**

Dated: 10/21/2024

DocuSigned by:  
*Georgia Garcia*  
CC036B55904A4B5...

Georgia Garcia  
Plaintiff and Class Representative

**DEFENDANT:**

Dated: 10/31/2024 | 1:35 PM PDT

Shutterfly Lifetouch, LLC

*Adrienne Logan*

By: Adrienne Logan

Title: Vice President and General Counsel

**APPROVED AS TO FORM BY COUNSEL**

**CLASS COUNSEL:**

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

Dated: 10/21/2024

**Melmed Law Group P.C.**



Jonathan Melmed  
Attorneys for Plaintiff Georgia Garcia

**DEFENDANT'S COUNSEL:**

Dated: November 1, 2024

**LITTLER MENDELSON, P.C.**



Alaya B. Meyers  
Attorneys for Defendant Shutterfly Lifetouch,  
LLC