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,	Case No. 2019-CH-07050
Plaintiffs,	Judge: Raymond W. Mitchell
v.	
SHUTTERFLY, INC.,	
Defendant.	

AFFIDAVIT OF ROBERT R. AHDOOT IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND
FOR CLASS REPRESENTATIVE SERVICE AWARDS

I, Robert R. Ahdoot, declare under penalty of perjury, based on my own personal knowledge and, where indicated as based on information and belief, that the following statements are true:

1. I am a partner and founding member of Ahdoot & Wolfson, PC ("AW"), and a member in good standing of the State Bar of California. I respectfully submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and for Class Representative Service Awards. [1]

2. AW, along with our co-Class Counsel have vigorously and zealously represented the interests of the proposed Settlement Class from the inception of this hard fought litigation until the present.

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[1] Unless otherwise defined herein, capitalized terms have the same meaning as those terms in the Settlement Agreement ("SA," "Settlement," or "Settlement Agreement"), which is attached as Exhibit A to Plaintiffs' Motion for Preliminary Approval dated May 17, 2021.

3.   Throughout this action, AW has sought to reach consensus with co-Class Counsel to manage the administration and work division in this case in a systematic and efficient manner, coordinating work assignments through conference calls, working to avoid duplication of efforts or unnecessary work undertaken by any of the counsel for the Settlement Class in this case, and ensuring that the skills and talents of counsel were put to use in an efficient and effective manner that maximized what each firm and attorney could contribute in a non-redundant way.

4.   As explained herein, I and my partners at AW believe the proposed Settlement to be fair, reasonable, and adequate, and in the best interests of the proposed Settlement Class.

HISTORY OF THE LITIGATION AND CLASS COUNSEL'S EFFORTS

5.   Plaintiffs filed this Action in Illinois Circuit Court on June 11, 2019, alleging that they suffered harm as a result of Defendant's violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA").

6.   Class Counsel conducted significant pre-filing investigations, which included detailed review and evaluation of the facts, thorough and exhaustive investigation of issues related to Shutterfly's violations of BIPA, and comprehensive research and analysis of the applicable law, including those related to Shutterfly's arbitration provisions.

7.   At the outset, Defendant removed this case and thereafter moved to dismiss Plaintiffs' claims under Rule 12(b)(6) and to compel arbitration. (*Miracle Pond, et al. v. Shutterfly, Inc.*, No. 1:19-cv-04722 (N.D. Ill. July 12, 2019) (the "Federal Action"), Dkt. Nos. 16, 19.)

8.   On May 15, 2020, Shutterfly's motion to compel arbitration of Plaintiff Miracle-Pond's claims (based on arbitration clause in Shutterfly's Terms and Conditions), was granted. (*Id.*, Dkt. Nos. 19, 67). 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, though only Ms. Miracle-Pond's claims were ordered to arbitration. (*Id.*, Dkt. No. 67.)

9.   Plaintiffs then filed a Motion to Clarify the Court's ruling on the motion to compel. (*Id.*, Dkt. No. 70.) Thereafter, on September 17, 2020, the District Court denied Shutterfly's motion to dismiss without prejudice. (Dkt. No. 81.)

10.   On November 9, 2020, Defendant re-filed its motion to dismiss advancing three grounds for dismissal (*id.*, Dkt. Nos. 85, 86), which Plaintiffs opposed (*id.*, Dkt. No. 88.) First, Shutterfly argued that scans of face geometry derived from photographs (rather than in-person) are not "biometric identifiers" under BIPA because the photographs themselves are excluded from the definition of biometric identifiers, and that scans of face geometry from photographs are not biometric information under BIPA because that definition excludes "information derived from items or procedures excluded under the definition of biometric identifiers," including photographs.

11.   Shutterfly also moved to dismiss Plaintiffs' allegation, in paragraph 48 of the Complaint, that "Shutterfly is selling, leasing, trading, or otherwise profiting from Plaintiffs' and Class members' biometric identifiers and/or biometric information," asserting that the Complaint does not cite the specific section of BIPA that prohibits such conduct (740 ILCS 14/15(c)-(d)). Finally, Shutterfly argued that Plaintiffs' allegation in paragraph 48 should be dismissed because it is a "conclusory allegation" with no factual support. Plaintiff Paraf opposed the motion to dismiss and addressed all arguments therein. (Federal Action, Dkt. No. 88.)

12.   Plaintiffs conducted extensive discovery and worked diligently to develop the factual record throughout the litigation. The Parties exchanged Rule 26(a) initial disclosures, interrogatories, and requests for production of documents. Shutterfly produced approximately 100,000 pages of discovery. (*Id.*, Dkt. Nos. 50-1, 92.) Plaintiffs reviewed many thousands of

documents produced by Shutterfly and conducted an exhaustive analysis of the legal and factual issues surrounding the case and Shutterfly's facial recognition technology. Shutterfly disclosed that it has approximately 954,000 users with billing addresses in Illinois who have uploaded at least one photo which includes a detected face.

13.   The breadth of information gleaned from their extensive discovery and investigation efforts allowed Class Counsel to weigh the likely success of Plaintiffs' claims and estimate individual damages associated with Plaintiffs' claims. This necessary work also allowed Class Counsel to proceed forward in a collaborative manner and formulate a litigation strategy aimed at obtaining meaningful relief for the Settlement Class as efficiently as possible.

14.   Other litigation-related work performed by Class Counsel included, *inter alia*: meetings, emails, and phone calls between attorneys and staff at Class Counsel's law firms; numerous conference calls and correspondence between Class Counsel and defense counsel; regularly communicating with the Plaintiffs and scores of other clients regarding the progress of the case; and regularly communicating with Plaintiffs regarding case developments, discovery, settlement and litigation strategy.

15.   Class Counsel also expended considerable vetting efforts and preparing individual arbitration case files, including demands to commence arbitration for each client, in anticipation of potential individual arbitration proceedings.

SETTLEMENT OF THE ACTION

16.   Following extensive preliminary negotiations, the Parties participated in a mediation before the Hon. Peter D. Lichtman (Ret.) at Signature Resolutions in October 2020. Defendant provided substantial information in advance of mediation, which in my opinion was sufficient to enable Plaintiffs' counsel to value the claims and understand the prospective Class's

composition. This information, and the parties' prior investigations, litigation, and briefing, gave Plaintiffs' counsel an understanding of the claims and defenses sufficient to meaningfully conduct informed settlement discussions.

17. The Settlement was not reached at the October 8, 2020 mediation. The Parties continued to engage in settlement conferences on a regular basis and exchanged several rounds of confidential settlement correspondence, with the continued assistance of Judge Lichtman, until a settlement in principle was reached.

18. The Parties engaged in further months-long negotiations with respect to the Settlement Agreement and its many exhibits. The Parties negotiated the maximum amount of Service Awards and attorneys' fees to be sought only after reaching an agreement upon the relief provided to the Settlement Class.

19. Plaintiffs also requested bids from a number of settlement administrators and based on such bids and subsequent negotiations, the Parties agreed upon Postlethwaite & Netterville ("P&N") to serve as the Settlement Administrator.

20. The Notice Plan and each document comprising the Class Notice were negotiated and exhaustively refined, with input from experts at P&N, to ensure that these materials will be clear, straightforward, and understandable by Class Members.

21. After the lengthy process that led to finalization of the Settlement Agreement and its many exhibits, Class Counsel prepared and filed Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, which included supporting documents, declarations, and exhibits. As discussed therein, despite the risk and uncertainty of class certification and continued litigation, the Settlement is an outstanding result for the Settlement Class.

22.   Under the terms of the Settlement Agreement negotiated by Class Counsel, Shutterfly will take reasonable steps to ensure compliance with BIPA by providing written disclosures to Class Members describing the data collected by Shutterfly's Face Grouping feature, the purpose of collecting the data, and the length of term of the collections. The notice will also provide Class Members with a clear and conspicuous mechanism to affirmatively consent to the Face Grouping feature while also providing that any Class member who has not affirmatively consented to Face Grouping within 180 days, will have the feature turned "off" and all Face Grouping data associated with the non-consenting Class Member permanently deleted. In addition, in recognition of the BIPA rights conferred on Class Members who are non-users and minors, each Illinois user who chooses to have Face Grouping enabled, must represent that they "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." In addition, as mandated under Section 15(a) of BIPA, Shutterfly will publish a retention schedule and guidelines for permanently destroying Face Grouping data created for Illinois residents within three (3) years of their last interaction with Shutterfly.

23.   Although Plaintiffs believe that each claim asserted in the Action has merit, that they would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class of non-users, and that they would have prevailed on the merits at summary judgment or at trial, Plaintiffs and Class Counsel recognize that Defendant has raised factual and legal defenses in the Action that present a risk that Plaintiffs may not prevail and/or that a Class might not be certified for trial. Plaintiffs and Class Counsel have also fully accounted for the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulty and delay inherent in such litigation. Class Counsel weighed these issues and conclude

that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and barred pursuant to the terms and conditions set forth in the Settlement Agreement.

24. After the Court preliminarily approved the Settlement on June 9, 2021, the Parties continued to work with the Settlement Administrator to supervise dissemination of Notice to Class Members. These efforts included review and drafting of the language and format of the Settlement Website, the language and format of the Settlement Class Notice forms, monitoring for exclusion requests and objections, and ensuring prompt response to each and every Class Member inquiry (whether by phone or e-mail) regarding the Settlement.

25. Under the Settlement Agreement's Notice Plan, which I am informed by P&N has already gone into effect, direct, publication, and Internet Notice of the Settlement was disseminated to the Settlement Class Members. In addition, the Settlement Website, which has been fully operational since July 1, 2021, makes available the Claim Form, Long Form Notice, and all relevant case information.

26. To date, with seven weeks left in the claims period, P&N reports that 40,764 claims have been submitted, no Class Member has objected, and 5 Class Members have requested exclusion. The Settlement Administrator will provide an Affidavit, along with Plaintiffs' Motion for Final Approval, which will provide the specifics of the dissemination of notice and updated numbers regarding the volume of claims, exclusions, and objections (if any).

CLASS COUNSEL'S ATTORNEYS' FEES AND EXPENSES

27. Class Counsel, in Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and for Class Representative Service Awards, filed concurrently herewith, have applied for attorneys' fees in the amount of $2,362,500, which represents 35% of the Settlement Fund, plus reasonable litigation expenses totaling $51,440.78.

28.   Despite the risks of non-recovery to the Settlement Class and non-payment to Class Counsel described above, both at the outset and for the duration of the litigation, Class Counsel nevertheless expended substantial attorney time and out-of-pocket costs and expenses investigating, prosecuting, and resolving the claims alleged in this case without any guarantee of reimbursement.

29.   I expect AW to maintain a high level of oversight and involvement in this case, and will continue to expend significant attorney time given the future work still needed for completion of the Settlement, including: preparing and filing final approval papers, attending the final approval hearing, responding to Class Member inquiries or challenges, responding to any requests for exclusion or objections, addressing any appeals, and working with Defendant and the Settlement Administrator on the distribution of benefits to the Settlement Class.

30.   As set forth in the concurrently filed Declarations of Class Counsel, Class Counsel have incurred a total of $51,440.78 in unreimbursed costs and expenses that were necessarily incurred in connection with the investigation, prosecution, and settlement of this litigation.

31.   To date, AW has incurred $29,941.69 of these expenses, as follows:

Description	Amount
Court Fees	$1,683.00
Electronic Research Fees	$86.90
Attorney Service Fees	$115.79
Copying and Reproduction	$170.59
Postage and Delivery	$518.64
Mediation	$3,950.00
Travel	$9,046.00
Deposition Fees	$6,580.27
Expert and Document Repository Fees	$7,790.50
Total	**$29,941.69**

32.   These costs include court fees, mediation fees, electronic research fees, attorney service fees, electronic document storage and expert fees, postage, duplication costs, travel, and other related costs. Each of these costs and expenses are fully documented, and in my opinion, necessary and reasonable.

AHDOOT & WOLFSON, PC FIRM EXPERIENCE

33.   At all times, AW had the experience and expertise to effectively litigate any and all issues related to this litigation.

34.   In March 1998, Tina Wolfson and I founded Ahdoot & Wolfson, PC ("AW"), now a nationally recognized law firm that specializes in complex and class action litigation, with a focus on privacy rights, consumer fraud, anti-competitive business practices, employee rights, defective products, civil rights, and taxpayer rights. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has successfully vindicated the rights of millions of class members in protracted, complex litigation, conferring hundreds of millions of dollars to the victims, and affecting real change in corporate behavior. The firm's resume is attached hereto as **Exhibit A.**

35.   AW has been prosecuting cutting edge privacy cases since the late 1990s, when its attorneys successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without consumers' consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, they were novel and hidden from public scrutiny at the time Ms. Wolfson and I were prosecuting them. Our work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW

has been at the forefront of privacy-related litigation since then.

36.   As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over $150 million. Each class member is entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian is also providing robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

37.   As an invaluable member of a five-firm Plaintiffs' Steering Committee ("PSC") in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-cv-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at $74 million.

38.   In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a $29 million settlement fund and robust injunctive relief for the consumer class. As co-lead counsel in *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA-MLC (D. Colo.) (Hon. Christine M. Arguello), AW secured a settlement for the nationwide class that provides for up to $250 in claimed damages or $10,000 in extraordinary damages.

39.   In *Adlouni v. UCLA Health Sys. Auxiliary*, No. BC589243 (Cal. Super. Ct. Los Angeles Cnty. ("LASC")) (Hon. Daniel J. Buckley), AW, as a member of the PSC for patients

impacted by a university medical data breach, achieved a settlement providing two years of credit monitoring, a $5,275,000 fund, and robust injunctive relief.

40.   AW's efforts have also shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited in every standing brief, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013) and concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

41.   Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), Ms. Wolfson (who was chosen by Judge Jackson to serve as a member of the Plaintiffs' Steering Committee) briefed and argued, in part, the granted motions to dismiss based on standing, and briefed in part the successful appeal to the D.C. Circuit.

42.   AW also serves as co-lead interim class counsel in the *Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila), which alleged Google's unlawful collection and use of mobile device location information on all Android and iPhone devices. Plaintiffs filed a motion for reconsideration of the Court's dismissal order in light of the Ninth Circuit's opinion in *In re Facebook, Inc. Internet Tracking Litigation*, 956 F.3d 589 (9th Cir. 2020).

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43.   AW attorneys are also serving as plaintiffs' counsel in consumer privacy rights cases involving the right to control the collection and use of biometric information. *See, e.g., Rivera v. Google LLC*, No. 2019-CH-00990 (Ill Cir. Ct.) (Hon. Anna M. Loftus); *Acaley v. Vimeo, Inc.*, No. 1:19-cv-7164 (N.D. Ill.) (Hon. Matthew F. Kennelly).

44.   In addition, Ms. Wolfson and AW have served and are serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in $10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) ($14.5 million nationwide settlement).

45.   AW has also served as lead counsel in other notable Class Action litigations. For example:

46.   In *Alvarez v. Sirius XM Radio Inc.*, No. 2:18-cv-08605-JVS-SS (C.D. Cal.) (Hon. James V. Selna), a breach of contract class action alleging that defendant did not honor its lifetime subscriptions, AW reached a nationwide class action settlement conservatively valued at approximately $420 million. The settlement extends the promised lifetime subscription for the lifetime of class members who have active accounts, and provides the opportunity for class members with closed accounts to reactivate their accounts and enjoy a true lifetime subscription or recover $100. The district court had granted the motion to compel arbitration on an individual basis, and AW appealed. AW reached the final deal points of the nationwide class action settlement literally minutes prior to oral argument in the Ninth Circuit.

47.   In *Eck v. City of Los Angeles*, No. BC577028 (LASC) (Hon. Ann I. Jones), AW achieved a $295 million class settlement in a case alleging that an 8% surcharge on Los Angeles

electricity rates was an illegal tax. Final settlement approval was affirmed on appeal in October 2019.

48.　　In *Kirby v. McAfee, Inc.*, No. 5:14-cv-02475-EJD (N.D. Cal.) (Hon. Edward J. Davila), a case arising from McAfee's auto renewal and discount practices, AW and co-counsel achieved a settlement that made $80 million available to the class and required McAfee to notify customers regarding auto-renewals at an undiscounted subscription price and change its policy regarding the past pricing it lists as a reference to any current discount.

49.　　In *Lavinsky v. City of Los Angeles*, No. BC542245 (LASC) (Hon. Ann I. Jones), a class action alleging the city unlawfully overcharged residents for utility taxes, Ms. Wolfson and AW certified the plaintiff class in litigation and then achieved a $51 million class settlement.

50.　　As co-lead counsel in *Berman v. Gen. Motors, LLC*, No. 2:18-cv-14371-RLR (S.D. Fla.) (Hon. Robin L. Rosenberg) (vehicle oil consumption defect class action), AW achieved a $40 million settlement.

51.　　In *Pantelyat v. Bank of America*, N.A., No. 1:16-cv-08964-AJN (S.D.N.Y.) (Hon. Alison J. Nathan), a class action arising from allegedly improper overdraft fees, AW, serving as sole class counsel for plaintiffs, achieved a $22 million class settlement, representing approximately 80% of total revenues gleaned by the bank's alleged conduct.

52.　　In the *Apple Inc. Device Performance Litigation*, No. 5:18-md-2827-EJD (N.D. Cal.) (Hon. Edward J. Davila), AW is serving on the Plaintiffs' Executive Committee in a class action arising from Apple's alleged practice of deploying software updates to iPhones that deliberately degraded the devices' performance and battery life. Judge Davila preliminarily approved a class action settlement of $310 million minimum and $500 million maximum.

53. AW also serves on the Plaintiffs' Executive Committees in the following actions: *Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 2:19-md-2921-BRM-JAD (D.N.J.) (Hon. Brian R. Martinotti), a class action alleging textured breast implants caused a rare type of lymphoma; *ZF-TRW Airbag Control Units Products Liability Litigation*, No. 2:19-ml-2905-JAK-FFM (C.D. Cal.) (Hon. John A. Kronstadt), a class action alleging a dangerous defect in car airbags; *Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litigation*, No. 2:19-md-2904-MCA-MAH (D.N.J.) (Hon. Madeline Cox Arleo), a class action arising out of a medical data breach that disclosed the personal and financial information of over 20 million patients.

54. AW's current work on civil rights class actions includes achieving class certification in *Novoa v. The Geo Group, Inc.*, No. 5:17-cv-2514-JGB-SHK (C.D. Cal.) (Hon. Jesus G. Bernal) (challenging private prison's alleged practices of forced labor against immigration detainees) and in *Williams v. City of New York*, No. 1:17-cv-2303-RJD-SM (E.D.N.Y.) (Hon. Raymond J. Dearie) (challenging allegedly unconstitutional prison conditions at Rikers Island and other facilities in New York State).

55. Thus, AW has decades of experience in the prosecution of class actions and, in particular, class actions on behalf of consumers, and can more than adequately represent the Settlement Class.

56. The Settlement achieved in this litigation is the product of the initiative, investigations, and hard work of skilled counsel.

57. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

Pursuant to 735 ILCS 5/1-109, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 26, 2021 in Los Angeles, California.

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Robert R. Ahdoot

EXHIBIT A

Ahdoot & Wolfson, PC ("AW") is a nationally recognized law firm founded in 1998 that specializes in complex and class action litigation, with a focus on privacy rights, unfair and anti-competitive business practices, consumer fraud, employee rights, defective products, civil rights, and taxpayer rights and unfair practices by municipalities. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has successfully vindicated the rights of millions of class members in protracted, complex litigation, conferring billions of dollars to the victims, and affecting real change in corporate behavior.

<u>Results</u>

AW has achieved excellent results as lead counsel in numerous complex class actions.

In *Alvarez v. Sirius XM Radio Inc.*, No. 2:18-cv-08605-JVS-SS (C.D. Cal.) (Hon. James V. Selna), a breach of contract class action alleging that defendant did not honor its lifetime subscriptions, AW reached a nationwide class action settlement conservatively valued at approximately $420 million. The settlement extends the promised lifetime subscription for the lifetime of class members who have active accounts, and provides the opportunity for class members with closed accounts to reactivate their accounts and enjoy a true lifetime subscription or recover $100. The district court had granted the motion to compel arbitration on an individual basis, and AW appealed. AW reached the final deal points of the nationwide class action settlement literally minutes prior to oral argument in the Ninth Circuit.

As a member of the Plaintiffs' Executive Committee in the *Apple Inc. Device Performance Litigation*, No. 5:18-md-2827-EJD (N D. Cal.) (Hon. Edward J. Davila), AW helped achieve a nationwide settlement of $310 million minimum and $500 million maximum. The case arose from Apple's alleged practice of deploying software updates to iPhones that deliberately degraded the devices' performance and battery life.

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In *Kirby v. McAfee, Inc.*, No. 5:14-cv-02475-EJD (N D. Cal.) (Hon. Edward J. Davila), a case arising from McAfee's auto renewal and discount practices, AW and co-counsel achieved a settlement that made $80 million available to the class and required McAfee to notify customers regarding auto-renewals at an undiscounted subscription price and change its policy regarding the past pricing it lists as a reference to any current discount.

In *Lavinsky v. City of Los Angeles*, No. BC542245 (LASC) (Hon. Ann I. Jones), a class action alleging the city unlawfully overcharged residents for utility taxes, AW certified the plaintiff class in litigation and then achieved a $51 million class settlement.

As co-lead counsel in *Berman v. Gen. Motors, LLC*, No. 2:18-cv-14371-RLR (S.D. Fla.) (Hon. Robin L. Rosenberg) (vehicle oil consumption defect class action), AW achieved a $40 million settlement.

Lumber Liquidators Chinese-Manufactured Flooring Durability Marketing & Sales Practices Litigation, No. 1:16-md-02743-AJT-TRJ (E.D. Va.) (Hon. Anthony J. Trenga) arose from alleged misrepresentations of laminate flooring durability, which was coordinated with MDL proceedings regarding formaldehyde emissions. As co-lead class counsel for the durability class, AW was instrumental in achieving a $36 million settlement.

In *McKnight v. Uber Technologies, Inc.*, No. 4:14-cv-05615-JST (N.D. Cal.) (Hon. Jon S. Tigar), AW achieved a $32.5 million settlement for the passenger plaintiff class alleging that Uber falsely advertised and illegally charged a "safe rides fee."

In *Pantelyat v. Bank of America, N.A.*, No. 1:16-cv-08964-AJN (S.D N.Y.) (Hon. Alison J. Nathan), a class action arising from allegedly improper overdraft fees, AW, serving as sole class counsel for plaintiffs, achieved a $22 million class settlement, representing approximately 80% of total revenues gleaned by the bank's alleged conduct.

Current Noteworthy Leadership Roles

Most recently, AW was selected to serve as interim co-lead class counsel in the *StubHub Refund Litigation*, No. 4:20-md-02951-HSG (N.D. Cal.) (Hon. Haywood S. Gilliam, Jr.). This consolidated multidistrict litigation alleges that StubHub retroactively changed its policies for refunds for cancelled or rescheduled events as a result of the Covid-19 pandemic and refused to offer

refunds despite promising consumers 100% of their money back if events are cancelled. In appointing Ms. Wolfson as Interim Co-Lead Counsel, Judge Gilliam noted that while competing counsel were qualified, her team "proposed a cogent legal strategy," "a process for ensuring that counsel work and bill efficiently" and "demonstrated careful attention to creating a diverse team."

Ms. Wolfson was appointed, after competing applications, to serve as interim co-lead class counsel in the *Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald), a consolidated class action arising from Ring's failure to implement necessary measures to secure the privacy of Ring user accounts and home-security devices, and failure to protect its customers from hackers despite being on notice of the inadequacies of its cybersecurity.

Judge Koh selected Ms. Wolfson and AW to serve as interim co-lead class counsel in the *ZOOM Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155-LHK (N.D. Cal.) (Hon. Lucy H. Koh), a class action alleging Zoom's failure to implement adequate security protocols for its video-conferencing platform that breached millions of consumers' privacy, fell well short of its promises, and diminished the value of the products and services it provided.

In *Clark v. American Honda Motor Co., Inc.*, No. 2:20-cv-03147-AB-MRW (C.D. Cal.) (Hon. André Birotte Jr.), Ms. Wolfson was appointed co-lead counsel in a class action arising from unintended and uncontrolled deceleration in certain Acura vehicles. In selecting Ms. Wolfson from competing applications, Judge Birotte noted: "The Court believes that Ms. Wolfson brings particular attention to the virtues of collaboration, efficiency, and cost-containment which strike the Court as especially necessary in a case such as this. Ms. Wolfson's appointment as Co-Lead also brings diversity to the ranks of attorneys appointed to such positions: such diversity is not simply a "plus factor" but the Court firmly believes that diverse perspectives improve decision-making and leadership."

AW was appointed to serve as co-lead interim class counsel in the *Google Location History Litigation*, No. 5:18-cv-5062-EJD (N D. Cal.) (Hon. Edward J. Davila), a consumer class action arising out of Google's allegedly unlawful collection and use of mobile device location information on all Android and iPhone devices.

AW also serves on the Plaintiffs' Executive Committees in *Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 2:19-md-2921-BRM-JAD (D N.J.) (Hon. Brian R. Martinotti), a class action alleging textured breast implants caused a rare type of lymphoma and in *ZF-TRW Airbag Control Units Products Liability Litigation*, No. 2:19-ml-2905-JAK-FFM (C.D. Cal.) (Hon. John A. Kronstadt), a class action alleging a dangerous defect in car airbag component units.

AW also was recently selected to serve on the PEC in the *Robinhood Outage Litigation*, No. 3:20-cv-1626-JD (N D. Cal.) (Hon. James Donato), a consolidated case arising from a March 2020 outage of the online stock trading platform.

In the *Kind LLC "All Natural" Litigation*, No. 1:15-md-02645-WHP (S.D.N.Y.) (Hon. William H. Pauley III), AW was selected as interim co-lead class counsel after competing applications. AW certified three separate classes of New York, California, and Florida consumers who purchased Kind LLC's products in a false labeling food MDL.

As part of the leadership team in *Novoa v. The Geo Group, Inc.*, No. 5:17-cv-2514-JGB-SHK (C.D. Cal.) (Hon. Jesus G. Bernal), AW certified a class of immigration detainees challenging private prison's alleged forced labor practices.

In the *Dental Supplies Antitrust Litigation*, No. 1:16-cv-00696-BMC-GRB (E.D.N.Y.) (Hon. Brian M. Cogan), a class action alleging an anticompetitive conspiracy among three dominant dental supply companies in the United States, AW served on the plaintiffs' counsel team that brought in an $80 million cash settlement for the benefit of a class of approximately 200,000 dental practitioners, clinics, and laboratories.

In *Robinson v. Jackson Hewitt, Inc.*, No. 2:19-cv-09066-SDW-ESK (D.N.J.) (Hon. Susan D. Wigenton), a class action alleging that a standardized "no-poach" agreement among Jackson Hewitt and its franchisees limited mobility and compensation prospects for the tax preparer employees, AW is asserting claims on behalf of consumers under both federal antitrust and California employment laws.

In *Powell Prescription Center v. Surescripts, LLC*, No. 1:19-cv-00627 (N.D. Ill.) (Hon. John J. Tharp. Jr.), AW represents pharmacies in a class action arising from Surescripts' alleged monopolies in both the routing and eligibility markets of the e-prescription industry.

Privacy Class Actions

AW has been prosecuting cutting edge privacy cases on behalf of consumers since the late 1990s. AW was among the first group of attorneys who successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without the consumers' consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, at the time AW was prosecuting these cases before the Hon. Richard R. Kramer, (Ret.) in the complex department of San Francisco Superior Court, such practices were novel and hidden from public scrutiny. AW's work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of privacy-related litigation since then.

As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over $150 million. Each class member is entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian is also providing robust injunctive relief. Judge

Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

As an invaluable member of a five-firm Plaintiffs' Steering Committee ("PSC") in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-cv-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at $74 million.

In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a $29 million settlement fund and robust injunctive relief for the consumer class. As co-lead counsel in *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA-MLC (D. Colo.) (Hon. Christine M. Arguello), AW secured a settlement for the nationwide class that provides for up to $250 in claimed damages or $10,000 in extraordinary damages.

AW was appointed to serve as co-lead interim class counsel in the *Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila), a consumer class action arising out of Google's allegedly unlawful collection and use of mobile device location information on all Android and iPhone devices.

AW also currently serves on the PSC in *Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litigation*, No. 2:19-md-2904-MCA-MAH (D.N.J.) (Hon. Madeline Cox Arleo), a class action arising out of a medical data breach that disclosed the personal and financial information of over 20 million patients, as well as many other data breach class actions.

AW's efforts have shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW's attorneys successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited in every standing brief, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013) and concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), AW, as a member of the PSC, briefed and argued, in part, the granted motions to dismiss based on standing, and briefed in part the successful appeal to the D.C. Circuit.

AW is also serving as plaintiffs' counsel in consumer privacy rights cases involving the right to control the collection and use of biometric information, successfully opposing motions to dismiss

based on lack of standing. *See, e g., Rivera v. Google LLC*, No. 19-1182 (7th Cir.) (order granting summary judgment currently on appeal to the Seventh Circuit); *Azzano v. Google LLC*, No. 2019-CH-11153 (Ill. Cir. Ct.) (Hon. Anna M. Loftus); *Molander v. Google LLC*, No. 5:20-cv-00918-EJD (N D. Cal.) (Hon. Edward J. Davila); *Miracle-Pond v. Shutterfly, Inc.*, No. 1:19-cv-4722 (N.D. Ill.) (Hon. Mary M. Rowland); *Acaley v. Vimeo, Inc.*, No. 1:19-cv-7164 (N.D. Ill.) (Hon. Matthew F. Kennelly).

In addition, AW has served and is serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in $10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S D.N.Y.) (Hon. Valerie E. Caproni) ($14 5 million nationwide settlement).

<u>**Attorney Profiles**</u>

Tina Wolfson graduated Harvard Law School *cum laude* in 1994. Ms. Wolfson began her civil litigation career at the Los Angeles office of Morrison & Foerster, LLP, where she defended major corporations in complex actions and represented indigent individuals in immigration and deportation trials as part of the firm's *pro bono* practice. She then gained further invaluable litigation and trial experience at a boutique firm, focusing on representing plaintiffs on a contingency basis in civil rights and employee rights cases. Since co-founding AW in 1998, Ms. Wolfson had lead numerous class actions to successful results. Ms. Wolfson is a member of the California, New York and District of Columbia Bars.

Recognized for her deep class action experience, Ms. Wolfson frequently lectures on numerous class action topics across the country. She is a guest lecturer on class actions at the University of California at Irvine Law School. Her notable speaking engagements include:

- Class Action Mastery Forum at the University Of San Diego School of Law (Consumer Class Actions Roundtable) March 2020, featuring Hon. Lucy H. Koh, Hon. Edward M. Chen, and Hon. Fernando M. Olguin.
- Class Action Mastery Forum at the University Of San Diego School of Law (Data Breach/Privacy Class Action Panel) January 16, 2019.
- Association of Business Trial Lawyers: "Navigating Class Action Settlement Negotiations and Court Approval: A Discussion with the Experts," Los Angeles May 2017, featuring Hon. Philip S. Gutierrez and Hon. Jay C. Gandhi.
- CalBar Privacy Panel: "Privacy Law Symposium: Insider Views on Emerging Trends in Privacy Law Litigation and Enforcement Actions in California," Los Angeles Mar. 2017 (Moderator), featuring Hon. Kim Dunning.
- American Conference Institute: "2nd Cross-Industry and Interdisciplinary Summit on Defending and Managing Complex Class Actions," April 2016, New York: Class Action Mock Settlement Exercise featuring the Hon. Anthony J. Mohr.

- Federal Bar Association: N.D. Cal. Chapter "2016 Class Action Symposium," San Francisco Dec. 2016 (Co-Chair), featuring Hon. Joseph F. Anderson, Jr. and Hon. Susan Y. Illston.
- Federal Bar Association: "The Future of Class Actions: Cutting Edge Topics in Class Action Litigation," San Francisco Nov. 2015 (Co-Chair &Faculty), featuring Hon. Jon S. Tigar and Hon. Laurel Beeler.
- American Association for Justice: AAJ 2015 Annual Convention – "The Mechanics of Class Action Certification," July 2015, Montreal, Canada.
- HarrisMartin: Data Breach Litigation Conference: The Coming of Age – "The First Hurdles: Standing and Other Motion to Dismiss Arguments," March 2015, San Diego.
- Bridgeport: 2015 Annual Consumer Class Action Conference, February 2015, Miami (Co-Chair).
- Venable, LLP: Invited by former opposing counsel to present mock oral argument on a motion to certify the class in a food labeling case, Hon. Marilyn Hall Patel (Ret.) presiding, October 2014, San Francisco.
- Bridgeport: 15th Annual Class Action Litigation Conference – "Food Labeling and Nutritional Claim Specific Class Actions," September 2014, San Francisco (Co-Chair and Panelist).
- Bridgeport: 2014 Consumer Class Action Conference – "Hot Topics in Food Class Action Litigation," June 2014, Chicago.
- Perrin Conferences: Challenges Facing the Food and Beverage Industries in Complex Consumer Litigations, invited to discuss cutting edge developments in settlement negotiations, notice, and other topics, April 2014, Chicago.
- Bridgeport: Class Action Litigation & Management Conference – "Getting Your Settlement Approved," April 2014, Los Angeles.
- HarrisMartin: Target Data Security Breach Litigation Conference – "Neiman Marcus and Michael's Data Breach Cases and the Future of Data Breach Cases," March 2014, San Diego.
- Bridgeport: Advertising, Marketing & Media Law: Litigation and Best Management Practices – "Class Waivers and Arbitration Provisions Post-*Concepcion / Oxford Health Care,*" March 2014, Los Angeles.

Ms. Wolfson currently serves as a Ninth Circuit Lawyer Representative for the Central District of California, as Vice President of the Federal Litigation Section of the Federal Bar Association, as a member of the American Business Trial Lawyer Association, as a participant at the Duke Law School Conferences and the Institute for the Advancement of the American Legal System, and on the Board of Public Justice.

Robert Ahdoot graduated from Pepperdine Law School *cum laude* in 1994, where he served as Literary Editor of the Pepperdine Law Review. Mr. Ahdoot clerked for the Honorable Paul Flynn at the California Court of Appeals, and then began his career as a civil litigator at the Los Angeles office of Mendes & Mount, LLP, where he defended large corporations and syndicates such as Lloyds of London in complex environmental and construction-related litigation as well as a variety of other matters. Since co-founding AW in 1998, Mr. Ahdoot had led numerous class actions to successful results. Recognized for his deep class action experience, Mr. Ahdoot frequently lectures on numerous class action topics across the country. His notable speaking engagements include:

- MassTorts Made Perfect: Speaker Conference, April 2019, Las Vegas: "Llegal Fees: How Companies and Governments Charge The Public, and How You Can Fight Back."
- HarrisMartin: Lumber Liquidators Flooring Litigation Conference, May 2015, Minneapolis: "Best Legal Claims and Defenses."
- Bridgeport: 15th Annual Class Action Litigation Conference, September 2014, San Francisco: "The Scourge of the System: Serial Objectors."
- Strafford Webinars: Crafting Class Settlement Notice Programs: Due Process, Reach, Claims Rates and More, February 2014: "Minimizing Court Scrutiny and Overcoming Objector Challenges."
- Pincus: Wage & Hour and Consumer Class Actions for Newer Attorneys: The Do's and Don'ts, January 2014, Los Angeles: "Current Uses for the 17200, the CLRA an PAGA."
- Bridgeport: 2013 Class Action Litigation & Management Conference, August 2013, San Francisco: "Settlement Mechanics and Strategy."

Theodore W. Maya graduated from UCLA Law School in 2002 after serving as Editor-in-Chief of the UCLA Law Review. From July 2003 to August 2004, Mr. Maya served as Law Clerk to the Honorable Gary Allen Feess in the United States District Court for the Central District of California. Mr. Maya was also a litigation associate in the Los Angeles offices of Kaye Scholer LLP for approximately eight years where he worked on a large variety of complex commercial litigation from inception through trial. Mr. Maya was named "Advocate of the Year" for 2007 by the Consumer Law Project of Public Counsel for successful pro bono representation of a victim of a large-scale equity fraud ring.

Bradley K. King is a member of the State Bars of California, New Jersey, New York, and the District of Columbia. He graduated from Pepperdine University School of Law in 2010, where he served as Associate Editor of the Pepperdine Law Review. He worked as a law clerk for the California Office of the Attorney General, Correctional Law Section in Los Angeles and was a certified law clerk for the Ventura County District Attorney's Office. Mr. King began his legal career at a boutique civil rights law firm, gaining litigation experience in a wide variety of practice areas, including employment law, police misconduct, municipal contracts, criminal defense, and premises liability

cases. During his nine-year career at AW, Mr. King has focused on consumer class actions, and data breach class actions in particular. He has extensive experience litigating consolidated and MDL class actions with AW serving in leadership roles, including numerous large data breach cases that have resulted in nationwide class settlements.

Henry Kelston graduated from New York University School of Law in 1978 and is a member of the New York and Connecticut Bars. Mr. Kelston has litigated a broad array of class actions for more than two decades, including actions challenging improperly charged bank fees, unauthorized collection of biometric data, and unlawful no-poach agreements among employers. He has been on the front lines in major data breach cases against companies such as Yahoo! and Facebook, and has represented consumers in class actions challenging food labeling practices, including the use of "natural" claims on products containing GMOs. His work in *In re Conagra Foods, Inc*, contributed to a groundbreaking decision by the Ninth Circuit Court of Appeals, significantly strengthening the rights of consumers to bring class actions. Mr. Kelston is also a frequent speaker and CLE presenter on electronic discovery, and a member of The Sedona Conference® Working Group 1 on Electronic Document Retention and Production.

Christopher E. Stiner graduated from Duke University School of Law *cum laude* in 2007 and is a member of the California and New York Bars. Mr. Stiner began his legal career at the New York office of Milbank Tweed working on finance matters for some of the world's largest financial institutions. Several years later Mr. Stiner transitioned to a litigation practice at the Los Angeles office of Katten Muchin, again representing large financial institutions and other corporate clients. Chris also worked as a clerk for the Honorable Thomas B. Donavan in the Central District of California Bankruptcy Court. In 2020 Mr. Stiner joined AW to pursue his desired focus on consumer class actions with a particular interest in consumer finance and banking matters.

Andrew W. Ferich is admitted to the bars of Pennsylvania, New Jersey, and the District of Columbia. Mr. Ferich received his law degree from Villanova University's Charles Widger School of Law in 2012, where he served as Executive Editor of the *Journal of Catholic Social Thought*. Mr. Ferich has significant experience in consumer protection, data privacy, ERISA/retirement plan, and whistleblower/*qui tam* litigation. Prior to joining the firm, Mr. Ferich was a senior associate at a well-known Philadelphia-area class action law firm. Before joining the plaintiffs' bar, Mr. Ferich was an associate at an AmLaw 200 national litigation firm in Philadelphia where he focused his practice on commercial litigation and financial services litigation. Mr. Ferich has represented a wide array of clients and has received numerous court-appointed leadership positions in large class actions. Mr. Ferich possesses major jury trial experience and has assisted in litigating cases that have collectively resulted in over $100 million in settlement value in damages and injunctive relief for various classes and groups of people.

Rachel Johnson graduated from Santa Clara University School of Law in 2019 as an Emery Merit Scholar with a certificate in High Tech Law and is a member of the State Bar of California. Ms. Johnson holds a Master's Degree from Stanford University School of Engineering and had a technical career as a scientist and engineer prior to and during attending law school. After graduate school, Ms. Johnson served as a senior data scientist and technical advisor for the US Department of Interior where she validated 3D hydrodynamic models using Bayesian statistics, developed predictive algorithms, and analyzed big data sets and time series using multivariate statistics tools. At AW, Ms. Johnson focuses on consumer protection and class actions.