

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

BRADLEY ACALEY, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

VIMEO.COM, INC., a Delaware corporation,

*Defendant.*

Case No. **2019 CH 10873**

Judge: Hon. Clare J. Quish

**ORDER**

This matter coming before the Court on August 3, 2023, on Plaintiff's Unopposed Motions for Final Approval of Class Action Settlement and for Attorneys' Fees, Reimbursement of Expenses, and for a Class Representative Service Award (the "Motions"), the Court having reviewed and considered the Motions, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiff Bradley Acaley ("Plaintiff"), individually and on behalf of the Settlement Class,<sup>1</sup> by and through Class Counsel, and Defendant Vimeo.com, Inc. ("Defendant" or "Vimeo"), including all exhibits and attachments to the Motions, the Settlement Agreement, and having conducted the Final Approval Hearing, and being cognizant of all other prior proceedings in this Action,

**IT IS HEREBY ORDERED:**

1. This Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all parties thereto, including the Class.
2. Pursuant to 735 ILCS 5/2-806, the Court grants final approval of the Settlement Agreement and finds that the Settlement is fair to the Class and was the result of arm's-length

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<sup>1</sup> Unless otherwise defined herein, capitalized words and terms used herein have the same meaning as ascribed to them in the Settlement Agreement ("SA," "Settlement," or "Settlement Agreement"), attached as Exhibit A to Plaintiff's Unopposed Amended Motion for Preliminary Approval of Class Action Settlement filed on December 12, 2022 ("Amended Motion").

negotiations between the Class, through Class Counsel, and Defendant's Counsel. The Court concludes that the Settlement Agreement is fair, reasonable, and adequate and in the best interest of the Settlement Class.

#### **FINAL CERTIFICATION OF SETTLEMENT CLASS**

3. Pursuant to Illinois Code of Civil Procedure 735 ILCS 5/2-801, the Court hereby certifies the following Settlement Class:

All Illinois residents who appear in a photograph or video maintained on Magisto at any time or held a registered Magisto account on which a face was detected between September 20, 2014 and the date of the issuance of the Preliminary Approval Order. Excluded from the Class are: (a) any Judge, Magistrate, or mediator presiding over this action and members of their families; (b) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

4. The Court finds that the Settlement Class satisfies the requirements of the Illinois Code of Civil Procedure 735 ILCS 5/2-801: the Settlement Class is sufficiently numerous; there are questions of law or fact common to the Settlement Class; Plaintiff's claims are typical of those of Settlement Class Members; and Plaintiff and his counsel have and will continue to fairly and adequately protect the interests of the Settlement Class.

5. The Court hereby appoints Bradley K. King and Robert Ahdoot of Ahdoot & Wolfson, PC as Class Counsel.

#### **NOTICE AND ADMINISTRATION**

6. Pursuant to this Court's Order granting preliminary approval of the Settlement, Postlethwaite & Netterville, APAC ("P&N") served as Settlement Administrator. This Court finds that the Settlement Administrator performed all duties thus far required as set forth in the Settlement Agreement.

7. The Court finds that the Settlement Administrator has complied with the approved notice process as confirmed by its Declaration filed with the Court. The Court further finds that the Notice plan set forth in the Settlement as executed by the Settlement Administrator satisfied the requirements of Due Process and 735 ILCS 5/2-803. The Notice plan was reasonably calculated and constituted the best notice practicable to apprise Settlement Class Members of the nature of this litigation, the scope of the Settlement Class, the terms of the Settlement, the right of Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. Accordingly, the Court finds and concludes that the Settlement Class Members have been provided the best notice practicable under the circumstances, and that the Notice plan was clearly designed to advise the Settlement Class Members of their rights.

8. After review of the Supplemental Affidavit of Ryan Aldridge filed July 20, 2023 (“Aldridge Affidavit”), the Court finds that the total Administration Expenses incurred are reasonable. The Court authorizes payment of \$178,000.00 to the Settlement Administrator for its total Administration Expenses.

#### **EXCLUSIONS AND OBJECTIONS**

9. The Settlement Administrator has certified, and the Court hereby finds, that no timely or otherwise valid objections to the Settlement Agreement or to Plaintiff’s Motion for Attorneys’ Fees, Reimbursement of Expenses, and for a Class Representative Service Award were submitted. Furthermore, the Settlement Administrator has certified, and this Court hereby finds, that no timely or otherwise valid exclusions were submitted. All persons who have not made their objections to the Settlement in the time-period and manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

#### **FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT**

10. The Court finds that the Action satisfies the applicable prerequisites for class action treatment under the Illinois Code of Civil Procedure, 735 ILCS 5/2-801. The Court finds that the settlement of the Action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interests of the Class Members, especially in light of the benefits to the Class Members, the relative strength of Plaintiffs' claims, the defenses raised by the Defendant, the complexity, expense and probable duration of further litigation, the risk and delay inherent in possible appeals, and the risk of collecting any judgment obtained on behalf of the Class. In the Preliminary Approval Order, the Court found that the Settlement Agreement appeared to be fair, reasonable, and adequate and fell within the appropriate range of possible approval. Essentially, the Settlement provides for each member of the Settlement Class, as that term is defined in the Settlement Agreement, to receive from the Defendant benefits described in the Settlement Agreement. The Settlement Agreement provides these benefits to the Settlement Class even though the Defendant has at all times disputed, and continue to dispute, Plaintiffs' allegations in this lawsuit, including that it captures or collects biometric identifiers or biometric information, and to deny any liability for any of the claims that have been or could have been alleged by Plaintiffs or other members of the Settlement Class.

#### **CLASS COUNSEL'S FEES AND EXPENSES AND SERVICE PAYMENT**

11. The Court hereby awards a Service Payment of \$5,000.00 to Plaintiff Bradley Acaley in compensation for the time, effort, and risk he undertook as representative of the Class. This award shall be paid within the time period and manner as set forth in the Settlement Agreement.

12. The Court hereby grants Plaintiff's Motion for Attorneys' Fees and Reimbursement of Expenses. Class Counsel is hereby awarded \$810,519.31 in reasonable attorneys' fees and expenses incurred in litigating this Action, in the manner specified in the Settlement Agreement.

Class Counsel's Fees and Expenses shall be paid within the time period and manner as set forth in the Settlement Agreement.

### **RELEASE OF CLAIMS**

13. The Final Judgment hereby incorporates and gives full effect to the Release set forth in the Settlement Agreement. By virtue of this Final Judgment, all members of the Class who did not validly and timely submit Requests for Exclusion in the manner provided in the Settlement Agreement shall, by operation of this Final Judgment, have fully, finally, and forever released, relinquished, and discharged the Defendant from the Released Claims as set forth in Section 1.26 of the Settlement Agreement. Furthermore, all members of the Class who did not validly and timely submit exclusions in the manner provided in the Settlement Agreement are hereby permanently barred and enjoined from (1) filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, either individually or as a class, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action and/or as a result of or in addition to those provided by the Settlement Agreement; and (2) organizing Settlement Class Members who have or have not excluded themselves from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state

or federal agency. Any Person who knowingly violates such injunction shall pay the attorneys' fees and costs incurred by Defendant and/or Class Counsel as a result of the violation.

#### **DISTRIBUTION OF SETTLEMENT FUND**

14. As indicated in the Aldridge Affidavit, the Court finds that a total of 8,574 valid claims were submitted under this Settlement. After deducting the total Administration Expenses of \$178,000.00, the Service Award of \$5,000.00, and Attorneys' Fees and Expenses of \$810,519.31 from the gross Settlement Fund of \$2,250,000.00, the Court authorizes a *pro rata* payment of \$146.54 to each valid claimant.

15. To the extent that a check issued to a Class Member is not timely cashed pursuant to paragraph 4.5 of the Settlement Agreement, such funds shall be apportioned *pro rata* to valid claimants in a second distribution, if practicable.

16. Pursuant to paragraphs 4.5 and 4.6 of the Settlement Agreement, any second-distribution funds remaining in the Settlement Fund (as defined therein) shall not revert to Defendant and shall be paid to the following non-profit organization: the American Civil Liberties Union of Illinois.

#### **AMENDMENTS AND MODIFICATIONS**

17. Class Counsel and Defendant are hereby authorized, without further approval from the Court, to agree to and adopt such amendments and modifications of the Settlement and its implementing documents (including all Exhibits to the Settlement Agreement) that they deem appropriate, provided that such amendments or modifications (1) shall be consistent in all material respects with this Final Judgment, and (2) do not limit the rights of Settlement Class Members.

#### **PRECLUSIVE EFFECT**

18. The Settlement Agreement and this Final Judgment are binding on and shall have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings

encompassed by the Release maintained by or on behalf of Plaintiff and the Settlement Class Members, and their respective present or part heirs, executors, estates, administrators, trustees assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

#### **INCORPORATION OF SETTLEMENT AGREEMENT INTO FINAL JUDGMENT**

19. The provisions of the Settlement Agreement and the relief provided to the Settlement Class therein are hereby fully incorporated into this Final Judgment.

#### **ENTRY OF FINAL JUDGMENT**

20. Finding that there is no just reason for delay, the Court orders that this Order for Final Approval of Class Action Settlement, Awarding Attorneys' Fees and Expenses, Class Representative Service Payment, and Entry of Final Judgment shall constitute a final judgment. The Clerk of the Court is directed to enter this Order on the docket forthwith.

21. The above-captioned action is hereby dismissed in its entirety *with prejudice*. Without affecting the finality of the Judgment hereby entered, the Court reserves jurisdiction over the implementation of the Settlement Agreement, including enforcement and administration of the Settlement Agreement and this Final Judgment.

22. Case disposed.

Judge Clare J. Quish  
(312) 603-3733  
ccc.chancerycalendar14@cookcountyl.gov  
Zoom Meeting ID: 953 7174 9534  
Zoom Password: 253498  
Zoom Dial-In: (312) 626-6799

**ENTERED:**



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Judge Clare J. Quish  
DATE: August 3, 2023

**Judge Clare J. Quish**

**AUG 03 2023**

**Circuit Court - 2160**