

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

BRADLEY ACALEY, individually and on behalf of all others similarly situated,  <i>Plaintiff,</i>  v.  VIMEO.COM, INC., a Delaware corporation,  <i>Defendant.</i>	Case No. 2019 CH 10873  Judge: Hon. Clare J. Quish
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**ORDER GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

This matter having come before the Court on January 20, 2023 on Plaintiff's Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement of the above-captioned matter (the "Action") between Plaintiff Bradley Acaley ("Plaintiff") and Defendant Vimeo.com, Inc. ("Vimeo" or "Defendant" and, collectively with Plaintiff, the "Parties"), as set forth in the Settlement Agreement between the Parties, parties appearing by counsel, and the Court having duly considered the papers and arguments of counsel,

**IT IS HEREBY ORDERD:**

1. Unless defined herein, all defined terms in this Order shall have the respective meanings ascribed to the same terms in the Settlement Agreement.
2. The Court has conducted a preliminary evaluation of the Settlement set forth in the Settlement Agreement. Based on this preliminary evaluation, the Court hereby finds that the Parties have shown the Court it will likely be able to approve the proposed Settlement, as embodied in the Settlement Agreement, as being fair, reasonable and adequate to the Settlement Class under of Section 2-801 of the Illinois Code of Civil Procedure, subject to further consideration at the Final Approval Hearing to be conducted, as described in Paragraph 4 below. The proposed Settlement appears to be the product of intensive, thorough, serious, informed, and non-collusive

negotiations overseen by the Chief Seventh Circuit Mediator, Joel Shapiro, has no obvious deficiencies, and does not improperly grant preferential treatment to the Class Representative or any Settlement Class Member.

3. Class Definition. Pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for settlement purposes only, the Court certifies the following Settlement Class, consisting of: 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. Final Approval Hearing. A hearing will be held by this Court **on June 29, 2023 at 10:30 a.m. by Zoom** before Judge Quish (Meeting ID: 953 7174 9534, Password: 253498, Dial-In (312) 626-6799) or at such other date and time later set by Court order for the following purposes: (a) to determine whether the Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class, and should be approved by the Court; (b) to determine whether a Final Approval Order and Judgment should be entered in accordance with the material terms of the Settlement Agreement; (c) to determine whether Class Counsel's motion for an award of attorneys' fees and expenses and for a Service Award to the Class Representative, should be approved; and (d) to consider any other matters that properly may be brought before the Court in connection with the Settlement.

5. Certification. For settlement purposes only, the Court finds that the Settlement Agreement meets all applicable requirements of Section 2-801 of the Illinois Code of Civil

Procedure, including that the Settlement Class is sufficiently numerous, that there are questions of law and fact common to members of the Settlement Class that predominate, that the proposed Class Representative fairly and adequately protects the interests of the Settlement Class, and that class treatment is an appropriate method for the fair and efficient adjudication of the Action. The Court further finds that: (i) the Settlement is fair, reasonable, and adequate, (ii) the Settlement Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and (iii) the settlement warrants Notice of its material terms to the Settlement Class for their consideration and reaction. Therefore, the Court grants preliminary approval of the Settlement.

6. Class Representative and Class Counsel. For settlement purposes only, the Court hereby approves the appointment of Plaintiff Bradley Acaley as Class Representative, and the law firm of Ahdoot & Wolfson, PC as Class Counsel. Solely for the purposes of effectuating the Settlement, Class Counsel are authorized to act on behalf of the Class Representative, and all other Settlement Class Members with respect to all acts or consents required by or that may be given pursuant to the Settlement Agreement, including all acts that are reasonably necessary to consummate the Settlement.

7. Settlement Administrator. Pursuant to the Parties' Settlement Agreement, Postlethwaite & Netterville (P&N) is hereby appointed as Settlement Administrator to supervise and administer the Notice Program under the Settlement, as well as the processing of claims. Notice of the Settlement and the Final Approval Hearing shall be given by the Settlement Administrator pursuant to the terms and conditions of the Settlement Agreement. P&N and the Parties have agreed to the following maximum amounts for administration costs: \$178,000 if 10,000 claims are submitted; \$182,000 if 15,000 claims are submitted; and \$189,500 if 20,000 claims are submitted.

8. Class Notice. The Court (a) approves, as to form and content, of the proposed Magisto BIPA Settlement Claim Form (“Claim Form”), Notice of Magisto BIPA Class Action Settlement (“Long Form Notice”), E-mail Summary Notice, and Post Card Summary Notice, submitted by the Parties as Exhibits 1, 4, 3, and 2 respectively, to the Settlement Agreement; and (b) finds and determines that Direct Notice to Settlement Class Members *via* e-mail and U.S. Mail (if e-mail is unavailable), and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, supplemented by any Internet Campaign and Publication Notice deemed appropriate by the Parties, (i) constitutes the best notice practicable under the circumstances, (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to submit a Claim (if applicable) their right to exclude themselves from the Settlement Class, the effect of the proposed Settlement (including the Releases to be provided thereunder), Class Counsel’s motion for an award of attorneys’ fees and expenses and for the Class Representative Service Award, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of 735 ILCS 5/2-803 and due process and all other applicable laws and rules. The Court further finds that all of the notices are written in simple terminology, and are readily understandable by Settlement Class Members. The date and time of the Final Approval Hearing shall be included in all notices before they are disseminated. The Parties, by agreement, may revise the notices in ways that are appropriate to update those notices for purposes of accuracy and clarity, and may adjust the layout of those notices for efficient electronic presentation and mailing.

9. Notice Date. The Court hereby directs the Parties and Settlement Administrator to disseminate Notice no later than March 21, 2023 (*i.e.* sixty (60) days after the entry of this Order).

The Court directs that the Settlement Administrator cause a copy of the Summary Notice be sent to all members of the Settlement Class who have been identified by Defendant through its records *via* e-mail or by first class United States mail, postage prepaid, within sixty (60) days after the entry of this Order. No later than the Notice Date, the Settlement Administrator shall cause copies of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement (“Settlement Website”).

10. Claims Deadline: The deadline by which all Claim Forms must be postmarked (if mailed) or submitted electronically to the Settlement Website is no later than 12:00 AM Central Time on June 5, 2023 (*i.e.* Seventy-Five (75) days after the Notice Date).

11. Exclusion from the Settlement Class. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked, or submitted electronically via the Settlement Website, on or before the Objection/Exclusion Deadline of May 5, 2023 (*i.e.* forty-five (45) days after the Notice Date). In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not electronically submitted or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.

12. Objections. Any Settlement Class Member may comment in support of, or in opposition to, the Settlement Agreement at his or her own expense. Any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be valid and entertained by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline of May 5, 2023 (*i.e.* forty-five (45) days after the Notice Date), the person making an objection shall: (i) file his/her objection with the Clerk of Court; (ii) file copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court; and (iii) sends copies of such papers via United States mail, hand delivery, or overnight delivery to Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this settlement.

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

into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

14. Final Approval Briefing. No later than 14 days prior to the Final Approval Hearing, June 15, 2023, Plaintiff must file any papers in support of final approval of the Settlement Agreement and in response to any objections. No later than 14 days prior to the Objection/Exclusion Deadline, April 21, 2023, Plaintiff must file any papers in support of Class Counsel's application for attorneys' fees and expenses and for a Service Award.

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

16. The Settlement Agreement and the proceedings and statements made pursuant to the Settlement Agreement or papers filed relating to the Settlement or this Order, are not and shall not in any event be described or construed as, and/or used, offered or received against Defendant or any other Released Parties as, evidence of and/or deemed to be evidence of any presumption, concession, or admission by any Released Party of the truth of any fact alleged by the Plaintiff; the validity of any Released Claim; the appropriateness of class certification; the deficiency of any defense that has been or could have been asserted in the Action or in any litigation; the violation of any law or statute; or any liability, negligence, fault, or wrongdoing of any of the Released Parties. Defendant has denied and continues to deny the claims asserted by Plaintiff. Notwithstanding, nothing contained herein shall be construed to prevent a Party from offering the Settlement Agreement into evidence for the purpose of enforcing the Settlement.

17. The certification of the Settlement Class shall be binding only with respect to the Settlement of the Action. In the event that the Settlement Agreement fails to become effective, is

overturned on appeal, or does not become final for any reason, the Parties shall be restored to their respective positions in the Action as of the date of the signing of the Settlement Agreement, and no reference to the Settlement Class, the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose.

Judge Clare J. Quish

JAN 20 2023

Circuit Court - 2160

ENTERED:



Judge Clare J. Quish

DATE: January 20, 2023

Judge Clare J. Quish

(312) 603-3733

ccc.chancerycalendar14@cookcountyil.gov

Zoom Meeting ID: 953 7174 9534

Zoom Password: 253498

Zoom Dial-In: (312) 626-6799