

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. 2019CH10873

Judge: Hon. Clare J. Quish

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of the latest dated signature below, by Plaintiff Bradley Acaley, individually and on behalf of the Settlement Class as defined below, by and through Class Counsel, and Defendant, Vimeo.com, Inc. Plaintiff and Defendant are each referred to herein as a **Party**, and collectively, as the **Parties**.

1. DEFINITIONS

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

1.1 “Action” means the case captioned *Acaley v. Vimeo, Inc.*, Case No. 2019CH10873, in which, following remand, Plaintiff will file an amended complaint to substitute Vimeo.com, Inc. as the sole named defendant.

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

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

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

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

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

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

1.8 “Class” or “Settlement Class” shall include all Illinois residents who appear in a photograph 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.

1.9 “Class Member” or “Settlement Class Member” means a person who falls within the definition of the Class, as defined in Section 3.2 of this Agreement, and who does not submit a valid request for exclusion.

1.10 “Class Counsel” means the law firm of Ahdoot & Wolfson, PC.

1.11 “Class Representative” or “Plaintiff” means Plaintiff, Bradley Acaley.

1.12 “Court” shall mean the Circuit Court of Cook County, Illinois, Chancery Division, the Honorable Clare J. Quish presiding (or any other Circuit Court of Cook County Judge assigned to the Action).

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

1.14 “Defendant” means Vimeo.com, Inc.

1.15 “Defendant’s Counsel” means Baker & Hostetler, LLP.

1.16 “Effective Date” means the date on which the Final Order and Judgment becomes “Final,” which shall be one business day after the latest of the following events: (a) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Order and Judgment approving the Settlement Agreement; (b) if there is an appeal or appeals, the date of completion, in a manner that finally affirms and leaves in place the Final Order and Judgment without any

material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (c) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

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

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

1.19 “Final Order and Judgment” means an order that is entered by the Court and in a form that is mutually agreeable to the Parties and as set forth in Section 14 of this Agreement, and approves this Agreement as fair, reasonable, and adequate and in the best interests of the Class as a whole, and makes such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.

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

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

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

1.23 “Magisto” means any service, including, but not limited to internet web applications and mobile “app” applications maintained or processed through the main domain <https://magisto.com> and related subdomains.

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

1.25 “Preliminary Approval Order” means the Court’s Order granting preliminary

approval of this Agreement, approving the Notice of Proposed Class Action Settlement and the manner of providing notice to the Class, and setting forth a schedule for briefing regarding the fairness of the settlement, deadlines for submitting exclusion requests and objections, and the date of the Final Approval Hearing, in a form as agreed to by the Parties.

1.26 “Released Claims” means any and all claims or causes of action of any kind, whether known or unknown (including “Unknown Claims” as defined below), fixed or contingent, accrued or not accrued, matured or not yet matured, asserted or unasserted, suspected or unsuspected, including without limitation those related to unknown and unsuspected injuries as well as unknown and unsuspected consequences of known or suspected injuries, that the Releasing Parties now own or hold, or have owned or held at any time prior to the Effective Date of this Agreement, arising from or related to images in photographs or videos that were uploaded onto Magisto, alleged biometric identifiers, biometric information, or personal data that were obtained from documents and information uploaded onto Magisto, and including all claims that were brought or could have been brought in the Action arising from the use of Magisto and Plaintiff’s allegations in the Action, including, but not limited to, claims for any violation of BIPA, including, without limitation, any claim that Released Parties do not comply with BIPA, or any other law or provision of a law under which a claim relating to biometric identifiers or biometric information could be brought with respect to photographs or videos of faces that were uploaded onto Magisto.

1.27 “Released Parties” means Vimeo.com, Inc., and its corporate parents, subsidiaries, principals, investors, owners, members, controlling shareholders, trustees, estates, heirs, executors, and administrators, along with the officers, directors, shareholders, employees, attorneys, representatives, agents, insurers, contracting parties, successors, predecessors, and assigns of such persons or entities.

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

1.29 “Service Award(s)” means such funds as may be awarded by the Court to the Class Representative in recognition of their time, effort and service to the Settlement Class, expenses in pursuing the Action or in otherwise fulfilling their obligations and responsibilities as the Settlement Class Representative.

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

1.31 “Settlement Amount” means Two Million Two Hundred Fifty Thousand Dollars and No Cents (\$2,250,000.00) to be paid by Defendant, and is the total amount that Defendant will be obligated to pay, pursuant to the terms and conditions of this Agreement in consideration of the settlement of all Plaintiff’s and Class Members’ Released Claims.

1.32 “Settlement Administrator” means P&N, the third-party entity that is jointly selected by the Parties to administer the settlement, as set forth in Section 6 of this Agreement.

1.33 “Settlement Fund” means the non-reversionary cash fund that shall be funded by Defendant in the total amount of the Settlement Amount (*i.e.* Two Million Two Hundred Fifty Thousand Dollars and No Cents (\$2,250,000.00)) and any accrued interest. The following shall be paid from the Settlement Fund: All Settlement Payments as a result of Approved Claims made by Class Members, Settlement Administration Expenses, any Service Award to the Class Representative, and any Fee and Expense Award to Class Counsel.

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

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

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

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

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

2. RECITALS

2.1 WHEREAS, the Action was originally filed in the Circuit Court of Cook County,

Illinois, County Department, Chancery Division on September 20, 2019 (*Acaley v. Vimeo, Inc.*, Case No. 2019CH10873).

2.2 WHEREAS, on October 31, 2019, Defendant removed this Action to the United States District Court for the Northern District of Illinois (*Acaley v. Vimeo, Inc.*, Case No. 1:19-cv-07164 (“*Federal Action*”), ECF No. 1).

2.3 WHEREAS, on December 20, 2019, Defendant moved to stay and compel individual arbitration of Plaintiff’s claims (*Federal Action*, ECF No. 17; “Arbitration Motion”). On June 1, 2020, after the Arbitration Motion was fully briefed, the District Court denied Defendant’s Arbitration Motion (*Federal Action*, ECF No. 41).

2.4 WHEREAS, on June 18, 2020, Defendant filed a notice of appeal of the Court’s order denying the Arbitration Motion (*Federal Action*, ECF No. 42; *Acaley v. Vimeo, Inc.*, Case No. 20-2047 (7th Cir.) (“Appeal”).

2.5 WHEREAS, the Parties thereafter entered into the Seventh Circuit mediation program with the Chief Seventh Circuit Mediator, Joel Shapiro. With the supervision of Mr. Shapiro, the Parties engaged in extensive settlement discussions, which lasted over one year and included a stipulated protective order between the Parties and signed by the District Court (*Federal Action*, ECF No. 52) which provided for the exchange of information between the Parties.

2.6 WHEREAS, on May 21, 2021, Vimeo, Inc. changed its name to Vimeo.com, Inc.

2.7 WHEREAS, after the Parties remained unable to reach a resolution by June 2021, the Seventh Circuit set a briefing schedule for the Appeal. In December 2021, after the Parties had fully briefed Defendant’s appeal and the Seventh Circuit set oral argument for February 10, 2022, the Parties revisited settlement discussions and participated in a full day mediation with Mr. Shapiro on January 7, 2022.

2.8 WHEREAS, while Plaintiff believes the claims in the Action possess merit and while Defendant disputes such claims and denies any fault or liability, the Parties have agreed to enter into this Agreement as a compromise of Plaintiff’s and the Settlement Class Members’ claims in order to resolve all controversy between them and to avoid the uncertainty, risk, expense, and burdens of protracted litigation that would be involved in prosecuting and defending the Action.

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

3. SETTLEMENT PURPOSES ONLY

3.1 For the purposes of this Settlement only, the Parties stipulate and agree that: (a) the Class shall be certified in accordance with the definition contained in Section 3.2, below; (b) Plaintiff shall represent the Class for settlement purposes and shall be appointed as the Class Representative; and (c) Plaintiff's Counsel shall be appointed as Class Counsel.

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

All Illinois residents who appear in a photograph or video maintained on Magisto at any time or held a registered 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.

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

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

4. SETTLEMENT RELIEF

4.1 Prospective Relief

Without admitting any liability or that it is required by law to do so, within thirty (30) days after entry of the Preliminary Approval Order, Defendant agrees to provide a declaration confirming that Defendant will delete (or has deleted) all geometric measurement data derived and collected from a face appearing in a photo or video on Magisto and will not sell such data. Going forward, Defendant agrees to comply with BIPA and any other law or provision of a law under which a claim relating to biometric identifiers or biometric information could be brought with respect to photographs or videos of faces that were uploaded onto Magisto.

4.2 Establishment of Settlement Fund

a. Defendant agrees to pay the total sum of Two Million Two Hundred Fifty Thousand Dollars and No Cents (\$2,250,000.00) (as defined above, the Settlement Amount) to create the Settlement Fund. The Settlement Fund shall be used to pay all Settlement Payments as a result of Approved Claims made by Class Members, Settlement Administration Expenses, any Service Award to the Class Representative, and any Fee and Expense Award to Class Counsel. The Settlement Fund represents the total extent of Defendant's monetary obligations under the Settlement Agreement, and neither Defendant nor any Released Party shall have any obligation to make any further payments into the Settlement Fund or any financial responsibility or obligation relating to the settlement beyond the Settlement Fund.

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

c. Within fifteen (15) business days after the later of (a) entry of the Preliminary Approval Order and (b) receipt from the Settlement Administrator of detailed wire instructions and a completed W-9 form, Defendant agrees to and shall cause the sum of One Hundred and Eighty-Nine Thousand and Fifty Dollars and No Cents (\$189,500.00) to be deposited in an interest-bearing bank escrow account established and administered by the Settlement Administrator (the "Escrow Account"). The Escrow Account shall be held in a Qualified Settlement Fund (defined below) in interest-bearing bank account deposits with commercial banks with excess capital exceeding One Hundred Million Dollars and No Cents (\$100,000,000.00), with a rating of "A" or higher by S&P and in an account that is fully insured by the United States Government or the FDIC.

d. The Settlement Administrator shall notify the Parties in the event that Administration Expenses incurred prior to the Final Order and Judgment are greater than One Hundred and Eighty-Nine Thousand and Fifty Dollars and No Cents (\$189,500.00). Defendant shall then cause an additional sum to be deposited into the Escrow Account as may be necessary in the reasonable estimate of the Settlement Administrator to satisfy the total anticipated Administration Expenses.

e. Within seven (7) business days after the Effective Date, Defendant agrees to and shall cause the remainder of the Settlement Amount (*i.e.* \$2,250,000.00, minus \$189,500.00 (deposited pursuant to Section 4.2(c)) and any additional sums deposited into the Escrow Account pursuant to Section 4.2(d)) to be deposited into the Escrow Account. In no event shall Defendant be required to pay any amounts in excess of the Settlement Amount under any circumstances.

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

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

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

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

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

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

4.3 Distribution of Settlement Fund

a. Class Members shall have until the Claims Deadline to submit a Claim Form. Each Class Member with an Approved Claim shall be entitled to a Settlement Payment from the Settlement Fund equal to the Class Member's *pro rata* share of the Settlement Fund after Administrative Expenses, any Service Award, and any Fee and Expense Award have been deducted from the Settlement Fund.

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

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

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

4.6 No amount paid by Defendant into the Settlement Fund shall revert to Defendant unless the Settlement is terminated in accordance with Section 15. In no event shall any such amount be paid to any Class Counsel except for the amount of an approved Fee and Expense Award.

4.7 All recipients of payments in relation to this Agreement are responsible for their own tax obligations. Neither Defendant or Defendant's counsel has provided tax advice to Plaintiff, Settlement Class Members, or Class Counsel in relation to this Agreement.

5. PRELIMINARY APPROVAL AND FINAL APPROVAL

5.1 This Agreement shall be subject to approval of the Court. As set forth in Section 15, Defendant shall have the right to terminate the Agreement if the Court does not approve the material aspects of the Agreement.

5.2 Plaintiff, through Class Counsel, shall file an unopposed motion for entry of an Order Conditionally Certifying the Settlement Class, granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, approving the Class Notice and Claim Form, appointing Class Counsel and Plaintiff as the Class Representative, and for entry of the

Preliminary Approval Order. The Preliminary Approval Order shall seek a Final Approval Hearing date and approve the Notices and Claim Form for dissemination in accordance with the Notice Program set forth in Section 7.1. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Final Order and Judgment set forth below and do not limit or impair the rights of the Class.

5.3 The Parties shall request that the Final Approval Hearing be scheduled at least ninety (90) days after entry of the Preliminary Approval Order and that the Court approve the Settlement of the Action as set forth herein.

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

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

6. SETTLEMENT ADMINISTRATION

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

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

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

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

6.2 The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud,

including by cross-referencing Approved Claims with the Class Notice List. The Settlement Administrator shall determine whether a Claim Form submitted by a Class Member is an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator by the Claims Deadline, or fourteen (14) days after the Settlement Administrator sends the email or regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form, whichever is later. In the event the Settlement Administrator receives such information after the deadline set forth in this subsection, then any such claim shall be denied. The Settlement Administrator may contact any person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form. Class Counsel and Defendant's Counsel shall both have the right to challenge the acceptance or rejection of a Claim Form submitted by a Class Member by the Settlement Administrator. The Settlement Administrator shall follow any joint decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed submitted Claim Form. Where Class Counsel and Defendant's Counsel disagree as to the validity of a submitted Claim Form, the Settlement Administrator will resolve the dispute and the Claim Form will be treated in the manner designated by the Settlement Administrator.

7. NOTICE TO THE CLASS

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

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

- i. Class Member Information Solely for Purposes of Notice. Any information relating to Settlement Class Members provided to the Settlement Administrator pursuant to this Agreement shall be provided solely for the purpose of providing Notice to Settlement Class Members and allowing them to recover under this Agreement; shall be kept in strict confidence by the Parties, their counsel, and the Settlement Administrator; shall not be disclosed to any third party; shall be destroyed after all distributions to Settlement Class Members have been made; and shall not be used for any other purpose.
- ii. The Settlement Administrator shall perform any further investigations deemed appropriate by the Settlement Administrator, including using

the National Change of Address (“NCOA”) database maintained by the United States Postal Service, in an attempt to identify current mailing addresses for individuals or entities whose names are provided by Defendant.

b. Timing of Class Notice. Notice shall be provided as set forth in this Agreement within sixty (60) days of the entry of the Preliminary Approval Order.

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

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

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

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

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

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

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

(e) Neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail individual notices that have been post mailed as provided in Sections 7.1(d)(1)(b) through (d).

ii. Notice via Internet Campaigns. Defendant shall place a hyperlink to the Settlement Website on Magisto's website (<https://magisto.com>) in the event direct email notice as described in Sections 7.1(d)(i)(a) and (b) above fails to be successfully delivered to at least 90% of the unique Persons identified on the Class Notice List ("Direct Email Reach Rate") and such notice shall remain on the website for no longer than thirty (30) days or for the remainder of the claims period, whichever is shorter. The Settlement Administrator shall determine the Direct Email Reach Rate and shall report the results in writing to Class Counsel and Defendant's Counsel. Defendant may target the delivery of the hyperlink on Magisto's website (<https://magisto.com>) to Persons on the Class Notice List who did not receive direct email notice. The hyperlink shall be accompanied by the following statement: "Magisto Account Holders: If your face appears in a photograph on a video uploaded to Magisto you may be entitled to a payment from a Class Action Settlement." In addition, the Settlement Administrator shall design and conduct an internet advertisement publication notice program, which must be approved by the Parties and the Court. This internet advertisement publication notice shall commence no later than sixty (60) days after entry of the Preliminary Approval Order and shall continue through the Claims Deadline.

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

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

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

8. SUBMISSION AND EVALUATION OF CLAIMS

8.1 All claims must be submitted to the Settlement Administrator via the Claim Form, and must be submitted by the Claims Deadline, either electronically *via* the Settlement Website or

by U.S. Mail, postmarked on or before the Claims Deadline.

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

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

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

8.4 Every Claim Form that is timely submitted as required by Section 8.1 and that is fully completed with the information required by Section 8.2 shall be considered a valid Claim Form, but shall remain subject to the approval and verification procedures set forth in Section 6.2. Any Claim Form that lacks the requisite information shall be deemed to be incomplete and ineligible for payment. For any partially-completed Claim Form, the Settlement Administrator shall attempt to contact the Settlement Class Member who submitted the Claim Form at least once by e-mail or, if no email address is available, by regular U.S. mail (a) to inform the Settlement Class Member of any error(s) and/or omission(s) in the Claim Form and (b) to give the Settlement Class Member one opportunity to cure any errors and/or omissions in the Claim Form. The Settlement Class Member must cure the error(s) and/or omission(s) by the Claims Deadline, or fourteen (14) days after the Settlement Administrator sends the email or regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form, whichever is later. If the Settlement Class Member cures the error(s) and/or omission(s) by the deadline set forth in this subsection, his or her Claim Form will be considered a valid Claim Form.

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

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

9. OPT-OUT RIGHTS

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

shall not be affected by this Agreement.

9.2 A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked, or submitted electronically *via* the Settlement Website, or by submitting a request to an email address established for the purpose of receiving exclusion requests, on or before the Objection/Exclusion Deadline. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a hand written signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not electronically submitted or postmarked as required herein and within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. The request for exclusion must be personally hand-signed only by the person requesting exclusion.

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

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

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

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

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

10. OBJECTIONS TO THE SETTLEMENT

10.1 The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall

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

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

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

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

11. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT

11.1 This Agreement shall be the sole and exclusive remedy for every Class Member with respect to any and all Released Claims. Upon entry of the Final Order and Judgment, each member of the Settlement Class shall be barred from initiating, asserting, or prosecuting any claim that is released by operation of this Agreement and the Final Order and Judgment. In the event any member of the Settlement Class attempts to prosecute an action in contravention of the Final Order

and Judgment and this Agreement, counsel for any of the Parties may forward this Agreement and the Final Order and Judgment to such Class Member and advise him, her, or it of the releases provided pursuant to this Agreement. If so requested by Defendant or Defendant's Counsel, Class Counsel shall provide this information to the Settlement Class Member.

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

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

12. RELEASES

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

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

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

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

13. SERVICE AWARD AND CLASS COUNSEL'S ATTORNEYS' FEES, COSTS AND EXPENSES

13.1 In recognition of the time and effort Plaintiff expended in pursuing the claims resulting in this Settlement and fulfilling his obligations and responsibilities as Settlement Class Representative, and of the benefits conferred on all Settlement Class Members by the Settlement, Class Counsel may ask the Court for the payment of a Service Award of no more than Five Thousand Dollars and No Cents (\$5,000.00) for the Class Representative, to be paid from the Settlement Fund. Defendant shall not oppose or appeal any such application that does not exceed Five Thousand Dollars and No Cents (\$5,000.00) for the Class Representative. Class Counsel may apply for such an application on or before fourteen (14) days prior to the Objection/Exclusion Deadline. If the Court awards the Service Award, the Settlement Administrator shall deliver to

Class Counsel a check, in the amount of the Service Award, made payable to the Class Representative, within fifteen (15) days after (a) the date a completed W-9 form for each Class Representative is provided to the Settlement Administrator, or (b) the Effective Date, whichever is later.

13.2 Class Counsel shall request, and Defendant shall not oppose, a Fee and Expense Award by which Class Counsel seeks fees not to exceed 35% of the Settlement Fund or Nine Hundred Thousand Dollars and No Cents (\$900,000.00), plus reasonable costs and expenses incurred by Class Counsel, to be paid by the Settlement Administrator from the Settlement Fund. Class Counsel shall file their application for such an award on or before fourteen (14) days prior to the Objection/Exclusion Deadline. The Fee and Expense Award, to the extent awarded by the Court, shall be paid subject to Section 13.4 below. Defendant shall not oppose, object to, appeal, or otherwise comment on, any such fee, cost and expense application in which the Fee portion of the award does not exceed Seven Hundred Eighty-Seven Thousand and Five Hundred Dollars and No Cents (\$787,500.00).

13.3 The Fee and Expense Award shall be paid by the Settlement Administrator from the Settlement Fund within five (5) days after the earlier of (a) the Effective Date, but no sooner than the provision to Defendant's Counsel of a completed and fully executed W-9 Form for the payee(s) of the Fee and Expense Award as designated by Class Counsel, or (b) the date on which all of the following conditions have occurred: (i) payment by Defendant of the Settlement Amount into the Escrow Account in accordance with Section 4.2(e), (ii) the entry of the Court's order so awarding the Fee and Expense Award, (iii) provision to Defendant's Counsel of a completed and fully executed W-9 Form for the payee(s) of the Fee and Expense Award as designated by Class Counsel, and (iv) provision to Defendant's Counsel of a fully executed Stipulated Undertaking by Class Counsel, substantially in the form attached hereto as **Exhibit 5**.

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

13.5 Class Counsel expressly disclaim any and all right to collect attorneys' fees and expenses from any Person in excess of the amount awarded by the Court, as provided in Section 13.2 above, and agree, upon demand, to execute a release of any Person's obligation to pay such

sums. Class Counsel is responsible for distributing any award of attorneys' fees and expenses among themselves. Defendant shall not be liable for any claims ensuing from the division of the Fee and Expense Award among Class Counsel.

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

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

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

13.9 Plaintiff and Class Counsel represent and warrant that no other attorney or law firm who has appeared in the Action on behalf of Plaintiffs has a right to claim recovery of attorneys' fees or costs in relation to the Action, allegations in the Action, this Settlement, or Released Claims. Plaintiff and Class Counsel will defend, indemnify, and hold harmless Defendant and Released Parties against any such claims.

14. FINAL ORDER AND JUDGMENT

14.1 The Parties shall jointly seek entry of Final Order and Judgment that is mutually agreeable to the Parties and is as described in this Section 14. The dismissal orders, motions or stipulation to implement this Section shall, among other things, provide for a dismissal with prejudice and waiver of any rights of appeal.

14.2 The Final Order and Judgment shall, among other things:

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

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

- c. Find that the Class Representative and Class Counsel adequately represent the Class for purposes of entering into and implementing the Agreement;
- d. Dismiss the Action (including all individual claims and Class claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;
- e. Incorporate the Releases set forth above, make the Releases effective as of the Effective Date, and forever discharge the Released Parties from the Released Claims as set forth herein;
- f. Permanently bar and enjoin all Class Members who have not properly sought exclusion from the Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;
- g. Without affecting the finality of the Final Order and Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Order and Judgment, and for any other necessary purpose;
- h. Incorporate any other provisions, as the Court deems necessary and just;
and
- i. Find that pursuant to 735 ILCS 5/2-1301, there is no just reason for the delay of entry of final judgment with respect to the foregoing.

15. MODIFICATION OR TERMINATION OF THE AGREEMENT

15.1 The performance of this Agreement is expressly contingent upon entry of the Final Order and Judgment. If the Court substantially denies the relief requested in the motion for Final Approval and does not issue the Final Order and Judgment as set forth in this Agreement following conclusion of the Final Approval Hearing, the Agreement will be terminated, having no force or effect whatsoever, and shall be null and void and will not be admissible as evidence for any purpose in any pending or future litigation in any jurisdiction, except as expressly set forth in Sections 3.3 and 3.4 of this Agreement.

15.2 If the number of Settlement Class Members who timely and validly request exclusion from the settlement in accordance with Section 9 exceeds seven thousand five hundred (7,500), then Defendant may, in its sole discretion, notify Class Counsel in writing that it has elected to terminate this Settlement Agreement. Such notification of intent to terminate the Settlement Agreement must be provided no later than three (3) business days after the Settlement Administrator has delivered to the Parties a list of all persons who have opted out of the Settlement in accordance with Section 9.7. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*.

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

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

15.5 In the event the terms or conditions of this Agreement, other than those pertaining to the Fee and Expense Award and/or Service Award, are materially modified by any court, then either Party in its sole discretion may declare this Agreement null and void (with the exception of Sections 6, 8, and 15 herein) within ten (10) business days from the occurrence of any such material modification.

15.6 In the event that a party exercises his/her/its option to withdraw from, rescind, revoke, and/or terminate this Agreement pursuant to any provision herein, then the Settlement proposed herein shall become null and void (with the exception of Sections 7, 8, and 15 herein) and shall have no legal effect and may never be mentioned at trial or in dispositive or class motions or motion papers (except as necessary to explain the timing of the procedural history of the Action), and the Parties will (i) return to their respective positions existing immediately before the execution of this Agreement, and (ii) not be deemed to have waived any claim, cause of action, defense, right, remedy, power, privilege, immunity, entitlement, benefit, position or argument.

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

15.8 Notwithstanding any provision of this Agreement, in the event this Agreement is

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

16. MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

16.7 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish such terms and conditions. Parties and their respective counsel agree that they will act in good faith and will not engage in any conduct that could frustrate the purposes of this Agreement.

16.8 The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents as may be reasonably

necessary to implement the terms of this Agreement.

16.9 The Parties agree to make their best efforts on an ongoing basis to effectuate the settlement consideration, as well as to defend this Agreement from any legal challenge by objection, appeal, collateral attack, or otherwise.

16.10 The Parties agree that they will not solicit or otherwise encourage, directly or indirectly, Class Members to request exclusion from the Settlement Class, object to the settlement, or appeal the final judgment.

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

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

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

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

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

e. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff, the Class, the Releasing Parties, or each and any of them,

or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

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

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

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

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

16.16 If any provision, paragraph, section, subsection, or other portion of this Agreement is found to be void (except for Sections 4 & 12), all of the remaining provisions of this Agreement shall remain in full force and effect.

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

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

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

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

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

[Remainder of Page Intentionally Left Blank]

IT IS SO AGREED BY THE PARTIES:


DATED: Jan 9, 2023

BRADLEY ACALEY

By: 
Bradley Acaley (Jan 9, 2023 10:59 CST)
Bradley Acaley

DATED: Jan 9, 2023

VIMEO.COM, INC.

By: 

Name: Michael Cheah

Title: General Counsel and Secretary

IT IS SO STIPULATED BY COUNSEL:

DATED: January 5, 2023

AHDOOT & WOLFSON, PC

By: 

Tina Wolfson
twolfson@ahdootwolfson.com
Bradley K. King
bking@ahdootwolfson.com
Henry Kelston
hkelston@ahdootwolfson.com
AHDOOT & WOLFSON, PC
2600 West Olive Avenue, Suite 500
Burbank, California 91505
Tel: 310-474-9111; Fax: 310-474-8585

DATED: 1/13/2023 | 8:30 AM PST

BAKER & HOSTETLER, LLP

By: 

1E2A5EB02A7D41D...
Joel Griswold
jcgriwold@bakerlaw.com
BAKER & HOSTETLER LLP
SunTrust Center
200 South Orange Avenue, Suite 2300
Orlando, Florida 32801-3432
Telephone: (407) 649-4000

Paul Karlsgodt
pkarlsgodt@bakerlaw.com
BAKER & HOSTETLER LLP
1801 California Street, Suite 4400
Denver, Colorado 80202-2662
Telephone: (303) 764-4013

Bonnie Keane DelGobbo
bdelgobbo@bakerlaw.com
BAKER & HOSTETLER LLP
One North Wacker Drive, Suite 4500
Chicago, Illinois 60606-2841
Telephone: (312) 416-6200

EXHIBIT 1

Magisto BIPA Settlement Administrator
P.O. Box XXX
Baton Rouge, LA 70821

**Your Claim Form Must Be
Submitted On or Before
Month day, Year**

Magisto BIPA Class Action Settlement
Acaley v. Vimeo.com, Inc., Case No. 2019CH10873 (Cir. Ct. Cook Cnty.)

Claim Form

IF, AT ANY TIME BETWEEN SEPTEMBER 20, 2014 AND [DATE OF PRELIMINARY APPROVAL], YOU APPEARED IN A PHOTOGRAPH OR VIDEO ON MAGISTO OR HELD A REGISTERED MAGISTO ACCOUNT ON WHICH A FACE WAS DETECTED WHILE YOU WERE AN ILLINOIS RESIDENT, YOU MAY BE ELIGIBLE FOR A PAYMENT AS PART OF THE SETTLEMENT OF THIS CASE

TO RECEIVE A PAYMENT, YOU MUST COMPLETE THIS CLAIM FORM AND SUBMIT IT BY MM DD, YYYY.

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

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

STEP 1 - CLAIMANT INFORMATION

In the spaces below, print your (i) full name, (ii) current mailing address, (iii) email address, and (iv) Settlement Claim ID (optional):

Remember that you are only eligible for a claim if you are an Illinois resident and 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 Month Day, Year.

| | | | | | | | | | | | | | | | | | | | |
|-----------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|---------------------------|--|
| [Grid for First Name] | | | | | | | | | | | | | | | | | | [Grid for Middle Initial] | |
| First Name | | | | | | | | | | | | | | | | | | Middle Initial | |

| | | | | | | | | | | | | | | | | | | | | | | | | | |
|----------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| [Grid for Last Name] | | | | | | | | | | | | | | | | | | | | | | | | | |
| Last Name | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| [Grid for Mailing Address: Street Address/P O Box (include Apartment/Suite/Floor Number)] | | | | | | | | | | | | | | | | | | | | | | | | | |
| Mailing Address: Street Address/P O Box (include Apartment/Suite/Floor Number) | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | |
|-----------------|--|--|--|--|--|--|--|--|--|--|--|------------------|--|---------------------|--|--|--|
| [Grid for City] | | | | | | | | | | | | [Grid for State] | | [Grid for Zip Code] | | | |
| City | | | | | | | | | | | | State | | Zip Code | | | |

| | | | | | | | | | | | | | | | | | | | | | | | | | |
|----------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| [Grid for Current Email Address] | | | | | | | | | | | | | | | | | | | | | | | | | |
| Current Email Address | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | | | | | |
|-----------------------------|--|--|--|--|--|---|--|-----------------------------|--|--|--|--|--|---|--|---|--|--|--|--|--|
| [Grid for Telephone Number] | | | | | | - | | [Grid for Telephone Number] | | | | | | - | | [Grid for Settlement Claim ID (Optional)] | | | | | |
| Telephone Number | | | | | | | | | | | | | | | | Settlement Claim ID (Optional) | | | | | |

FILED DATE: 1/13/2023 2:58 PM 2019CH10873

STEP 4 - CERTIFICATION

I _____, affirm that:
Full Name

I am an Illinois resident and 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 Month Day, Year.

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

Signature: _____ Date: / / 2 0

STEP 5 - METHODS OF SUBMISSION

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

1. Online by visiting www.MagistoBIPASettlement.com and completing an online Claim Form no later than **Month Day, Year**;

OR

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

Acaley v. Vimeo.com, Inc.,
Case No. 2019CH10873 (Cir. Ct. Cook Cnty.)
P.O. Box XXX
Baton Rouge, LA 70821

EXHIBIT 2

What Are the Settlement Terms? Class Members who file valid claims will be eligible to receive a *pro rata* portion of the \$2,250,000 Settlement Fund, with the payment amount depending on the number of valid claims and deductions for Court-approved notice and settlement administration expenses, attorneys' fees, litigation costs and expenses, and service award to the Class Representative.

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

Your Other Options. If you do not want to be legally bound by the Settlement, you must exclude yourself by _____, **2023**. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website. You may object to the Settlement by _____, **2023**. The Long Form Notice available on the website listed below explains how to exclude yourself or object. The Court will hold a Final Approval Hearing on _____, **2023** to consider whether to approve the Settlement and a request for attorneys' fees of up to 35% of the Settlement Fund and for a Service Award of \$5,000 to the Class Representative. Motions for these fees and expenses will be posted on the Settlement Website when they are filed with the Court. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to. The hearing may be held remotely at the Court's discretion. For more information, call or visit the website.

Legal Notice about a Class Action Settlement

If Your Face Appears In A Photograph Or Video On Magisto, You May Be Entitled To A Payment From A Class Action Settlement.

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

A **\$2.25 million settlement** has been reached in a class action lawsuit against Vimeo.com, Inc. (“Vimeo”), claiming that Vimeo violated Illinois law by collecting and storing biometric data of individuals in Illinois who appear in photographs and videos uploaded onto the Magisto application (“Magisto”) without proper notice and consent. Vimeo denies it violated any law and the Court has not decided who is right.

Who is Included? You are a Class Member and are affected by this Settlement if you are an Illinois resident and appear in a photograph or video maintained on Magisto at any time or held a Magisto registered account on which a face was detected between September 20, 2014 and **Month, Day, Year**.

Visit www.MagistoBIPASettlement.com or call 1-XXX-XXX-XXXX for more information.

Magisto BIPA Settlement Administrator

P.O. Box XXXX

Baton Rouge, LA 70821

ELECTRONIC SERVICE REQUESTED

[FIRST NAME] [LAST NAME]

[ADDRESS1]

[ADDRESS2]

[CITY] [STATE] [ZIP]



Postal Service: Do Not Mark or Cover Barcode

FILED DATE: 1/13/2023 2:58 PM 2019CH10873

EXHIBIT 3

SUMMARY E-MAIL NOTICE

IF YOUR FACE APPEARS IN A PHOTOGRAPH OR VIDEO ON MAGISTO YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

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

A **\$2.25 million settlement** has been reached in a class action lawsuit against Vimeo.com, Inc. (“Vimeo”), which claims that Vimeo violated Illinois law by collecting and storing biometric data of individuals in Illinois who appear in photographs and videos uploaded onto the Magisto application (“Magisto”) without proper notice and consent. Vimeo denies it violated any law and the Court has not decided who is right. For more information or to submit a claim for payment please visit www.MagistoBIPASettlement.com.

- **Who is Included?** You are a Class Member and are affected by this Settlement if you are an Illinois resident and appear in a photograph or video maintained on Magisto at any time or held a Magisto registered account on which a face was detected between September 20, 2014 and **Month, Day, Year**.
- **What Are the Settlement Terms?** Class Members who file valid claims will be eligible to receive a *pro rata* portion of the \$2,250,000 Settlement Fund, with the payment amount depending on the number of valid claims and deductions for Court-approved notice and settlement administration expenses, attorneys’ fees, litigation costs and expenses, and service award to the Class Representative.
- **How Can I Get a Payment?** The only way to get a payment is to submit a Claim Form. If you submit a Claim Form, you will give up the right to sue Vimeo or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement. You must submit a Claim Form by **Month, Day, Year**.
- **Your Other Options.** If you do not want to be legally bound by the Settlement, you must exclude yourself by _____, 2023. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website at www.MagistoBIPASettlement.com. You may object to the Settlement by _____, 2023. The Long Form Notice available on the website explains how to exclude yourself or object. The Court will hold a Final Approval Hearing on _____, 2023 to consider whether to approve the Settlement and a request for attorneys’ fees of up to 35% of the Settlement Fund, reimbursement of expenses, and for a Service Award of \$5,000 to the Class Representative. Motions for these fees and expenses will be posted on the Settlement Website when they are filed with the Court. You may appear at the hearing, either yourself or through an attorney hired by you, but you don’t have to. The hearing may be held remotely at the Court’s discretion. For more information, call 1-XXX-XXX-XXXX or visit the Settlement Website.

EXHIBIT 4

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
Acaley v. Vimeo.com, Inc., Case No. 2019CH10873 (Cir. Ct. Cook Cty.)

IF, AT ANY TIME BETWEEN SEPTEMBER 20, 2014 AND [DATE OF PRELIMINARY APPROVAL], YOU APPEARED IN A PHOTOGRAPH OR VIDEO ON MAGISTO OR HELD A REGISTERED MAGISTO ACCOUNT ON WHICH A FACE WAS DETECTED WHILE YOU WERE AN ILLINOIS RESIDENT, YOU MAY BE ENTITLED TO GET A PAYMENT FROM A CLASS ACTION SETTLEMENT.

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

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

- A Settlement has been reached in a class action lawsuit against Vimeo.com, Inc. (“Defendant” or “Vimeo”), which alleges that Vimeo violated Illinois law by collecting and storing biometric data of individuals in Illinois who appear in photographs and videos uploaded onto the Magisto application (“Magisto”) without proper notice and consent. Vimeo denies it violated any law. For more information, please visit www.MagistoBIPASettlement.com.
- You are a Class Member and are affected by this Settlement if you are an Illinois resident and 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 Month Day, Year.
- Class Members who file valid claims will be eligible to receive a *pro rata* portion of the \$2,250,000 Settlement Fund. The actual cash amount an individual will receive will depend on the number of valid claims and deductions for Court-approved notice and settlement administration expenses, attorneys’ fees, litigation costs and expenses, and service award to the Class Representative.
- Your legal rights will be affected whether you act or do not act. You should read this entire Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

| | |
|---|---|
| SUBMIT A CLAIM FORM: Month Day, Year | The only way to get a payment is if you submit a Claim Form. If you submit a Claim Form, you will give up the right to sue Vimeo or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement. You must submit a Claim Form by Month, Day, Year . For more information, see Section ■ below. |
| EXCLUDE YOURSELF FROM THIS SETTLEMENT DEADLINE: Month Day, Year | You may exclude yourself from (or “opt-out” of) the Settlement. If you do so, you will not receive any payment, but you will keep any rights to pursue your own lawsuit against Vimeo or any Released Parties (described below) for the claims made in this case and released by this Settlement. To exclude yourself, you must submit a request to be excluded by Month, Day, Year . For more information, see Section ■ below. |
| OBJECT TO OR COMMENT ON THE SETTLEMENT DEADLINE: Month Day, Year | You may object to the Settlement by writing to the Court and informing it why you do not think the Settlement should be approved. You can also write the Court to provide comments or reasons why you support the Settlement. In either case, you will give up the right to sue Vimeo or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement. If you choose to object, you must do so by Month, Day, Year . For more information, see Section ■ below. |
| GO TO THE “FINAL APPROVAL” HEARING DATE: Month Day, Year | You may attend the Final Approval Hearing where the Court may hear arguments concerning the approval of the Settlement. This hearing may be held remotely at the Court’s discretion. If you wish to speak at the Final Approval Hearing, you must make a request to do so in your written objection or comment, or you may appear at the Final Approval Hearing and request that the Court allow you to speak. You are <u>not</u> required to attend the Final Approval Hearing. |

This Settlement affects your legal rights even if you do nothing.
Questions? Go to www.MagistoBIPASettlement.com or call 1-888-888-8888.

FILED DATE: 1/13/2023 2:58 PM 2019CH10873

DO NOTHING

You will not receive a payment, and you will give up the right to sue Vimeo or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement.

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

**Questions? Go to www.MagistoBIPASettlement.com or call 1-888-888-8888.
This Settlement affects your legal rights even if you do nothing.**

BASIC INFORMATION

1. Why did I get this Notice?

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

Judge Clare J. Quish of the Circuit Court of Cook County, Illinois is overseeing this class action. The case is known as *Acaley v. Vimeo.com, Inc.*, Case No 2019CH10873. (Cir. Ct. Cook Cty.) (the “Action”). The person who filed this lawsuit is called the “Plaintiff” and the company that was sued, Vimeo.com, Inc., is called the “Defendant.”

2. What is this lawsuit about?

The Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), prohibits private companies from collecting, capturing, purchasing, receiving through trade, or otherwise obtaining a person’s biometric identifiers and/or biometric information (collectively, “biometrics”), such as a scan of face geometry, without first providing such individual with certain written disclosures and obtaining written consent. BIPA also requires that private companies that possess biometrics develop a written policy, made available to the public, establishing a retention schedule.

The Plaintiff claims that Vimeo violated BIPA by obtaining, collecting and storing Illinois residents’ biometrics through the process of using facial recognition technology that extracts and analyzes data from photographs and videos uploaded to the Magisto application without adequate prior notice and consent.

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

3. Why is this a class action?

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

The Class Representative in this case is the Plaintiff, Bradley Acaley.

Vimeo does not concede that this action could be certified as a class action for any purpose other than settlement.

4. Why is there a Settlement?

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

WHO IS INCLUDED IN THE SETTLEMENT?

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

You are a Class Member, and you are affected by this Settlement, if you appeared in a photograph or video maintained on Magisto at any time or held a registered Magisto account on which a face was detected while you were an Illinois resident between September 20, 2014 and Month Day, Year. If you received this notice by e-mail or U.S. mail, you may fit this description, and you may submit a Claim Form. If you did not receive this notice by e-mail or U.S. mail, but believe you fit this description, you may also submit a Claim Form.

Note: If you are a registered Magisto account holder, you should have received an email to the email address associated with your Magisto account. For more information, please visit www.MagistoBIPASettlement.com.

**Questions? Go to www.MagistoBIPASettlement.com or call 1-888-888-8888.
This Settlement affects your legal rights even if you do nothing.**

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

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

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

If you are still not sure whether you are a Class Member, you may go to the Settlement website at www.MagistoBIPASettlement.com, email the Settlement Administrator at info@yMagistoBIPASettlement.com, or call the Settlement Administrator's toll-free number at 1-888-888-8888.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

Vimeo has agreed to create a Settlement Fund totaling **\$2,250,000**, if the Settlement is approved by the Court. The following payments will come out of this fund: Settlement Payments as a result of Approved Claims made by Class Members, Settlement Administration Expenses, any Court-approved Service Award to the Class Representative, and any Court-approved attorneys' fees and expenses to Class Counsel.

In addition, Vimeo has agreed to delete all geometric measurement data derived and collected from a face appearing in a photo or video on Magisto and will not sell such data. Going forward, Defendant agrees to comply with BIPA and any other law or provision of a law under which a claim relating to biometric identifiers or biometric information could be brought with respect to photographs or videos of faces that were uploaded onto Magisto.

9. How much will my payment be?

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

10. How can I get a payment?

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

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

11. When will I get my payment?

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

**Questions? Go to www.MagistoBIPASettlement.com or call 1-888-888-8888.
This Settlement affects your legal rights even if you do nothing.**

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

All checks will expire and become void 90 days after they are issued. If appropriate, funds remaining from the initial round of uncashed checks or returned electronic payments may be used for a second distribution to participating Class Members and/or may be donated to the American Civil Liberties Union of Illinois.

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

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

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

Acaley v. Vimeo.com, Inc.,
Case No. 2019CH10873 (Cir. Ct. Cook Cty.)
P.O. Box ____
_____, ____

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

REMAINING IN THE SETTLEMENT

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

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

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

14. What are the Released Claims?

If you are a Class Member, and you do not exclude yourself from the Settlement, and the Settlement becomes final, you will be releasing Vimeo and any of the Released Parties from any liability regarding any and all claims associated with this case, as explained in the Settlement Agreement. You will give up your right to be part of any other lawsuit against Vimeo and any of the Released Parties regarding the claims resolved by this Settlement and released by the Settlement Agreement. The specific claims you will release are described in sections 1.26-1.28 and 12.1-12.4 of the Settlement Agreement (available at www.MagistoBIPASettlement.com). A copy of sections 1.26-1.28 and 12.1-12.4 of the Settlement Agreement, which sets out the claims released by you, if you are a Class Member, is attached to this Notice as Exhibit A.

THE LAWYERS REPRESENTING YOU

22. Do I have a lawyer in this case?

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

23. How will Class Counsel be paid?

Pursuant to the Settlement Agreement, Class Counsel will file a motion asking the Court to award them attorneys’ fees not to exceed 35% of the Settlement Fund (or \$787,500.00), plus reasonable costs and expenses incurred by Class Counsel. They will also ask the

**Questions? Go to www.MagistoBIPASettlement.com or call 1-888-888-8888.
This Settlement affects your legal rights even if you do nothing.**

Court to approve a \$5,000 Service Award to the Class Representative for participating in this Action and his efforts in achieving the Settlement. The Court may award less than these amounts.

Class Counsel's application for attorneys' fees, costs, and expenses, and application for a Service Award to the Class Representative will be made available on the Settlement Website at www.MagistoBIPASettlement.com fourteen (14) days before the deadline for you to comment or object to the Settlement.

EXCLUDING YOURSELF FROM THE SETTLEMENT

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

24. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must submit a request in writing to exclude yourself from the Settlement. The request must be in writing and identify the case name *Acaley v. Vimeo.com, Inc.*, Case No. 2019CH10873 (Cir. Ct. Cook Cty.); state your name, address, and telephone number; contain your original signature; and must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Acaley v. Vimeo.com, Inc.*, Case No. 2019CH10873 (Cir. Ct. Cook Cty.)” You must either mail your request to be excluded from the Settlement Class to the post office box address below, or submit your request to be excluded through the link on the Settlement Website, or email your request to the following email address established for the purpose of accepting exclusions: _____@_____.com. To be valid, your exclusion must be received by the Settlement Administrator electronically, or if mailed to the address below postmarked, no later than **Month Day, Year**:

Acaley v. Vimeo.com, Inc.,
Case No. 2019CH10873 (Cir. Ct. Cook Cty.)
P.O. Box _____
_____, _____

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

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

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

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

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

OBJECT TO OR COMMENT ON THE SETTLEMENT

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

If you are a Class Member, you can tell the Court that you do not agree with all or any part of the Settlement. You can give reasons why you think the Court should not approve the Settlement. To object, on or before **Month Day, Year**, you must send copies of your written objection via United States mail, hand delivery, or overnight delivery to the Settlement to Class Counsel and Counsel for Vimeo.com at the addresses set forth below, and file, mail or hand-deliver your objection simultaneously to the Court, at the address below. A copy of the objection must also be mailed to the Settlement Administrator at _____.

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

**Questions? Go to www.MagistoBIPASettlement.com or call 1-888-888-8888.
This Settlement affects your legal rights even if you do nothing.**

| | | |
|--|--|--|
| <p>Clerk of the Circuit Court of Cook County – Chancery Division <i>Richard J. Daley Center, 8th Floor</i> 50 West Washington Street Chicago, Illinois 60602</p> | <p>Class Counsel c/o Magisto BIPA Settlement P.O. Box _____ _____, _____ <i>info@MagistoBIPASettlement.com</i></p> | <p>Counsel for Vimeo c/o Magisto BIPA Settlement P.O. Box _____ _____, _____ <i>info@MagistoBIPASettlement.com</i></p> |
|--|--|--|

28. What is the difference between objecting and requesting exclusion?

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

THE FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing on **Month Day, Year** at **__:_0_.m.** before the Honorable _____ in Room _____ at the _____. This hearing may be held remotely at the Court’s discretion. Check the Settlement Website for updates.

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

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

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

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

31. May I speak at the Final Approval Hearing?

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

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

IF YOU DO NOTHING

32. What happens if I do nothing at all?

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

**Questions? Go to *www.MagistoBIPASettlement.com* or call 1-888-888-8888.
This Settlement affects your legal rights even if you do nothing.**

GETTING MORE INFORMATION

33. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at info@MagistoBIPASettlement.com, by calling 888-888-8888 or by writing to *Acaley v. Vimeo.com, Inc.*, Case No. 2019CH10873, P.O. Box _____, _____, _____. In the event of any conflict between this Notice and the Settlement Agreement, the Settlement Agreement shall be binding. Publicly filed documents can also be obtained by visiting the office of the Clerk of the Circuit Court of Cook County – Chancery Division, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

If you have questions you may contact Class Counsel at:

Ahdoot & Wolfson, PC
c/o Magisto BIPA Settlement
P.O. Box _____
_____, _____
info@MagistoBIPASettlement.com

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

**Questions? Go to www.MagistoBIPASettlement.com or call 1-888-888-8888.
This Settlement affects your legal rights even if you do nothing.**

EXHIBIT A

SECTIONS 1.26-1.28 OF THE SETTLEMENT AGREEMENT

DEFINITIONS

1.26 “Released Claims” means any and all claims or causes of action of any kind, whether known or unknown (including “Unknown Claims” as defined below), fixed or contingent, accrued or not accrued, matured or not yet matured, asserted or unasserted, suspected or unsuspected, including without limitation those related to unknown and unsuspected injuries as well as unknown and unsuspected consequences of known or suspected injuries, that the Releasing Parties now own or hold, or have owned or held at any time prior to the Effective Date of this Agreement, arising from or related to images in photographs or videos that were uploaded onto Magisto, alleged biometric identifiers, biometric information, or personal data that were obtained from documents and information uploaded onto Magisto, and including all claims that were brought or could have been brought in the Action arising from the use of Magisto and Plaintiff’s allegations in the Action, including, but not limited to, claims for any violation of BIPA, including, without limitation, any claim that Released Parties do not comply with BIPA, or any other law or provision of a law under which a claim relating to biometric identifiers or biometric information could be brought with respect to photographs or videos of faces that were uploaded onto Magisto.

1.27 “Released Parties” means Vimeo.com, Inc., and its corporate parents, subsidiaries, principals, investors, owners, members, controlling shareholders, trustees, estates, heirs, executors, and administrators, along with the officers, directors, shareholders, employees, attorneys, representatives, agents, insurers, contracting parties, successors, predecessors, and assigns of such persons or entities.

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

SECTIONS 12.1-12.4 OF THE SETTLEMENT AGREEMENT

RELEASES

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

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

**Questions? Go to www.MagistoBIPASettlement.com or call 1-888-888-8888.
This Settlement affects your legal rights even if you do nothing.**

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

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

[Please note that capitalized terms that are not defined herein have the same meaning as ascribed to them in the Settlement Agreement (available at www.MagistoBIPASettlement.com), including as defined in sections 1.1-1.36 of the Settlement Agreement]

**Questions? Go to www.MagistoBIPASettlement.com or call 1-888-888-8888.
This Settlement affects your legal rights even if you do nothing.**

EXHIBIT 5

**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. 2019CH10873

Judge: Hon. Clare J. Quish

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

Plaintiff Bradley Acaley (“Plaintiff”) and Defendant Vimeo.com, Inc. (“Vimeo”), by and through their undersigned counsel, stipulate and agree as follows:

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

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

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

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

1. In the event that the Final Approval Order and Judgment entered in the Action is reversed, vacated, or modified on appeal, in whole or in part, Class Counsel shall, within ten (10)

business days after the order reversing, vacating, or modifying the Final Approval Order and Judgment becomes final, repay to Vimeo or any of its successors or assigns, as designated in the sole discretion of Vimeo or Defendant's Counsel, the full amount of the Fee and Expense Award paid to Class Counsel, without interest.

2. In the event the Final Order and Judgment is not reversed, vacated, or modified on appeal, in whole or in part, but the Fee and Expense Award awarded by the Court is reduced, vacated, or modified on appeal, Class Counsel shall, within ten (10) business days after the order reducing, vacating, or modifying the Fee and Expense Award becomes final, repay to the Settlement Administrator, for deposit into the Settlement Fund, the Fee and Expense Award paid to Class Counsel in the amount reduced, vacated, or modified, without interest.

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

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

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

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

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

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

AGREED TO BY CLASS COUNSEL

AHDOOT & WOLFSON, PC

/s/ Bradley K. King
Bradley K. King

Date: July 22, 2022

AGREED TO BY DEFENDANT'S COUNSEL

BAKER & HOSTETLER, LLP

/s/ Joel Griswold
Joel Griswold

Date: July 22, 2022