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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT

WINNEBAGO COUNTY, ILLINOIS

JACQUELINE GREGORY, individually and on behalf of a class of similarly situated individuals, *Plaintiff*, v. TUBI, INC., *Defendant*.	Case No.: 24-LA-0000209 Hon. Ronald A. Barch

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARD

Dated: October 10, 2024

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Plaintiff Jacqueline Gregory ("Plaintiff"), by and through her attorneys, and pursuant to 735 ILCS 5/2-801, hereby moves for an award of attorneys' fees and expenses for Class Counsel, as well as a service award for Plaintiff as the Class Representative in connection with the class action settlement with Defendant Tubi, Inc. ("Defendant") (Plaintiff and Defendant are collectively, the "Parties"). In support of this Motion, Plaintiff states as follows:

The Settlement that Class Counsel have achieved in this case is an excellent result for Settlement Class Members, as it provides claimants with a significant cash payment. The Parties' Settlement Agreement establishes a Settlement Fund of $19,990,000.00 to provide Settlement Class Members who submit valid claims with an equal, *pro rata* distribution of the Settlement Fund for having their viewing history disclosed by Defendant in alleged violation of the Video Privacy Protection Act, 18 U.S.C. § 2710 (the "VPPA")—the largest VPPA settlement to date.

The Court preliminarily approved the Settlement on August 26, 2024 and direct and publication notice of the Settlement commenced on September 26, 2024.

With this Motion, Plaintiff and Class Counsel respectfully request that the Court approve a Service Award of $5,000 to Plaintiff; a Fee Award to Class Counsel of 35% of the Settlement Fund, amounting to $6,996,500; and reimbursement for Class Counsel's out of pocket expenses of $12,712.12. As detailed below, the requested awards are appropriate under governing Illinois law, consistent with the amounts awarded in prior similar settlements, and fairly compensate Class Counsel and the Class Representative for the work they performed and result they achieved in this high-risk litigation. Both Class Counsel and the Class Representative have devoted significant time and effort to the prosecution of the Settlement Class Members' claims, and their efforts have yielded an excellent benefit to the Class. The requested attorneys' fees and expenses and Service Award are amply justified in light of the investment, significant risks, and excellent results

obtained for the Settlement Class Members in this litigation, particularly given the substantial uncertainty regarding the merits of their underlying VPPA claims when this Settlement was reached.

FACTUAL AND PROCEDURAL BACKGROUND

I. PLAINTIFF'S ALLEGATIONS

Tubi is one of the most popular video streaming service providers in the country with over 74 million subscribers watching content on its platform. Unlike other streaming platforms, Tubi's streaming service is a completely free, ad-supported viewing platform. As such, Plaintiff has alleged that Tubi disclosed to its advertising partners subscribers' specific video viewing history along with their identities to allow advertisers to target specific viewers who were most likely to purchase their products in violation of the VPPA. Defendant has at all times denied that it violated the VPPA.

II. PROCEDURAL HISTORY AND THE PARTIES' SETTLEMENT NEGOTIATIONS

The procedural background of the litigation and this Settlement is set forth in detail in Section I of Plaintiff's Motion for Preliminary Approval and need not be fully set forth again herein. As set out in the Motion for Preliminary Approval, this litigation originally started in the U.S. District Court for the Northern District of Illinois, where the original plaintiff, Ms. Sylvia Campos, filed her lawsuit against Tubi and successfully won denial of Tubi's motion to dismiss and to compel arbitration. After Tubi filed an appeal of the decision to the Seventh Circuit Court of Appeals, Ms. Campos and Class Counsel engaged in mediation efforts before the Seventh Circuit's mediation office, at which time it was disclosed that Ms. Campos lacked standing to proceed with her claims. Nonetheless, in an effort to reach a resolution to what would undoubtedly be continued and extensive litigation with an uncertain result, on May 30, 2024, the Parties

participated in a full-day mediation before Hon. Michael T. Mason (Ret.), a former Magistrate Judge with the Northern District of Illinois. Having made Defendant aware that Class Counsel were representing additional plaintiffs that did have standing, including Plaintiff Gregory, and given the significant risks of proceeding with the litigation, the Parties reached an agreement in principle to resolve the privacy claims against Defendant related to its streaming service and use of its subscriber's data. In order to effectuate the class action settlement, and to ensure that there were no standing issues, on July 19, 2024, Plaintiff Gregory filed this action alleging the same claims as brought forth in the original *Campos* action.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES, COSTS, AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED.

Pursuant to the Settlement, Class Counsel seek attorneys' fees of 35% of the Settlement Fund, which amounts to $6,996,500, plus $12,712.12 in reimbursable expenses. (Agreement, ¶ 8.1). Such a request is within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the significant recovery secured on behalf of the Settlement Class Members. It is well settled that attorneys who, by their efforts, create a common fund for the benefit of a class are entitled to reasonable compensation for their services. *See Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.").

In cases where, as here, a class action settlement results in the creation of a settlement fund, "[t]he Illinois Supreme Court has adopted the approach taken by the majority of Federal courts on the issue of attorney fees[.]" *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13 (1st Dist.

1992) (citing *Fiorito v. Jones*, 72 Ill.2d 73 (1978)). That is, where "an equitable fund has been created, attorneys for the successful plaintiff may directly petition the court for the reasonable value of those of their services which benefited the class." *Id.* at 14 (citing *Fiorito*, 72 Ill.2d 73). This rule "is based on the equitable notion that those who have benefited from litigation should share in its costs." *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (*citing Skelton v. Gen. Motors Corp*., 860 F.2d 250, 252 (7th Cir. 1988)).

A. The Court Should Apply The Percentage-of-the-Benefit Method In This Case.

"When awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235, 244 (1995). In deciding an appropriate fee in such cases, "a trial judge has discretionary authority to choose a percentage[-of-the-benefit] or a lodestar method[.]" *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge*, 168 Ill. 2d at 243–44). Here, Plaintiff submits that the Court should apply the percentage-of-the-benefit approach—the approach used in the vast majority of common fund class actions, including VPPA class actions. It is settled law in Illinois that the Court need not employ the lodestar method in assessing a fee petition. *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59. This is because the lodestar method is disfavored, as it not only adds needless work for the Court and its staff,[1] it misaligns the interests of Class Counsel and the Settlement Class Members. 5 Newberg on Class Actions § 15:65 (5th ed.) ("Under the percentage method, counsel have an interest in generating as large a recovery for the class as possible, as their fee increases with the class's take.

[1] *See Langendorf v. Irving Trust Co.*, 244 Ill. App. 3d 70, 80 (1st Dist. 1992), abrogated on other grounds by 168 Ill. 2d 235; *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 924–25 (1st Dist. 1995) (the "[p]ercentage analysis approach eliminates the need for additional major litigation and further taxing of scarce judicial resources").

By contrast, when class counsel's fee is set by an hourly rate, the lawyers have an incentive to run up as many hours as possible in the litigation so as to ensure a hefty fee, even if the additional hours are not serving the clients' interests in any way"). The percentage-of-the-benefit method also better aligns Class Counsel's interests with those of the Settlement Class because it bases the fee on the results the lawyers achieve for their clients rather than on the number of motions they file, documents they review, or hours they work, and it avoids some of the problems the lodestar-times-multiplier method can foster (such as encouraging counsel to delay resolution of the case when an early resolution may be in their clients' best interests). *Brundidge*, 168 Ill.2d at 242; *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 566 (7th Cir. 1994); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 720-21 (7th Cir. 2001).

In "choosing between the percentage and lodestar approaches," courts "look to the calculation method most commonly used in the marketplace at the time such a negotiation would have occurred." *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500–01 (N.D. Ill. 2015) (citing *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998)); *see also McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 814-15 (E.D. Wis. 2009). In class action litigation, where "the normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery," *Kolinek*, 311 F.R.D. at 500-01, state and federal courts in Illinois and throughout the country are in near unanimous agreement that "the percentage approach is likely what the class members and counsel would have negotiated when counsel agreed to take on the case." *McCormick v. Adtalem Glob. Educ., Inc*, 2022 IL App (1st) 201197-U, ¶ 26; *see also Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 2006) ("When the prevailing method of compensating lawyers for similar services is the contingent fee, then the contingent fee *is* the 'market rate'"); *Ryan*, 274 Ill. App. 3d at 923 (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by

counsel in common fund cases") (citation omitted); *Williams v. Gen. Elec. Capital Auto Lease*, No. 94-cv-7410, 1995 WL 765266, *9 (N.D. Ill. Dec. 26, 1995) (noting that "[t]he approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class"); *see also, e.g., Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (explaining that where "a class suit produces a fund for the class," as is the case here, "it is commonplace to award the lawyers for the class a percentage of the fund," and affirming fee award of 38% of $20 million recovery to class) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)).

In utilizing the percentage-of-the-benefit approach, a court is not required to perform a lodestar cross-check on Class Counsel's fees. *McCormick*, 2022 IL App (1st) 201197-U, ¶ 24 (rejecting an objector's argument that failure to perform lodestar cross-check rendered class counsel's fee unreasonable and awarding class counsel fees totaling 35% of the common fund, or $15,7000,00); *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge*, 168 Ill.2d at 246) (rejecting an objector's argument that the trial court was required to perform a lodestar cross-check on class counsel's fees and awarding class counsel fees based on a percentage of the common settlement fund).

This Court should likewise apply the percentage-of-the-benefit method here, which best replicates the *ex ante* market value of the services that Class Counsel provided to the Settlement Class. It is not just the typical method used in contingency-fee cases generally, *see Gaskill*, 160 F.3d at 363, but it is also the means by which an informed Settlement Class and Class Counsel would have established counsel's fee *ex ante*, at the outset of the litigation. *See Kolinek*, 311 F.R.D. at 500-01 ("[T]he normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery"). This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiff, who agreed *ex ante* that attorneys' fees would

be awarded on a contingency basis from any settlement fund created for the benefit of a class, plus reimbursement of costs and expenses. (Declaration of Eugene Y. Turin, attached hereto as Exhibit A, ¶ 16.)

Class Counsel are not aware of any VPPA class action settlements involving a monetary common settlement fund where a court relied on the lodestar method to determine attorneys' fees. In fact, to Class Counsel's knowledge, the percentage-of-the-benefit method has been used to determine a reasonable fee award in *every* VPPA class action settlement in Illinois state court where the defendant – as here – created a monetary common fund. *See, e.g.*, *Young v. Military Advantage, Inc. d/b/a Military.com*, No. 2023LA000535 (Cir. Ct. DuPage Cnty. Ill.); *Beltran et al. v. Sony Pictures Entertainment*, No. 22-cv-04858 (N.D. Ill.); *Jackson v. Fandango Media, LLC*, No. 2023LA000631 (Cir. Ct. DuPage Cnty. Ill.). Accordingly, the Court should adopt and apply the percentage-of-the-benefit approach here. Under this approach, as set forth more fully below, Class Counsel's requested attorneys' fees are eminently reasonable.

B. The Requested Attorneys' Fees, Costs, And Expenses Are Reasonable As A Percentage Of The Class Benefit.

An award to Class Counsel of 35% of the Settlement Fund value is well within the range of fees typically awarded to class counsel by Illinois courts in comparable class action settlements. In fact, higher fee awards of up to 40% have regularly been awarded in numerous class action settlements involving allegations of violations of privacy rights in circuit courts throughout Illinois. *See, e.g.*, *Gray v. Verificient Technologies*, No. 2018-CH-16054 (Cir. Ct. Cook County, Ill. 2024) (awarding 40% of a class settlement fund for violations of the Illinois biometric information privacy act ("BIPA")); *Coleman v. Farm King*, No. 22-LA-0002 (Cir. Ct. McDonough Cnty., Ill. 2024) (same); *Bodie v. Capitol Wholesale Meats, Inc.*, 22-CH-000020 (Cir. Ct. DuPage Cnty., Ill. 2022) (same); *Jackson v. UKG, Inc.*, No. 2020-L-000031 (Cir. Ct. McLean Cnty., Ill. 2022)

(awarding 35% of the class settlement fund in attorneys' fees); *Vega v. Mid-America Taping & Reeling, Inc.,* No. 2019-CH-1136 (Cir. Ct. DuPage Cnty., Ill. 2022) (same).

The requested fee of 35% of the Settlement Fund is reasonable in light of the substantial monetary and non-monetary relief obtained by Class Counsel here – despite significant risk – and is consistent with fees recently approved by Illinois courts in other similar class action settlements.

1. The requested fee of 35% of the Settlement fund is reasonable.

"When assessing the reasonableness of fees, a trial court may consider a variety of factors, including the nature of the case, the case's novelty and difficulty level, the skill and standing of the attorney, the degree of responsibility required, the usual and customary charges for similar work, and the connection between the litigation and the fees charged." *McNiff v. Mazda Motor of Am., Inc.*, 384 Ill. App. 3d 401, 407 (2008) (quoting *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314–15 (1st Dist. 2007)) (quotations omitted). Here, each of these factors shows the requested fee is reasonable.

i. *Plaintiff's claims carried substantial litigation risk.*

This case has long presented substantial litigation risk. In particular, Defendant has denied the allegations put forth in Plaintiff's complaint since the outset of this litigation and would have pursued several legal and factual defenses, including but not limited to asserting that it did not share any information about its subscribers that would allow identification of their viewing history in violation of the VPPA and that the Class Members' claims are subject to arbitration agreements. Defendant's arguments regarding the manner in which its streaming service operated in particular posed significant risk to proceeding with Plaintiff's claims given the novelty of VPPA suits and lack of relevant caselaw. If successful, Defendant's defenses could have resulted in Plaintiff and the other Settlement Class Members, or significant portions of the settlement class, receiving no

payment or relief whatsoever. Moreover, even if Plaintiff was successful in defeating Defendant's arguments on the merits of her claim, Defendant would have strongly contested class certification. Given that the settlement class includes individuals from across the country, with variations in different state's laws on the enforceability of arbitration provisions, there was significant risk that Plaintiff would not have been able to certify a nationwide class.

Nonetheless, despite knowing the risks, Class Counsel pursued and litigated the case, and undertook a significant financial risk, with no upfront payment and no guarantee of payment absent a successful outcome. In addition to attorney time spent on the case, Class Counsel also advanced a total of $12,712.12 in out-of-pocket expenses, again with no guarantee of repayment. (Turin Decl. ¶ 17.) If the case had advanced through class certification, these expenses would have increased many-fold, and Class Counsel would need to advance these expenses potentially for several years to litigate this action through judgment and appeals. Despite these risks, the Settlement Agreement provides every Settlement Class Member who completes a simple Claim Form with a *pro rata* cash payment from a nearly $20 million Settlement Fund, after deductions for administrative expenses, attorneys' fees and expenses, and a service award. And Class Members can receive this benefit now, as opposed to receiving it years from now or potentially never. This is an excellent result.

ii. *The skill and standing of the attorneys supports the requested fee.*

Class Counsel are well-respected attorneys with significant experience litigating similar class action cases involving violations of consumers' privacy rights in federal and state courts in Illinois and across the country. (Turin Decl. ¶ 18.) Class Counsel have successfully litigated and settled class actions in courts throughout Illinois and throughout the country and have been appointed class counsel by numerous courts in similar consumer privacy class actions. (*Id.*)

Furthermore, "[t]he quality of the opposition should be taken into consideration in assessing the quality of the plaintiffs' counsel's performance." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). Here, Defendant was represented by the prominent and well-respected law firm of Jenner & Block. Class Counsel achieved an exceptional result in this case while facing well-resourced and experienced defense counsel. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement").

iii. *The Settlement was the result of arm's-length negotiations between the Parties after a significant exchange of information.*

The Settlement was the result not only of hard-fought litigation, but also of serious and contentious negotiations over an extended period of time. Class Counsel worked with Defendant's counsel to obtain critical information in advance of the mediations and prior to any settlement being reached. Class Counsel also prepared for and participated in two separate mediation sessions, including a full-day mediation session with Hon. Michael T. Mason (Ret.) of JAMS, where the Parties were able to reach an agreement in principle. (Turin Decl. ¶¶ 4, 5.) Through the undertaking of a thorough investigation, hard fought litigation over the merits of the claims at issue and Defendant's arbitration provisions, informal discovery, and substantial arm's-length negotiations, Class Counsel obtained a settlement that provides a real and significant monetary benefit to the Class, as well as non-monetary relief in the form of changes to Tubi's Privacy Policy and Terms of Use. Since that time, Class Counsel have drafted and negotiated the Settlement Agreement and related notice documents, moved for and obtained preliminary approval, and diligently monitored the successful notice program and claims administration process. (Turin Decl. ¶¶ 14–15, 23–24.)

iv. The usual and customary charges for similar work.

When Class Counsel undertake major litigation such as this, it necessarily limits their ability to undertake and dedicate time to other complex litigation cases. During the course of this litigation, Class Counsel devoted significant time and resources to succeed in this case and will continue to do so. (Turin Decl. ¶¶ 14–15, 23–24.) Class Counsel had to make this commitment at the outset of this case without knowing how long the case would take to resolve, if ever. Therefore, Class Counsel's willingness to prosecute this action on a contingent fee basis and to advance substantial costs diverted the time and resources expended on this action from other cases. (*Id.* ¶ 9.) As set forth above, Illinois courts regularly award 35–40% in attorneys' fees in similar privacy-related class settlements, and a fee award of 35% is eminently reasonable in this matter.

C. The Court Should Also Award Class Counsel's Requested Reimbursable Litigation Expenses.

Class Counsel have expended $12,727.98 in reimbursable expenses related to filing fees, mediation costs, and case administration. (Turin Decl., ¶ 17.) Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.,* No. 12-cv-5134, 2014 WL 2808801, at *4 (N.D. Ill. June 20, 2014) (awarding expenses "for which a paying client would reimburse its lawyer"); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation). Accordingly, this Court should award a total fee and expense award to Class Counsel of $7,009,227.98.

II. THE REQUESTED SERVICE AWARD IS REASONABLE AND SHOULD BE APPROVED.

A Service Award of $5,000.00 for Plaintiff Gregory is appropriate here. "In some cases, the amount requested as an incentive award, given the court's knowledge about the advanced stage

of the case or other procedural facts, will be so obviously reasonable that only minimal scrutiny will be required for approval, at least in the absence of any objection from class member." 299 F.R.D. 160 at NACA Guideline 5. Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of class action litigation. *See id.* ("Consumers who represent an entire class should be compensated reasonably when their efforts are successful and compensation would not present a conflict of interest").

This case is no different. Plaintiff's participation has been instrumental in the prosecution and ultimate settlement of this action. Here, Plaintiff's efforts and participation in prosecuting this case justify the $5,000.00 Service Award sought. Even though no award of any sort was promised to Plaintiff prior to the commencement of the litigation or any time thereafter, Plaintiff nonetheless contributed her time and effort in pursuing her own VPPA claim, as well as in serving as a representative on behalf of the Settlement Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (Turin Decl., ¶¶ 25–28.) Plaintiff participated in the initial investigation of her claims and provided information to Class Counsel to aid in preparing the pleading filed in this case, consulted with Class Counsel on numerous occasions, and most importantly provided feedback on the Settlement Agreement ultimately reached by the Parties. (*Id*.) Further, agreeing to serve as Class Representatives meant that Plaintiff publicly placed her name on this suit and opened herself to "scrutiny and attention" – especially given the wide audience and large number of class members put at issue – which, in and of itself, "is certainly worthy of some type of remuneration." *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 600–01 (N.D. Ill. 2011). Were it not for Plaintiff's willingness to pursue this action on a class-wide basis, her efforts and contributions to the litigation by assisting Class Counsel with their investigation and prosecution of this suit, and her continued

participation and monitoring of the case up through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would simply not exist. (Turin Decl., ¶ 27.)

The requested $5,000.00 Service Award is well in line with the average service award granted in class actions. Indeed, many Illinois courts that have granted final approval in VPPA class action settlements have granted class representative awards in the same amount as the payment sought here. *See, e.g. Beltran v. Sony Pictures*, No. 22-cv-04858 (awarding $5,000 service awards to each of the class representatives); *Young v. Military.com*, No. 2023LA000535 (awarding $5,000 service award to one of the class representatives); *see also Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514 (Cir. Ct. Cook Cnty., Ill.) (awarding $10,000 service award in BIPA class action); *see also Cook,* 142 F.3d 1004 (value of settlement was $14 million; service award to class representative of $25,000); *see also In re Remeron End-Payor Antitrust Litig*., No. 02-cv-2007, 2005 WL 2230314 (D.N.J. Sept. 13, 2005) (value of settlement was $36 million; service payments totaling $75,000 for six named plaintiffs).

Compensating Plaintiff for the risks and efforts she undertook to benefit the Settlement Class Members is reasonable under the circumstances of this case, especially in light of the excellent results obtained. As shown above, courts have regularly approved awards in similar class action litigation of at least $5,000.00. Accordingly, a $5,000.00 Service Award for Plaintiff is reasonable, justified by Plaintiff's time and effort in this case, and should be approved.

CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an Order: (1) approving an award of attorneys' fees and expenses of $7,009,227.98; and (ii)

approving a Service Award of $5,000 for Plaintiff in recognition of her significant efforts on behalf of the Settlement Class Members.

Dated: October 10, 2024

Respectfully submitted,

JACQUELINE GREGORY, individually and on behalf of all others similarly situated

By: /s/ *Eugene Y. Turin*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 10, 2024, the foregoing document was filed via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

/s/ Eugene Y. Turin
Eugene Y. Turin

Exhibit A

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT

WINNEBAGO COUNTY, ILLINOIS

JACQUELINE GREGORY, individually and on behalf of a class of similarly situated individuals, *Plaintiff*, v. TUBI, INC., *Defendant*.	Case No.: 24-LA-0000209 Hon. Ronald A. Barch

DECLARATION OF EUGENE Y. TURIN

I, Eugene Y. Turin, hereby aver, pursuant to 735 ILCS 5/1-109, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am an adult over the age of 18 and a resident of the state of Illinois. I am a Partner at the law firm McGuire Law, P.C., I am licensed to practice law in the state of Illinois, and I, along with Evan M. Meyers and Jordan R. Frysinger of McGuire Law, P.C. (together, "Proposed Class Counsel"), am one of the attorneys representing Plaintiff Jacqueline Gregory and the putative class in this matter. I am fully competent to make this Declaration and make this Declaration in support of Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and Service Award.

The Litigation

2. This litigation originated when plaintiff Sylvia Campos filed her class action complaint in the U.S. District Court for the Northern District of Illinois alleging that Defendant violated the VPPA by disclosing information identifying her as having viewed specific video materials on its streaming platform (the "*Campos* Action").

3. Following the filing of the original action, Defendant sought to dismiss the action and compel plaintiff Campos' claims to arbitration. After full briefing of a motion to dismiss and motion to compel arbitration, the court in the *Campos* action denied Defendant's early dismissal efforts, including its efforts to compel arbitration.

4. Defendant thereafter filed an appeal as of right of the district court's decision in the *Campos* action with the Seventh Circuit Court of Appeals. As part of the appellate proceedings, the Seventh Circuit ordered Ms. Campos and Tubi to participate in a mediation on March 28, 2024. As part of the mediation proceedings Tubi disclosed that Ms. Campos did not have standing to assert a VPPA claim or to represent a putative class of persons alleging VPPA claims.

5. While the Seventh Circuit mediation ultimately did not result in any settlement, plaintiff Campos and Plaintiff's counsel attended a subsequent mediation on May 30, 2024 before JAMS mediator Hon. Michael T. Mason (Ret.), where Plaintiff's counsel made Defendant aware that they were representing additional plaintiffs who did have standing, including Plaintiff Gregory. At the mediation the Parties reached an agreement to settle the nationwide privacy claims against Defendant related to its streaming service.

6. In order to effectuate the class action settlement, on July 19, 2024, Plaintiff Gregory filed this action alleging the same claims as brought forth in the original *Campos* action.

7. The Court preliminarily approved the Settlement on August 26, 2024.

8. The Settlement reached by Plaintiff and her counsel provides for a $19,990,000.00 non-reversionary Settlement Fund established by the Defendant. The Settlement Fund will be used to pay all Settlement Class Member payments, settlement administration expenses, any class representative service award and attorneys' fees and expenses awarded to Class Counsel.

9. From the outset of this litigation, the attorneys of McGuire Law, P.C. anticipated

spending hundreds of hours litigating the claims in this matter with no guarantee of success. Class Counsel understood that prosecution of this case would require that other work be foregone, that there was significant uncertainty surrounding the applicable legal and factual issues, and that there would be significant opposition from a defendant with substantial resources.

10. Class Counsel assumed a significant risk of non-payment in prosecuting this litigation given the novelty of legal issues involved and the uncertainty in the development of VPPA caselaw against providers of online video streaming services; the legal issues involving Plaintiff's and the other Class Members' ability to proceed with their claims outside of Defendant's arbitration requirements; and the vigorous and nuanced legal defenses that Defendant and its skilled counsel have raised and were prepared to litigate had this case proceeded further.

11. From the outset of the litigation, Defendant and its counsel have presented strong defenses to Plaintiff's claims on the merits and the ability to represent a class of those whose viewing history was collected by Defendant. Had the case not settled, the Parties would have continued with extensive discovery, class certification briefing, and summary judgment briefing. Given the financial resources at its disposal, any final decisions favorable to Plaintiff would have also likely been appealed by Defendant.

12. Defendant is represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case, including by proceeding with an appeal on the issue of whether its arbitration agreement was enforceable, moving for summary judgment after discovery on the merits of Plaintiff's claims relating to whether information sufficient to identify her as having watched video materials was disclosed to third parties, and opposing any effort to obtain class certification. If successful, these defenses could have resulted in Plaintiff and the Settlement Class Members receiving no payment or relief

whatsoever. Looking beyond trial, Plaintiff is also keenly aware that Defendant could appeal the merits of any adverse decision.

13. Class Counsel were able to obtain the substantial benefit provided to the Settlement Class Members through the Settlement, despite the significant risks and defenses raised by Defendant, only as a result of their efforts in investigating Defendant's streaming service and its data collection and use practices; defeating Defendant's motion to dismiss and to compel arbitration; bringing a new action before this Court in light of standing issues raised by Defendant as to plaintiff Campos; and, most importantly, playing a central role in the careful and extended negotiations that resulted in the final Settlement Agreement preliminarily approved by this Court, including the drafting and preparation of the Settlement Agreement, all related exhibits, and the Motion for Preliminary Approval.

14. The work that Class Counsel have committed to this case has been substantial. Among other things, Class Counsel have:

a. Investigated Defendant's data collection and use practices;

b. Drafted the Complaints in both this matter and the *Campos* matter;

c. Successfully briefed Defendant's Motion to Dismiss and Motion to Compel Arbitration in the *Campos* matter;

d. Participated in a mediation before the Seventh Circuit mediation office;

e. Participated in a full-day mediation session before Hon. Michael T. Mason (Ret.) of JAMS.

f. Engaged in months of continued settlement negotiations, which involved the exchange of settlement drafts and multiple communications with Defendant's counsel, and which resulted in the drafting and execution of the finalized Settlement Agreement and related documents, including class notice documents;

g. Successfully moved for preliminary approval of the Settlement;

h. Oversaw the implementation of the Settlement, including multiple communications with the Settlement Administrator about class notice and the settlement website; and

i. Engaged in ongoing communications with the Settlement Administrator and with numerous Class Members answering questions about the Settlement and the claims process.

15. Based on my experience in many other class action settlements, I anticipate that Class Counsel will expend substantial additional time and resources over the pendency of this action relating to briefing and filing a motion for final approval of the Settlement, attending the final approval hearing, responding to Class Members' inquiries regarding the Settlement and advising them how to proceed, responding to any objectors, and remaining involved with the Settlement through implementation, including continuous communications with the Settlement Administrator and Class Members relating to benefits distribution.

16. Plaintiff previously executed a fee agreement with Class Counsel that was contingent in nature. Plaintiff agreed *ex ante* that attorneys' fees would be awarded on a contingency basis from any settlement fund created for the benefit of a class, plus reimbursement of costs and expenses. Class Counsel would not have brought this action absent the prospect of obtaining a percentage of the recovery to account for the risk inherent in this type of class action.

17. In addition to attorney time expended in pursuit of this case, Class Counsel have collectively incurred $12,712.12 in out-of-pocket expenses related to this litigation, which is comprised primarily of mediation fees, filing fees, and case administration expenses. These costs and expenses are reflected in Class Counsel's firm records and were necessary to effectively prosecute this litigation and to reach this Settlement. Being responsible for advancing all expenses, Class Counsel have had a strong incentive not to expend any funds unnecessarily, and Class Counsel undertook these expenses without any guarantee of reimbursement.

18. My firm has extensive experience litigating class actions, and the attorneys of McGuire Law and I have regularly engaged in complex litigation on behalf of consumers and have extensive experience in class action lawsuits similar in size and complexity to the instant case, including dozens of consumer privacy class actions involving federal privacy statutes. McGuire Law attorneys and their firms have been appointed as class counsel in numerous complex class actions in state and federal courts in Illinois and across the country. *See, e.g, McFerren et al., v. AT&T Mobility, LLC* (Sup. Ct. Fulton County, Ga. 2008); *Gray et al. v. Mobile Messenger Americas, Inc. et al.* (S.D. Fla. 2008); *Gresham et al. v. Keppler & Associates, LLC et al.* (Sup. Ct. Los Angeles County, Cal. 2008); *Sims et al. v. Cellco Partnership et al.* (N.D. Cal. 2009); *Van Dyke et al. v. Media Breakaway, LLC et al.* (S.D. Fla. 2009); *Paluzzi, et al. v. mBlox, Inc., et al*. (Cir. Ct. Cook County, Ill. 2009); *Valdez et al. v. Sprint Nextel Corporation* (N.D. Cal. 2009); *Ryan et al. v. Snackable Media, LLC* (Cir. Ct. Cook County, Ill. 2011); *Parone et al. v. m-Qube, Inc. et al.* (Cir. Ct. Cook County, Ill. 2010); *Williams et al. v. Motricity, Inc. et al.* (Cir. Ct. Cook County, Ill. 2011); *Walker et al. v. OpenMarket, Inc. et al.* (Cir. Ct. Cook County, Ill. 2011); *Schulken at al. v. Washington Mutual Bank, et al.* (N.D. Cal. 2011); *In re Citibank HELOC Reduction Litigation* (N.D. Cal. 2012); *Rojas v. Career Education Corp*. (N.D. Ill. 2012); *Murray et al. v. Bill Me Later, Inc.* (N.D. Ill. 2014); *Gomez et al v. Campbell-Ewald Co.* (C.D. Cal. 2014); *Manouchehri, et al. v. Styles for Less, Inc., et al.* (S.D. Cal. 2016); *Valladares et al. v. Blackboard, Inc. et al.* (Cir. Ct. Cook County, Ill. 2016); *Hooker et al v. Sirius XM Radio, Inc.* (E.D. Va. 2017); *Flahive et al v. Inventurus Knowledge Solutions, Inc.* (Cir. Ct. Cook County, Ill. 2017); *Serrano et al. v. A&M (2015) LLC* (N.D. Ill. 2017); *Vergara et. al. v. Uber Technologies, Inc.* (N.D. Ill. 2018); *Zepeda v. International Hotels Group, Inc. et. al.* (Cir. Ct. Cook County, Ill 2018); *Kovach et al v. Compass Bank* (Cir. Ct. Jefferson County, Ala. 2018); *Svagdis v. Alro Steel Corp.* (Cir. Ct.

Cook County, Ill. 2018); *Zhirovetskiy v. Zayo Group, LLC* (Cir. Ct. Cook County, Ill. 2019); *Marshall v. Lifetime Fitness, Inc.* (Cir. Ct. Cook County, Ill. 2019); *McGee v. LSC Communications, Inc. et al.* (Cir. Ct. Cook County, Ill. 2019); *Prather et al. v. Wells Fargo Bank, N.A.* (N.D. Ill. 2019); *Nelson et al v. Nissan North America, Inc.* (M.D. Tenn. 2019); *Smith v. Pineapple Hospitality Co., et al.* (Cir. Ct. Cook County, Ill. 2020); *Garcia v. Target Corp.* (D. Minn. 2020); *Roberts v. Superior Nut and Candy Co., Inc.* (Cir. Ct. Cook County, Ill. 2020); *Rafidia v. KeyMe, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Burdette-Miller v. William & Fudge, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Farag v. Kiip, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Lopez v. Multimedia Sales & Marketing, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Prelipceanu v. Jumio Corp.* (Cir. Ct. Cook County, Ill. 2020); *Williams v. Swissport USA, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Glynn v. eDriving, LLC* (Cir. Ct. Cook County, Ill. 2020); *Pearlstone v. Costco Wholesale Corp.* (E.D. Mo. 2020); *Kusinski v. ADP, LLC* (Cir. Ct. Cook County, Ill. 2021); *Draland v. Timeclock Plus, LLC* (Cir. Ct. Cook County, Ill. 2021); *Harrison v. Fingercheck, LLC* (Cir. Ct. Lake County, Ill. 2021); *Rogers v. CSX Intermodal Terminals, Inc.* (Cir. Ct. Cook County, Ill. 2021); *Freeman-McKee v. Alliance Ground Int'l, LLC* (Cir. Ct. Cook County, Ill. 2021); *Gonzalez v. Silva Int'l, Inc.* (Cir. Ct. Cook County, Ill. 2021); *Salkauskaite v. Sephora USA, Inc.* (Cir. Ct. Cook County, Ill. 2021); *Williams v. Inpax Shipping Solutions, Inc.*, 2018-CH-02307 (Cir. Ct. Cook County, Ill. 2021); *Roberts v. Paramount Staffing, Inc.*, 2017-CH-15522 (Cir. Ct. Cook County, Ill. 2021); *Roberts v. Paychex, Inc.*, 2019-CH-00205 (Cir. Ct. Cook County, Ill. 2021); *Zanca v. Epic Games, Inc.*, 21-CVS-534 (Superior Ct. Wake County, N.C. 2021); *Rapai v. Hyatt Corp.*, 2017-CH-14483 (Cir Ct. Cook County, Ill. 2022); *Jackson v. UKG, Inc.* (Cir. Ct. McLean County, Ill. 2022); *Vo v. Luxottica of America, Inc.* (Cir. Ct. Cook County, Ill. 2022); *Rogers v. Illinois Central Railroad Co.* (Cir. Ct. Cook County, Ill. 2022); *Stiles v. Specialty Promotions, Inc.* (Cir. Ct. Cook County,

Ill. 2022); *Fongers v. CareerBuilder LLC* (Cir. Ct. Cook County, Ill. 2022); *Vega v. Mid-America Taping & Reeling, Inc.* (Cir. Ct. DuPage Cnty., Ill. 2022); *Wood et al. v. FCA US LLC* (E.D. Mich. 2022); *Marzec v. Reladyne, LLC* (Cir. Ct. Cook Cnty., Ill. 2022); *Komorski v. Polmax Logistics, LLC et al.* (Cir. Ct. Cook Cnty., Ill. 2022); *Wordlaw v. Enterprise Holdings, Inc. et al.* (N.D. Ill. 2023); *McGowan et al. v. Veriff, Inc.* (Cir. Ct. DuPage Cnty., Ill. 2023); *Davis v. Cafeteria Alternatives, Inc.* (Cir. Ct. Cook Cnty., Ill. 2023); *Mahmood v. Berbix Inc.* (Cir. Ct. Lake Cnty., Ill. 2023); *King v. PeopleNet Corporation* (Cir. Ct. Cook Cnty., Ill. 2023); *McFarland v. SIU Physicians & Surgeons, Inc.* (Cir. Ct. Jackson Cnty., Ill. 2023); *Romero v. Mini Storage Maintenance, LLC* (Cir. Ct. Cook Cnty., Ill. 2023); *Grabowska v. The Millard Group, LLC* (Cir. Ct. Cook Cnty., Ill. 2023); *Fregoso v. American Airlines, Inc.* (Cir. Ct. Cook Cnty., Ill. 2023); *Martinez v. PowerStop, LLC* (Cir. Ct. Cook Cnty., Ill. 2024); *Gray v. Verificient Technologies, Inc.* (Cir. Ct. Cook Cnty., Ill. 2024); *Lumpkins v. R&M Freight, Inc.* (Cir. Ct. Cook Cnty., Ill. 2024); *Coleman v. Farm King Supply LLC* (Cir. Ct. McDonough Cnty., Ill. 2024); *Taylor v. 815 Pallets, Inc.* (Cir. Ct. Cook Cnty., Ill. 2024).

19. The McGuire Law firm has successfully prosecuted claims on behalf of our clients in both state and federal trial and appellate courts throughout the country, including claims involving allegations of consumer fraud; unfair competition; invasion of privacy; data breach; false advertising; breach of contract; and various statutory violations, including BIPA, TCPA, ECPA, and VPPA violations.

20. I have substantial experience litigating class action cases in state and federal courts, including as the lead attorney in dozens of class action suits across the country involving violations of consumer privacy rights, and have been appointed class counsel in Illinois state courts, the U.S. District Court for the Northern District of Illinois, the U.S. District Court for the District of

Minnesota, and the U.S. District Court for the Central District of California. I am a graduate of Loyola University of Chicago and the Loyola University of Chicago School of Law. I have been admitted to practice in the Illinois Supreme Court, the Supreme Court of California, and in multiple federal courts throughout the country, including the Ninth Circuit Court of Appeals and the Seventh Circuit Court of Appeals.

21. My colleague Evan M. Meyers is a partner at McGuire Law. In addition to his experience with scores of class actions, Mr. Meyers has extensive experience in complex commercial litigation, has been appointed as class counsel in numerous class actions involving consumer data privacy claims, and has regularly litigated cases in state and federal trial and appellate courts across the nation, including in the Circuit Court of Cook County, the Circuit Court of Lake County, the Circuit Court of Winnebago County, the U.S. District Court for the Northern District of Illinois, the U.S. District Court for the Eastern District of Michigan, the Ninth Circuit Court of Appeals, the Judicial Panel on Multidistrict Litigation, and the U.S. Supreme Court, where he served as co-lead counsel in a case of seminal importance to class action jurisprudence nationwide. *See Campbell-Ewald Co. v. Jose Gomez*, 136 S. Ct. 663 (2016). Mr. Meyers received his B.A. from the University of Michigan and graduated from the University of Illinois College of Law in 2002.

22. My colleague, Jordan R. Frysinger, is an associate at McGuire Law and has experience litigating numerous putative class actions pending in Illinois state and federal courts, including numerous other VPPA class actions. Mr. Frysinger received his B.A. from the University of Idaho and his J.D. from the Loyola University of Chicago School of Law.

23. Since the Court preliminarily approved the Settlement, Class Counsel have worked with the Settlement Administrator, Simpluris, Inc. ("Simpluris"), to carry out the Court-ordered

notice plan. Specifically, Class Counsel helped compile and review the contents of the class notices, reviewed the final claim forms, and reviewed and tested the settlement website before it launched live. Class Counsel also worked with Defendant and Simpluris to effectuate notice as ordered by the Court.

24. Since class notice has been disseminated, Class Counsel have continued to work closely with Simpluris to monitor settlement claims and other issues that have arisen and may continue to arise, including numerous communications with Class Members.

The Class Representative's Contributions to the Case

25. Plaintiff has been significantly involved in this litigation, has willingly contributed her own time and efforts toward this litigation, and is deserving of the proposed Service Award.

26. Plaintiff assisted Class Counsel's investigation into Defendant's video streaming platform, Plaintiff was also prepared to testify at deposition and trial, if necessary, and was actively consulted during the settlement process. Moreover, Plaintiff had the ability to bring her claim on behalf of herself against Defendant but chose to proceed with her claim on behalf of a class, despite having the financial incentive to pursue her claim on an individual basis. Plaintiff has succeeded in obtaining significant financial relief, as well as important non-monetary relief, on behalf of the class.

27. I believe that Plaintiff's active involvement in this case was critical to its ultimate resolution. Plaintiff took her role as a class representative seriously, and without her willingness to assume the risks and responsibilities of serving as a class representative, the substantial benefits to the class afforded under this Settlement Agreement would not have been achieved.

28. Plaintiff has not received any payment in this matter, was never promised any payment, and was not promised that she would receive an award of any kind in this litigation.

Rather, the requested Service Award for Plaintiff seeks only to compensate Plaintiff for her respective time, effort, and contributions to this case.

I declare under penalty of perjury that the above and foregoing is true and accurate.

Executed this 10th day of October, 2024 in Chicago, Illinois.

/s/ *Eugene Y. Turin*
Eugene Y. Turin, Esq.