SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

DANIEL OHEBSHALOM, THOMAS FAN, MATTHEW KIMOTO, and CLINTON BROWN, individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

DAPPER LABS, INC.,

Defendant.

Index No.: 615987/2025

Motion Seq. 003

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT OF CLASS REPRESENTATIVES AND SERVICE AWARDS, APPOINTMENT OF PHILIP L. FRAIETTA AND STEFAN BOGDANOVICH, OF BURSOR & FISHER, P.A., AS CLASS COUNSEL, AND APPROVAL OF ATTORNEYS' FEES AND COSTS

Dated: March 27, 2026

BURSOR & FISHER, P.A.

<u>/s/ Philip L. Fraietta</u>
Philip L. Fraietta
50 Main Street, Suite 475
White Plains, NY 10606
Telephone: (914) 874-0710
Facsimile: (914) 206-3656
pfraietta@bursor.com

Stefan Bogdanovich
1990 North California Blvd, 9th Floor
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
sbogdanovich@bursor.com

Attorneys for Plaintiffs

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PRELIMINARY STATEMENT

On December 19, 2025, this Court preliminarily approved the class action settlement between Plaintiffs Daniel Ohebshalom, Thomas Fan, Matthew Kimoto, and Clinton Brown (together, "Plaintiffs") and Defendant Dapper Labs, Inc. ("Defendant") and directed that notice be sent to the Settlement Class.[1] *See* Order Granting Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (NYSCEF Doc. No. 20) ("Prelim. App. Order"). The settlement administrator has implemented the Court-approved notice plan and direct notice has reached 89.2% of the certified Settlement Class. *See* Affirmation of Cameron R. Azari Regarding Implementation of Notice and Claims Administration ("Epiq Aff.") ¶¶ 18, and 27. The reaction from the Settlement Class has been overwhelmingly positive. Specifically, as of March 26, 2026, **32,930 Claim forms** from individuals wishing to be part of Settlement Class were received, compared to only **three opt-outs**, and **zero objections**. *Id.* ¶ 33. A final reminder notice will be sent a week before the final approval hearing, *id*. ¶ 34, and Class Counsel anticipates receiving a sizable number of last-minute Claim forms before the hearing.[2]

The Settlement is an excellent result for the Class and the Court should grant final approval for the reasons stated below.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed a putative class action complaint against Defendant on July 28, 2025, alleging that Defendant violated the Video Protection Privacy Act, 18 U.S.C. § 2710, *et seq.* (the "VPPA"), with respect to the Google Pixel, the Microsoft Bing Pixel, the SnapChat Pixel, the X

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[1] Capitalized terms used in this memorandum are defined in the Class Action Settlement Agreement (the "Settlement"), attached to the Affirmation of Stefan Bogdanovich ("Bogdanovich Aff.") as Exhibit 1.

[2] The deadline for Settlement Class Members to object or request exclusion is April 15, 2026. *See* Order Extending Deadlines, NYSCEF Doc. No. 22 at 2.

Pixel, the Reddit Pixel, and the TikTok Pixel software code (collectively, the "Trackers") embedded on the NBA Top Shot, NFL All Day, Disney Pinnacle, UFC Strike, and La Liga Golazos platforms (collectively, the "Platforms"), and the Meta Pixel on all Platforms except for NBA Top Shot. Before initiating the instant action, Plaintiffs' Counsel conducted a thorough investigation into Defendant and the alleged conduct at issue, including research and analysis of the Trackers on the Platforms and the Meta Pixel on all Platforms except for NBA Top Shot, and whether Defendant's conduct violated the VPPA. This investigation further included researching the strengths and weaknesses of the claims asserted and Defendant's potential defenses thereto. Plaintiffs' Counsel also conducted substantial research into the financial health of Defendant and its business operations.

Over the past approximately thirteen months, the parties' respective counsel participated in numerous telephone conferences and exchanged many e-mails, discussing the merits of and defenses to the claims, and the possibility of settlement on a class-wide basis. Ultimately, the parties agreed to schedule a private mediation to take place on May 27, 2025, before Hon. Wayne R. Andersen (Ret.), a former judge for the Northern District of Illinois. Prior to the mediation, the parties engaged in extensive discovery in a separate action related to Defendant's use of tracking technologies, including the production and review of thousands of documents as well as numerous depositions and third-party discovery. Given the extensive exchange of documents that had taken place leading up to mediation, Plaintiffs' Counsel was sufficiently able to determine the amount of damages at issue, as well as the strengths and weaknesses of continued litigation, as well as the risks posed by class certification.

Plaintiffs' Counsel utilized information provided by Defendant to evaluate the claims alleged by Plaintiffs in this action and Defendant's defenses thereto, and to calculate alleged damages on a class-wide basis.

Prior to the mediation, the parties' respective counsel held multiple conference calls to discuss liability, defenses, and the potential damages at issue.

The mediation on May 27, 2025 was ultimately unsuccessful. However, the parties continued to negotiate at arm's length following the mediation and ultimately agreed to the material terms of a class action settlement on July 2025.

TERMS OF THE SETTLEMENT

A. Class Definition

The "Settlement Class" or "Settlement Class Members" is defined as:

> All individuals who held an account on the NFL All Day, Disney Pinnacle, UFC Strike, NBA Top Shot, or La Liga Golazos product websites (www.nflallday.com, www.disneypinnacle.com, www.ufcstrike.com, www.nbatopshot.com, and www.laligagolazos.com) during the Class Period.[3]

Prelim. App. Order ¶ 2; Settlement Agreement § 1.30. Dapper's records confirm that there are 1,397,267 unique names and email addresses in the Settlement Class. Epiq Aff. ¶ 22.

B. Monetary Relief

The Five Million Dollar ($5,000,000) Gross Settlement Amount shall be used to pay all Approved Claims and any Court-approved Costs and Fees. Settlement Agreement § 1.18.

[3] Excluded from the Settlement Class are counsel to the Settling Parties, Hon. Wayne R. Andersen, and their employees, legal representatives, heirs, successors, assigns, or any members of their immediate family; any government entity; Dapper Labs, Inc., any entity in which Dapper Labs, Inc. has a controlling interest, any of Dapper Labs, Inc.'s subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns, or any members of their immediate family; any persons who, as of the date of this Agreement, have provided notice to Dapper Labs, Inc. of claims relating to the Action; any persons who have released claims relating to the Action; and any persons who timely opt-out of the Settlement Class. *Id.*

Settlement Class Members shall have until the Claims Deadline[4] to submit an Approved Claim. Each Settlement Class Member with an Approved Claim shall be entitled to receive a Cash Payment of $5.00 USD subject to the conditions set forth in Section 2.1 of the Settlement Agreement.

C. Non-Monetary Benefits

The Settlement also provides for significant non-monetary benefits. Defendant has agreed to cease operation of the Meta Pixel, the Google Pixel, the Microsoft Bing Pixel, the SnapChat Pixel, the X Pixel, the Reddit Pixel, and the TikTok Pixel on any pages on its websites where it would capture the title of a video purchased or viewed, unless and until the VPPA is amended, repealed, or otherwise invalidated by judicial decision as applied to the use of website pixel technology or video games generally, or until Dapper obtains VPPA-compliant consent for the disclosure of such video titles to any third-parties. Settlement Agreement § 2.2.

D. Release

In exchange for the relief described above, each of the Releasing Parties shall be deemed to have, and by operation of the Approval Order shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released Party based on the

[4] In its January 21, 2026 Order Granting Joint Stipulation to Extend Deadlines, the Court set the Claims Deadline as April 15, 2026 (*see* NYSCEF, Doc. No. 24).

Released Claims. *Id.* § 3.2.

E. Service Awards, Attorneys' Fees, Costs, And Expenses

In recognition of their efforts on behalf of the Settlement Class, Class Counsel is entitled to seek, and hereby does seek, approval of service awards for Plaintiffs of $5,000 each ($20,000 total), as appropriate compensation for their time and effort serving as Class Representatives and as parties to the Action. Settlement § 8.3.

Further, pursuant to CPLR 909 and Settlement § 8.1, Defendant agrees that Class Counsel shall be entitled to an award of reasonable attorneys' fees and costs in an amount determined by the Court as the Fee Award. With no consideration given or received, Class Counsel hereby petitions the Court for attorneys' fees, costs, expenses in an amount no more than one-third of the Gross Settlement Amount (*i.e.*, $1,666,666.67), minus Settlement Administration Costs.

ARGUMENT

I. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

New York has a well-established public policy favoring settlement, especially in the class action context. *Brad H. v. City of New York*, 2003 WL 22721558, at *1 (Sup. Ct., N.Y. Cnty. Nov. 12, 2003). Although the CPLR does not define the specific mechanism for approval of class action settlements, New York courts look to federal case law for guidance. *See*, *e.g.*, *Colt Indus. Shareholder Litig. v. Colt Indus. Inc.*, 77 N.Y.2d 185, 194 (1991) ("New York's class action statute has much in common with Federal Rule 23.") Federal courts use a two-step class settlement approval process which has routinely been followed by New York state courts. *See*, *e.g.*, *Saska v. Metropolitan Museum of Art*, 2016 WL 6682271, at *9-10 (Sup. Ct., N.Y. Cnty. Nov. 10, 2016) (setting forth procedure). This is the second step of the two-step process.

In ruling on final approval motions, New York Courts looks to: (1) the likelihood of success on the merits; (2) the extent of support from the parties; (3) the judgment of counsel; (4) the presence of good faith bargaining; and (5) the nature of the issues of law and fact. *Milton v. Bells Nurses Registry & Employment Agency, Inc.*, 2015 WL 9271692, at *1-2 (Sup. Ct. Kings Cnty. Dec. 21, 2015).

A review of the key factors for final approval supports approval here. Here, as set forth below, each factor weighs in favor of final approval.

A. The Value Of The Settlement Outweighs The Likelihood Of Plaintiffs' Success On The Merits

The first factor in determining fairness, adequacy, and reasonableness of a proposed settlement is to "balance[e] the value of th[e] settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154, 160 (1st Dep't 1990). Litigation inherently involves risks, and the settlement benefits the class by ensuring some measure of relief and eliminating the "risk that an outcome unfavorable to plaintiffs will emerge from a trial." *Velez v. Majik Cleaning Serv., Inc.*, 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007). Thus, "there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 n.2 (2d Cir. 1974).

Here, the Settlement provides a substantial benefit to Settlement Class Members. Defendant has agreed to settle this case for the Gross Settlement Amount of $5,000,000. Based on Class Counsel's analysis of the potential damages, along with the data provided by Plaintiffs and Defendant, the Settlement represents a significant percentage of the recovery that Plaintiffs and the Settlement Class Members would have achieved had they prevailed on all of their claims and survived an appeal. If Defendant were successful on any one of their many arguments as to why Plaintiffs' claims should fail, or if Defendant otherwise showed it complied with the law, then

Settlement Class Members would receive nothing at all. Even if a judgment were obtained against Defendant at trial, the relief might be no greater, and indeed might be less, than that provided by the proposed Settlement.

In sum, the Settlement provides the significant benefit of a guaranteed and substantial payment to Settlement Class Members, rather than "speculative payment of a hypothetically larger amount years down the road." *Teachers Ret. Sys. v. A.C.L.N. Ltd.*, 2004 WL 1087261, at *5 (S.D.N.Y. May 14, 2004)).

B. The Class Members And Parties Unanimously Support The Settlement

Under New York law, support for a proposed Settlement from the opposing parties and Settlement Class Members demonstrates its fairness and reasonableness. *See*, *e.g.*, *Hibbs v. Marvel Enters.*, 19 A.D.3d 232, 233 (1st Dep't 2005).

Here, the reaction of the Class Members to the Settlement has been overwhelmingly positive. Class Notice has been provided to the Settlement Class Members in accordance with the requirements of the CPLR and the Preliminary Approval Order (NYSCEF, Doc. No. 20), and direct notice reached 89.2% of the Settlement Class. *See* Epiq Aff. ¶¶ 18, and 27. As of March 26, 2026, **32,930 Claim forms** from individuals wishing to be part of Settlement Class were received, compared to only **three opt-outs**, and **zero objections**. *Id.* ¶ 33. The lack of objections from the Settlement Class leaves no question that the class members view the Settlement favorably, which weighs heavily in favor of final approval and further supports the "presumption of fairness." *See*, *e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. June 9, 1998) ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."); *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *4 (E.D.N.Y. 2012) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness.").

Moreover, Plaintiffs and Class Counsel have reviewed and analyzed the disclosures and documents provided by Defendant and those obtained via their own investigation, considered and researched Defendant's defenses, and examined the benefits made available by the Settlement. Bogdanovich Aff. ¶¶ 6, 8, 62. Plaintiffs and Class Counsel believe that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class. *Id.* ¶ 19.

Defendant likewise believes that the Settlement is appropriate. Settlement, Recitals ¶ D. Defendant denies each and every one of the allegations of wrongdoing or liability and has asserted numerous defenses. *Id.* Defendant has also engaged well-qualified counsel with extensive complex class action experience and recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending the action, the costs of any appeals, and the disruption to its business operations arising out of burdensome and protracted litigation. *Id.* This factor favors final approval.

C. Class Counsel And Defendant's Counsel Are Experienced Class Action Litigators, And They Support The Settlement

New York courts grant significant weight to the judgment of experienced counsel in determining the fairness of a class action settlement. *See Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 538 (Sup. Ct., New York Cnty. 2010) (finding that the settlement is supported by the "judgment of counsel" weights in favor of approval). The Settlement is the product of intense and protracted negotiations involving highly experienced law firms. As set forth more fully in the Bogdanovich Affirmation, Class Counsel has years of experience litigating and settling consumer class actions—and, in particular, Video Privacy Protection Act class actions—and in their view, the Settlement represents a fair value and commendable result. Bogdanovich Aff. ¶¶ 19, 51, 74. Counsel for Defendant also has significant experience defending class actions, are well regarded within the class action bar, and support the Settlement as well. *See Williams v. Reckitt Benckiser*

LLC, 2022 WL 1176959 (S.D. Fla. Mar. 17, 2022). This factor favors final approval.

D. The Settlement Is The Result Of Arm's-Length Negotiations Between The Parties After A Mediation With An Experienced Class Action Mediator

"[N]egotiations are presumed to have been conducted at arm's length and in good faith where there is no evidence to the contrary[.]" *Gordon v. Verizon Commc'ns, Inc.*, 148 A.D.3d 146, 157 (1st Dep't 2017). As detailed above, this Settlement is the result of informed, arm's-length negotiations, which included a full-day mediation and extensive discussions involving experienced counsel for the Parties under the direction of Hon. Wayne R. Andersen (Ret.). Bogdanovich Aff. ¶ 8. Additionally, the fact that the Settlement was reached with the assistance of a highly-regarded class action mediator, following a full-day mediation and subsequent negotiations in the following weeks, further supports preliminary approval. *See*, *e.g.*, *Fiala v. Metropolitan Life Ins. Co.*, 899 N.Y.S.2d 531, 539 (Sup. Ct., New York Cnty. Mar. 3, 2010) (finding that settlement occurred "with the help of an accomplished and scrupulous mediator" weights in favor of approval). This factor favors final approval.

E. The Nature Of The Legal And Factual Issues Is Complex

Finally, courts consider the complexity of the case and whether continued litigation would be "expensive and protracted" in determining whether to approve a settlement. *Lowenschuss v. Bluhdorn*, 613 F.2d 18, 19 (2d Cir. 1980) (affirming approval of a settlement where further litigation would have been "expensive and protracted" with no guarantee of any relief to the class). "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000); *see also Fiala*, 899 N.Y.S.2d at 540 (noting that "the complexity of the litigation, its expenses and its duration favored settlement for both the plaintiffs and defendant").

There is no doubt that the Parties significantly dispute both the factual and legal issues in this matter. Although Plaintiffs believe their claims have merit, they recognize the legal, factual, and procedural obstacles to recovery, as Defendant has and will continue to vigorously contest Plaintiffs' claims if the action does not settle. Specifically, Defendant contends that it is not a video tape service provider subject to the Video Protection Privacy Act, that it does not knowingly disclose personally identifiable information, and that Plaintiffs cannot show a knowing disclosure of personally identifiable information.

These significant disputed legal and factual issues support approval of the Settlement. *See Fernandez v. Legends Hosp., LLC*, 2015 WL 3932897, at *2-3 (N.Y. Sup Ct, New York County June 22, 2015); *Ryan v. Volume Servs. Am., Inc.*, 2013 WL 12147011, at *2 (N.Y. Sup Ct, New York County Mar. 07, 2013). Accordingly, there are substantial risks in establishing both liability and damages for the Class, and resolution of this action would hinge on the determination of complex factual and legal issues.

In sum, the Settlement readily meets all the factors weighted by courts in determining whether it is fair, reasonable, adequate, and in the best interests of the Settlement Class, and therefore should be finally approved.

II. FINAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

At the preliminary approval stage, the Court certified the following Settlement Class for settlement purposes:

> All individuals who held an account on the NFL All Day, Disney Pinnacle, UFC Strike, NBA Top Shot, or La Liga Golazos product websites (www.nflallday.com, www.disneypinnacle.com, www.ufcstrike.com, www.nbatopshot.com, and www.laligagolazos.com) during the Class Period.

Prelim. App. Order ¶ 2; Settlement Agreement § 1.30. The Court's preliminary approval order also appointed Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. as Class

Counsel. *Id.* ¶ 3.

Having already notified Class Members of the Settlement and having received no objection that would call into question the Court's findings in its Preliminary Approval Order, final certification of the Class is appropriate and warranted. Bogdanovich Aff. ¶ 30. The Settlement's benefits can be realized only through final certification of the Class and entry of a Final Order.

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

This case is complex with the added class action procedural issues overlaying the underlying litigation. It has unquestionably been litigated efficiently and with no duplication of effort. The work performed was legal work related to the litigation and to the settlement. All tasks were pursued with one goal in mind: what was in the best interests of the Class.

"In testing the reasonableness of the negotiated fee, [courts] first look[] to the percentage of the recovery approach." *Michels v. Phoenix Home Life Mut. Ins.*, 1997 WL 1161145, at *31 (Sup. Ct. N.Y. Cnty. Jan. 7, 1997). "Federal courts around the country, including federal district courts in New York, are turning away from the lodestar/multiplier approach and are returning to the percentage of the recovery approach." *Id.* (citing cases). "New York's courts have recognized that its class action statute is similar to the federal statute and have looked to federal case law for guidance." *Fiala*, 899 N.Y.S.2d at 537 (citing cases); *Colt Indus. Shareholder Litig. v. Colt Indus. Inc.*, 77 N.Y.2d 185, 194 (1991) ("New York's class action statute has much in common with Federal Rule 23.").

New York courts "have routinely granted requests for one-third or more of the fund in cases with settlement funds similar to or substantially larger than this one." *Massiah v. MetroPlus Health Plan*, *Inc.*, 2012 WL 5874655, at *7 (E.D.N.Y. Nov. 20, 2012) (citing cases); *Milton v. Bells Nurses Registry & Employment Agency, Inc.*, 2015 WL 9271692, at *5 (N.Y. Sup. Ct. Dec.

21, 2015) (collecting cases and noting that 33.3% is "consistent with the norms of class litigation in this circuit"); *Cucuzza v. National Debt Relief, LLC*, No. 601631/2021, NYSCEF No. 21 (Sup. Ct. Nassau Cty. Apr. 20, 2022); *Cortes v. Mexican Hospitality Operator LLC*, No. 601406/2021, NYSCEF No. 18 (Sup. Ct. Nassau Cty. Feb. 28, 2022; *Gabriel v. Homyn Enterprises Corp.*, No. 504595/2021, NYSCEF No. 15 (Sup. Ct. Kings. Cty. Nov. 23, 2021); *Coba v. Wagamama USA, LLC*, No. 614988/2020, NYSCEF No. 17 (Sup. Ct. Nassau Cty. November 3, 2021); *Flowers v. FSNY Restaurant Associates, LLC*, No. 600976/2021, NYSCEF No. 19 (Sup. Ct. Nassau Cty. Oct. 21, 2021); *Hyken v. Greenwich BBQ, LLC*, No. 608689/2020, NYSCEF No. 19 (Sup. Ct. Nassau Cty. Jun. 3, 2021); *Figueroa v. United American Security, LLC*, No. 613892/2020, NYSCEF No. 21 (Sup. Ct. Nassau Cty. May 24, 2021); *Luna v. Zuma NYC, LLC*, No. 509547/2020, NYSCEF No. 40 (Sup. Ct. Kings Cty. May 10, 2021); *Lemma v. 103W77 Partners LLC*, No. 513125/2019, NYSCEF No. 24 (Sup. Ct. Kings Cty. Mar. 31, 2021); *Guzman v. Del Frisco's of New York, LLC*, No. 617666/2019, NYSCEF No. 61 (Sup. Ct. Nassau Cty. Mar. 18, 2021); *Robinson v. Big City Yonkers, Inc.*, No. 600159/2016, NYSCEF No. 291 (Sup. Ct. Nassau Cty. Feb. 16, 2018). Indeed, as courts have noted, fee requests for one-third of settlement funds "reasonably approximate[] the market for the services rendered," because they represent what "reasonably paying clients typically pay … pursuant to contingency retainer agreements." *In re Nigeria Charter Flights Litig.*, 2011 WL 7945548, at *4 (E.D.N.Y. Aug. 25, 2011) (citing *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany & Albany Cnty. Bd. of Elections*, 522 F.3d 182 (2d Cir. 2008)).

"In a claims-made settlement, attorneys' fees should be based on the gross settlement amount, regardless of the number of claims actually made, because every putative class member could have claimed a portion of the fund if they wished to do so." *Lopez v. The Dinex Group, LLC*, 2015 WL 5882842, at *6 (N.Y. Sup. Ct. Oct. 06, 2015); *see also Behzadi v. International Creative Mgmt Partners, LLC*, 2015 WL 4210906, *2 (S.D.N.Y. July 9, 2015) ("Awarding attorneys' fees based on a percentage of the settlement amount rather than the amount paid is proper."); *Alleyne v. Time Moving & Storage, Inc.*, 264 F.R.D. 41, 59 (E.D.N.Y. 2010) (approving one third of total settlement fund, stating that "the proper number against which attorneys' fees are measured is the amount of the entire fund created by the efforts of counsel, not the amount actually claimed or collected by the class."); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2d Cir. 2007) ("An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available.").

A. Plaintiffs' Request For Approval Of Reimbursement Of Litigation Expenses And Attorneys' Fees Is Fair And Reasonable And Should Be Granted

Plaintiffs respectfully submit that Class Counsel's request for $1,666,666.67, or approximately 33.33% of the cash made available to the Settlement Class, in attorneys' fees and reimbursement of expenses for the successful prosecution and resolution of this class action should also be approved by the Court. Like the Settlement, the amount of this inclusive fee and expense request was negotiated at arms-length and those fee and expense negotiations were not commenced until after all the material terms of the Settlement had been agreed to. Maximizing the benefit to the Class was therefore Class Counsel's paramount consideration. Class Counsel's efforts to date during litigation have been without compensation of any kind, and receipt of any attorneys' fee or reimbursement of expenses has been wholly contingent upon the result achieved. For these and the other reasons set forth below, Plaintiffs respectfully submit that the expenses and attorneys' fees sought meet the applicable legal standards and, considering the contingency risk undertaken and the result achieved, should be approved.

CPLR 909 permits courts to award attorneys' fees in class action litigation. To assess a reasonable fee, a court should consider:

> [T]he risks of the litigation, whether counsel had the benefit of a prior judgment, standing at bar of counsel for the plaintiffs and defendants, the magnitude and complexity of the litigation, responsibility undertaken, the amount recovered, the knowledge the court has of the case's history and the work done by counsel prior to trial, and what it would be reasonable for counsel to charge a victorious plaintiff.

Milton, 2015 WL 9271692, at *7 (*citing Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 610 (Sup. Ct. N.Y. Cnty. 2010)). Each of these factors supports approval of Class Counsel's fee and expense request here.

1. The Risk Of Litigation

This factor recognizes the risk of non-payment in cases prosecuted on a contingency basis where claims are not successful, which can justify higher fees. *See, e.g.*, *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk."); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008) (noting risk of non-payment in cases brought on contingency basis). "It is well settled that class actions are notoriously complex and difficult to litigate." *Shapiro v. JPMorgan Chase 7 Co.*, 2014 WL 1224666, at *21 (S.D.N.Y. Mar. 24, 2014).

The Gross Settlement Amount is a compromise figure. In reaching the settlement, Class Counsel carefully evaluated the merits of the case and proposed settlement, considered the risks of establishing liability and obtaining class certification, and considered the time, delay, and financial risks in the events of trial and appeal by Defendant. Although Plaintiffs believe that their claims have merit, they recognize the legal, factual, and procedural obstacles to recovery, as Defendant has and will continue to contest Plaintiffs' claims if the action does not settle. Moreover, even if this case were to proceed to trial, Class Counsel recognizes that the apparent strengths of Plaintiffs' claims are no guarantee against a complete or partial defense judgment or verdict.

Further, obtaining and maintaining a class action may prove difficult. For instance, in *Scott v. Chipotle Mexican Grill, Inc.*, 954 F.3d 502 (2d Cir. 2020), after eight years of contested litigation, the court's denial of class certification was upheld by the Second Circuit. The instant settlement in this matter alleviates the uncertainty associated with obtaining and maintaining a class action through trial and makes financial recovery available for Class Members now.

In light of the strengths and weaknesses of this case, Class Counsel believes the settlement easily falls within the range of reasonableness because it achieves a significant benefit for Plaintiffs and Class Members in the face of significant obstacles. The settlement negotiations were at all times hard fought at arm's length, and they have produced a result that Class Counsel believes to be in the best interests of Class Members in light of the costs and risks of continued litigation. For example, Plaintiffs' allegations that Defendant violated the Video Protection Privacy Act were (and are) vigorously contested by Defendant. For example, Defendant argued and would continue to argue that it is not a video tape service provider subject to the Video Protection Privacy Act, that Dapper does not knowingly disclose personally identifiable information, and that Plaintiffs cannot show a knowing disclosure of personally identifiable information. If Defendant is correct on any one of these arguments, it would leave Plaintiffs and members of the class without any prospective or monetary relief whatsoever.

Were the case to proceed in Court, Defendant was prepared to vigorously contest class certification, move for summary judgment, and present expert testimony supporting its defenses to Plaintiffs' claims. As such, continued litigation on this claim represents a substantial risk to Plaintiffs. Moreover, Plaintiffs would have to prove that the Trackers and the Meta Pixel software code at issue function as Plaintiffs allege they do, an allegation Defendant has strongly argued against and denies. If Plaintiffs were unable to establish this allegation as fact, they would not be entitled to recover under any of their asserted claims, and the class would be left with nothing.

The fact that Class Counsel undertook this representation, despite the significant risk of nonpayment, supports the requested fee award.

2. Whether Counsel Had The Benefit Of A Prior Judgment

There was no relevant prior judgment when this action was filed and so Class Counsel was litigating the case on a blank slate and with no advantage from any previous judgment.

3. Standing At Bar Of Counsel For The Plaintiffs And Defendant

Class action litigation presents unique challenges and Class Counsel proved that they have the ability and resources to litigate this case zealously and effectively. Class Counsel are well-respected attorneys with significant experience litigating consumer class actions of similar size, scope, and complexity. Bogdanovich Aff. ¶¶ 58-61. Moreover, Class Counsel has been recognized by courts across the country for its expertise. *See* Firm Resume, Bogdanovich Aff. Ex. 4; *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. 2014) ("Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. … The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five class action jury trials since 2008.").

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). Class Counsel achieved an exceptional result in this case while facing well-resourced and experienced defense counsel.

Class Counsel litigated this case efficiently, effectively, and civilly. The excellent result is a function of the high quality of that work, which supports the requested fee award.

4. The Magnitude And Complexity Of The Litigation

"[C]lass actions have a well deserved reputation as being most complex." *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998). This case was no exception. The instant action hinged on several mixed questions of fact and law. In particular, both parties disputed whether Plaintiffs could bring claims under the VPPA and whether Defendant otherwise complied with the law. While Plaintiffs believe that their claims are strong, they are not without risk. The Settlement eliminates these risks and will provide substantial recovery for the Class without the risk and delay of continued litigation.

This factor therefore also supports Court approval of the requested attorneys' fee and expense award.

5. The Case History And The Responsibility Undertaken By Class Counsel

Class Counsel's time invested in litigating and settling this case was significant and reasonable. Class Counsel conducted substantial investigation into the instant action prior to filing the complaint, such as detailed factual and legal investigation on the underlying merits of the claims, the measure of damages, the likelihood of class recovery, and the assets and liabilities of the corporate Defendant. In addition, Class Counsel participated in substantial informal discovery regarding the core facts underlying the Parties' dispute and calculated damages on a class-wide basis. Class Counsel also engaged in lengthy settlement discussions, drafted and negotiated a comprehensive Settlement Agreement, and prepared a motion for preliminary approval of the Settlement. Since reaching the Settlement, Class Counsel has responded to inquiries from numerous Settlement Class Members and coordinated and assisted the Settlement process with the Claims Administrator. Class Counsel anticipates expending significant additional time administering the Settlement after final approval.

Thus, the work performed by Class Counsel to date has been comprehensive, complex, and wide ranging. This factor supports the requested fee award.

6. The Amount Recovered

Class Counsel's work has led to the creation of the $5,000,000.00 Gross Settlement Amount. This amount represents a significant percentage of the recovery that Plaintiffs and the Class Members would have achieved had they prevailed on all of their claims and survived an appeal. Therefore, the Settlement represents an excellent result for the Class. Moreover, Class Counsel also secured nonmonetary relief in the form of prohibiting Defendant from engaging in such data sharing practices moving forward as a result of this lawsuit. *See* Settlement § 2.2.

The Settlement is clearly an excellent result.

7. What It Would Be Reasonable For Counsel To Charge A Victorious Plaintiff

Under CPLR 909, "[i]f a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys' fees … based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount awarded from the opponent of the class."[5] Here, the Settlement provides that Class Counsel may petition the Court for an award up to $1,666,666.67. Settlement ¶ 8.1. The "Fee Award" also includes all costs and expenses incurred by Class Counsel.

New York State Courts frequently award attorneys' fees of one-third of class settlements.

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[5] The requested fee award also encompasses unreimbursed litigation costs and expenses. Settlement § 8.1. Reasonable litigation-related costs and expenses are customarily awarded in class action cases and include costs such as document preparation and travel. *See*, *e.g.*, *Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013) ("Class Counsel's unreimbursed expenses, including court and process server fees, postage and courier fees, transportation, working meals, photocopies, electronic research, expert fees, and Plaintiffs' share of the mediator's fees, are reasonable and were incidental and necessary to the representation of the class.").

See, e.g., *Cucuzza v. National Debt Relief, LLC,* No. 601631/2021, NYSCEF No. 21 (Sup. Ct. Nassau Cty. Apr. 20, 2022); *Cortes v. Mexican Hospitality Operator LLC*, No. 601406/2021, NYSCEF No. 18 (Sup. Ct. Nassau Cty. Feb. 28, 2022; *Gabriel v. Homyn Enterprises Corp.*, No. 504595/2021, NYSCEF No. 15 (Sup. Ct. Kings. Cty. Nov. 23, 2021); *Coba v. Wagamama USA, LLC,* No. 614988/2020, NYSCEF No. 17 (Sup. Ct. Nassau Cty. November 3, 2021).

Public policy also favors Class Counsel's requested fee. "Consumer class actions . . . have value to society . . . both as deterrents to unlawful behavior . . . and as private law enforcement regimes that free public sector resources. If we are to encourage these positive societal effects, class counsel must be adequately compensated." *Gascho v. Glob. Fitness Holdings, LLC*, 822 F3d 269, 287 (6th Cir. 2016); *see also* Myriam Gilles & Gary B. Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. PA. L. REV. 103, 106 (2006) ("[T]he deterrence of corporate wrongdoing is what we can and should expect from class actions."); William B. Rubenstein, *On What A "Private Attorney General" Is—and Why It Matters*, 57 VAND. L. REV. 2129, 2168 (2004) ("[Class counsel's] clients are not just the class members, but the public and the class members; their goal is not just compensation, but deterrence and compensation."); William B. Rubenstein, *Why Enable Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, 74 UMKC L. REV. 709, 724-25 (2006) ("By enabling litigation, the class action has the structural consequence of dividing law enforcement among public agencies and private attorneys general and of shifting a significant amount of that enforcement to the private sector."). Indeed, "many courts have recognized that generous fee awards … serve the dual purpose of encouraging plaintiffs' attorneys to act as private attorneys general and discouraging wrongdoing." *Michels*, 1997 WL 1161145, at *31.

But for Class Counsel's efforts, Defendant's conduct likely would have continued unabated. This factor therefore supports the requested fee award.

IV. PLAINTIFFS' REQUESTED SERVICE AWARDS ARE FAIR AND REASONABLE AND SHOULD BE GRANTED

It is common for courts to grant service awards in class action suits. Such awards "reward[] the named plaintiffs for the effort and inconvenience of consulting with counsel over the many years [a] case was active and for participating in discovery, including depositions." *Milton*, 2015 WL 9271692, *2-3 (citing *Cox v. Microsoft Corp.*, 26 Misc. 3d 1220(A), at *4 (Sup. Ct. N.Y. Cnty. 2007)).

Here, Plaintiffs made significant contributions to this litigation by bringing these lawsuits, providing counsel with relevant documents, actively participating in the litigation, and providing important information used to prosecute this action and to achieve the Settlement. Bogdanovich Aff. ¶¶ 33-34; *see also Milton*, 2015 WL 9271692, *3 (recognizing the important role that plaintiffs play as the "primary source of information concerning the claim[,]" including by responding to counsel's questions and reviewing documents).

Service Awards of $5,000.00 are reasonable and well within the range awarded by New York courts in similar matters. *See Jacobs v. Washington Place, LLC*, No. 503148/2017, NYSCEF No. 51 at 2 (Sup. Ct. Kings Cty. Aug. 15, 2017) (granting a total of $50,000.00 in enhancement awards to two plaintiffs); *Grant v. Jay-Jay Cabaret, Inc.*, No. 514417/2015, NYSCEF No. 22 (Sup. Ct. Kings Cty. Jan. 10, 2017) (granting $20,000.00 to each named plaintiff); *Mancia v. HSBC Sec. (USA) Inc.*, 2016 WL 833232, at *2-3 (N.Y. Sup Ct, Kings County Feb. 19, 2016) (granting $15,000.00 to the named plaintiff); *Murillo v. 12 East 12 Associates, LP*, No. 503201/2018; NYSCEF No. 47 (Sup. Ct. Kings Cty. Jan. 2, 2019) (granting service awards ranging from $10,000.00 to $20,000.00 to the named plaintiffs, totaling $60,000.00).

Given the time, assistance, and development of the case, and in light of the fact that the Plaintiffs are providing a complete release of claims to Defendant under the Settlement Agreement, the Service Awards are appropriate and justified as part of the overall Settlement.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) grant final approval of the Settlement Agreement attached as Exhibit 1 to the Bogdanovich Affirmation; (2) certify, for settlement purposes, the Settlement Class under Article 9 of the New York Civil Practice Law and Rules § 908; (3) grant Plaintiffs Service Awards of $5,000 each in recognition of their efforts on behalf of the class; and (4) approve attorneys' fees, costs, and expenses in the amount of $1,666,666.67.

Dated: March 27, 2026
White Plains, New York

Respectfully submitted,

BURSOR & FISHER, P.A.

/s/ Philip L. Fraietta

Philip L. Fraietta
50 Main Street, Suite 475
White Plains, NY 10606
Telephone: (914) 874-0710
Facsimile: (914) 206-3656
pfraietta@bursor.com

Stefan Bogdanovich
1990 North California Blvd, 9th Floor
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
sbogdanovich@bursor.com

Attorneys for Plaintiffs

CERTIFICATE OF WORD COUNT

I, Philip L. Fraietta, hereby certify that Plaintiffs' Memorandum Of Law In Support Of Plaintiffs' Unopposed Motion For Final Approval Of Class Settlement, Certification Of The Settlement Class, Appointment Of Class Representatives And Service Awards, Appointment Of Philip L. Fraietta And Stefan Bogdanovich, Of Bursor & Fisher, P.A., As Class Counsel, And Approval Of Attorneys' Fees And Costs contains 6,395 words, per Uniform Rules for the Trial Courts, 22 N.Y.C.R.R. Part 202.

/s/ *Philip L. Fraietta*
Philip L. Fraietta