

IN THE CIRCUIT COURT OF GRUNDY COUNTY, ILLINOIS

MATHIEU ASPEL, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

INCODE TECHNOLOGIES, INC., a Delaware
corporation,

Defendant.

Case No.:

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into by and among Plaintiff Mathieu Aspel (“Plaintiff”), for himself individually and on behalf of the Settlement Class defined below, and Defendant Incode Technologies, Inc. (“Incode” or “Defendant”) (Plaintiff and Incode are referred to individually as “Party” and collectively referred to as the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof, and subject to the approval of the Court.

RECITALS

A. On November 11, 2023, Plaintiff Mathieu Aspel filed a putative class action complaint against Incode in the Circuit Court of Grundy County, Illinois, alleging violations of the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”). Plaintiff Aspel claimed that Incode collected, stored, and/or used his biometric data without authorization when he uploaded a photo of himself and his Illinois ID for identity verification on the web application of one of Incode’s Customers.

B. On December 27, 2023, Incode removed the case to the United States District Court for the Northern District of Illinois, where it was assigned the caption, *Aspel v. Incode Technologies, Inc.*, No. 23-cv-17093 (N.D. Ill.).

C. The Parties began to explore the potential for class-wide resolution, during which Parties exchanged information about Plaintiff's claims and the number of putative settlement class members. After exchanging several demands and counteroffers and participating in several telephone conferences between counsel, the Parties reached an agreement on the material terms of their class-wide settlement.

D. Plaintiff and Class Counsel conducted a comprehensive examination of the law and facts relating to the allegations in the Action and Defendant's potential defenses. Plaintiff believes that the claims asserted in the Action have merit, that they would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class, and that they would have prevailed on the merits at summary judgment or at trial. However, Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses in the Action that presented a significant risk that Plaintiff may not prevail and/or that a class might not be certified for trial. Class Counsel have also taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as difficulty and delay inherent in such litigation. Plaintiff and Class Counsel believe that this Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Plaintiff and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and based on good faith negotiations, and in the best interests of Plaintiff and the Settlement Class. Therefore, Plaintiff believes that it is desirable that the Released

Claims be fully and finally compromised, settled, and resolved with prejudice, and forever barred pursuant to the terms and conditions set forth in the Settlement Agreement.

E. Defendant denies the material allegations in the Action, as well as all allegations of wrongdoing and liability, including that it is subject to or violated BIPA, and believes that it would have prevailed on the merits and that a class would not be certified for trial. Nevertheless, Defendant has similarly concluded that this settlement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Class' claims for damages, attorneys' fees, and related costs under BIPA. Defendant thus desires to resolve finally and completely the pending and potential claims of Plaintiff and the Settlement Class.

F. In order to avoid any jurisdictional challenges to the Settlement, the Parties filed a Stipulation to Remand in the Northern District of Illinois.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and Defendant that, subject to the approval of the Court after a hearing as provided for in this Settlement Agreement, and in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Settlement Agreement.

AGREEMENT

1. DEFINITIONS

In addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1.1 “**Action**” means the case captioned *Aspel v. Incode Technologies, Inc.*, No. No. 2023LA59 (Cir. Ct. of Grundy County, Ill.).

1.2 “**Agreement**” or “**Settlement Agreement**” or “**Settlement**” means this Class Action Settlement Agreement and the attached Exhibits.

1.3 “**Claims Deadline**” means the date by which all Claim Forms must be postmarked or submitted on the Settlement Website to be considered timely, and shall be set as a date no later than sixty-three (63) days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the order preliminarily approving the Settlement, as well as in the Notice, on the Claim Form, and on the Settlement Website.

1.4 “**Claim Form**” means the documents substantially in the forms attached hereto as Exhibit A (the online Claim Form) and Exhibit B (the paper Claim Form), as approved by the Court. The Claim Form, which shall be completed by Class Members who wish to submit a claim for a Class Settlement Payment, shall be available in paper and electronic format. The Claim Form will require claimants to provide the following information: (i) full name, (ii) current U.S. Mail address, (iii) current contact telephone number and email address, and (iv) a statement that he or she uploaded their photograph(s) and an ID to at least one mobile application, software, or website to verify their identity between November 11, 2018 and the date of the Preliminary Approval Order. The Claim Form will not require notarization, but will require affirmation that the information supplied is true and correct. The online Claim Form will provide the option of having settlement payments transmitted electronically through Venmo, Zelle, or PayPal, or by check via U.S. Mail. Claimants who submit a paper Claim Form that is approved will be sent a check via U.S. Mail. The Claim Forms will be exclusively returnable to

the Settlement Administrator and the identities and contact information in the Claim Forms shall be treated as confidential by the Settlement Administrator and not provided to anyone.

1.5 “**Class Counsel**” means attorney Matthew T. Peterson of Consumer Law Advocate, PLLC.

1.6 “**Class Representative**” or “**Plaintiff**” means the named Plaintiff in the Action, Mathieu Aspel.

1.7 “**Court**” means the Illinois Circuit Court of Grundy County, Illinois.

1.8 “**Defendant**” or “**Incode**” means Incode Technologies, Inc., a Delaware corporation.

1.9 “**Defendant’s Counsel**” or “**Incode’s Counsel**” means attorneys Joel Griswold and Bonnie Keane DelGobbo of Baker & Hostetler LLP.

1.10 “**Effective Date**” means one business day following the later of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award or incentive awards, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Final Approval Order.

1.11 “**Escrow Accounts**” means the interest-bearing escrow account to be established by the Settlement Administrator, from which all payments out of the Settlement Fund will be

made. The Escrow Account shall be established under terms acceptable to Class Counsel and Defendant's Counsel at a depository institution insured by the Federal Deposit Insurance Corporation. The money in the Escrow Accounts shall be invested in the following types of accounts and/or instruments and no other: (a) demand deposit accounts and/or (b) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. Any interest earned on the Escrow Accounts shall be considered part of the Settlement Fund. The Settlement Administrator shall be responsible for all tax filings with respect to the Escrow Accounts.

1.12 **“Final Approval Hearing”** means the hearing before the Court where Plaintiff will request that the Final Approval Order be entered by the Court confirming approval of the Settlement Class for purposes of Settlement, finally approving the Settlement as fair, reasonable, adequate, and determining the Fee Award and the incentive award to the Class Representative.

1.13 **“Final Approval Order”** means the final approval order to be entered by the Court confirming approval of the Settlement Class for purposes of Settlement, approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing, and dismissing the Action with prejudice.

1.14 **“Customer”** means an entity, or affiliate of an entity, to whom Incode sold, leased, licensed, or otherwise provided identity verification software or services.

1.15 **“Settlement Class”** means all persons who, while within the State of Illinois, uploaded their photograph(s) and an ID to any application, software, or website operated by a Customer, and subsequently to Incode, between November 11, 2018 and the date of the Preliminary Approval Order. Excluded from the Settlement Class are: (1) persons who executed a written release or consent form specifically authorizing Incode's alleged collection of their

biometric data, before their alleged biometric data was ever collected or stored by Incode, (2) any Judge or Magistrate presiding over this action and members of their families, (3) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (4) persons who properly execute and file a timely request for exclusion from the Settlement Class, and (5) the legal representatives, successors or assigns of any such excluded persons.

1.16 “**Settlement Class Member**” means a person who falls within the definition of the Settlement Class and who does not submit a valid request for exclusion from the Settlement Class.

1.17 “**Fee Award**” means the amount of attorneys' fees and reimbursement of expenses awarded to Class Counsel by the Court to be paid out of the Settlement Fund.

1.18 “**Settlement Fund**” means the non-reversionary cash settlement fund that shall be established by Defendant in the amount of Four Million Dollar and Zero Cents (\$4,000,000.00), plus all interest earned thereon, which Defendant shall cause be deposited into the Escrow Account within thirty (30) days after the Effective Date. From the Settlement Fund, the Settlement Administrator shall pay: (i) Approved Claims, (ii) a proportional amount of the Settlement Administration Expenses, (iii) any incentive award to Plaintiff, and (iv) any Fee Award. The Settlement Fund represents extent of Defendant's monetary obligations under this Agreement to the Settlement Class. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the above-listed payments are made. In no event shall any amount paid by Defendant into the Escrow Account, or any interest earned thereon, revert to Defendant or any other Released Party, except as set forth in Paragraph 9 of this Agreement.

1.19 “**Settlement Payment**” means a *pro rata* portion of the Settlement Fund less any Fee Award, incentive award to Plaintiff Mathieu Aspel, and Settlement Administration Expenses, and other agreed-upon expenses related to providing Notice of the proposed settlement to the Settlement Class and the administration of the settlement.

1.20 “**Notice**” means the notice of the proposed Settlement and Final Approval Hearing, which is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, fulfills the requirements of Due Process under the United States Constitution and Illinois Constitution and 735 ILCS 5/2-806, and is substantially in the form of Exhibits C–E attached hereto.

1.21 “**Notice Date**” means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than (i) twenty-eight (28) days after entry of the Preliminary Approval Order, or (ii) twenty-eight (28) days after the final Class List is compiled as described in Section 4.1, whichever occurs later, but no later than sixty (60) days after entry of the Preliminary Approval Order.

1.22 “**Objection/Exclusion Deadline**” means the date by which a written objection to the Settlement Agreement by a Settlement Class Member must be filed with the Court or a request for exclusion submitted by a Settlement Class Member must be postmarked or received by the Settlement Administrator, which shall be designated as a date fifty-six (56) days after the Notice Date, as approved by the Court. The Objection/Exclusion Deadline will be set forth in the Notice and on the Settlement Website.

1.23 “**Preliminary Approval Order**” means the Court’s order preliminarily approving the Agreement, appointing Class Counsel, certifying and/or finding the Settlement Class are

likely to be certified for purposes of entering the Final Approval Order, and approving the form and manner of the Notice.

1.24 **“Released Claims”** means all claims, liabilities, demands, causes of action, or lawsuits, whether known or unknown (including “Unknown Claims” as defined below), whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, and whether brought in an individual, representative, or any other capacity, arising from or relating to alleged biometric identifiers of any kind (including a retina or iris scan, fingerprint, voiceprint, scan of hand, scan of face geometry, or measurement of any biological feature) and/or alleged biometric information of any kind (including any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s biometric identifier used to identify an individual) derived from images and information submitted to Incode and Released Parties and Incode’s alleged collection, possession, capture, purchase, receipt through trade, obtaining, sale, profit from, disclosure, redisclosure, dissemination, storage, transmittal, and/or protection from disclosure of alleged biometric identifiers or biometric information, including, but not limited to, claims under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*, and any other federal, state, or local law, regulation, or ordinance, or common law.

1.25 **“Released Parties”** means Incode, and its corporate parents, subsidiaries, principals, investors, owners, members, controlling shareholders, trustees, estates, heirs, executors, and administrators, along with the officers, directors, shareholders, employees, attorneys, representatives, agents, insurers, reinsurers, vendors, Customers, successors, predecessors, and assigns of such persons or entities.

1.26 **“Releasing Parties”** means Plaintiff and the Settlement Class Members and their respective present or past heirs, executors, estates, administrators, trustees, assigns, agents,

consultants, independent contractors, insurers, reinsurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

1.27 “**Settlement Administration Expenses**” means the expenses reasonably incurred by the Settlement Administrator in or relating to administering the Settlement, including expenses related to providing Notice, creating and maintaining the Settlement Website, receiving and processing Claim Forms, disbursing payments and mailing checks for settlement payments, and paying related tax expenses, fees of the escrow agent, and other such related expenses, with all such expenses to be proportionally paid from the Settlement Fund.

1.28 “**Settlement Administrator**” means KCC LLC subject to approval of the Court, which will provide the Notice, create and maintain the Settlement Website, receive and process Claim Forms, send settlement payments to members of the Settlement Class who submit approved claims, be responsible for tax reporting, and perform such other settlement administration matters set forth herein or contemplated by the Settlement.

1.29 “**Settlement Website**” means the website to be created, launched, and maintained by the Settlement Administrator, and which allows for the electronic submission of Claim Forms and provides access to relevant case documents including the Notice, information about the submission of Claim Forms and other relevant documents.

1.30 “**Unknown Claims**” means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived

and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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

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

2. SETTLEMENT RELIEF

2.1 Settlement Payments Settlement Class Members.

- a. Settlement Class Members shall have until the Claims Deadline to submit Claim Forms. Settlement Class Members who submit an Approved Claim shall be entitled to a Class Settlement Payment.
- b. The Settlement Administrator shall have sole and final authority for determining if Settlement Class Members' Claim Forms are complete, timely, and accepted as an Approved Claim.
- c. *Electronic Payments.* Settlement Class Members who select an electronic payment method will receive their Settlement Payment within sixty (60) days of the

Effective Date, or such other date as the Court may set, by electronic deposit to the Venmo, Zelle, or PayPal account provided on the approved Claim Forms.

d. *Check Payments.* Settlement Class Members who select a paper check (by choice or by default if they do not choose an electronic payment method) will receive their Settlement Payment within sixty (60) days of the Effective Date, or such other date as the Court may set, by First Class U.S. Mail to the address provided on the approved Claim Forms.

e. In the event that any of the electronic deposits to a Settlement Class Member are unable to be processed, the Settlement Administrator shall attempt to contact the class member within thirty (30) days of each failed attempt to correct the problem.

f. Each check issued to a Settlement Class Member will state on the face of the check that it will become null and void unless cashed or deposited within one hundred and eighty (180) days after the date of issuance.

g. To the extent that any of the first checks issued are not cashed or deposited within one hundred eighty (180) days after the date of issuance, or any of the electronic deposits are unable to be processed within one hundred eighty (180) days of the first attempt, such funds shall be returned to the respective settlement funds from which they were withdrawn for *pro rata* distribution.

h. To the extent that a final check is not cashed or deposited within one hundred eighty (180) days after the date of issuance, or a final electronic deposit is unable to be processed within one hundred eighty (180) days of the first attempt, such funds shall be returned to the respective settlement funds from which they were withdrawn and shall first be re-distributed to Settlement Class Members who successfully cashed their

first check or successfully received at least one electronic payment, if feasible and in the interests of each class.

i. If redistribution is not feasible for any given class, or if residual funds remain in the any of the settlement funds after redistribution, the Settlement Administrator shall distribute such funds to the Unclaimed Property Division of the Illinois Treasurer's Office, subject to approval by the Court, and shall identify to the Illinois Treasurer's Office each individual claimant who did not cash or deposit their final check or did not successfully receive their final e-payment and the amount each individual claimant did not cash, deposit, or successfully receive. If the Court does not approve distributing the residual funds to the Unclaimed Property Division, such residual funds shall be distributed to a *cy pres* recipient selected by the Court.

2.2 Each Settlement Class Member who submits a valid Claim shall be entitled to receive only one Settlement Payment.

3. RELEASE

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished and completely discharged the Released Parties from any and all Released Claims.

4. NOTICE TO THE CLASS

4.1 The Class List.

a. Defendant represents that, within five (5) days after entry of a Preliminary Approval Order, it reached out to its Customers that account for the people who

submitted Illinois IDs with selfies for identity verification, requesting that such Customers voluntarily provide the Settlement Administrator with the available names, email addresses, and mailing addresses of all of their users who have Illinois addresses and who submitted an ID and a selfie for identity verification since between November 11, 2018 and the date on which the respective Customer implemented a BIPA notice and consent (the “Contact Information”).

b. If, by 35 days after entry of a Preliminary Approval Order, any Incode Customer has failed to voluntarily provide Contact Information to Incode or the Settlement Administrator (the “Refusing Customers”), Incode shall provide Plaintiff the name and business address of each Refusing Customer, and any other third parties whom Incode knows is in possession of any Refusing Customer’s users’ Contact Information, so that Plaintiff may issue subpoenas to such Refusing Customers or other third parties. Plaintiff’s subpoenas will provide respondents with the option to provide Contact Information directly to the Settlement Administrator. Any Incode Customer who voluntarily provides Contact Information to the Settlement Administrator shall not be deemed to admit or concede that it is subject to BIPA or otherwise waive any defense to BIPA.

c. All Contact Information provided to the Settlement Administrator will be compiled by the Settlement Administrator to form a class list (the “Class List”). Within two (2) days after the Class List is compiled, the Settlement Administrator shall provide Class Counsel a report detailing the total number of unique names on the Class List, the number of unique names for whom a U.S. Mail address is available on the Class List, the number of unique names for whom an email address is available on the Class List, and

the number of unique names for whom no address or email address is available on the Class List. The Settlement Administrator shall keep the Class List, and all Contact Information contained therein, strictly confidential. Under no circumstances shall the Class List, in whole in part, be made available to anyone other than the Settlement Administrator. The Class List may not be used by the Settlement Administrator for any purpose other than advising specific individual members of the Settlement Class of their rights, mailing settlement payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

d. Upon the request of a Customer, the Settlement Administrator shall enter into one or more confidentiality agreements with Customer providing the Contact Information to ensure the confidentiality of such information and such Customer shall be a third-party beneficiary to this Agreement only for the purpose of enforcing this Paragraph 4.1(d).

4.2 The Customer List.

a. Within ten (10) business days after the Preliminary Approval Order, Defendant shall provide the Settlement Administrator, and only the Settlement Administrator, a list of its Customers whose users submitted Illinois IDs with selfies during the class period (the “Customer List”), solely for the purposes of validating Claim Forms.

b. The Claim Form, Notice, and any other documents related to the settlement shall not contain the name of any Incode Customers.

c. The Settlement Administrator shall not disclose the name of any Incode Customers to anyone. It is a material term of this Settlement Agreement that the Settlement Administrator enter into a confidentiality agreement with Incode to ensure that the Customer List is treated consistent with this paragraph.

4.3 The Notice shall include the best notice practicable, including but not limited to:

a. *Update Addresses.* Prior to mailing any Notice, the Settlement Administrator will update the U.S. Mail addresses of persons on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any class members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings as described below in Section 5.1.

b. *Direct Notice.* No later than the Notice Date, the Settlement Administrator shall (1) send Notice via First Class U.S. Mail substantially in the form of Exhibits C to all persons for whom a physical address is available in the Class List and (2) shall send Notice via email substantially in the form of Exhibits D to all persons for whom an email address is available in the Class List.

c. *Reminder Notice.* Thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email along with an electronic link to the Claim Form, to all persons on the Class List for whom a valid email address is available and who, at those points, have not submitted a Claim Form. The reminder notices shall be substantially in the form of

Exhibit D, with minor, non-material modifications to indicate that they are reminder notices rather than initial notices.

d. *Internet Notice.* Within twenty-one (21) days after the entry of the Preliminary Approval Order, the Settlement Administrator will develop, host, administer and maintain a Settlement Website containing the notice substantially in the form of Exhibit E.

4.4 The Notice shall advise the Settlement Class of their rights under the Settlement, including the right to be excluded from or object to the Settlement Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the person making an objection shall file notice of his or her intention to do so and at the same time (a) files copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court, (b) files copies of such papers through the Court's electronic filing system if the objection is from a Settlement Class Member represented by counsel, who must also file an appearance, and (c) sends copies of such papers via email, U.S. Mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

4.5 **Right to Object or Comment.** Any Settlement Class Member who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the objector's full name and current address, (b) a statement that he or she believes himself or herself to be a Settlement Class Member, (c) whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, (d) the specific grounds for the objection, (e)

all documents or writings that the objector desires the Court to consider, (f) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (g) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed with the Court and postmarked, emailed, or delivered to Class Counsel and Defendant's Counsel no later than the Objection/Exclusion Deadline. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement, the Final Approval Order, or Alternative Approval Order, by appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

4.6 Right to Request Exclusion. Any person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be valid, any request for exclusion must (a) be in writing; (b) identify the case name [*Aspel v. Incode Technologies, Inc.*, No. No. 2023LA59 (Cir. Ct. of Grundy County, Ill.)]; (c) state the full name and current address of the person seeking exclusion; (d) be signed by the person seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. The Settlement Administrator shall create a dedicated email address to receive exclusion requests electronically. Each request for exclusion must also contain

a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in [*Aspel v. Incode Technologies, Inc.*, No. No. 2023LA59 (Cir. Ct. of Grundy County, Ill.)];” A request for exclusion that does not include all of the foregoing information, that is sent to an address or email address other than that designated in the Notice, or that is not postmarked or electronically delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement Class Members and shall be bound by this Settlement Agreement, if approved. Any person who elects to request exclusion from the Settlement Class in compliance with this provision shall not (a) be bound by any orders or the Final Approval Order entered in the Action, (b) receive a settlement payment under this Settlement Agreement, (c) gain any rights by virtue of this Settlement Agreement, or (d) be entitled to object to any aspect of this Settlement Agreement or the Final Approval Order or Alternative Approval Order. No person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs, meaning, *inter alia*, that each individual who seeks to opt out must send an individual, separate request to the Settlement Administrator that complies with all requirements of this paragraph. Any person who requests to exclude themselves from this Settlement pursuant to this Paragraph is voluntarily: (1) disclosing their identity to the Settlement Administrator and authorizing the Settlement Administrator to disclose the first letter of their first name and the first three letters of their last name to Class Counsel, and (2) consenting to the inclusion of the first letter of their first name, and the first three letters of their last name in the Final Approval Order.

5. SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator's Duties.

a. *Dissemination of Notices.* The Settlement Administrator shall disseminate the Notice as provided in Section 4 of this Settlement Agreement.

b. *Undeliverable Direct Notice.* If any Notice sent via U.S. Mail is returned as undeliverable, the Settlement Administrator shall forward it to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Settlement Administrator shall perform skip traces to attempt to obtain the most recent addresses for such members of the Settlement Class. In the event transmission of email notice results in any "bounce-backs," the Settlement Administrator shall, where reasonable, correct any issues that may have caused the "bounce-back" to occur and make a second attempt to re-send the email notice.

c. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law and such records will be made available to Class Counsel and Defendant's Counsel upon request, except that Plaintiff and Class Counsel shall not have access to the Customer List or Contact Information on the Class List. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning the Notice, the number of Claim Forms submitted, the number of approved claims, any requests for exclusion, and the administration and implementation of the Settlement. The Settlement Administrator shall make available for inspection by

Class Counsel and Defendant's Counsel the Claim Forms received by the Settlement Administrator, from which the names and contact information have been redacted, at any time upon reasonable notice. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a post-distribution accounting of all settlement payments, the number and value of checks not cashed, the number and value of electronic payments unprocessed, the amount redistributed to claimants, and the amount distributed to the state or *cy pres* recipient, if any.

d. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class. The Settlement Administrator will provide to Class Counsel and Defendant's Counsel the number of requests for exclusions and a copy of each request for exclusion, from which all contact information besides the unique notice control numbers, the first letter of the first name, and the first three letters of the last name of such persons have been redacted, within five (5) days after the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests after the Objection/Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof, from which all contact information besides the unique notice control numbers, the first letter of the first name, and the first three letters of the last name of such persons have been redacted, to Class Counsel and Defendant's Counsel.

e. *Creation of Settlement Website.* The Settlement Administrator shall create the Settlement Website. The Settlement Website shall include a toll-free telephone phone number and mailing address through which class members may contact the Settlement

Administrator or Class Counsel directly, and include the ability for Settlement Class Members to submit Claim Forms online.

f. *Processing Claim Forms.* The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud, including by cross-referencing information from submitted Claim Forms with the Class List and Customer List. The Settlement Administrator shall determine whether a Claim Form submitted by a person is an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline, but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than twenty-eight (28) days after the Settlement Administrator's request for additional information. In the event the Settlement Administrator receives such information after more than twenty-eight (28) days, then any such claim shall be denied. The Settlement Administrator may contact any person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

g. Forty-one (41) days after the Notice Date (i.e., fifteen (15) days before the Objection/Exclusion Deadline), the Settlement Administrator shall provide Class Counsel

a preliminary report detailing, to date, the number of Claim Forms submitted, the number of Claim Forms it has processed, and the number of Claim Forms it has initially approved as Approved Claims.

h. *Establishment of the Escrow Accounts.* The Settlement Administrator shall establish the three Escrow Accounts, pursuant to the terms of Section 1.13, and maintain the Escrow Accounts as qualified settlement funds throughout the implementation of the Settlement in accordance with the Court's Preliminary Approval Order and Final Approval Order.

i. *Tax Reporting.* The Settlement Administrator shall be responsible for all tax filings related to the Escrow Account.

6. PRELIMINARY APPROVAL AND FINAL APPROVAL

6.1 **Preliminary Approval.** Promptly after execution of this Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court and shall move the Court to enter a Preliminary Approval Order, which shall include, among other provisions, a request that the Court:

- a. appoint Class Counsel and the Class Representatives;
- b. certify the Settlement Class for settlement purposes only and/or find that the Settlement Class are likely to be certified for purposes of entering the Final Approval Order under 735 ILCS 5/2-806;
- c. preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Class; and
- d. approve the form and contents of the Notice and the method of its dissemination to the Settlement Class.

6.2 **Final Approval.** After Notice to the Settlement Class is disseminated, Class Counsel shall move the Court for entry of a Final Approval Order, which shall include, among other provisions, a request that the Court:

- a. find that it has personal jurisdiction over all Settlement Class Members, and subject matter jurisdiction to approve this Settlement Agreement, including all attached exhibits;
- b. approve the Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members;
- c. direct the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions;
- d. declare the Settlement to have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members, and Releasing Parties;
- e. find that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of the Illinois Civil Code, Illinois Supreme Court Rules, the Due Process Clause of the United States Constitution and the Illinois Constitution, the rules of the Court , and complies with applicable privacy laws;

f. finally certify or confirm certification of the Settlement Class under 735 ILCS 5/2-806, including finding that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

g. dismiss the Action on the merits and with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

h. incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

i. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement and its implementing documents (including all Exhibits to this Settlement Agreement) that (i) shall be consistent in all material respects with the Final Approval Order, and (ii) do not limit the rights of Settlement Class Members; and

j. without affecting the finality of the Final Approval Order for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Approval Order, and for any other necessary purpose.

6.3 Cooperation. The Parties shall, in good faith, cooperate, assist and undertake all reasonably necessary actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

7. TERMINATION OF THE SETTLEMENT AGREEMENT

7.1 Termination. Subject to Section 9 below, the Class Representative, on behalf of the respective Settlement Class, or Defendant, shall have the right to terminate this Agreement

by providing written notice of the election to do so to Class Counsel or Defendant's Counsel within ten (10) days of any of the following events: (i) the Court's refusal to enter the Preliminary Approval Order approving of this Agreement in any material respect; (ii) the Court's refusal to enter the Final Approval Order in this Action in any material respect; (iii) the Court's refusal to enter a final judgment in this Action in any material respect; (iv) the date upon which the Final Approval Order is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternative Approval Order is entered, as defined in Section 9.1 of this Agreement, is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

7.2 Defendant may terminate this Agreement in the event that more than 2,000 individuals included on the Class List submit timely and valid requests for exclusion from the Settlement, provided that Defendant provides written notice of the election to do so to Class Counsel within ten (10) days after the Objection/Exclusion Deadline.

8. INCENTIVE AWARDS AND CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

8.1 At least twenty-one (21) days prior to the Objection/Exclusion Deadline, Class Counsel will move the Court for an award of attorneys' fees plus their reasonable costs and expenses.

8.2 The amount of the Fee Award shall be determined by the Court based on a petition from Class Counsel. Class Counsel have agreed, with no consideration from Defendant, to limit their fee request to no more than thirty-eight percent (38%) of the Settlement Fund, plus reasonable costs and expenses. Payment of the Fee award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in

the amount sought and the amount ultimately awarded pursuant to this section shall remain in the Settlement Fund and be distributed to Settlement Class.

8.3 The Fee Award shall be paid solely from the Settlement Fund by wire transfer from the Settlement Administrator one (1) day after the Settlement Administrator receives the Settlement Fund payment from Defendant, as outlined in Paragraph 1.8.

8.4 Notwithstanding any contrary provision of this Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

8.5 Prior to or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for an Incentive Award for the Class Representative in an amount not to exceed \$10,000.00 (Ten Thousand Dollars), and Defendant agrees that it will not oppose the requested Incentive Award. The Incentive Award shall be paid solely from the Settlement Fund by check payable to Plaintiff and mailed by the Settlement Administrator to an address specified by Plaintiff's Counsel within one (1) day after the Settlement Administrator receives the Settlement Fund payment from Defendant, as outlined in Paragraph 1.8.

8.6 In no event will Defendant's liability for attorneys' fees, expenses, and costs, Administration Expenses, and/or Incentive Awards exceed the funding obligation set out in this Agreement. Defendant shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Defendant shall have no further obligation for attorneys' fees or

expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class. Defendant will have no responsibility, obligation, or liability for allocation of fee and expenses among Class Counsel.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

9.1 The Effective Date shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs subject to the provisions in Section 1.12:

- a. This Agreement has been signed by the Parties, Class Counsel and Defendant's Counsel;
- b. The Court has entered a Preliminary Approval Order approving the Agreement;
- c. The Court has entered a Final Approval Order finally approving the Agreement, or a judgment substantially consistent with this Settlement Agreement that has become final and unappealable, following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure; and
- d. In the event that the Court enters an approval order and final judgment in a form other than that provided above ("Alternative Approval Order") to which the Parties have consented, that Alternative Approval Order has become final and unappealable.

9.2 If some or all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to Section 9.3, unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Settlement Agreement. If any Party is in material

breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Class Counsel set forth above or the incentive awards to the Class Representative, regardless of the amounts awarded shall not prevent the Settlement Agreement from becoming effective and settlement payments being distributed, nor shall they be grounds for termination of the Agreement.

9.3 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Approval Order or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into.

9.4 In the event the Settlement is terminated or fails to become effective for any reason, the Settlement Fund, together with any earnings thereon at the same rate as earned, less any taxes paid or due, less Settlement Administrative Expenses actually incurred and paid or payable from the respective settlement funds, shall be returned to Defendant within thirty (30) days after written notification of such event in accordance with instructions provided by Defendant's Counsel to the Settlement Administrator.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and

to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one another to the extent reasonably necessary in seeking entry of the Preliminary Approval Order and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

10.2 Each signatory to this Agreement represents and warrants (a) that the signatory has all requisite power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated herein, (b) that the execution, delivery and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory, and (c) that this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class Members, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

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

10.5 Whether the Effective Date occurs or this Settlement is terminated, neither this Settlement Agreement nor the Settlement contained herein, nor any court order, communication, act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties or Incode's Customers, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement funds, the settlement payments or the fee awards, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties or Incode's Customers, or any of them;

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

c. is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

d. is, may be deemed, or shall be used, offered or received against the Released Parties or Incode's Customers, or each or any of them as an admission or

concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties or Incode's Customers, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement to the extent consistent with the confidentiality obligations contained in this Settlement Agreement. Moreover, if this Settlement Agreement is approved by the Court, any of the Released Parties may file this Settlement Agreement and/or the Final Approval Order in any action that may be brought against such parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim;

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

f. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.6 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

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

10.8 All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

10.9 This Settlement Agreement and its Exhibits A-E set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits A-E other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.10 Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

10.11 Plaintiff represents and warrants that he has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that they are fully entitled to release the same.

10.12 Each counsel or other person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such person has the full authority to do so and has the authority to take

appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

10.13 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Settlement Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

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

10.15 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to the conflicts of laws provisions thereof.

10.16 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.

10.17 No Tax Advice. No provision of this Agreement, and no written communication or disclosure between or among the Parties or any attorney for any of the Parties is or was intended to be, nor will be construed or relied upon as, tax advice. Each of the Parties has relied exclusively upon his/her or its own independent tax advisers for tax advice in connection with this Agreement. None of the Parties have entered into this Agreement based upon the recommendation of any of the other Parties or any attorney or advisor to any of the other Parties.


Each of the Parties expressly acknowledges that each has not received any tax advice from Class Counsel or Defendant's Counsel.

10.18 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the Parties' counsel: Matthew T. Peterson, mtp@lawsforconsumers.com, CONSUMER LAW ADVOCATE, PLLC 230 E. Ohio St, Suite 410 in Chicago, Illinois 60611; Joel Griswold, jcgriswold@bakerlaw.com, BAKER & HOSTETLER LLP, One North Wacker Drive, Suite 3700 in Chicago, Illinois 60602.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Dated: 07 / 02 / 2024

MATHIEU ASPEL

By (signature): 

Name (printed): Mathieu D. Aspel

Dated: 07 / 02 / 2024

CONSUMER LAW ADVOCATE, PLLC

By (signature): 

Name (printed): Matthew T. Peterson

Its (title): Partner

Dated: 7/2/2024 | 2:19 PM PDT

INCODE TECHNOLOGIES INC.

By (signature):  DocuSigned by:
C99D2124FD9F449...

Name (printed): Marianna Amper

Its (title): VP Strategic Finance

Exhibit A

ONLINE CLAIM FORM

PAGE 1:

Instructions: You may be eligible for a payment as part of the Settlement for this case. Fill out each section of this form and sign where indicated. Please select whether you prefer to receive payment via Venmo, PayPal, Zelle, or check.

We strongly encourage you to select an electronic payment method (Venmo, PayPal, or Zelle), instead of paper checks, because it allows you to receive more of your settlement payment faster, it is more efficient and secure than a paper check in the mail, and you won't need to update your address with the settlement administrator if your address changes before the final installment payment is paid.

THIS CLAIM FORM MUST BE SUBMITTED BY [**CLAIMS DEADLINE**] AND MUST BE FULLY COMPLETED, BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

<u>First Name</u>		<u>Last Name</u>	
<u>Street Address</u>			
<u>City</u>	<u>State</u>	<u>ZIP Code</u>	
<u>Email Address</u>			
<u>Contact Phone #:</u>			

You may be contacted by phone or email if further information is required.

Select Payment Method. Select the box of how you would like to receive your payment and provide the requested information:

- Zelle®
- PayPal®
- Venmo®
- Check

[Based on the selection, the claimant will be prompted to provide the information the Settlement Administrator requires to complete the payment]

Class Member Verification: By submitting this Claim Form, I declare that the following information is true and correct to the best of my knowledge: I am an individual who, while within the State of Illinois, uploaded a photo or video of myself and a photo ID to an application, software, or website for identity verification with Incode Technologies, Inc. between November 11, 2018 and [date of Preliminary Approval Order]. I will notify the Settlement Administrator of any changes to information submitted on this Online Claim Form.

E- Signature: _____

Date: __ __/ __ __/ __

The Settlement Administrator will review your Claim Form. If accepted, you will receive Settlement Payment for an equal, or *pro rata*, share of the Settlement Fund. The exact amount of your total payment will depend on the number of valid Claim Forms received by members of each class. This process takes time; please be patient.

[If the claimant does not appear on the class list given the information provided on the claim form, the claimant will be directed to Page 2.]

PAGE 2:

Based on the information you provided, we are unable to confirm whether you are a class member for one of two reasons: either (1) some of the information you submitted on the claim form matches the class list, but other information does not (like first name, last name, address, and/or email address), or (2) none of the information you submitted matches the class list. If you believe you are a class member, please provide the following information so that the settlement administrator can further evaluate your claim.

1. If you submitted an abbreviated version of your first name on your claim form, instead of your full given name (for example, “Alex” instead of “Alexander”), or vice versa, please submit any other version(s) of your first name.

First Name(s) (up to 3)

2. If you have a maiden name or former last name, please submit it.

Maiden or Former Last Name(s) (up to 3)

3. Please provide your most recent prior addresses in Illinois.

Prior Street Address(es) (up to 10)

4. Please provide the names of all apps and websites where you have uploaded a photo or video of yourself and a photo ID for identity verification between November 11, 2018 and [date of Preliminary Approval Order].

Names of Apps and Websites (up to 10)

5. Please provide any email addresses you may have submitted when registering for an account on the apps and websites you listed above.

Other Email Address(es) (up to 10)

Exhibit B

COURT AUTHORIZED NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

OUR RECORDS INDICATE THAT YOU UPLOADED A PHOTO OR VIDEO OF YOURSELF AND A PHOTO ID TO A MOBILE APP OR WEBSITE FOR IDENTITY VERIFICATION PERFORMED BY INCODE TECHNOLOGIES, INC. BETWEEN NOVEMBER 11, 2018 AND [DATE OF PRELIM APPROVAL] AND ARE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

Aspel v. Incode Technologies, Inc.
c/o Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

First-Class
Mail
US Postage
Paid
Permit # _____



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»
«C/O»
«Addr1» «Addr2»
«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

XXX

CLAIM FORM

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [CLAIMS DEADLINE] AND MUST BE FULLY COMPLETED, BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

Instructions: Fill out each section of this form and sign where indicated. If you prefer to receive payment via Venmo, PayPal, or Zelle, you must submit a Claim Form online on the Settlement Website at www.IncodeBIPASettlement.com. If you submit this paper Claim Form by mail and it is approved, you will receive your prorated portion of the settlement fund.

We strongly encourage you submit a claim form online at www.IncodeBIPASettlement.com and select an electronic payment method (Venmo, PayPal, or Zelle), instead of a paper check. Doing so allows you to receive your settlement payment faster, it is more efficient and secure than a paper check in the mail, and you won't need to update your address with the settlement administrator if your address changes before the final installment payment is paid.

Name (First, M.I., Last): _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email Address (optional): _____

Contact Phone #: (_____) _____ - _____ (You may be contacted if further information is required.)

Signature: _____ Date: ____/____/____

Print Name: _____

Class Member Verification: By submitting this Claim Form, I declare that the following information is true and correct to the best of my knowledge: I am an individual who, while within the State of Illinois, uploaded a photo or video of myself and a photo ID to an application, software, or website for identity verification with Incode between November 11, 2018 and [date of Preliminary Approval Order]. I will notify the Settlement Administrator of any changes to information submitted on this Claim Form.

The Settlement Administrator will review your Claim Form. If accepted, you will be mailed two installment checks for a *pro rata* share depending on the number of valid claim forms received. This process takes time, please be patient.

Questions, visit www.IncodeBIPASettlement.com or call [toll free number]

This notice is to inform you that a Settlement has been reached in a class action lawsuit between Incode Technologies, Inc. (“Incode”) and individuals who, while in Illinois, uploaded a photo or video of themselves and a photo ID to certain apps or websites for identity verification. Incode provides identity verification software that is built into certain apps and websites you may have used. The lawsuit claims that, in performing identity verification on individuals in Illinois, Incode violated an Illinois law called the Biometric Information Privacy Act (“BIPA”) by collecting individuals’ biometric data without complying with the law’s requirements. Incode denies that it violated any laws. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

Who is included in the Settlement Class? Our records indicate that you are included in the Settlement Class, which includes all persons who, while within the State of Illinois used one of Incode’s customer’s apps or websites, while using the app or website, you uploaded your selfie and photo ID for identity verification, which was performed by Incode between November 11, 2018 and [date of the Preliminary Approval Order] without first executing a BIPA consent naming Incode.

What can I get out of the settlement? If you’re eligible and the Court approves the Settlement, you can submit a claim to receive a cash payment. The total payment amount is estimated to be approximately x, but could be more or less depending on the number of valid claims submitted. This amount is an equal share of a \$4,000,000 fund that Incode agreed to create for the Class, after any Court-approved payment of settlement expenses, attorneys’ fees, and any incentive award.

How do I get my payment? Just complete and return the attached Claim Form by mail, or you can visit the Settlement Website, www.IncodeBIPASettlement.com, and submit a Claim Form online. If you submit the paper Claim Form and it is approved, your payments will be sent via check in the mail. If you submit online you can choose to receive your payments via Venmo, PayPal, Zelle, or a check. We strongly encourage you to submit your Claim Form online (instead of by mail) and choose either Venmo, PayPal, or Zelle (instead of a check). *All Claim Forms must be postmarked or submitted online by [Claims Deadline].*

What are my Options? You can do nothing, comment on or object to any of the settlement terms, or exclude yourself from the settlement. If you do nothing, you won’t get a payment, and you won’t be able to sue Incode or certain related companies and individuals in a future lawsuit about the claims addressed in the settlement. You can also comment on or object to the settlement if you disagree with any of its terms by writing to the Court. If you exclude yourself, you won’t get a payment, but you’ll keep your right to sue Incode on the issues the settlement concerns. You must submit your request to the settlement administrator by mail or e-mail to exclude yourself from the settlement. For detailed requirements and instructions on how to exclude yourself or object go to www.IncodeBIPASettlement.com. *All Requests for Exclusion and Objections must be received by [Objection/Exclusion Deadline].*

Do I have a lawyer? Yes. The Court appointed lawyers from Consumer Law Advocate, PLLC as “Class Counsel.” They represent you and other Class Members. You can hire your own lawyer, but you’ll need to pay that lawyer’s legal fees. The Court has also approved Mathieu Aspel—a class member like you—to represent the Class.

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] before the Honorable XXX at XX or via remote means as instructed by the Court. Instructions for participating remotely will be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the settlement is fair, and consider Class Counsel’s request for fees and expenses of up to 38% of the Class fund and an incentive award of \$10,000 to the Class Representative. The request will be posted on the Settlement Website by [two weeks prior to Objection/Exclusion Deadline].

NO POSTAGE
NECESSARY
IF MAILED IN
THE UNITED
STATES

Aspel v. Incode Technologies, Inc.
c/o Settlement Administrator
PO Box 0000
City, ST 00000-0000

XXX

Exhibit C

COURT AUTHORIZED NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

OUR RECORDS INDICATE THAT YOU UPLOADED A SELFIE AND A PHOTO ID TO A MOBILE APP OR WEBSITE FOR IDENTITY VERIFICATION PERFORMED BY INCODE TECHNOLOGIES, INC. BETWEEN NOVEMBER 11, 2018 AND [DATE OF PRELIM APPROVAL] WITHOUT FIRST EXECUTING A BIPA CONSENT NAMING INCODE AND MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

XXX

Aspel v. Incode Technologies, Inc.
c/o Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

First-Class
Mail
US Postage
Paid
Permit # __



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»
«C/O»
«Addr1» «Addr2»
«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

CLAIM FORM

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [CLAIMS DEADLINE] AND MUST BE FULLY COMPLETED, BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

Instructions: Fill out each section of this form and sign where indicated. If you prefer to receive payment via Venmo, PayPal, or Zelle, you must submit a Claim Form online on the Settlement Website at www.IncodeBIPASettlement.com. If you submit this paper Claim Form by mail and it is approved, you will receive a settlement payment.

We strongly encourage you submit a claim form online at www.IncodeBIPASettlement.com and select an electronic payment method (Venmo, PayPal, or Zelle), instead of a paper check. Doing so allows you to receive more of your settlement payment faster, it is more efficient and secure than a paper check in the mail, and you won't need to update your address with the settlement administrator if your address changes before the final installment payment is paid.

Name (First, M.I., Last): _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email Address (optional): _____

Contact Phone #: (_____) _____ - _____ (You may be contacted if further information is required.)

Signature: _____ Date: ____/____/____

Print Name: _____

Class Member Verification: By submitting this Claim Form, I declare that the following information is true and correct to the best of my knowledge: I am an individual who, while within the State of Illinois, uploaded my photograph(s) and a photo ID to an application, software, or website for identity verification between November 11, 2018 and [date of Preliminary Approval Order] without first executing a BIPA notice naming Incode. I will notify the Settlement Administrator of any changes to information submitted on this Claim Form.

The Settlement Administrator will review your Claim Form. If accepted, you will be mailed two installment checks for a *pro rata* share depending on the number of valid claim forms received. This process takes time, please be patient.

Questions, visit www.IncodeBIPASettlement.com or call [toll free number]

This notice is to inform you that a Settlement has been reached in a class action lawsuit between Incode Technologies, Inc. (“Defendant”) and individuals who, while in Illinois, uploaded a selfie and a photo ID to certain apps or websites for identity verification. Defendant provides identity verification software that is built into certain apps and websites you may have used. The lawsuit claims that, in performing identity verification on individuals in Illinois, Defendant violated an Illinois law called the Biometric Information Privacy Act (“BIPA”) by collecting individuals’ biometric data without complying with the law’s requirements. Defendant denies that it violated any laws. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

Who is included in the Settlement Class? Our records indicate that you are included in the Settlement Class, which includes all persons who, while within the State of Illinois (1) used one of Defendant’s customer’s apps or websites, and (2) while using the app or website, you uploaded your selfie and photo ID for identity verification, which was performed by Defendant between November 11, 2018 and [date of the Preliminary Approval Order] without first executing a BIPA consent naming Incode.

What can I get out of the settlement? If you’re eligible and the Court approves the Settlement, you can submit a claim to receive a cash payment. The total payment amount is estimated to be approximately \$____, but could be more or less depending on the number of valid claims submitted. This amount is an equal share of a \$4,000,000 fund that Defendant agreed to create, after any Court-approved payment of settlement expenses, attorneys’ fees, and any incentive award.

How do I get my payment? Just complete and return the attached Claim Form by mail, or you can visit the Settlement Website, www.IncodeBIPASettlement.com, and submit a Claim Form online. If you submit the paper Claim Form and it is approved, your payments will be sent via check in the mail. If you submit online you can choose to receive your payments via Venmo, PayPal, Zelle, or a check. We strongly encourage you to submit your Claim Form online (instead of by mail) and choose either Venmo, PayPal, or Zelle (instead of a check). **All Claim Forms must be postmarked or submitted online by [Claims Deadline].**

What are my Options? You can do nothing, comment on or object to any of the settlement terms, or exclude yourself from the settlement. If you do nothing, you won’t get a payment, and you won’t be able to sue Defendant or certain related companies and individuals in a future lawsuit about the claims addressed in the settlement. You can also comment on or object to the settlement if you disagree with any of its terms by writing to the Court. If you exclude yourself, you won’t get a payment, but you’ll keep your right to sue Defendant on the issues the settlement concerns. You must submit your request to the settlement administrator by mail or e-mail to exclude yourself from the settlement. **All Requests for Exclusion and Objections must be received by [Objection/Exclusion Deadline].**

Do I have a lawyer? Yes. The Court appointed lawyers from Consumer Law Advocate, PLLC as “Class Counsel.” They represent you and other Class Members. You can hire your own lawyer, but you’ll need to pay that lawyer’s legal fees. The Court has also approved Matthieu Aspel—a class member—to represent the Settlement Class.

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] at Circuit Court of Grundy County, Illinois located at 111 East Washington Street, Courtroom _____ in Morris, Illinois 60450 or via remote means as instructed by the Court. Instructions for participating remotely will be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the settlement is fair, and consider Class Counsel’s request for fees and expenses of up to 38% of the Settlement Fund and an incentive award of \$10,000 to the Class Representative. The request will be posted on the Settlement Website by [two weeks prior to Objection/Exclusion Deadline].

NO POSTAGE
NECESSARY
IF MAILED IN
THE UNITED
STATES

Aspel v. Incode Technologies, Inc. Settlement
c/o Settlement Administrator
PO Box 0000
City, ST 00000-0000

XXX

Exhibit D

From: tobedetermined@domain.com
To: JohnDoeClassMember@domain.com
Re: Legal Notice of Proposed Class Action Settlement

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
Aspel v. Incode Technologies, Inc., No. []
(United States District Court for the Northern District of Illinois)

OUR RECORDS INDICATE THAT YOU UPLOADED A SELFIE AND A PHOTO ID TO A MOBILE APP OR WEBSITE FOR IDENTITY VERIFICATION PERFORMED BY INCODE TECHNOLOGIES, INC. BETWEEN NOVEMBER 11, 2018 AND [DATE OF PRELIMINARY APPROVAL] WITHOUT FIRST EXECUTING A BIPA CONSENT NAMING INCODE AND MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This is an official court notice. You are not being sued. This is not an ad for a lawyer.

For more information, visit www.IncodeBIPASettlement.com.

This notice is to inform you that a Settlement has been reached in a class action lawsuit between Incode Technologies, Inc. (“Defendant” or “Incode”) and individuals who, while in Illinois, uploaded a selfie and a photo ID to certain apps or websites for identify verification Defendant provides identity verification software that is built into certain apps and websites you may have used. The lawsuit claims that, in performing identity verification on individuals in Illinois, Defendant violated an Illinois law called the Biometric Information Privacy Act (“BIPA”) by collecting individuals’ biometric data without complying with the law’s requirements. Defendant denies that it violated any law or that the law applies to its conduct. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

Who is included in the Settlement Class? Our records indicate that you are included in the Settlement Class, which includes all persons who, while within the State of Illinois used one of Defendant’s customer’s apps or websites, (2) while using the app or website, you uploaded your selfie and photo ID for identity verification, which was performed by Defendant between November 11, 2018 and [date of the Preliminary Approval Order] without first executing a BIPA consent naming Defendant.

What can I get out of the settlement? If you’re eligible and the Court approves the Settlement, you can submit a claim to receive a cash payment. The total payment amount is estimated to be approximately \$, but could be more or less depending on the number of valid claims submitted. This amount is an equal share of a \$4,000,000 fund that Defendant agreed to create for the Settlement Class, after any Court-approved payment of settlement expenses, attorneys’ fees, and any incentive award.

How do I get my payment? Just complete and verify the Claim Form online here [Claim Form Link], or if you also received a notice of this Settlement in the mail, you can fill out the paper Claim Form attached to that notice and submit it by mail. By submitting online you can choose to receive your

payments via Venmo, PayPal, Zelle, or a check. If you submit a paper Claim Form and it is approved, your payments will be sent via check in the mail. We strongly encourage you to submit your Claim Form online (instead of by mail) and choose either Venmo, PayPal, or Zelle (instead of a check). ***All Claim Forms must be submitted online or postmarked by [Claims Deadline].***

What are my Options? You can do nothing, comment on or object to any of the settlement terms, or exclude yourself from the settlement. If you do nothing, you won't get a payment, and you won't be able to sue Defendant or certain related companies and individuals in a future lawsuit about the claims addressed in the settlement. You can also object to the settlement if you disagree with any of its terms by writing to the Court. If you exclude yourself, you won't get a payment, but you'll keep your right to sue Defendant on the issues the settlement concerns. You must submit your request to settlement administrator by mail or email ([email address]) to exclude yourself from the settlement. ***All Requests for Exclusion and Objections must be received by [Objection/Exclusion Deadline].***

Do I have a lawyer? Yes. The Court has appointed lawyers from Consumer Law Advocate, PLLC as "Class Counsel." They represent you and other Class Members. You can hire your own lawyer, but you'll need to pay that lawyer's legal fees if you do. The Court has also approved Matthieu Aspel — a class member—to represent the Settlement Class.

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] before the Circuit Court of Grundy County, Illinois located at 111 East Washington Street, Courtroom _____ in Morris, Illinois 60450 or via remote means as instructed by the Court. Instructions for participating remotely will be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the settlement is fair, and consider Class Counsel's request for fees and expenses of up to 38% of the Settlement Fund and an incentive award of \$10,000 to the Class Representative. The fee request will be posted on the settlement website by [two weeks prior to Objection/Exclusion Deadline].

Exhibit E

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Aspel v. Incode Technologies, Inc., No. [REDACTED]

IF YOU WERE IN ILLINOIS AND UPLOADED A SELFIE AND A PHOTO ID TO A MOBILE APP OR WEBSITE FOR IDENTITY VERIFICATION PERFORMED BY INCODE TECHNOLOGIES, INC. BETWEEN NOVEMBER 11, 2018 AND [DATE OF PRELIMINARY APPROVAL], YOU MAY BE ABLE TO CLAIM A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This is an official court notice. You are not being sued. This is not an ad for a lawyer.

- A Settlement has been reached in a class action lawsuit between Incode Technologies, Inc. (“Defendant” or “Incode”) and individuals who, while in Illinois, uploaded a selfie and a photo ID to certain apps or websites for identity verification. Defendant provides identity verification software that is built into certain apps and websites used by consumers. The lawsuit claims that, in performing identity verification on individuals in Illinois, Defendant violated an Illinois law called the Biometric Information Privacy Act (“BIPA”) by collecting individuals’ biometric data without complying with the law’s requirements. Defendant denies that it violated any law or that the law applies to its conduct. The Court has not decided who is right or wrong.
- If you received a notice of this Settlement in the mail or by e-mail, our records indicate that you are a member of the class of people covered by the Settlement. Those included in the Settlement may submit a claim form online or by mail to receive a settlement payment. Included in the Settlement are those who, while in Illinois, uploaded their selfie and photo ID to any application, software, or website operated by an Defendant customer, and subsequently to Defendant, between November 11, 2018 and [the date of Preliminary Approval] without first having executed a written release or consent form naming Defendant.
- If the Court approves the Settlement, members of the Settlement Classes who submit valid claims will receive an equal, or *pro rata*, share of the \$4,000,000 fund that Defendant agreed to create for Class Members, after all notice and administration costs, incentive awards, and attorneys’ fees have been paid. Individual payments to Class Members who submit timely and valid claim forms are estimated to be around \$ [REDACTED]. These settlement payments could be more or less depending on the number of valid claims submitted.
- Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

QUESTIONS? VISIT WWW.INCODEBIPASETTLEMENT.COM

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	This is the only way to receive a payment. You must submit a complete and valid claim form either online or by mail before [Claims Deadline].
DO NOTHING	You will receive no payment under the Settlement and give up your rights to sue Defendant and certain related companies and individuals about the issues in this case.
EXCLUDE YOURSELF	You will receive no payment, but you will retain any rights you currently have to sue Defendant about the issues in this case.
OBJECT	Write to the Court explaining why you don't like the Settlement.
ATTEND A HEARING	Ask to speak in Court about the fairness of the Settlement.

These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be provided only after any issues with the Settlement are resolved and will be paid in installments as described in this notice. Please be patient.

BASIC INFORMATION

1. What is this notice and why should I read it?

The Court authorized this notice to let you know about a proposed Settlement with Defendant. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. You may be eligible to receive a cash payment as part of the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge XXX of the Circuit Court for Grundy County, Illinois is overseeing this class action. The case is called *Aspel v. Incode Technologies, Inc.*, No. . The person who brought the lawsuit, Matthieu Aspel, is the Plaintiff. The company he sued, Incode Technologies, Inc., is the Defendant.

2. What is a class action lawsuit?

A class action is a lawsuit in which an individual or individuals called “Class Representatives” bring a single lawsuit on behalf of other people who have similar legal claims. All of these people together are a “Class” or “Class Members.” Once a settlement class is certified, a class action

Settlement finally approved by the Court resolves the issues for all Class Members, except for those who exclude themselves from the Settlement Classes.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

Defendant provides identity verification software that uses facial recognition to several apps and websites to help them confirm the identities of people who use their mobile apps and websites. Class member consumers can upload a current picture of themselves (a “selfie”) along with their photo ID (like a driver’s license or passport) and Defendant’s software compares the two faces for a match.

This lawsuit alleges that, in performing identity verification for its customers, Defendant collected scans of users’ facial geometry without complying with the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, which prohibits private companies from capturing, obtaining, storing, and/or using the biometric identifiers and/or biometric information of another individual unless subject to an exception, without first providing notice and getting consent in writing. Plaintiff alleges that consumers in the state of Illinois who uploaded their selfie and photo ID to any app or website using Defendant’s facial recognition software were not aware that Defendant was collecting their biometric data and did not receive proper notice or give the necessary consent for such collection. Defendant denies these allegations and denies that it was subject to or violated BIPA.

More information about Plaintiff’s complaint in the lawsuit and the Defendant’s defenses can be found in the “Court Documents” section of the settlement website at www.IncodeBIPASettlement.com.

4. Who is included in the Settlement Classes?

You are a member of one of the Settlement Classes if, while in the state of Illinois, you uploaded your selfie and a photo ID to any application, software, or website operated by a customer of Defendant, and subsequently to Defendant, between November 11, 2018 and [the date of Preliminary Approval] without first executing a BIPA consent naming Defendant. If you received a notice of the Settlement via email or in the mail, our records indicate that you are a class member and are included in the Settlement.

THE SETTLEMENT BENEFITS

5. What does the Settlement provide?

Cash Payments. If you’re eligible, you can file a claim to receive a cash payment. The amount of such payment is estimated to be \$. These settlement payments could be more or less depending on the number of valid claims submitted.

These payments will be a *pro rata*, or equal, share of either a \$4,000,000 fund that Defendant agreed to create for Class Members, after the payment of settlement expenses, attorneys’ fees, and any incentive award for the Class Representatives approved by the Court.

HOW TO GET SETTLEMENT BENEFITS

6. How do I get a payment?

If you want to get a payment, you must complete and submit a valid Claim Form by [Claims Deadline]. If you received an email notice, it contained a link to the online Claim Form, which is also available here [Claim Form Link] and can be filled out and submitted online. The online claim form lets you select to receive your payment by Venmo, Zelle, Paypal, or check. A paper Claim Form with pre-paid postage was attached to the postcard notice you may have received in the mail. Those who submit a paper Claim Form will receive their payment by checks by mail, if the claim is approved.

The Claim Form requires you to provide the following information: (i) full name, (ii) current U.S. Mail address, (iii) current contact telephone number and email address, and (iv) a statement that you are an individual who, while within the State of Illinois, uploaded your photograph(s) and a photo ID to an application, software, or website for identity verification between November 11, 2018 and [date of Preliminary Approval Order] without first executing a BIPA consent naming Incode.

7. When will I get my payment?

The hearing to consider the fairness of the Settlement is scheduled for [Final Approval Hearing Date] at [time]. If the Court approves the Settlement, Class Members whose claims were approved by the Settlement Administrator will receive their payments via their selected method: either electronic (Venmo, PayPal, or Zelle) or paper check within 60 days after entry of the Final Approval Order, unless there is an appeal.

Uncashed checks and electronic payments that are unable to be completed will expire and become void 180 days after they are issued and will revert to their respective settlement fund to be redistributed *pro rata* to claiming class members in the remaining installment payments. If any residual funds remain after the final redistribution, those funds will, subject to Court approval, be sent to the Unclaimed Property Division of the Illinois Treasurer's Office to be claimed by class members who missed the final void deadline (see <https://icash.illinoistreasurer.gov>) or to a *cy pres* recipient selected by the Court.

THE LAWYERS REPRESENTING YOU

8. Do I have a lawyer in the case?

Yes, the Court has appointed attorneys Matthew T. Peterson from the law firm Consumer Law Advocate, PLLC as the attorney to represent you and other Class Members. This attorney is called "Class Counsel." In addition, the Court appointed Plaintiff Matthieu Aspel to serve as the Class Representative. He is a Class Member.

9. Should I get my own lawyer?

You don't need to hire your own lawyer because Class Counsel is working on your behalf. You may hire your own lawyer, but if you do so, you will have to pay that lawyer.

10. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses of up to 38% of the Settlement Fund to be paid on the same schedule as Class Members are paid, and will also request an incentive award of \$10,000 for the Class Representative from the settlement fund associated with the class they represent. If the Settlement is finally approved, the Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel and the proper amount of any award to the Class Representatives. The Court may award less than the amounts requested.

YOUR RIGHTS AND OPTIONS

11. What happens if I do nothing at all?

If you do nothing, you will receive no money from the settlement funds, but you will still be bound by all orders and judgments of the Court. Unless you exclude yourself from the Settlement, you will not be able to file or continue a lawsuit against Defendant or other Released Parties regarding any of the Released Claims. **Submitting a valid and timely Claim Form is the only way to receive a payment from this Settlement.**

To submit a Claim Form, or for information on how to request exclusion from the class or file an objection, please visit the settlement website, www.IncodeBIPASettlement.com, or call [Settlement Administrator's phone number].

12. What happens if I ask to be excluded?

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will keep any claims you may have against the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have in your own lawsuit against the Released Parties at your own risk and expense.

13. How do I ask to be excluded?

You can mail or email a letter stating that you want to be excluded from the Settlement. Your letter must: (a) be in writing; (b) identify the case name, *Aspel v. Incode Technologies, Inc.*, No. _____; (c) state the full name and current address of the person seeking exclusion; (d) be signed by the person seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before [Objection/Exclusion Deadline]. Each request for exclusion must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Classes in *Aspel v. Incode Technologies, Inc.*, No. _____." You must mail or e-mail your exclusion request no later than [Objection/Exclusion Deadline] to:

Aspel v. Incode Technologies, Inc. Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

-or-

[e-mail address]

You can't exclude yourself over the phone. No person may request to be excluded from the Settlement Classes through "mass" or "class" opt-outs. Each request for exclusion must be separately signed and submitted.

14. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant and any other Released Party for the claims being resolved by this Settlement.

15. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you will not receive a payment.

16. How do I object to the Settlement?

If you do not exclude yourself from either settlement class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must file a letter or brief with the Court stating that you object to the Settlement in *Aspel v. Incode Technologies, Inc.*, No. _____, no later than [Objection/Exclusion Deadline]. Your objection must be e-filed or delivered to the Court at the following address:

Circuit Court of Grundy County
111 East Washington Street
Courtroom
Morris, Illinois 60450

The objection must be in writing, must be signed, and must include the following information: (a) your full name and current address, (b) whether the objection applies only to the objector or to the entire Class, (c) the specific grounds for your objection, (d) all documents or writings that you wish the Court to consider, (e) the name and contact information of any attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (f) a statement indicating whether you intend to appear at the Final Approval Hearing. If you hire an attorney in connection with making an objection, that attorney must file an appearance with the Court or seek *pro hac vice* admission to practice before the Court, and electronically file the objection by the objection deadline of [Objection/Exclusion Deadline]. If you do hire your own attorney, you will be solely responsible for payment of any fees and expenses the attorney incurs on your behalf. If you exclude yourself from the Settlement, you cannot file an objection.

In addition to filing your objection with the Court, you must send via mail, email, or delivery service, by no later than [Objection/Exclusion Deadline], copies of your objection and any supporting documents to both Class Counsel and Defendant's lawyers at the addresses listed below:

Class Counsel	Defendant's Counsel
Matthew T. Peterson mtp@lawsforconsumers.com CONSUMER LAW ADVOCATE, PLLC 230 East Ohio Street, Suite 410 Chicago, Illinois 60611	Joel Griswold jcgriswold@bakerlaw.com BAKER & HOSTETLER 1 North Wacker Drive, Suite 3700 Chicago, Illinois 60606

Class Counsel will file with the Court and post on the settlement website its request for attorneys' fees and incentive awards on [date 2 weeks before Objection/Exclusion deadline].

17. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement. Excluding yourself from the Settlement Class is telling the Court that you don't want to be a Class Member. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold the Final Approval Hearing on [date] at [time] at Circuit Court of Grundy County, Illinois located at 111 East Washington Street, Courtroom _____ in Morris, Illinois 60450, or via remote means as instructed by the Court. Instructions for participating remotely will be posted on the Settlement Website. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representative.

Note: The date, time, and location of the Final Approval Hearing are subject to change by Court order. Any changes will be posted at the settlement website, www.IncodeBIPASettlement.com.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed or mailed on time and meets the other criteria described in the Settlement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

20. May I speak at the hearing?

Yes. If you do not exclude yourself, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement. If you filed an objection (*see* Question 17 above) and intend to appear at the hearing, you must state your intention to do so in your objection.

GETTING MORE INFORMATION

21. Where do I get more information?

This notice summarizes the proposed Settlement. More details, including the Settlement Agreement and other documents are available at www.IncodeBIPASettlement.com or at the Clerk's Office in the located at 111 East Washington Street in Morris, Illinois 60450, excluding Court holidays and any closures.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, THE DEFENDANT OR THE DEFENDANT'S LAWYERS WITH QUESTIONS ABOUT THE SETTLEMENT OR DISTRIBUTION OF SETTLEMENT PAYMENTS.

Title	Hello
File name	1719947733-Aspel_...nal_Signature.pdf
Document ID	5edb51d646e60fc3bf81313d3dfa06c6dd92363e
Audit trail date format	MM / DD / YYYY
Status	● Signed

This document was requested on consumerlawadvocate.cliogrow.com and signed on consumerlawadvocate.cliogrow.com

Document History



SENT

07 / 02 / 2024

19:18:14 UTC

Sent for signature to Mathieu Aspel (maspel@live.com) from mtp@lawsforconsumers.com
IP: 52.124.45.65



VIEWED

07 / 02 / 2024

19:19:49 UTC

Viewed by Mathieu Aspel (maspel@live.com)
IP: 172.58.165.115



SIGNED

07 / 02 / 2024

19:23:20 UTC

Signed by Mathieu Aspel (maspel@live.com)
IP: 172.58.165.115



COMPLETED

07 / 02 / 2024

19:23:20 UTC

The document has been completed.