

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Aspel v. Incode Technologies, Inc., No. 23LA59

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 AUGUST 5, 2024, 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 identify 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 email, 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 a Defendant customer, and subsequently to Defendant, between November 11, 2018 and August 5, 2024 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 between \$65 and \$240. 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.

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 November 25, 2024.
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 Gary Dobbs of the Circuit Court for Grundy County, Illinois is overseeing this class action. The case is called *Aspel v. Incode Technologies, Inc.*, No. 23LA59. 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 August 5, 2024 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 between \$65 and \$240. 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 November 25, 2024. If you received an email notice, it contained a link to the online Claim Form, which is also available at www.IncodeBIPASettlement.com 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 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 mailed check, 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 August 5, 2024 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 November 27, 2024 at 9:00 a.m. 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 1-877-375-0133.

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. 23LA59; (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 November 18, 2024. 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. 23LA59.” You must mail or email your exclusion request no later than November 18, 2024 to:

Aspel v. Incode Technologies Settlement Administrator
P.O. Box 301172
Los Angeles, CA 90030-1172

-or-

info@IncodeBIPASettlement.com

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. 23LA59, no later than November 18, 2024. Your objection must be e-filed or delivered to the Court at the following address:

Circuit Court of Grundy County
111 East Washington Street
West Courtroom of the Grundy Courthouse
Morris, IL 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 November 18, 2024. 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 November 18, 2024, 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, IL 60611	Joel Griswold jcgriswold@bakerlaw.com BAKER & HOSTETLER 1 North Wacker Drive, Suite 3700 Chicago, IL 60606

Class Counsel will file with the Court and post on the settlement website its request for attorneys' fees and incentive awards on November 4, 2024.

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 November 27, 2024 at 9:00 a.m. at Circuit Court of Grundy County, Illinois located at 111 East Washington Street, West Courtroom of the Grundy Courthouse 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 16 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 located at 111 East Washington Street, 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.