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FILED

AUG 05 2024

Cecilia Trotter
GRUNDY COUNTY CIRCUIT CLERK

IN THE CIRCUIT COURT OF GRUNDY COUNTY

Mathieu Aspel,
Plaintiff,

23LA59
CASE NUMBER

JURY TRIAL DEMAND

v.

Incode Technologies, Inc.
Defendant

ACTION ORDER

This matter having come before the Court, the Court having jurisdiction and being fully advised in the premises:

IT IS HEREBY ORDERED as follows:

The case is continued to November 8, 2024 at 9:00 a.m. for HEARING via Zoom
(<https://zoom.us/j/9224230462?pwd=V2s0V0I2TW92cFIBWIZwbTR5NkV6Zz09> Meeting ID: 922 423 0462 Passcode: 111Wash!@).

Description: Final Settlement Approval

PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiff's Unopposed Motion in Support of Preliminary Approval of Class Action Settlement, the Court having reviewed in detail and considered the Motion and memorandum in support of the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiff Matthieu Aspel ("Plaintiff") and Defendant Incode Technologies, Inc. ("Defendant") (collectively, the "Parties"), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was negotiated at arm's-length between the Parties, who were represented by experienced counsel.
3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure – including numerosity,

commonality and predominance, adequacy, and appropriateness of class treatment of these claims – have been preliminarily satisfied.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of:

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.

5. For settlement purposes only, Plaintiff Matthieu Aspel is appointed as the Class Representative.

6. For settlement purposes only, Matthew T. Peterson of Consumer Law Advocate, PLLC, is hereby appointed as Class Counsel.

7. Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and the Litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the postcard class notice and long form class notice, attached to the Settlement Agreement as Exhibits C and D, respectively, and finds that they meet the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfy Due Process.

9. The Court finds that the planned notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, where Class Members' identities are contained in Defendant's records and may be readily ascertained, satisfying fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. KCC LLC is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. Defendant or another Released Party under the Settlement Agreement is hereby ordered to provide the Class List to the Settlement Administrator. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Claim Form in accordance with the instructions provided in the Class Notice on or before **October 31, 2024**. The Court hereby approves as to form and content the Claim Form attached to the Settlement Agreement as Exhibit A.

13. All Claim Forms must be either mailed via U.S. Mail to the address specified in the Claim Form or be electronically submitted to the Settlement Administrator via the settlement website or via electronic mail no later than **October 31, 2024**. Settlement Class Members who do not timely submit a Claim Form deemed to be valid in accordance with the Settlement Agreement shall not be entitled to receive any portion of the Settlement Fund.

14. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including with respect to Released Claims as set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated other litigation or proceedings against Defendant or the Released Parties relating to the claims released under the terms of the Settlement Agreement.

15. Any Person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request in a written exclusion request. Such exclusion requests must be received by the Settlement Administrator electronically via the Settlement Website, or at the address specified in the Class Notice in written form, by first class mail, postage prepaid, and postmarked no later than the Objection/Exclusion Deadline: **October 7, 2024**

16. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name and address, a signature, the name and number of the Litigation, and a statement that they wish to be excluded from the Settlement Class. Any request for exclusion submitted via first class mail must be personally signed by the person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

17. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees, costs and expenses, as well as Incentive Awards for the Class Representatives, in accordance with the terms of the Settlement Agreement, no later than **September 16, 2024**

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek and the payment of the Incentive Awards to the Class Representatives, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than **October 7, 2024**. Addresses for Class Counsel, Defendant's Counsel, the Settlement Administrator, and the Clerk of Court are as follows:

Class Counsel:

Matthew T. Peterson
Consumer Law Advocate, PLLC
230 E. Ohio St., Suite 410
Chicago, IL 60611

Defendant's Counsel:

Joel Griswold
Baker & Hostetler LLP
One North Wacker Drive, Suite 3700
Chicago, Illinois 60602.

Settlement Administrator:

KCC LLC

Clerk of the Circuit Court of Grundy County

111 E Washington St # 30
Morris, IL 60450

20. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) their full name, address, telephone number, and email address; (ii) the case name and number of this Litigation; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) the identification of any other objections they have filed, or have had filed on their behalf, in any other class action cases in the last four years; and (v) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court.

Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of Incentive Awards, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement, may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Plaintiffs' Counsel's Fee and Expense Application and/or the request for Incentive Awards to the Class Representatives are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates their intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in their written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make their objection to the Settlement in the manner provided herein, or who does not also timely provide copies to Counsel for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

23. All papers in support of the Final Approval of the Settlement shall be filed no later than ten (10) days before the Final Approval Hearing.

24. Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

25. A hearing (the "Final Approval Hearing") shall be held before the Court November 8, 2024 (or via remote means or at such other time or location as the Court may without further notice direct and which shall be identified on the Settlement Website) for the following purposes: (a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met; (b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court; (c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing Released Claims as set forth in the Settlement Agreement; (d) to consider the application for an award of

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attorneys' fees, costs and expenses of Class Counsel; (e) to consider the application for Incentive Awards to the Class Representatives; (f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and (g) to rule upon such other matters as the Court may deem appropriate.

26. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

27. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

28. All discovery and other proceedings in the Litigation as between Plaintiffs and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

29. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

1. Notice Date: Friday, September 6, 2024

2. Deadline for Opt-Outs / Objections: Monday, October 7, 2024

3. Submission of Papers in Support of Attorneys' Fees and Expenses: Monday, September 16, 2024;

4. Submission of Papers in Support of Final Approval of Settlement: November 1, 2024.

5. Claims Deadline: Thursday, October 31, 2024

6. Final Approval Hearing: Friday, November 8, 2024 at 9:00 A.M. via Zoom.

IT IS SO ORDERED.

Dated: August 5, 2024

By: 

The Honorable Gary Dobbs