

**CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

*Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116

IF YOU ARE AN ILLINOIS RESIDENT WHO TOOK AN ONLINE EXAM USING EXAMSOFT’S SOFTWARE BETWEEN JANUARY 1, 2020 AND MAY 5, 2021 AND HAD YOUR BIOMETRIC IDENTIFIERS AND/OR BIOMETRIC INFORMATION COLLECTED, CAPTURED, RECEIVED, OR OTHERWISE OBTAINED BY EXAMSOFT YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

***A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.***

- A Settlement has been reached in a class action lawsuit against ExamSoft Worldwide, LLC f/k/a ExamSoft Worldwide, Inc. (“ExamSoft”). In the class action lawsuit, plaintiffs allege that ExamSoft unlawfully collected, captured, received, or otherwise obtained and/or stored the Biometric Identifiers and/or Biometric Information of Illinois test-takers through its online proctoring software. ExamSoft denies the allegations.
- You are included if you are an Illinois resident and used ExamSoft’s software to take an online exam between January 1, 2020 and May 5, 2021, and had your biometric identifiers and/or biometric information collected, captured, received, or otherwise obtained and/or stored by ExamSoft.
- Those included in the Settlement will be eligible to automatically receive a *pro rata* payment from the Net Settlement Fund.
- Read this notice carefully. Your legal rights are affected whether you act or don’t act.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING</b>	Once the Settlement becomes Final, you will automatically receive a payment that is a <i>pro rata</i> share of the Net Settlement Fund—the remainder of the Settlement Fund after the deduction of attorneys’ fees, expenses, incentive awards, notice and settlement administration costs, and any other costs agreed to by the Parties and approved by the Court. Your <i>pro rata</i> share will be determined by whether you are a Private University Student, Public University Student, or Bar Exam Taker. You will receive your share by check.
<b>EXCLUDE YOURSELF FROM THE CLASS BY MARCH 14, 2022</b>	You will receive no benefits, but you will retain any rights you currently have to sue ExamSoft about the claims in this case. Excluding yourself is the only option that allows you to ever bring or maintain your own lawsuit against ExamSoft regarding the allegations in this case ever again.
<b>OBJECT BY MARCH 14, 2022</b>	Write to the Court explaining why you don’t like the Settlement and think it shouldn’t be approved. Filing an objection does not exclude you from the Settlement.

Questions? Call 1-877-389-1908 toll-free, or visit [www.ESBIPASettlement.com](http://www.ESBIPASettlement.com)

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

The Court in charge of this action has preliminarily approved the Settlement as fair, reasonable, and adequate, and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement.

*Please be patient.*

## TABLE OF CONTENTS

<b>Basic Information.....</b>	<b>3</b>
1. Why was this Notice issued? .....	3
2. What is a class action? .....	3
3. What is this lawsuit about? .....	3
4. Why is there a Settlement? .....	3
<b>Who’s Included in the Settlement? .....</b>	<b>4</b>
5. How do I know if I am in the Settlement Class? .....	4
<b>The Settlement Benefits .....</b>	<b>4</b>
6. What does the Settlement provide?.....	4
7. How can I get a payment from the Settlement?.....	4
8. When will I get my payment?.....	4
<b>Remaining in the Settlement .....</b>	<b>5</b>
9. What am I giving up if I stay in the Class?.....	5
10. What happens if I do nothing at all? .....	5
<b>The Lawyers Representing You .....</b>	<b>5</b>
11. Do I have a lawyer in the case?.....	5
12. How will the lawyers be paid?.....	5
<b>Excluding Yourself from the Settlement.....</b>	<b>6</b>
13. How do I get out of the Settlement?.....	6
14. If I don’t exclude myself, can I sue ExamSoft for the same thing later? .....	6
15. If I exclude myself, can I get anything from this Settlement? .....	6
<b>Objecting to the Settlement.....</b>	<b>6</b>
16. How do I object to the Settlement? .....	6
17. What’s the difference between objecting and excluding myself from the Settlement? ...	7
<b>The Court’s Final Approval Hearing.....</b>	<b>7</b>
18. When and where will the Court decide whether to approve the Settlement? .....	7
19. Do I have to come to the hearing?.....	7
20. May I speak at the hearing?.....	7
<b>Getting More Information .....</b>	<b>8</b>
21. Where do I get more information? .....	8

## BASIC INFORMATION

### **1. Why was this Notice issued?**

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The case is pending in the Circuit Court of Eighteenth Judicial Circuit, DuPage County, Illinois. The case is called *Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116. The persons who sued are called the Plaintiffs. The Defendant is ExamSoft Worldwide, LLC f/k/a ExamSoft Worldwide, Inc.

### **2. What is a class action?**

In a class action, one or more people called class representatives (in this case, Brittney Frederick, Alexander Pruefer, Jinger Sanders, Cristen Lee, Marcia Curcio, and Alexandra Neumayer) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the Class.

### **3. What is this lawsuit about?**

This lawsuit claims that ExamSoft violated Illinois law by unlawfully collecting, capturing, receiving, or otherwise obtaining and/or storing its Illinois test-takers’ Biometric Identifiers and/or Biometric Information through its online proctoring software. ExamSoft denies the claims in the lawsuit, contends that it did not do anything wrong, and denies that class certification is warranted or appropriate. The Court did not resolve the claims and defenses raised in this action. Nor has the Court determined that ExamSoft did anything wrong or that this matter should be certified as a class action except if the Settlement is fully approved by the Court. Rather, the Parties have, without admitting liability, agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

### **4. Why is there a Settlement?**

The Court has not decided whether the Plaintiffs or ExamSoft should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation sooner rather than, if at all, after the completion of a trial.

**The issuance of this Notice is not an expression of the Court’s opinion on the merit or the lack of merit of Plaintiffs’ claims or the defenses in the lawsuit. Both parties recognize that to resolve the issues raised in the lawsuit would be time-consuming, uncertain, and expensive.**

## **WHO'S INCLUDED IN THE SETTLEMENT?**

### **5. How do I know if I am in the Settlement Class?**

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

All Illinois residents who used ExamSoft's software to take an online exam between January 1, 2020 through and including May 5, 2021 and who had their facial geometry or other biometric information collected, captured, received, or otherwise obtained and/or stored by Defendant.

## **THE SETTLEMENT BENEFITS**

### **6. What does the Settlement provide?**

**Monetary Relief:** A Settlement Fund has been created totaling \$2,250,000.00. Settlement Class Member payments as well as the cost to administer the Settlement, the cost to inform people about the Settlement, attorneys' fees, and an award to the Class Representatives, will come out of this fund (*see* Question 12).

**Prospective Relief:** On or about May 6, 2021, ExamSoft updated its notices and consents. It agrees to continue to provide BIPA-compliant notices and obtain BIPA-compliant consents from all test takers in Illinois unless and until BIPA is amended, repealed, invalidated, or otherwise declared unconstitutional.

A detailed description of the settlement benefits can be found in the [Settlement Agreement](#) on the Important Documents page at [www.ESBIPASettlement.com](http://www.ESBIPASettlement.com).

### **7. How can I get a payment from the Settlement?**

You will automatically receive a designated *pro rata* share of the Net Settlement Fund—which will be the remainder of the Settlement Fund after the deduction of attorneys' fees, expenses, incentive awards, notice and settlement administration costs, and any other costs agreed to by the Parties and approved by the Court. Your *pro rata* share will be determined by whether you are a Private University Student, Public University Student, or Bar Exam Taker. You may elect to receive your share by either electronic deposit or by check, provided however that the default payment method will be check. All checks will expire and become void 180 days after they are issued.

### **8. When will I get my payment?**

The hearing to consider the fairness of the settlement is scheduled for **April 7, 2022**. If the Court approves the settlement, eligible Class Members whose claims were approved by the Settlement Administrator will receive their payment shortly after the Settlement has been finally approved and/or after any appeals process is complete. Please be patient; this process could take a while. Class Members will receive their payments via check or direct deposit, at your election, provided however that the default payment method will be check. All checks will expire and become void 180 days after they are issued.

## REMAINING IN THE SETTLEMENT

### **9. What am I giving up if I stay in the Class?**

If the Settlement becomes final, you will give up your right to sue ExamSoft and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against ExamSoft are described in the Settlement Agreement. You will be “releasing” ExamSoft and certain of its affiliates, employees and representatives as described in Section 3.2 of the Settlement Agreement. Unless you exclude yourself (*see* Question 13), you are “releasing” the claims, regardless of whether you submit a claim or not. The Settlement Agreement is available through the “court documents” link on the website.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 11 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

### **10. What happens if I do nothing at all?**

You will automatically receive a designated *pro rata* share of the Net Settlement Fund—which will be the remainder of the Settlement Fund after the deduction of attorneys’ fees, expenses, incentive awards, notice and settlement administration costs, and any other costs agreed to by the Parties and approved by the Court. Your *pro rata* share will be determined by whether you are a Private University Student, Public University Student, or Bar Exam Taker. You will receive your share by check.

## THE LAWYERS REPRESENTING YOU

### **11. Do I have a lawyer in the case?**

The Court has appointed Bursor & Fisher, P.A to be the attorneys representing the Settlement Class. They are called “Class Counsel.” They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

### **12. How will the lawyers be paid?**

Any Class Counsel attorneys’ fees and costs awarded by the Court will be paid out of the Settlement Fund in an amount to be determined by the Court. The fee petition will seek no more than 37.5% of the Settlement Fund; the Court may award less than this amount. Under the Settlement Agreement, any amount awarded to Class Counsel will be paid out of the Settlement Fund.

Subject to approval by the Court, the Class Representatives may be paid up to \$5,000 each from the Settlement Fund.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### **13. How do I get out of the Settlement?**

To exclude yourself from the Settlement, you must mail or otherwise deliver a written request for exclusion stating that you want to be excluded from the *Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116 settlement. Your letter or request for exclusion must also include your name, your address, your signature, the name and number of this case, and a statement that you wish to be excluded. You must mail or deliver your exclusion request no later than **March 14, 2022** to:

ES BIPA Settlement  
c/o JND Legal Administration  
P.O. Box 91398  
Seattle, WA 98111

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

No. Unless you exclude yourself, you give up any right to sue ExamSoft 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 *pro rata* payment from the Net Settlement Fund.

## OBJECTING TO THE SETTLEMENT

### **16. How do I object to the Settlement?**

If you are a Class Member and do not exclude yourself from the 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 not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116, identify all your reasons for your objections (including citations and supporting evidence), and attach any materials you rely on for your objections. Your letter or brief must also include your name, your address, the basis upon which you claim to be a Class Member, the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

Class Counsel will file with the Court and post on this website its request for attorneys' fees by February 28, 2022.

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in the answer to Question Number 20), you must say so in your

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letter or brief and file the objection with the Court and mail a copy to Class Counsel and Defendant's Counsel postmarked no later than **March 14, 2022**.

<b>Court</b>	<b>Class Counsel</b>	<b>Defendant's Counsel</b>
Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois 505 N. County Farm Rd. Wheaton, IL 60187	Philip L. Fraietta Bursor & Fisher P.A. 888 Seventh Ave. New York, NY 10019	Lauren R. Goldman Mayer Brown LLP 1221 Ave. of the Americas New York, NY 10020

**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 Class. Excluding yourself from the Class is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement 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 at **10:00 a.m. on April 7, 2022**, at the Eighteenth Judicial Circuit Court for the County of DuPage, Illinois, 505 N. County Farm Road, Wheaton, IL 60187. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for an incentive award to the Class Representatives. At that hearing, the Court will be available to hear any timely filed objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check [www.ESBIPASettlement.com](http://www.ESBIPASettlement.com) or call 1-877-389-1908. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of such Final Approval Hearing.

**19. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have, but you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

**20. May I speak at the hearing?**

Yes. So long as you timely filed an objection to the settlement, you may ask the Court for permission to speak at the Fairness Hearing, but do not have to. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent

to Appear in *Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116.” It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your objection and notice of intent to appear must be filed with the Court and postmarked no later than **March 14, 2022** and be sent to the addresses listed in Question 16.

### **GETTING MORE INFORMATION**

#### **21. Where do I get more information?**

This Notice summarizes the Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [www.ESBIPASettlement.com](http://www.ESBIPASettlement.com). You may also write with questions to ES BIPA Settlement, c/o JND Legal Administration, P.O. Box 91398, Seattle, WA 98111. You can call the Settlement Administrator at 1-877-389-1908 or Class Counsel at 1-646-837-7150, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website. **Please do not telephone the Court to inquire about the settlement or the claims process.**