

Hirmer v. ESO Solutions, Inc. d/b/a eCore Solutions, Inc.
U.S.D.C., Northern District of Illinois, Eastern Division

Case No. 22-cv-01018

If you scanned your finger in connection with your use of an ePro BioClock in Illinois from January 24, 2017 to September 10, 2024, and had your finger-scan data hosted on a server owned or leased by ESO Solutions, Inc. (“ESO”), you may be entitled to benefits under a class action lawsuit.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- **A proposed settlement will provide \$4,101,300.00 (the “Settlement Fund”) to fully settle and release claims of the following individuals:**

All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to September 10, 2024. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.

The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

- **ESO denies Plaintiff’s allegations and denies any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiff’s claims or ESO’s defenses. By entering into the settlement, ESO has not conceded the truth or validity of any of the claims against it.**
- **The Settlement Fund shall be used to pay amounts related to the settlement, including awards to Settlement Class, attorneys’ fees and costs to attorneys representing Plaintiff and the Settlement Class (“Class Counsel”), any service award for Plaintiff and the costs of notice and administration of the settlement. Class Counsel estimate that Settlement Class Members will receive approximately \$401.00 (“Initial Settlement Award Checks”). However, the payment will ultimately depend on the total number of Settlement Class Members, costs of notice and administration, as well as the reasonable costs, attorneys’ fees, and incentive award approved by the Court. Any monies remaining in the Settlement Fund after the Initial Settlement Award Checks are distributed and the expiration date has passed will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their Initial Settlement Award Checks (the “Subsequent Distribution”), so long as the amount to be distributed is at least \$5.00 per Settlement Class Member. The Subsequent Distribution shall be made within thirty (30) days after the expiration date of the Initial Settlement Award Checks. If there is not enough money to pay at least \$5.00 to each Settlement Class Member who cashed their initial Settlement Award Check or accepted their initial Settlement Award deposit, or if any checks or deposits from the subsequent distribution remain uncashed after the stale date, those funds shall be distributed, in equal amounts, to the Electronic Privacy Information Center and Illinois Heart Rescue as the *cy pres* beneficiaries, subject to Court approval.**
- **Your rights and options, and the deadlines to exercise them, are explained in this Notice. Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

EXCLUDE YOURSELF OR “OPT OUT” OF THE SETTLEMENT	If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue your own potential claims against ESO or other released parties related to a released claim. The deadline for excluding yourself is December 2, 2024.
OBJECT TO THE SETTLEMENT	If you wish to object to the settlement, you must write to the Court about why you believe the settlement is unfair in any respect. The deadline for objecting is December 2, 2024.
DO NOTHING	If you do nothing, you will still receive a payment from the settlement and give up your rights to sue ESO or any other released parties related to a released claim.
GO TO THE FINAL APPROVAL HEARING	You may attend the Final Approval Hearing. At the Final Approval Hearing, you may ask to speak in Court about the fairness of the settlement. To speak at the Final Approval Hearing, you must file a document which includes your name, address, telephone number and your signature with the Court, which must also state your intention to appear at the Final Approval Hearing. This must be filed no later than December 2, 2024.

- 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 (*i.e.*, Settlement Award Checks) will be disbursed if the Court approves the settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed settlement has been reached in the putative class action lawsuit entitled *Hirmer v. ESO Solutions, Inc. d/b/a eCore Solutions, Inc.*, filed in the United States District Court, Northern District of Illinois, Eastern Division, Case No. 2022-cv-01018. Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

2. What does it mean if I received an email or postcard about this settlement?

If you received a postcard describing this settlement, it is because ESO’s records indicate that you may be a member of the Settlement Class. The members of the Settlement Class include:

All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to the date the Court enters the Preliminary Approval Order. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.

3. What is this class action lawsuit about?

In a class action, one or more people called Class Representatives (here, Plaintiff, Kelsey Hirmer) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiff alleges that ESO violated the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, by allegedly failing to: (1) obtain individuals’ informed written consent before collecting, capturing, or otherwise obtaining their alleged biometric identifiers or biometric information in connection with their use of the ePro BioClock; and (2) implement and adhere to a written policy for permanently destroying alleged biometric identifiers or biometric

information in its possession. ESO denies these allegations and any wrongdoing or violation of the law. The Court has not made any ruling as to the merits of those allegations or ESO's liability. The Court has conditionally certified a class action for settlement purposes only. The Honorable LaShonda A. Hunt is in charge of this action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or ESO. Instead, the parties agreed to this settlement. This way, the parties avoid the risk and cost of a trial, and the Settlement Class Members will receive compensation in exchange for the release set forth in the Settlement Agreement. Plaintiff and Class Counsel think the settlement is best for all persons in the Settlement Class.

WHO IS IN THE SETTLEMENT CLASS?

5. How do I know if I am a part of the settlement class?

The Court has certified a class action for settlement purposes only. The Settlement Class is defined as:

All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to September 10, 2024. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.

A "Settlement Class Member" is any person in the Settlement Class who is not validly excluded from the Settlement Class. If you are still not sure whether you are included, you can visit other sections of the Settlement Website, www.esoBIPAsettlement.com, you may write to the Settlement Administrator at *Hirmer v. ESO Solutions* Settlement Administrator, P.O. Box 301172, Los Angeles, CA 90030-1172, or you may call the Toll-Free Settlement Hotline, 1-866-927-7092, for more information.

THE LAWYERS REPRESENTING YOU

6. Do I have lawyers in this case?

The Court has appointed the law firm of Keogh Law, Ltd., as Settlement Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers.

7. How will Settlement Class Counsel be paid?

Settlement Class Counsel will ask the Court to approve payment of up to thirty-six percent of the Settlement Fund after administrative costs have been subtracted, which is \$1,463,024.88 for attorneys' fees, plus reasonable expenses. Settlement Class Counsel also will ask the Court to approve payment of \$10,000.00 to Plaintiff for her services as Class Representative if permitted by law. The Court may award less than these amounts.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?

Settlement Fund. ESO will pay \$4,101,300.00 into a fund (the "Settlement Fund"), which will cover: (1) cash payments to Settlement Class Members; (2) an award of attorneys' fees and expenses to Class Counsel; (3) service award to the Plaintiff, Kelsey Hirmer; and (4) the costs of notice and administration of the settlement.

Cash Payments. All Settlement Class Members will receive a cash payment, so long as their last known address can be determined. Any money remaining in the Settlement Fund after paying all Settlement Award Checks to Settlement Class Members, attorneys' fees and costs to Class Counsel, any service award to Plaintiff, and the costs of notice and administration of the settlement will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their Initial Settlement Award Check, so long as the amount to be distributed per Claimant is at least \$5.00. Any subsequent distribution will be made within thirty (30) days after the expiration date of the Initial Settlement Award Check has passed.

9. How much will my payment be?

Class Counsel estimates your share of the Settlement Fund will be \$401.00. **This is an estimate only. The final cash payment amount will depend on the total number of Settlement Class Members, costs of notice and administration, as well as the reasonable costs, attorneys' fees, and incentive award approved by the Court.**

10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the settlement, you will be part of the Settlement Class and will be bound by the release of claims in the settlement. This means that if the settlement is approved, you cannot rely on any Released Claim to sue, or continue to sue, ESO or other Released Parties, on your own or as part of any other lawsuit, as explained in the Settlement Agreement. It also means that all of the Court's orders will apply to you and legally bind you. Unless you exclude yourself from the settlement, you will agree to release ESO and all other Released Parties, as defined in the Settlement Agreement, from any and all claims that arise from any alleged collection of alleged biometric identifiers or biometric information.

In summary, the Release includes all claims of any kind, whether known or unknown, that were asserted in the Action, or that could have been asserted in the Action based on the facts alleged in Plaintiff's Class Action Complaint, including, but not limited to, claims arising under BIPA or any other similar state, local, or federal law, regulation, or ordinance, or common law, regarding the use, collection, capture, receipt, maintenance, storage, transmission, or disclosure of biometric identifiers and/or biometric information. The complete release language can be found in the Settlement Agreement.

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed under Question 6, for free; or, at your own expense, you may talk to your own lawyer. The Release does not apply to persons in the Settlement Class who timely exclude themselves.

HOW TO OBTAIN A PAYMENT

11. How can I get a payment?

There is nothing you need to do to obtain a payment from the settlement. Your portion of the Settlement Fund will be sent to your last known address, along with a Form 1099 to the extent required. If you would prefer to receive your Settlement Award via electronic deposit, you can update your payment preferences at www.esoBIPAsettlement.com.

WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

12. When would I receive a settlement payment?

The Court will hold a hearing on January 14, 2025 to decide whether to approve the settlement. If the Court approves the settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who declines to exclude themselves will be informed of the progress of the settlement through information posted on the Settlement Website at www.esoBIPAsettlement.com. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the settlement?

If you do not wish to release any potential claims against ESO or a Released Party, as defined in the Settlement Agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting out of, the Settlement Class.

A Settlement Class Member who wishes to exclude himself or herself from this settlement, and from the Release pursuant to this settlement, shall submit a written Opt-Out Request to the Settlement Administrator at the address designated in the Notice no later than the Opt-Out/Objection Deadline. Opt-Out Requests must: (i) be timely submitted by the Opt-Out/Objection Deadline; (ii) be signed by the person in the Settlement Class who is requesting to be excluded from the Settlement Class; (iii) include the name and address of the person in the Settlement Class requesting exclusion; and (iv) include a statement or words to the effect of the following: "I request to be excluded from the ESO BIPA Settlement,

and understand that by doing so I will not be entitled to receive any of the benefits from the settlement.” No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

To be valid, you must mail your exclusion request postmarked no later than December 2, 2024 to the Settlement Administrator at *Hirmer v. ESO Solutions* Settlement Administrator, P.O. Box 301172, Los Angeles, CA 90030-1172.

14. If I do not exclude myself, can I sue ESO for the same thing later?

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) ESO or any Released Parties for the claims that this settlement resolves.

15. If I exclude myself, can I get a benefit from this settlement?

No. If you exclude yourself, you will not receive a settlement payment and you cannot object to the settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not think the settlement is fair?

If you are in the Settlement Class, you can object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement, or the award of any attorneys’ fees and expenses, and/or any proposed service award.

To object, you must make your objection in writing, stating that you object to the settlement. To be considered by the Court, you must personally sign the objection and provide the following information with it: (i) full name, current address, email address, and current telephone number; (ii) the case name and number of this Action; (iii) documentation sufficient to establish membership in the Settlement Class; (iv) a statement of reasons for the objection, including the factual and legal grounds for your position; (v) the identification of any other objections you have filed, or have had filed on your behalf, in any other class action cases in the last five years, and (vi) your signature.

To be considered, you must file your objections with the Court and mail your objections to the addresses below no later than December 2, 2024.

For Plaintiff:
Keith J. Keogh
Gregg M. Barbakoff
KEOGH LAW, LTD.
55 W. Monroe St., Suite 3390
Chicago, IL 60603

For Defendant:
Jody Kahn Mason
Andrew D. Welker
JACKSON LEWIS P.C.
150 North Michigan Ave., Suite 2500
Chicago, IL 60601

17. What is the difference between objecting and excluding yourself?

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself means that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you exclude yourself and object, your submission will be considered an Exclusion.

18. What happens if I do nothing at all?

If you do nothing, you will still receive a payment from the settlement and give up your rights to sue ESO or any other released parties related to a released claim. For information relating to what rights you are giving up, see Question 10.

THE FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at 9:30 a.m. on January 14, 2025, in Room 1425, 14th Floor, at the United States Courthouse, 291 South Dearborn Street, Chicago, IL 60604. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 16 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff.

The Final Approval Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for updates.

20. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the procedure set forth in Question 16 above. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, it must include your name, address, telephone number and your signature. The document must be filed with the Court no later than December 2, 2024. You cannot speak at the hearing if you exclude yourself from the settlement.

GETTING MORE INFORMATION

22. How do I get more information?

This Notice is only a summary of the proposed settlement. You can get a copy of the Settlement Agreement by visiting the Settlement Website, www.esoBIPAsettlement.com, or you can write to the address below or call the Toll-Free Settlement Hotline, 1-866-927-7092. You can also call Class Counsel with any questions at 1-866-726-1092.

DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, ESO, OR ESO'S COUNSEL ABOUT THE SETTLEMENT. ALSO, TELEPHONE REPRESENTATIVES WHO ANSWER CALLS MADE TO THE TOLL-FREE NUMBER ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.

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P.O. Box 301172
Los Angeles, CA 90030-1172