

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Agnew v. Foris DAX, Inc.*, No. 2024-CH-00435 (Cir. Ct. Cook Cnty., Ill.)

**YOU MAY BE ENTITLED TO A MONETARY PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOUR BIOMETRIC DATA WAS OBTAINED AND STORED BY FORIS DAX, INC. WITHIN THE STATE OF ILLINOIS BETWEEN AUGUST 1, 2018, AND JUNE 5, 2024.**

*This is a court-authorized notice of a proposed class action settlement. This is not a solicitation from a lawyer and is not notice of a lawsuit against you.*

### **1. WHY DID I GET THIS NOTICE?**

This is a court-authorized notice of a proposed settlement in a class action lawsuit, *Agnew v. Foris DAX, Inc.*, currently pending in the Circuit Court of Cook County, Illinois. The Settlement would resolve a lawsuit brought on behalf of persons who allege that Foris DAX, Inc. (“Foris DAX” or “Defendant”) obtained and stored individuals’ biometrics in Illinois in connection with those individuals’ creation of Crypto.com accounts without first providing them with legally-required written disclosures and obtaining written consent. If you received this notice, Defendant’s records indicate that between August 1, 2018, and June 5, 2024, you created a Crypto.com account either (1) as an Illinois resident; or (2) using an Illinois identification or Illinois telephone number in connection with the account creation. The Court has granted preliminary approval of the Settlement and has conditionally certified the Settlement Class for purposes of settlement only. This notice explains the nature of the class action lawsuit, the terms of the Settlement, and the legal rights and obligations of the Settlement Class Members. Please read the instructions and explanations below so that you can better understand your legal rights.

### **2. WHAT IS THIS LAWSUIT ABOUT?**

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, prohibits private companies from capturing, obtaining, storing, transferring, and/or using the biometric identifiers and/or information, such as fingerprints, of another individual for any purpose without first providing them with certain written disclosures and obtaining written consent. This lawsuit alleges that Defendant violated BIPA by collecting individuals’ biometrics by requiring new users to upload self-photographs without first providing the requisite disclosures or obtaining the consent required by BIPA. Defendant denies these claims and denies that it violated BIPA.

### **3. WHY IS THIS A CLASS ACTION?**

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. All of these people together are a “Class” or “Class Members.” Once a Class is certified, a class action Settlement finally approved by the Court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

### **4. WHY IS THERE A SETTLEMENT?**

To resolve this matter without the expense, delay, and uncertainties of litigation, the Parties have reached a Settlement, which resolves all claims against Defendant and affiliated entities. The Settlement requires Defendant to pay money to the Settlement Class, as well as pay settlement administration expenses, attorneys’ fees and costs to Class Counsel, and a Service Award to the Class Representative, if approved by the Court. The Settlement is not an admission of wrongdoing by Defendant and does not imply that there has been, or would be, any finding that Defendant violated the law.

The Court has already preliminarily approved the Settlement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, the Court overseeing this lawsuit must give final approval to the Settlement before it can be effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this notice and the opportunity to exclude themselves from the Settlement Class, to voice their support or opposition to final approval of the Settlement, and to submit a Claim Form to receive the relief offered by the Settlement. If the Court does not give final approval to the Settlement, or if it is terminated by the Parties, the Settlement will be void, and the lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

**QUESTIONS? VISIT [www.ForisDAXBIPASettlement.com](http://www.ForisDAXBIPASettlement.com)  
OR CALL TOLL FREE 1(877)375-5787**

## 5. WHO IS IN THE SETTLEMENT CLASS?

You are a member of the Settlement Class if between August 1, 2018, and June 5, 2024, you created a Crypto.com account as an Illinois resident or by using an Illinois identification or Illinois telephone number.

## 6. WHAT DOES THE SETTLEMENT PROVIDE?

**Monetary Payments.** Defendant has agreed to create a \$1,720,000.00 Settlement Fund for the Class Members. All Settlement Class Members are entitled to submit a Claim Form to receive a payment out of the Settlement Fund. If the Settlement is approved, each Settlement Class Member who submits a timely Claim Form that is deemed valid will be entitled to an equal payment paid out of the Settlement Fund after payment is made for administrative expenses, Class Counsel's attorneys' fees and expenses, and a Class Representative Service Award. The amount of each valid claimant's payment is estimated to be between \$30-\$60 but the exact amount is unknown at this time and depends on several factors, including how many valid claims are submitted and the amount of costs, attorneys' fees and expenses. The Settlement Administrator will issue a check or digital payment to each Class Member who submits a valid and timely Claim Form following the final approval of the Settlement. All checks issued to Settlement Class Members will expire and become void 100 days after they are issued. Additionally, the attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees of up to one third of the Settlement Fund, plus reasonable costs, for the substantial time, expense, and effort spent investigating the facts, litigating the case, and negotiating the Settlement. The Class Representative also will apply to the Court for a payment of up to \$5,000.00 for his time, effort, and service in this matter. Class Counsel will file with the Court their request for attorneys' fees and costs and a Service Award on **September 8, 2024**.

## 7. WHAT ARE MY OPTIONS?

### (1) Accept the Settlement.

To accept the Settlement, you must submit a Claim Form by **September 3, 2024**. You may obtain a Claim Form at [www.ForisDAXBIPASettlement.com](http://www.ForisDAXBIPASettlement.com), and you may submit your Claim Form online at the same website. You may also submit a Claim Form to the Settlement Administrator by email at [claims@ForisDAXBIPASettlement.com](mailto:claims@ForisDAXBIPASettlement.com) or by U.S. Mail at P.O. Box 2775, Portland, OR 97708. If the Settlement is approved and your claim is deemed valid, a check will be mailed to you, or you will receive a digital payment. ***Submitting a valid and timely Claim Form is the only way to receive a payment from this Settlement and is the only thing you need to do to receive a payment.***

### (2) Exclude yourself.

You may exclude yourself from the Settlement on an individual basis. If you do so, you will not receive any monetary payment, but you will not release any claims you may have against Defendant and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have your own risk and expense. To exclude yourself from the Settlement, you must mail a signed letter to the Settlement Administrator at P.O. Box 2775, Portland, OR 97708, postmarked by **September 3, 2024**. The exclusion letter must state that you exclude yourself from this Settlement and must include the name and case number of this litigation, as well as your full name, address, telephone number, and email address, the name and email address associated with your Crypto.com account, a statement that you wish to be excluded, and your personal signature. So-called "mass" or "class" exclusion requests are not permitted.

### (3) Object to the Settlement.

If you wish to object to the Settlement, you must submit your objection in writing to the Clerk of the Court of the Circuit Court of Cook County, Illinois, Richard J. Daley Center, 50 West Washington Street, Courtroom 2102 Chicago, Illinois 60602. The objection must be received by the Court no later than **September 3, 2024**. You must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including Class Counsel (James Simon of Simon Law Co., 11 ½ N. Franklin Street, Chagrin Falls, Ohio 44022, and Michael L. Fradin, 8 N. Court St. 403, Athens, Ohio 45701), as well as the attorneys representing Defendant (Christopher Carmichael of Henderson Parks, 140 South Dearborn Street, Suite 1020, Chicago, Illinois 60603, and Aaron Weiss and Charles Throckmorton of Carlton Fields P.A., 700 NW 1st Avenue, Suite 1200, Miami, Florida 33136), and the Settlement Administrator (P.O. Box 2775, Portland, OR 97708 ), postmarked no later than **September 3, 2024**. Any objection to the proposed Settlement must include (i) the objector's full name, address, email address, and current telephone number;

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(ii) the case name and number of the 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; (v) the name and email address used to create the objector's Crypto.com account; and (vi) the objector's signature. If you hire an attorney in connection with making an objection, that attorney must also file with the court a notice of appearance by the objection deadline of **September 3, 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.

You may appear at the Final Approval Hearing, which will be held on **September 13, 2024, at 11:00 a.m.**, 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 Final Approval of the Settlement, the request for attorneys' fees and expenses, and/or the request for a Service Award to the Class Representative are required to indicate in their written objection their intention to appear at the hearing on their own behalf or through counsel and to identify the names of any witnesses they intend to call to testify at the Final Approval Hearing, as well as any exhibits they intend to introduce at the Final Approval Hearing.

#### **(4) Do Nothing.**

If you do nothing, you will receive no money from the Settlement Fund, 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 the 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 more information on how to request exclusion from the Class or file an objection, please call 1(877)375-5787.*

## **8. WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?**

Unless you exclude yourself from this Settlement, you will be considered a member of the Settlement Class, which means you give up your right to file or continue a lawsuit against Defendant and the other Released Parties (as defined in the Settlement Agreement) relating to the Released Claims (as defined in the Settlement Agreement). Giving up your legal claims is called a release. The precise terms of the release are in the Settlement Agreement, which is available on the settlement website. Unless you formally exclude yourself from this Settlement, you will release your claims whether or not you submit a Claim Form and receive payment. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

## **9. WHEN WILL I BE PAID?**

The Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement, so please be patient. However, if the Court approves the Settlement, you will be paid as soon as possible after the court order becomes final, which should occur within approximately 60 days after the Settlement has been finally approved. If there is an appeal of the Settlement, payment may be delayed. Updated information about the case is available at [www.ForisDAXBIPASettlement.com](http://www.ForisDAXBIPASettlement.com), or you can call the Settlement Administrator at 1(877)375-5787 or contact Class Counsel at the information provided below.

## **10. WHEN WILL THE COURT RULE ON THE SETTLEMENT?**

The Court has already given preliminary approval to the Settlement. A final hearing on the Settlement, called a Final Approval Hearing, will be held to determine the fairness of the Settlement. At the Final Approval Hearing, the Court will also consider whether to make final the certification of the Class for settlement purposes, hear any proper objections and arguments to the Settlement, as well as any requests for an award of attorneys' fees, costs, and expenses and a Class Representative Service Award that may be sought by Class Counsel. The Court will hold the Final Approval Hearing on **September 13, 2024, at 11:00 a.m.** The hearing is subject to being changed by the Court, including taking place remotely via videoconference, so please visit [www.ForisDAXBIPASettlement.com](http://www.ForisDAXBIPASettlement.com) for updates.

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If the Settlement is given final approval, the Court will not make any determination as to the merits of the claims against Defendant or its defenses to those claims. Instead, the Settlement's terms will take effect and the lawsuit will be dismissed on the merits with prejudice. With prejudice means that the case is dismissed permanently, it cannot be brought back to court, and the claims cannot be refiled. Both sides have agreed to the Settlement to achieve an early and certain resolution to the lawsuit, in a manner that provides specific and valuable benefits to the members of the Settlement Class.

If the Court does not approve the Settlement, if it approves the Settlement and the approval is reversed on appeal, or if the Settlement does not become final for some other reason, you will not be paid at this time and Class Members will receive no benefits from the Settlement. Plaintiff, Defendant, and all of the Class Members will be in the same position as they were prior to the execution of the Settlement, and the Settlement will have no legal effect, no class will remain certified (conditionally or otherwise), and the Plaintiff and Defendant will continue to litigate the lawsuit. There can be no assurance that if the Settlement is not approved, the Settlement Class will recover more than is provided in the Settlement, or indeed, anything at all.

## 11. WHO REPRESENTS THE CLASS?

The Court has approved the following attorneys to represent the Settlement Class. They are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer instead, you may hire one at your own expense.

James Simon Simon Law Co.  
11 ½ N. Franklin St.  
Chagrin Falls, Ohio 44022  
[james@simonsayspay.com](mailto:james@simonsayspay.com)  
Tel: 216-816-8696

Mihael L. Fradin  
Fraden Law  
8 N. Court St. 403  
Athens, Ohio 45701  
[mike@fradinlaw.com](mailto:mike@fradinlaw.com)  
Tel: 847-986-5889

## 12. WHERE CAN I GET ADDITIONAL INFORMATION?

This Notice is only a summary of the proposed Settlement of this lawsuit. More details are in the Settlement Agreement which, along with other documents, can be obtained at [www.ForisDAXBIPASettlement.com](http://www.ForisDAXBIPASettlement.com). If you have any questions, you can also call the Settlement Administrator at 1(877)375-5787 or contact Class Counsel at the number or email addresses set forth above. In addition to the documents available on the case website, all pleadings and documents filed in court may be reviewed or copied in the Office of the Clerk. Please do not call the Judge or the Clerk of the Court about this case. They will not be able to give you advice on your options.

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