

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement,” “Settlement,” or “Settlement Agreement”) is entered into by and between Plaintiffs Robert Cannon and Tonia Lewis (“Representative Plaintiffs”), on behalf of themselves and the Settlement Class (“Plaintiffs”), and Defendant FIC America Corp. (“Defendant” or “FIC”), Case No. 2020 L 000121, currently pending in the Circuit Court of the 18th Judicial Circuit, DuPage County (the “Action”). Plaintiffs and Defendant are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

I. FACTUAL BACKGROUND AND RECITALS

1. On January 30, 2020, Plaintiff Robert Cannon filed a Class Action Complaint (“Complaint”) against FIC, Case No. 2020 L 000121 in the Circuit Court of DuPage County, alleging violations of the Illinois Biometric Information Privacy Act (“BIPA” or “Privacy Act”), 740 ILCS 14/1, *et seq.* The Complaint alleged that FIC collected plaintiff’s fingerprint without first complying with the Privacy Act’s notice and consent requirements (Section 15(b)) and lacked a publicly-available biometric data retention and destruction policy (Section 15(a)). 740 ILCS 14/15(a) and (b).

2. On April 13, 2020, FIC America filed a Section 2-619.1 Motion to Dismiss which asserted a constitutional challenge – that the Privacy Act is arbitrary “special legislation” in violation of Article IV, Section 13 of the Illinois Constitution. The Motion to Dismiss further argued that plaintiff’s claims were time-barred by the one or two-year statutes of limitations, preempted by the exclusive remedy provisions of the Illinois Workers’ Compensation Act (“IWCA”), and failed to state a claim for a reckless violation of the Privacy Act.

3. The Court ruled in FIC’s favor on the statute of limitations argument and held that the two-year statute of limitations for statutory penalty claims applied. The Court, however, denied defendant’s accrual argument – that the Section 15(b) claim accrued on the first collection – and also denied FIC’s constitutional challenge and IWCA preemption arguments.

4. On October 23, 2020, FIC filed a Section 2-619 Motion to Dismiss Plaintiff’s Section 15(a) Claim or to Certify for Interlocutory Appeal. The motion argued plaintiff lacked standing to assert a Section 15(a) claim because he alleged no particularized harm or injury-in-fact from the purported lack of a “publicly available” policy, which implicates public rights, not the personal or property rights of the plaintiff. The motion further argued that plaintiff never alleged that defendant failed to timely destroy plaintiff’s biometric data and, in fact, defendant complied with Section 15(a) by having a retention and destruction policy and practice that destroyed plaintiff’s alleged biometric data when his work ended.

5. Plaintiff sought discovery on the Motion to Dismiss his Section 15(a) claim, which the Court limited to the deposition of FIC’s affiant, Senior HR Manager Monica Pineda. On May 11, 2021, following the deposition of Ms. Pineda, plaintiff voluntarily dismissed his Section 15(a) claim.

6. On October 25, 2020, FIC filed a Motion to Reconsider or to Certify for Interlocutory Appeal Under Supreme Court Rule 308(a). The motion asked the Court to reconsider or certify the “first collection” accrual and constitutional challenge issues for interlocutory appeal. On February 2, 2021, following oral argument, the Court denied Defendant’s Motion to Reconsider or to Certify for Interlocutory Appeal. The Court clarified that its denial of the motion to certify was without prejudice to its refiling, following appellate court rulings on two pending statute of limitations interlocutory appeals. The Court also stayed all further discovery pending further order.

7. The parties subsequently extended the court-ordered stay by agreement pending rulings in *Tims v. Black Horse Carriers, Inc.* (the applicable statute of limitations), *McDonald v. Symphony Bronzeville Park, LLC* (IWCA preemption) and *Cothron v. White Castle Syst. Inc.* (when BIPA claims accrue). See 5/11/21, 8/24/21, 1/11/22, 3/15/22, 7/14/22 and 11/15/22 Orders.

8. The Illinois Supreme Court decided *McDonald v. Symphony Bronzeville Park, LLC* on February 3, 2022, holding that BIPA statutory damages claims by current or former employees are not barred by the IWCA’s exclusive remedy provisions. IWCA preemption was another argument raised in FIC’s Motion to Dismiss which, if granted, could have resulted in a dismissal with prejudice.

9. The Illinois Supreme Court decided *Tims* on February 2, 2023, reversing the appellate court’s finding that the one-year “privacy” statute of limitations applied to Section 15(d) unauthorized disclosure claims. Instead, it held that all Section 15 claims are governed by the five-year “catch-all” statute of limitations. Had the Court applied the one-year statute of limitations to all Section 15 claims along with a “first collection” accrual ruling in *Cothron*, this lawsuit could have been time-barred.

10. On February 17, 2023, the Illinois Supreme Court issued a 4-3 decision in *Cothron v. White Castle System, Inc.*, 2023 IL 128004, holding that a separate claim accrues under the Privacy Act each time a private entity scans or transmits an individual’s biometric identifier or information.

11. On March 28, 2023, the parties filed a Joint Status Report to apprise the Court of the rulings in *Tims* and *Cothron* and their impact on the case. Plaintiff asked the Court to lift the stay of discovery. FIC asked that the stay remain in place pending the Illinois Supreme Court’s ruling on the Petition for Rehearing in *Cothron*. The Court agreed and extended the stay, pending the ruling in *Cothron*.

12. The Illinois Supreme Court denied the Petition for Rehearing on July 18 and issued the mandate in *Cothron* on August 22, 2023.

13. On October 4, 2023, Plaintiff filed a motion to file an Amended Class Action Complaint, adding a Section 15(d) claim and Tonia Lewis as an additional Named Plaintiff and proposed class representative. The Section 15(d) claim alleged that FIC America made an unauthorized disclosure of plaintiff’s “fingerprint data to a third party – specifically to Kronos.”

14. Following arms-length negotiations, the Parties have negotiated a settlement in which the Parties agree to resolve all claims that relate to or arise out of Defendant's use of an alleged biometric timekeeping system. Defendant represents that there are 3,251 members of the Settlement Class, and Defendant understands and agrees that this representation is a material term of this Settlement Agreement. If the class size increases, the total Settlement Fund will be adjusted up on a *pro rata* basis.

15. The Parties have agreed to settle the Action on the terms and conditions set forth herein in recognition that the outcome of the Action is uncertain and that achieving a final result through litigation would require substantial additional risk, discovery, time, and expense.

16. Defendant, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the action on the terms stated herein to avoid further expense, inconvenience and burden, and therefore has determined that this settlement on the terms set forth herein is in Defendant's best interests. Neither the settlement agreement nor any actions taken to carry out the settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any party. Defendant denies the material allegations of the Complaint. Neither the Settlement Agreement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Defendant, or be offered or received in evidence as an admission, concession, presumption or inference of any wrongdoing by Defendant in any proceeding.

17. Plaintiffs and Class Counsel have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class, recognizing (a) the existence of complex and contested issues of law and fact; (b) the risks inherent in litigation; (c) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (d) the magnitude of the benefits derived from the contemplated Settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (e) the Representative Plaintiffs' and Class Counsel's determination that the Settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

18. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Representative Plaintiffs and Class Counsel are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class.

19. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled and compromised, and that the Releasers release the Released Parties of the Released Claims, without costs as to Defendant, the Released Parties, Representative Plaintiffs, Class Counsel, or the

Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

The following terms, as used in this Agreement, have the following meanings:

20. “Action” shall mean the class action lawsuit pending in the Circuit Court of the 18th Judicial Circuit, DuPage County captioned *Cannon, et al. v. FIC America Corp.*, Case No. 2020 L 000121.

21. “Administrative Expenses” shall mean expenses associated with the Settlement Administrator including, but not limited to, creating and maintaining the Settlement Website, costs in providing Notice, communicating with the Settlement Class Members, responding to requests from the Parties, Settlement Class Members and non-Class members, disbursing payments to the proposed Settlement Class Members, and tax reporting.

22. “Biometric System(s)” shall mean any allegedly biometric devices, software, or equipment capable of capturing information that is or could be protected under the BIPA, including but not limited to alleged biometric time clocks.

23. “Class,” “Settlement Class,” “Class Member,” or “Settlement Class Member” shall mean each member of the Settlement Class, as defined in Section III of this Agreement, who does not timely elect to be excluded from the Settlement Class and includes, but is not limited to, the Representative Plaintiffs.

24. “Class Counsel” or “Plaintiffs’ Counsel” means Werman Salas P.C. and Fish Potter Bolaños, P.C.

25. “Class List” means an electronic list from Defendant’s available records that includes the names, Social Security Numbers, last-known home addresses, personal email addresses and personal phone numbers, to the extent available, of the Class Members.

26. “Class Period” means January 30, 2015 through the date of the preliminary approval order.

27. “Counsel” or “Counsel for the Parties” means both Class Counsel and Defendant’s Counsel, collectively.

28. “Court” shall mean the Circuit Court of DuPage County and the Honorable Neal W. Cerne or any judge sitting in his stead.

29. “Defendant” shall mean Defendant FIC America Corp.

30. “Defendant’s Counsel” shall mean Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

31. “Effective Date” shall mean the date when the Settlement Agreement becomes Final, assuming that no appeals are filed following entry of the Final Approval Order other than an appeal or appeals solely with respect to the Fee Award or any Service Awards.

32. “Exclusion Deadline” means the date by which a request for exclusion submitted by a person within the Settlement Class must be postmarked and sent via U.S. Mail, which shall be designated as a date 60 days after the issuance of Notice, or such other date as ordered by the Court.

33. “Fee and Expense Petition” shall mean the motion to be filed by Class Counsel, in which they seek approval of an award of attorneys’ fees, costs, and expenses.

34. “Fee Award” means the amount of attorneys’ fees awarded by the Court to Class Counsel.

35. “Final” means the Final Approval Order has been entered on the docket and (a) seven (7) days after the date to appeal from such order has expired and no appeal has been timely filed (other than an appeal or appeals solely with respect to the Fee Award or any incentive awards); (b) if an appeal has been filed, seven (7) days after it has been finally resolved and has resulted in an affirmation of the Final Approval Order and without the possibility of further appeal; or (c) the Court, following the resolution of the appeal and in accordance with the mandate of the appellate court, enters a further order or orders approving the Settlement and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

36. “Final Approval Hearing” means the hearing before the Court where the Plaintiffs will request a Final Judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving a Service Award to the Class Representatives.

37. “Final Approval Order” or “Final Approval” shall mean an order entered by the Court that:

- a. Certifies the Settlement Class pursuant to 735 ILCS 5/2-801;
- b. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;
- c. Dismisses the Action without prejudice, which converts to a dismissal with prejudice of all claims of the Settlement Class against the Defendant in the Action on the Release Date ;
- d. Enters a Final Judgment pursuant to 735 ILCS 5/2-1301 that settles the Parties’ rights with respect to these issues;
- e. Retains jurisdiction solely for the purpose of enforcing the Settlement until the Settlement Fund is paid in full as explicitly provided for in this Agreement.

f. Approves the Release provided in Section VII and orders that, as of the Release Date, the Released Claims will be released as to the Released Parties;

38. “Notice” means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and Exhibit A and is consistent with the requirements of due process.

39. “Objection Deadline” means the date by which a written objection to this Settlement Agreement submitted by a person within the Settlement Class must be filed with the Court and copies sent via U.S. Mail to Class Counsel and the Settlement Administrator postmarked by the Objection Deadline, which shall be designated as a date 60 days after the issuance of Notice, or such other date as ordered by the Court.

40. “Out-of-Pocket Costs” shall refer to the costs and expenses incurred by Class Counsel during the pendency of this litigation and approved by the Court to be reimbursed out of the Settlement Fund.

41. “Parties” shall mean Plaintiffs and Defendant, collectively.

42. “Plaintiffs” or “Representative Plaintiffs” shall mean Robert Cannon and Tonia Lewis.

43. “Preliminary Approval Order” or “Preliminary Approval” shall mean the Court’s order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing Notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Agreement. The draft Preliminary Approval Order is in substantially the form of Exhibit B.

44. “Released Claims” means any and all claims or causes of action for actual damages, liquidated damages, penalties, injunctive relief, declaratory relief, attorneys’ fees and costs, expenses and interest, liabilities, demands, or lawsuits against the Released Parties (defined below) under the Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.*, and all other related federal, state, and local laws, including the common law, whether known or unknown, whether legal, statutory, equitable, or of any other type or form, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever that were or could have been brought in any of the actions filed (or to be filed) by Plaintiff and the Settlement Class Members. This includes all BIPA claims of any nature whatsoever, whether known or unknown.

45. “Release Date” means one business day after the Settlement Fund has paid the Settlement Class Members, the Service Awards, and the Fee Award and Out-of-Pocket Costs.

46. “Released Parties” means Defendant and its current and former affiliates, parents, subsidiaries, related entities, joint venturers, predecessors, successors and assigns, and the past and present owners, members, shareholders, officers, directors, trustees, managers, employees, agents, insurers, reinsurers and retrocessionaires, and attorneys of these entities, their employee benefit plans and the sponsors, fiduciaries or administrators of said employee benefit plans.

47. “Releasers” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Settlement Class Members, and to each of their predecessors, successors, children, spouses, beneficiaries, heirs, executors, conservators, administrators, and assigns of each of the foregoing, and anyone claiming by, through or on behalf of them.

48. “Service Award” shall mean a reasonable incentive award of not more than \$10,000 to each Named Plaintiff.

49. “Settlement Administrator” means, subject to Court approval, Analytics Consulting LLC or such other entity selected and supervised by Class Counsel to administer the Settlement.

50. “Settlement Class” means all individuals who worked or are currently working for Defendant in the State of Illinois who had their Biometric Identifiers and/or Biometric Information collected, captured, received or otherwise obtained or disclosed by Defendant or its agents without first signing a written consent regarding same between January 30, 2015, and the date of the preliminary approval order. Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the Settlement Class, and (4) the legal representatives, successors or assigns of any such excluded persons.

51. “Settlement Fund” means a cash settlement fund to be established by Defendant in an amount equal to \$4,000,000.00 based on a gross award of approximately \$1,230.39 to each Settlement Class Member. If the class size increases before Final Approval to be greater than 3,251 persons, the Settlement Fund shall increase by \$1,230.39 for each such Settlement Class Member. The Settlement Fund will decrease proportionally by \$1,230.39 for each Settlement Class Member who excludes himself or herself from the Settlement. The Settlement Fund shall be used to pay (1) all payments to Settlement Class Members, (2) settlement website, class notice and administration costs, (3) incentive awards of no more than \$10,000.00 to each Named Plaintiff, to be decided by the Court, and (4) reasonable attorneys’ fees and costs to be decided by the Court.

III. SETTLEMENT CLASS CERTIFICATION

52. For the purposes of the Settlement only, the Parties stipulate and agree that (a) the Class shall be certified in accordance with the definition contained in Paragraph 49 ; (b) Representative Plaintiffs shall represent the Class for settlement purposes and shall be the Class Representatives; and (c) Plaintiffs’ Counsel shall be appointed as Class Counsel.

53. Defendant does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval of the Settlement Agreement, or if for any other reason Final Approval of the Settlement Agreement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated, and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into.

54. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes:

All individuals who worked or are currently working for Defendant in the State of Illinois who had their Biometric Identifiers and/or Biometric Information collected, captured, received or otherwise obtained or disclosed by Defendant or its agents without first signing a written consent regarding same between January 30, 2015, and the date of the preliminary approval order.

55. In addition to persons who timely signed a written consent, additional exclusions from the Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the Settlement Class, and (4) the legal representatives, successors or assigns of any such excluded persons.

56. Defendant represents that based on its present investigation of its records, there are 3,251 members in the Settlement Class. Defendant shall submit the Class List to the Claims Administrator and Class Counsel within 30 days following preliminary approval.

57. If for any reason the Settlement Agreement is not approved, the Court does not enter a Preliminary Approval Order and/or Final Approval Order, or a Final settlement and resolution of this Action as provided for in this Agreement is not reached, Defendant's agreement to certification of the Settlement Class shall not be used for any purpose, including but not limited to in any request for class certification in the Action or any other proceeding.

IV. SETTLEMENT OF THE ACTION AND CLAIMS AGAINST THE RELEASED PARTIES

58. Upon Final Approval of this Settlement Agreement, Representative Plaintiffs and the Settlement Class Members will release any and all claims or causes of action for actual damages, liquidated damages, penalties, injunctive relief, declaratory relief, attorneys' fees and costs, expenses and interest, liabilities, demands or lawsuits against the Released Parties under the Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.*, whether known or unknown, whether legal, statutory, equitable or of any other type or form, and whether brought in an individual, representative or any other capacity, of every nature and description whatsoever that were or could have been brought in any of the actions filed (or to be filed) by Representative Plaintiffs and the Settlement Class Members. This Release includes all BIPA claims of any nature whatsoever, whether known or unknown.

V. SETTLEMENT FUND

59. Establishment of Settlement Fund.

- a. No later than 30 days after Preliminary Approval and Defendant's receipt of wire and/or mailing instructions and an IRS Form W-9 for the Qualified Settlement Fund, Defendant or its insurer shall deposit into an account managed by the Settlement Administrator the amount of \$20,000.00 for Administrative Expenses.
- b. No later than 35 days after Final Approval, Defendant or its insurer shall deposit into the Qualified Settlement Fund the remainder of the Settlement Fund.
- c. The funds provided by or on behalf of Defendant to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an FDIC insured interest-bearing account created and controlled by the Settlement Administrator.
- d. Provided that Final Approval of this Agreement is granted by the Court, the Settlement Fund will be used to satisfy all claims for Settlement Class Members in exchange for a comprehensive release and the covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all Released Parties from Released Claims, inclusive of all claims for attorneys' fees, and dismissal of the Action with prejudice on the Release Date. In no event shall the Settlement Fund be increased for any other reason.
- e. If the Agreement is not finally approved, the Parties shall each bear 50% of the financial responsibility for any Administrative Expenses actually incurred as of the date that the Agreement is not finally approved, subject first to the Parties' good faith efforts to resolve any issues or concerns raised by the Court or appellate court.
- f. The Settlement Fund shall be used to pay (i) the Settlement payment to each Settlement Class Member ; (ii) a reasonable Service Award to the Class Representatives of no more than \$10,000.00 each, to be decided by the Court; (iii) a reasonable Fee Award and Out-of-Pocket Costs to be decided by the Court; and (iv) Administrative Expenses.
- g. The Settlement Fund represents the total extent of the Defendant's monetary obligations under the Settlement Agreement. Defendant's contributions to the Settlement Fund shall be fixed under this Section and final unless the

class size increases. Defendant and the other Released Parties shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund unless the class size increases.

60. The Settlement Fund shall be divided among members of the Settlement Class that do not opt out as follows: approximately \$1,230.39 per class member, less *pro rata* reductions for Class Counsel's Fee Award and Out-of-Pocket Costs, a Service Award to each of the Representative Plaintiffs, and Administrative Expenses.

61. Settlement Class Members shall receive a *pro rata* amount of the Settlement Fund by check in the mail after Administrative Expenses, reasonable Service Awards, and a reasonable Fee Award and Out-of-Pocket Costs are deducted.

62. Settlement Class Members shall receive their shares of the Settlement Fund without having to submit a claim form or otherwise "opt in" to the Settlement Class.

63. The Settlement Administrator shall be responsible for making all reporting and filings with respect to amounts payable to Class Members required pursuant to any federal, state, or local tax law or regulation hereunder under the EIN of the Qualified Settlement Fund. The Settlement Administrator shall also be responsible for filing and sending an IRS Form 1099 to any applicable recipient of money from the Settlement Fund, as required by law.

64. Plaintiffs, Class Counsel and all other Class Members will be solely responsible for all taxes, interest, penalties, or other amounts due with respect to any payment received pursuant to the Settlement.

65. Procedure for Approving Settlement.

- a. Plaintiffs will file an unopposed motion for an order conditionally certifying the Class, giving Preliminary Approval to the Settlement, setting a date for the Final Approval Hearing, and approving the Notice (the "Unopposed Motion for Preliminary Approval"). Prior to filing, Plaintiffs will circulate the draft Motions for Preliminary and Final Approval to Defendant for review and comment to ensure accuracy with the Memorandum of Understanding and Settlement Agreement.
- b. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Unopposed Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement Agreement; appointing the Class Representatives and Class Counsel; approving the Notice to the Class of the Settlement; and setting the Final Approval Hearing.

- c. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition and on the terms contained above, that Representative Plaintiffs shall be conditionally appointed Class Representatives, and that Plaintiffs' Counsel shall be conditionally appointed as Class Counsel.

66. Procedure for Administering Settlement.

- a. Class List.
 - i. Defendant shall create a Class List, based on readily available information already within its possession. To the extent Defendant possesses information in its records, the Class List shall include: name, last-known address, telephone number, personal e-mail address, and Social Security Number for each Settlement Class member ("Class List").
 - ii. To the extent that Defendant is unable to obtain a complete Class List from the temporary staffing companies that it used for Notice to Settlement Class Members, the Parties will cooperate to issue subpoenas to these staffing companies to obtain the information.
 - iii. Defendant shall provide the Settlement Administrator and Class Counsel the Settlement Class list and contact information for the Settlement Class within 30 days following preliminary approval, although the Parties may need to subpoena former temporary staffing companies to obtain the contact information and Social Security Numbers for said temporary workers who are part of the Class, which shall be provided directly to the Claims Administrator.
 - iv. The Settlement Administrator will update the Class List using the U.S. Postal Service's database of verifiable mailing addresses and the National Change-of-Address database.
- b. Anti-Fraud Measures.
 - i. The Settlement Administrator shall put reasonable anti-fraud measures in place to prevent theft of Settlement Class Members' settlement payments via, *inter alia*, requiring documentation to update their contact information.
- c. Type of Notice Required.
 - i. The Notice, which shall be substantially in the form of Exhibit A attached hereto, shall be used for the purpose of informing proposed

Settlement Class Members prior to the Final Approval Hearing that there is a pending Settlement and to further inform Settlement Class Members how they may: (i) protect their rights regarding the Settlement; (ii) request exclusion from the Settlement Class and the proposed Settlement, if desired; (iii) object to any aspect of the proposed Settlement, if desired; and (iv) participate in the Final Approval Hearing, if desired. The Notice shall make clear the binding effect of the Settlement on all persons who do not timely request exclusion from the Settlement Class.

- ii. The notice plan shall include direct notice via U.S. Mail and a settlement website, www.ficbipasettlement.com, URL and content. In addition to the URL and domain name, the Parties will also agree on the content of the Notice forms, Settlement Agreement and any Q&A on the website. The Parties agree they will place the Notice forms, the Settlement Agreement, the Motions for Preliminary and Final Approval of Class Settlement, Plaintiffs' fee petition, any Q&A and all orders on the website.
- iii. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties and shall be substantially in the form attached as Exhibit A.
- iv. Within 45 days of entry of the Preliminary Approval Order, individual notice shall be sent via U.S. Mail (substantially in the form of Exhibit A). For all mailings returned as undeliverable, the Settlement Administrator shall perform a reverse look-up to find updated addresses and will cause the Notice mailing to be re-mailed to those members of the Settlement Class.

67. Allocation.

- a. Within 14 business days after the Effective Date, provided all appeals are resolved, the Settlement Administrator shall send a check by First Class U.S. Mail to each Class Member, including the Representative Plaintiffs, equal to each Settlement Class member's *pro rata* share of the Settlement Fund, less Administrative Expenses paid to the Settlement Administrator, the Service Awards to the Class Representatives, and the Fee Award to Class Counsel.
- b. Within 14 business days after the Effective Date, provided all appeals are resolved, the Settlement Administrator shall send a Service Award to each Class Representative as a check in the amount of \$10,000 each. This amount will be paid to each Representative Plaintiff as 1099 income.

- c. The Settlement Administrator shall notify the Parties that all payments have been made within five business days of the last such payment. The Settlement Administrator will provide Counsel for the Parties with weekly reports regarding the status of administration of this Settlement.
- d. Payments to the Settlement Class Members shall remain valid and negotiable for 120 days from the date of their issuance. Each Settlement check will be issued on the date of mailing and will state on its face that the check will expire and become null and void within 120 days of the date of issuance. Within 75 days of the checks' mailing, the Settlement Administrator shall run a report of uncashed checks and send these Class Members a reminder via email, phone or mailing to cash their checks. Within 10 days of the expiration of the 120-day period, the Settlement Administrator shall transfer 40% of the remaining funds to a nonprofit *cy pres* providing free legal services for families in need such as Prairie State Legal Services and 60% shall remain with Defendant and its insurer.

VI. PROSPECTIVE RELIEF

68. Defendant ended use of biometric time clocks in Illinois due to this lawsuit. Although Defendant currently uses no biometric time clocks or other known biometric devices in Illinois, it has maintained a biometric data and retention policy and consent form in Illinois since 2020, to ensure compliance with BIPA. .

VII. RELEASE

69. Plaintiffs and the Settlement Class Members release and forever discharge any and all claims or causes of action for actual damages, liquidated damages, penalties, injunctive relief, declaratory relief, attorneys' fees and costs, expenses and interest, liabilities, demands or lawsuits against the Released Parties under the Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.*, whether known or unknown, whether legal, statutory, equitable or of any other type or form, and whether brought in an individual, representative or any other capacity, of every nature and description whatsoever that were or could have been brought in any of the actions filed (or to be filed) by Representative Plaintiffs and the Settlement Class Members. This Release includes all BIPA claims of any nature whatsoever, whether known or unknown. "Released Parties" includes Defendant and its current and former affiliates, parents, subsidiaries, related entities, joint venturers, predecessors, successors and assigns, and the past and present owners, members, shareholders, officers, directors, trustees, managers, employees, agents, insurers, reinsurers and retrocessionaires, and attorneys of these entities, their employee benefit plans and the sponsors, fiduciaries or administrators of said employee benefit plans.

PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

70. This Settlement Agreement shall be subject to approval of the Court.

71. Plaintiffs, through Class Counsel, shall submit this Settlement Agreement, together with its Exhibits, to the Court and shall move the Court for Preliminary Approval of the Settlement set forth in this Settlement Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representatives, and entry of the Preliminary Approval Order, which order shall seek a Final Approval Hearing date and approve the Notice for dissemination in accordance with the Notice provisions in Paragraph 52 and elsewhere in this Agreement.

72. At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final Approval Hearing approximately 105 days after entry of the Preliminary Approval Order and approve the Settlement as set forth herein.

73. At least seven days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiffs, through Class Counsel, will move for: (a) Final Approval of the Settlement Agreement; (b) Final appointment of the Class Representatives and Class Counsel; and (c) Final certification of the Settlement Class, including for the entry of a Final Order and Judgment, and file a memorandum in support of the motion for Final Approval.

VIII. EXCLUSIONS

74. Exclusion Period.

- a. Settlement Class Members will have up to and including 60 days following the date Notice is distributed to exclude themselves from the Settlement in accordance with this Section. If the Settlement Agreement is finally approved by the Court, all Settlement Class Members who have not opted out by the end of the Objection/Exclusion Deadline will be bound by the Agreement and will be deemed a Releasor as defined herein, and the relief provided by the Agreement will be their sole and exclusive remedy for the claims alleged in the Action.

75. Exclusion Process.

- a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Exclusion Deadline.
- b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that they wish to be excluded from the Settlement Class; their signature and the date that they signed the statement. A request to be excluded that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a

member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved.

- c. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any order or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement Class cannot also object to the Settlement Agreement.
- d. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.
- e. Within seven (7) business days after the Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel a written list reflecting all timely and valid exclusions from the Settlement Class.

76. A list reflecting all individuals who timely and validly excluded themselves from the Settlement shall also be filed with the Court at the time of the motion for Final Approval of the Settlement.

IX. OBJECTIONS

77. Settlement Class Members will have up to and including 60 days following the date Notice is distributed to object to the Settlement in accordance with this Section. The Notice shall specify that any objection to this Settlement, with all required information and supporting materials as discussed in the Paragraph below, must be filed with the Clerk of Court by the Objection Deadline. Copies of the filed objection and supporting materials must also be mailed to the Settlement Administrator and Class Counsel at the addresses set forth in the Notice and postmarked by the Objection Deadline. at the Final Approval Hearing. Class Counsel shall promptly provide a list of the written objections and supporting documentation to Defendant’s Counsel. The Court will address any objections at the Final Approval Hearing.

78. Any Settlement Class Member who intends to object to this Settlement Agreement must include in any such objection: (a) their full name, address, and current telephone number; (b) the case name and number of this Action; (c) the date range during which they were employed or engaged by FIC; (d) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (e) the identification of any other objections they have filed, or has had filed on their behalf, in any other class action cases in the last five years; and (f) the objector’s signature. If represented by counsel, the objecting Settlement Class Member must also provide the name, address, email address and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, they must state as such in the written objection, and must also identify any

witnesses they may seek to call to testify at the Final Approval Hearing and all exhibits they intend to seek to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

79. Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Settlement Agreement, shall not be permitted to object to the approval of the Agreement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Agreement or its terms by appeal or other means.

X. FINAL APPROVAL HEARING

80. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to 735 ILCS 5/2-801 for settlement purposes only and, if so, (a) consider any properly-filed objections; (b) determine whether the Settlement Agreement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connection therewith; and (c) enter the Final Approval Order, including Final Approval of the Settlement Class and the Settlement Agreement, and the Fee Award and Service Awards.

XI. FINAL APPROVAL ORDER

81. The Parties shall jointly seek entry of the Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions, or stipulation to implement this Section shall, among other things, seek or provide for entry of Final Judgment, a dismissal of the Action with prejudice on the Release Date, and waiver of any rights of appeal.

82. The Parties shall jointly submit to the Court the proposed Final Approval Order that:

- a. Approves finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of 735 ILCS 5/2-801;
- b. Retains jurisdiction solely for the purpose of enforcing the Settlement;
- c. Dismisses the Action with prejudice of all claims of the Settlement Class against the Released Parties, without costs and fees except as explicitly provided for in this Agreement; and
- d. Enters a Final Judgment pursuant to 735 ILCS 5/2-1301.

XII. NO TERMINATION OF THE SETTLEMENT; CONTINUED GOOD FAITH NEGOTIATION.

83. In the event that the Court reduces or does not approve the Fee Award and Incentive Awards, Plaintiffs and Class Counsel shall not have the right to revoke this Settlement Agreement, which shall remain binding. Any such unapproved amounts shall be returned to the Settlement Fund for distribution to the Settlement Class Members. However, nothing herein shall be read to limit Class Counsel's ability to appeal a Fee Award that is less than what is sought.

84. If the Court does not grant preliminary or final approval or makes material modifications to the terms of the Settlement Agreement, the Parties shall work together in good faith to address the concerns raised in denying preliminary or final approval or in modifying the Agreement. If the Parties are unable to jointly agree on solutions to address the Court's concerns, then the Parties shall request the assistance of Judge Holderman of JAMS or another mediator, if Judge Holderman is unavailable.

85. Only after both Parties agree that they have fully exhausted such efforts will this Settlement Agreement become null and void. The Settlement Administrator shall promptly return to Defendant and its insurer the amounts they paid into the Settlement Fund, plus the *pro rata* interest earned on these monies, less half of the Administrative Expenses. The other half of the Administrative Expenses shall be paid by Class Counsel. The Parties will then return to their positions immediately prior to the execution of this Settlement Agreement.

XIII. ATTORNEYS' FEES, COSTS, AND EXPENSES AND SERVICE AWARDS

86. No later than seven days prior to the date of the Final Approval Hearing, Class Counsel will move the Court for an award of attorneys' fees not to exceed 38% of the Settlement Fund, or \$1,520,000 based on the estimated size of the Class, plus reasonable Out-of-Pocket Costs. Defendant will not oppose this request.

87. Notwithstanding any contrary provision of this Agreement, and subject to Paragraphs ____ of this Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

88. Class Counsel shall provide the Settlement Administrator with its completed W-9 before the payment of the Fee Award is due. Within 14 business days after the Effective Date, provided all appeals are resolved, the Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount awarded by the Court in the Fee Award. Any payment of the Fee Award shall be paid via electronic wire transfer to an account designated by Class Counsel.

89. Prior to or at the same time as Plaintiffs seek final approval of the Settlement Agreement, Class Counsel shall move the Court for a Service Award for each of the Class Representatives in an amount not to exceed Ten Thousand Dollars (\$10,000.00), and Defendant

agrees that it will not oppose such a request. The Service Awards shall be paid solely from the Settlement Fund by check written by the Settlement Administrator within 14 business days of the Effective Date, provided all appeals are resolved.

90. In no event will Defendant's liability for payments to Class Members, attorneys' fees, expenses, and costs, including the Fee Award, Administrative Expenses, and/or a Service Awards exceed the funding obligations set out in this Agreement unless the class size increases. Defendant shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund unless the class size increases. Defendant shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class. Defendant will have no responsibility, obligation, or liability for allocation of fees and expenses among Class Counsel. The Settlement Administrator shall handle all tax reporting with respect to the payments made pursuant to the Settlement and shall report the payments in accordance with applicable law. Defendant, its counsel and the Released Parties shall also have no responsibility, obligation or liability whatsoever for any act, omission or determination by the Settlement Administrator or Class Counsel, or any of their respective designees or agents (i) in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the allocation of Net Settlement Funds to Settlement Class Members or the implementation, administration, calculation or interpretation thereof; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) the payment, reporting or withholding of any taxes, tax expenses or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state or local returns; or (vi) any other acts, omissions or nonperformance of the Settlement Administrator.

XIV. MISCELLANEOUS REPRESENTATIONS

91. Plaintiffs will not make the terms of the settlement public until the Settlement Agreement is formally submitted to the Court for preliminary approval but they may communicate the fact of the settlement at the next status conference. FIC has discretion to make disclosures as necessary to comply with its legal disclosure obligations.

92. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

93. The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement, and (b) agree to cooperate in good faith to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain Final Approval of the Settlement Agreement.

94. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by the Representative Plaintiffs and the Settlement Class and other Releasers, and each or any of them, on the one hand, against the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

95. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Settlement Agreement, including its exhibits, and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

96. Any headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

97. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any prior or subsequent breach of this Agreement.

98. This Agreement and its exhibits set forth the entire Agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

99. This Agreement may not be amended, modified, altered, or otherwise changed in any material manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

100. The Parties agree that Exhibit A to this Settlement Agreement is a material and integral part thereof and is fully incorporated herein by this reference.

101. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

102. Except as otherwise provided herein, each Party shall bear its own costs.

103. Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other person or party.

104. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.

105. The Parties specifically acknowledge, agree, and admit that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations,

negotiations, correspondence, orders, or other documents shall be considered a compromise within the meaning of Illinois Rule of Evidence 408, and any other equivalent or similar rule of evidence, and shall not, (a) constitute, be construed, be offered, or received into evidence as an admission of any kind, including but not limited to any negligent, reckless or illegal action or omission or other wrongdoing, the appropriateness of class certification, the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (b) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

106. The Parties also agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement, are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.

107. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Approval Order.

108. The provisions of this Settlement Agreement, and any orders, pleadings, or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (a) to enforce the terms and provisions hereof or thereof, (b) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (c) in connection with any motion to enjoin, stay, or dispose of any other action, or (d) to obtain Court approval of the Settlement Agreement.

109. This Agreement may be executed in one or more counterparts exchanged by hand, messenger, or PDF as an electronic mail attachment, and any such signature exchanged shall be deemed an original signature for purposes of this Settlement Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement all exchange signed counterparts.

110. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

111. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

112. This Agreement is deemed to have been prepared by Counsel for the Parties as a result of arms-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement and its exhibits, it shall not be construed more strictly against one Party than another.

113. Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and shall be sent by electronic mail or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Douglas M. Werman
WERMAN SALAS P.C.
77 West Washington St.,
Suite 1402
Chicago, Illinois 60602
(312) 419-1008
dwerman@flsalaw.com

If to the Defendant's Counsel:

Anne E. Larson
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
155 North Wacker Drive, Suite 4300
Chicago, Illinois 60606
(312) 558-1220
anne.larson@ogletree.com

David J. Fish
Mara Ann Baltabols
FISH POTTER BOLAÑOS,
P.C. #218726
111 East Wacker Drive,
Suite 2300
Chicago, IL 60601
(312) 861-1800
dfish@fishlawfirm.com
mara@fishlawfirm.com

114. This Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.

In witness hereof, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

Robert Cannon, on behalf of himself and the Settlement Class

Robert Cannon

ID 71PS8enRoH4oqxiffM9c37to1

Robert Cannon, Plaintiff

Date: 1/16/2024

Tonia Lewis, on behalf of herself and the Settlement Class

Tonia Lewis

Tonia Lewis, Plaintiff

Date: 01/16/2024 17:37 UTC

CLASS COUNSEL

Douglas Werman

ID sGwm7hBPekaBxAJhfqkkNCFV

Date: 1/16/2024

Douglas M. Werman
WERMAN SALAS P.C.
77 West Washington St.,
Suite 1402
Chicago, Illinois 60602

David Fish

Date: 01/16/2024 17:38 UTC

David J. Fish
Mara Ann Baltabols
FISH POTTER BOLAÑOS, P.C.
#218726
111 East Wacker Drive, Suite 2300
Chicago, IL 60601

FIC America Corp.

Signature Name

Position

Date:

DEFENDANT'S COUNSEL

Date:

Anne E. Larson
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
155 North Wacker Drive, Suite 4300
Chicago, Illinois 60606

In witness hereof, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

Robert Cannon, on behalf of himself and the Settlement Class

Robert Cannon, Plaintiff

Date:

Tonia Lewis, on behalf of herself and the Settlement Class

Tonia Lewis, Plaintiff

Date:

CLASS COUNSEL

Date:

Douglas M. Werman
WERMAN SALAS P.C.
77 West Washington St.,
Suite 1402
Chicago, Illinois 60602

Date:

David J. Fish
Mara Ann Baltabols
FISH POTTER BOLAÑOS, P.C.
#218726
111 East Wacker Drive, Suite 2300
Chicago, IL 60601

FIC America Corp. *Scott Hollander*

Signature Name

General Counsel

Position

Date: 1-16-2024

DEFENDANT'S COUNSEL

DocuSigned by:
Anne E. Larson
308F921F0227430...

Date: 1/16/2024

Anne E. Larson
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
155 North Wacker Drive, Suite 4300
Chicago, Illinois 60606

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Robert Cannon and Tonia Lewis v. FIC America Corp., Case No. 20-L-000121,
in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County

PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU PROVIDED YOUR FINGER SCAN FOR EMPLOYEE TIMEKEEPING TO FIC AMERICA CORP. AT ANY TIME BETWEEN JANUARY 30, 2015 TO **DATE OF PRELIM APPROVAL ORDER******

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.

WHY DID I GET THIS NOTICE?

This is a court-authorized notice of a proposed Settlement in a class action lawsuit, *Robert Cannon and Tonia Lewis v. FIC America Corp.*, Case No. 20-L-000121, pending in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County. If you received this Notice, you have been identified as a member of the Settlement Class. The Court has preliminarily approved 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 explanation below so that you can better understand your legal rights.

WHAT IS THIS LAWSUIT ABOUT?

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, prohibits private entities from collecting, capturing, purchasing, receiving through trade, or otherwise obtaining, storing, selling, leasing, trading, or otherwise profiting from, disclosing, redisclosing, disseminating, or transmitting, and/or using biometric identifiers and/or biometric information, such as fingerprints, of an individual for any purpose, including timekeeping, without first providing such individual with certain written disclosures and obtaining their written consent. This lawsuit alleges that Defendant violated BIPA by requiring current and former workers to submit their fingerprint for timekeeping purposes between January 30, 2015 and ****DATE OF PRELIM APPROVAL ORDER****, without first providing the requisite disclosures or obtaining the requisite consent. Defendant FIC America Corp. (“FIC” or “Defendant”) contests these claims, denies that it violated BIPA and denies any and all liability for the claims raised in the lawsuit. Additional information can be obtained about the lawsuit by visiting the settlement website at www.ficbipasettlement.com

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.” 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.

WHY IS THERE A SETTLEMENT?

To resolve this matter without the further expense, delay, and uncertainties of litigation, the Parties have reached a Settlement, which resolves all claims against Defendant. 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 Incentive Awards to the Class Representatives, 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 the Defendant violated the law. Defendant denies that it violated BIPA and denies any and all liability for the allegations raised in the lawsuit.

WHO IS IN THE SETTLEMENT CLASS?

You are a member of the Settlement Class if, at any time between January 30, 2015, and ****DATE OF PRELIM APPROVAL ORDER****, you performed work for FIC in Illinois and had your biometric identifiers or biometric information, such as your fingerprint, allegedly collected, captured, received, obtained, maintained, stored, transmitted, or otherwise disclosed by Defendant or its agents without you first signing a consent regarding same. You will be considered a member of the Settlement Class unless you properly execute and file a timely request for exclusion from the Class as explained below.

WHAT DOES THE SETTLEMENT PROVIDE?

Cash Payments. Defendant has agreed to create a Settlement Fund for the Class Members in the gross amount of \$4,000,000.. All Settlement Class Members are entitled to receive a payment out of the Settlement Fund. If the Settlement is approved, each Settlement Class Member will be entitled to an equal payment out of the Settlement Fund, estimated to be approximately **\$750**, after payment of Court-approved attorneys' fees, costs, and Incentive Payments to the two Class Representatives. The Settlement Administrator will issue a check to each Class Member following final approval of the Settlement. All checks issued to Settlement Class Members will expire and become void 120 days after they are issued. The attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees of up to 38% of the Settlement Fund, plus reasonable costs, for the time, expense and effort expended in investigating the facts, litigating the case, and negotiating the Settlement. Each Class Representative also will apply to the Court for a payment of up to \$10,000.00 for their time, effort, and service to the Class in this matter and the Settlement Administrator will be paid for its expenses in administering the settlement.

WHAT ARE MY OPTIONS?

(1) Accept the Settlement by doing nothing.

To accept the Settlement, you do not need to do anything. If you are receiving this Notice, you are currently considered a member of the Settlement Class and will continue to be unless you exclude yourself from the Settlement.

(2) Exclude yourself.

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against Defendants and the other Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have by filing your own lawsuit against Defendant at your own risk and expense. To

exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator providing your name, address, and telephone number; the name and number of this case; a statement that you wish to be excluded from the Settlement Class; and your signature, postmarked by **[EXCLUSION DEADLINE]** to **[ADMINISTRATOR ADDRESS]**. A request to be excluded that is sent to an address other than that designated in this Notice, or that is not postmarked within the time specified, shall be invalid and you shall be considered a member of the Settlement Class and shall be bound as a Settlement Class Member by the Settlement Agreement, if approved by the Court.

(3) Object to the Settlement.

If you wish to object to the Settlement, you must submit your objection in writing to Clerk of the Court of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, 505 N. County Farm Road, Wheaton, IL 60187, specifying *Cannon, et al. v. FIC America Corp.*, Case No. 20-L-000121. The objection must be received by the Court no later than **[OBJECTION DEADLINE]**. You must also send a copy of your objection and any supporting documents to Class Counsel (address below) postmarked no later than **[OBJECTION DEADLINE]**. Any objection to the proposed Settlement must include your: (i) full name, address, and telephone number; (ii) the case name and number of this lawsuit; (iii) the date range during which you were employed by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (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 four years; and (vi) your 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 **[OBJECTION DEADLINE]**. 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 is to be held on **[FINAL HEARING DATE AND TIME]**, in person or through counsel to show cause of 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, the request for attorneys' fees and expenses, and/or the request for a service award to the Class Representatives 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.

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 any rights you may currently have to sue Defendant under BIPA. Giving up your legal claims is called a release. The precise terms of the release are in the Settlement Agreement, which is available at www.ficbipasettlement.com. Unless you formally exclude yourself from this Settlement, you will release any claims you may have against Defendant. 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.

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 finally approves the Settlement, you will be paid as soon as possible after the Court order becomes final, which should occur within approximately 105 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 can be obtained through Class Counsel at the information provided below.

WHEN WILL THE COURT RULE ON 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 Class Representative service awards that may be sought by Class Counsel. The Court will hold the Final Approval Hearing on **FINAL APPROVAL DATE / TIME!**

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. Plaintiffs, 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, , and the Plaintiffs 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.

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.

Douglas M. Werman
Werman Salas P.C.
77 West Washington St., Suite 1402 Chicago, Illinois 60602
T: (312) 419-1008 | F: 312. 419.1025 | E: info@flsalaw.com

David Fish
Mara Baltabols
Fish Potter Bolaños, P.C.
111 East Wacker Drive, Suite 2300, Chicago, IL 60601
T: 312-861-1800 | F: 331-425-7083 | E: admin@fishlawfirm.com

HOW DO I UPDATE MY CONTACT INFORMATION?

You must notify the Settlement Administrator of any changes in your mailing address so that your Settlement award will be sent to the correct address. To update your address, contact the Settlement Administrator at:

Settlement Administrator, Contact Information

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 by visiting the settlement website, www.ficbipasettlement.com, or by contacting Class Counsel. If you have any questions, you can also contact Class Counsel at the number or email address set forth above. In addition, 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.

Exhibit B

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 18TH JUDICIAL COURT
COUNTY OF DUPAGE**

ROBERT CANNON and TONIA LEWIS,)
on behalf of themselves and all other)
persons similarly situated known and)
unknown,)

Plaintiffs,)

v.)

FIC AMERICA CORP.,)

Defendant.)

Case No. 2020 L 000121

[PROPOSED] PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiffs’ Unopposed Motion and Memorandum for Preliminary Approval of Class Action Settlement (“the Motion”), the Court having reviewed and considered the Motion, the supporting Memorandum of Law and attached exhibits, including the Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”) and its attachments, and the Court being fully advised in the premises,

IT IS ORDERED AS FOLLOWS:

1. Capitalized terms not defined in this Order are defined in the Parties’ Settlement Agreement.
2. The Court finds, on a preliminary basis, that the settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.
3. The Settlement Agreement was negotiated at arm’s length between counsel for the Parties who are experienced in class action litigation.
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, a Settlement Class of the following:

All individuals who worked or are currently working for Defendant in the State of Illinois who had their Biometric Identifiers and/or Biometric Information collected, captured, received or otherwise obtained or disclosed by Defendant or its agents without first signing a written consent regarding same between January 30, 2015, and the date of the preliminary approval order.

In addition to persons who timely signed a written consent, excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the Settlement Class, and (4) the legal representatives, successors or assigns of any such excluded persons.

5. For purposes of settlement, the Court finds on a preliminary basis that the settlement and Settlement Class satisfy the requirements of Section 2-801 of the Illinois Code of Civil Procedure, specifically that: (a) the class is so numerous that joinder of all members is impracticable; (b) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (c) the representative parties will fairly and adequately protect the interests of the class; and (d) class action is an appropriate method for the fair and efficient adjudication of this controversy. 735 ILCS 5/2-801.

6. The Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in this matter in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, if the Settlement is not finally approved, and litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, this Preliminary Approval Order will be vacated in its entirety, and the Parties shall revert to their positions in the litigation as if no settlement had occurred.

7. The Court finds that distribution of notice to the proposed Settlement Class Members is justified because Plaintiffs have shown that the Court will likely be able to (i) approve the Settlement under Section 2-801 of the Illinois Code of Civil Procedure and (ii) certify the proposed class for purposes of settlement.

8. For settlement purposes only, the Court appoints Robert Cannon and Tonia Lewis as the Settlement Class Representatives and finds that they will adequately protect the interests of the Settlement Class.

9. For settlement purposes only, the Court appoints as Settlement Class Counsel David Fish and Mara Baltabols of Fish Potter Bolaños, P.C. and Douglas M. Werman of Werman Salas PC as Class Counsel. The Court finds that Class Counsel is competent, capable, and will adequately represent the interest of the Settlement Class.

10. The Court appoints Analytics Consulting LLC as the Settlement Administrator to perform all duties described in the Settlement Agreement and ordered by this Court.

11. The Court finds that distribution of the proposed Notice of Class Action Settlement (“Notice”) by mail as well as creation of a settlement website (containing Notice forms, the Settlement Agreement, the Motions for Preliminary and Final Approval of Class Settlement, Plaintiffs’ fee petition, any Q&A and all orders) are the best practicable means of providing notice under the circumstances and when completed, shall constitute due and sufficient notice of the settlement terms, the right to object, the right to exclude themselves from the Class, and of the Final Approval Hearing to all persons affected by or entitled to participate in the Settlement, in full compliance with the notice requirements of Section 2-803 of the Illinois Code of Civil Procedure, due process, the Constitution of the United States, the Illinois Constitution, and other applicable laws. The proposed Notice is accurate, objective, and informative. It provides Class

Members with all of the information necessary to protect the interests of the class and the parties, and allows the Class Members to evaluate the fairness of the settlement and to make an informed decision regarding whether to participate in the Settlement. The Class Notice meets all applicable legal requirements. The parties, by agreement, may revise the Notice in non-material ways or to update the documents for purposes of accuracy or formatting for publication.

12. Any Settlement Class Member may request to be excluded from the settlement by submitting a written request for exclusion to the Settlement Administrator as described in the Notice by **EXCLUSION DEADLINE**. A request for exclusion that does not include all of the information required by the Notice or that is not postmarked and sent via U.S. Mail by the Exclusion Deadline will be invalid and the person will be deemed to remain a Settlement Class Member and bound by the Settlement Agreement, if approved.

13. Any Settlement Class Member who excludes himself or herself from the settlement will not be entitled to any recovery under the settlement and will not be bound by the settlement or have any right to object, appeal, or comment on it.

14. Any Settlement Class Member who does not request to be excluded from the Settlement may object to the settlement by filing his or her objection, the specific grounds for said objection, supporting documentation and all papers to be presented to the Court at the Final Approval Hearing (as more thoroughly described below) with the Clerk of the Court and by delivering timely-postmarked copies of said objection to Class Counsel and the Settlement Administrator by **OBJECTION DEADLINE**. Any such objection must comply with the requirements set forth in the Settlement Agreement, including by providing: (i) their full name, address, and current telephone number; (ii) the case name and number of this action; (iii) the date range during which he/she was employed or engaged by FIC in Illinois; (iv) all grounds for the

objection, with factual and legal support for the stated objection, including any supporting materials; (v) 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 five years; and (vi) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name, address, email address and telephone number of his or her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, they must state as such in the written objection, and must also identify any witnesses they may call to testify at the Final Approval Hearing and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection. All written objections must be served on Class Counsel, who will promptly provide a list of the written objections and supporting documentation to defense counsel. Failure to timely object in compliance with these requirements will waive any objections to the settlement.

15. Settlement Class Members and other Releasors shall be bound by all determinations and orders pertaining to the Settlement, including the release of the Releasees from all Released Claims as set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement in a timely and proper manner as provided herein. Settlement Class Members who do not timely and validly request exclusion shall be bound by the Settlement, including the release of all Released Claims, even if they have previously initiated or subsequently initiate litigation or other proceedings against Defendants or Releasees for any Released Claims.

16. Class Counsel may file any motion seeking an award of attorneys' fees and costs not to exceed 38% of the Settlement Fund in attorneys' fees, plus their reasonable costs and

expenses, as well as a Service Award to each of the Named Plaintiffs no later than seven (7) days prior to the Final Approval Hearing.

17. All papers in support of the final approval of the proposed Settlement shall be filed no later than seven (7) days prior to the Final Approval Hearing.

18. The Court schedules a Final Approval Hearing for _____, 2024 at ___:___ a.m./p.m. to consider, among other things, (1) whether to finally approve the settlement and whether it is fair, reasonable, and adequate; (2) whether to approve Class Counsel's request for attorney fees and litigation costs; (3) whether to approve the Settlement Administrator's costs; (4) whether to approve the Class Representatives' request for an Incentive Award; and (5) whether a judgment and order of dismissal with prejudice should be entered. Settlement Class Members may, but are not required to, appear at the Final Approval Hearing and request to speak in favor or against the settlement.

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

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

21. 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.

22. If the Settlement Agreement fails to become effective, is overturned on appeal, or does not become final for any reason, the parties shall be restored to their respective positions in this action as of the date preceding the signing of the Settlement Agreement.

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

Class List Sent to Administrator: _____

Notice to be completed by: _____

Objection Deadline: _____

Exclusion Request Deadline: _____

Final Approval Submissions: _____

Final Approval Hearing: _____

IT IS SO ORDERED.

ENTERED: _____

Judge