

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

MARCUS MCCULLUM, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

IKO MIDWEST, INC.,

Defendant,

Case No.: 2020 CH 05114

PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiff's Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (the "Motion"), the Court having reviewed in detail and considered the Motion and Memorandum in support of the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiff, Marcus McCullum ("Plaintiff" or "Class Representative") and Defendant, IKO Midwest, Inc. ("Defendant") (together, "the Parties"), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. Subject to the modifications herein, the terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find

that the Settlement Agreement was negotiated at arms-length between the Parties, who were represented by experienced counsel.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure — including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims — have been preliminarily satisfied.

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

All individuals who used a hand scan or finger scan for timekeeping purposes at Defendant's facility after July 24, 2015 within the state of Illinois and did not provide written consent in advance.

5. For settlement purposes only, Plaintiff Marcus McCullum is hereby appointed as Class Representative.

6. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

David Fish
Mara Baltabols
Fish Potter Bolaños, P.C.
200 East Fifth Avenue, Suite 123
Naperville, Illinois 60563

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and litigation resumes, this Court's preliminary findings regarding the propriety of class

certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Notice, attached to the Settlement Agreement as Exhibit A finds that it meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfy Due Process.

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

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

11. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement do not need to take any affirmative action to claim their pro rata share of the Settlement Fund.

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

14. The terms of the Settlement Agreement are preliminarily approved, with the following modifications:

Paragraph 29 of the Settlement Agreement is modified to read: "Released Claims" shall mean any and all claims reasonably arising out of the Class Action Complaint in this lawsuit, or which could have been brought in this lawsuit, including allegations that Defendant improperly collected, stored, used, or transferred workers' biometric identifiers and information, including but not limited to claims arising under the Biometric Information Privacy Act, and all other related federal, state, and local law, including the common law, as well as related claims for liquidated or other damages, penalties, attorneys' fees and costs, expenses, and interest.

Paragraph 40 of the Settlement Agreement is modified to read: Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of the Releasors, all claims reasonably arising out of the Class Action Complaint in this lawsuit, and those claims which could have been brought in this lawsuit, including allegations that Defendant improperly collected, stored, used, or transferred workers' biometric identifiers and information, including but not limited to claims arising under the Biometric Information Privacy Act, and all other related federal, state, and local law, including the common law, as well as related claims for liquidated or other damages, penalties, attorneys' fees and costs, expenses, and interest.

15. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request in a written exclusion request. Such exclusion requests must be received by the Settlement Administrator in written form, by first class mail, postage prepaid, and postmarked, no later than **May 9, 2022**.

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

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

18. The Court preliminarily approves the Jewish Federation of Metropolitan Chicago and Prairie State Legal Services as the *cy pres* recipients, including a distribution of 50% of uncashed funds to each as set forth in the Settlement Agreement.

19. Class Counsel may file any motion seeking an award of attorneys' fees plus their reasonable costs and expenses, as well as an Incentive Award of five thousand dollars and zero cents (\$5,000.00) for the Class Representative, no later than **June 15, 2022**. The Court reserves a decision on the amount of attorney fees until the Final Approval Hearing.

20. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intend to seek and the payment of the Incentive Award to the Class Representative, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 21 of this Order, with the Clerk of the Court, and served upon the Settlement Administrator no later than **May 9, 2022**.

21. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) their full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range during which they 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 they have filed, or have had filed on their behalf, in any other class action cases in the last four years; and (vi) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order may be deemed to have waived, and forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of an Incentive Award, and to the Final Approval Order and the right to appeal same.

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

23. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, may be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and may be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

24. All papers in support of the final approval of the proposed settlement shall be filed no later than seven (7) before the Final Approval Hearing.

25. A hearing (the “Final Approval Hearing”) shall be held before the Court on **June 22, 2022 at 2:00 p.m.** (or at such other time or location as the Court may without further notice direct)

25. The Final Approval Hearing will take place virtually via Zoom Videoconference. Please use the following information to join the hearing:

Link and Log in Information:

<https://circuitcourtofcookcounty.zoom.us/j/92896632736?pwd=cS9PaEQyOFFka0Fwdjd3NXgyd253UT09>

Meeting ID: 928 9663 2736

Password: 813107

If a party is unable to sign on to Zoom with a computer or smartphone, a party may also dial in to the hearing, similar to a conference call.

If calling from the Chicagoland area, dial 312-626-6799. Then, when prompted, enter the Zoom Meeting ID (928 9663 2736), and follow prompts as appropriate. If you are not calling from the Chicagoland area, please contact Chambers at ccc.chancerycalendar11@cookcountyil.gov or (312) 603-6034 for the dial-in number you are to use to join the hearing.

26. The Final Approval Hearing will be held for the following purposes:
- (a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;
 - (b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;
 - (c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;
 - (d) to consider the application for an award of attorneys’ fees, costs and expenses of Class Counsel;

(e) to consider the application for an Incentive Award to the Class Representative;

(f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

(g) to rule upon such other matters as the Court may deem appropriate.

27. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class, other than by posting on the Settlement Website www.firmlawfirm.com/IKO. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

29. Settlement Class Members do not need to appear at the Final Approval Hearing, unless they object, or take any other action to indicate their approval.

30. All discovery and other proceedings in the Litigation as between Plaintiff 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.

IT IS SO ORDERED.

ENTERED:



Honorable Judge Pamela McLean Meyerson

Judge Pamela McLean Meyerson

Date

MAR 09 2022

Circuit Court - 2097