

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

ANTHONY GORDON individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Case No.: 2019 L 144

IFCO SYSTEM US, LLC, a Delaware limited
liability company, and MTIL, INC., a California
corporation

Defendants,

STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement is entered into by and among Plaintiff Anthony Gordon (“Gordon” or “Plaintiff”), for himself individually and on behalf of the Settlement Class, and Defendant IFCO System US, LLC (“IFCO”)¹ (Plaintiff and IFCO are referred to individually as a “Party” and collectively referred to as the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof, and is subject to the approval of the Court.

RECITALS

A. Plaintiff filed a putative class action complaint against IFCO and MTIL, Inc. in this Court, alleging a claim for damages and an injunction under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* (“BIPA”), related to the alleged unauthorized collection, storage, and dissemination of finger-scans.

¹This Agreement expressly does not include MTIL, Inc.

B. Following the filing of the lawsuit, the Parties to this Agreement began discussing the potential for a classwide settlement and exchanged information on the underlying facts of the case and the size of the class. After considerable arms-length negotiations, the Parties were able to reach agreement on the terms of a class-wide settlement.

C. Plaintiff and Class Counsel conducted an examination of the law and facts relating to the allegations in the complaint and IFCO's potential defenses. Plaintiff believes that each claim asserted in the Action has merit, that Plaintiff would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class, and that Plaintiff would have prevailed on the merits at summary judgment or at trial. But Plaintiff and Class Counsel recognize that IFCO has raised factual and legal defenses in the Action that presented a risk that Plaintiff may not prevail and/or that a Class might not be certified for trial. Class Counsel have also taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulty and delay inherent in such litigation. This Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and barred pursuant to the terms and conditions set forth in this Settlement Agreement.

D. IFCO denies and continues to deny all allegations of wrongdoing and liability and denies all material allegations in the Complaint. Despite IFCO's beliefs that it is not liable for and has good defenses to the claims alleged in the Action, IFCO has similarly concluded that this Settlement Agreement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the substantial risk posed by the Class's claims for liquidated damages. IFCO thus desires to resolve finally and completely the pending and potential claims of Plaintiff

and the Settlement Class. Neither this Settlement Agreement, nor any negotiation or discussion thereof, is or may be deemed to be or may be used as an admission of or evidence of any wrongdoing or liability.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and IFCO that, subject to the Court after a hearing as provided for in this Settlement Agreement, and in consideration of the benefits flowing to the Parties from the Settlement Agreement set forth herein, the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Settlement Agreement.

AGREEMENT

1. DEFINITIONS

As used herein, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1.1 “**Action**” means the case captioned *Anthony Gordon v. IFCO, Inc. et al*, Case No. 2019-L-144 (Will Cty.).

1.2 “**Agreement**” or “**Settlement Agreement**” means this Stipulation of Class Action Settlement.

1.3 “**Class Counsel**” means attorneys John Kunze and David Fish of The Fish Law Firm, P.C.

1.4 “**Class Representative**” means the named Plaintiff in the Action, Anthony Gordon.

1.5 “**Court**” means the Circuit Court of Will County, Illinois, the Honorable Raymond Rossi presiding, or any judge who shall succeed him as the Judge assigned to the Action.

1.6 **“IFCO” or “Defendant”** means IFCO System US, LLC.

1.7 **“IFCO’s Counsel” or “Defendant’s Counsel”** means Baker & Hostetler LLP.

1.8 **“Effective Date”** means one business day following the later of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Judgment; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Final Judgment.

1.9 **“Escrow Account”** means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class Counsel and IFCO at a depository institution insured by the Federal Deposit Insurance Corporation. The money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (a) demand deposit accounts and/or (b) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. Any interest earned on the Escrow Account shall inure to the benefit of the Settlement Class as part of the Settlement Payment, if practicable. The Settlement Administrator shall be responsible for all tax filings with respect to the Escrow Account.

1.10 **“Fee Award”** means the amount of attorneys’ fees and reimbursement of costs to Class Counsel awarded by the Court to be paid out of the Settlement Fund.

1.11 **Final Approval Hearing**” means the hearing before the Court where the Parties will request that the Final Judgment be entered by the Court finally approving the Settlement Agreement as fair, reasonable and adequate, and approving the Fee Award and the incentive award to the Class Representative.

1.12 **Final Judgment**” means the final judgment to be entered by the Court approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing.

1.13 **Notice**” means the notice of this proposed settlement of the Action and Final Approval Hearing, which is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, fulfills the requirements of Due Process and 735 ILCS 5/2-801, and is substantially in the form of Exhibits A, B and C attached hereto.

1.14 **Notice Date**” means the date upon which the Notice is first disseminated to the Settlement Class, which shall be a date no later than twenty-eight (28) days after entry of Preliminary Approval.

1.15 **Objection/Exclusion Deadline**” means the date by which a written objection to the Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be filed with the Court and/or postmarked, which shall be designated as a date forty two (42) days after the Notice Date, as approved by the Court. The Objection/Exclusion Deadline will be set forth in the Notice.

1.16 **Plaintiff**” means the named Plaintiff in the Action, Anthony Gordon.

1.17 **Preliminary Approval**” means the Court’s Order preliminarily approving the Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice.

1.18 **Released Claims**” means any and all actual, potential, filed, unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and/or obligations (including “Unknown Claims” as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on BIPA or other federal, state, local, statutory or common law or any other law, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of or relating to the facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged possession, collection, capture, purchase, receipt through trade, obtaining, sale, lease, trade, profit from, disclosure, redisclosure, dissemination, storage, transmittal, and/or protection from disclosure of allegedly biometric information including all claims that were brought or could have been brought in the Action relating to such allegedly biometric information and/or finger-scans belonging to any and all Releasing Parties.

1.19 **“Released Parties”** means IFCO and all of its present or former heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, holding companies, investors, sister and affiliated companies, divisions, associates, affiliated and related entities, employers, employees, agents, representatives, consultants, independent contractors, directors, managing directors, officers, partners, principals, members, attorneys, vendors, accountants, fiduciaries, financial and other advisors, investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors, investment advisors, and any and all present and former companies, firms, trusts, corporations, officers, directors, other

individuals or entities in which IFCO has a controlling interest or which is affiliated with any of them, or any other representatives of any of these persons and entities, as well as all persons acting by, through, under or in concert with any of these persons or entities. It, however, shall expressly be defined to exclude MTIL, Inc. or any of MTIL, Inc.'s agents; the Plaintiff and the putative class preserves and retains all claims against MTIL, Inc. and its agents.

1.20 **"Releasing Parties"** means Plaintiff and Settlement Class Members and their respective present or past heirs, executors, estates, administrators, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

1.21 **"Settlement Administration Expenses"** means the expenses incurred by the Settlement Administrator in or relating to administering the Settlement, providing Notice, mailing checks for Settlement Payments, and other such related expenses, with all such expenses to be paid from the Settlement Fund.

1.22 **"Settlement Administrator"** means Simpluris subject to approval of the Court, which will provide the Notice and sending of Settlement Payments to Settlement Class Members and other requested duties.

1.23 **"Settlement Class"** means the 206 IFCO employees who used timekeeping technology that utilized a scan of a portion of the Plaintiff's and the other Settlement Class Members' fingers for timekeeping purposes in the State of Illinois between February 8, 2014 and March 2016, and whose Employee ID is included on the Bolingbrook RPC January 2014-March 2016 Excel Spreadsheet that was exchanged by the Parties. Excluded from the Settlement Class are (a) any Judge presiding over this action and members of their families; (b) IFCO, IFCO's subsidiaries, parent companies, successors, predecessors, and any entity in which IFCO or its

parents have a controlling interest and their current or former officers, directors and employees;

(c) persons who properly execute and file a timely request for exclusion from the Settlement Class;

(d) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; and (e) counsel for all Parties and members of their families.

1.24 “**Settlement Class Member**” or “**Class Member**” means a person who falls within the definition of the Settlement Class and who does not submit a valid request for exclusion from the Settlement Class.

1.25 “**Settlement Fund**” means the amount paid by IFCO into the Escrow Account. IFCO shall within twenty-one days of entry of the Final Judgment and receipt of payee instructions and a Form W-9 for the payee (if required) pay into the Escrow Account an amount equal to and no greater than Two Hundred Twenty-Seven Thousand Five Hundred Dollars (\$227,500.00). In no event shall any amount paid by IFCO into the Escrow Account revert to IFCO.

1.26 “**Settlement Payment**” means a *pro rata* portion of the Settlement Fund less any Fee Award, incentive award to the Class Representative, and Settlement Administration Expenses.

1.27 “**Unknown Claims**” means claims that could have been raised in the Action and that Plaintiff, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, to object or not to object to the settlement of the Action. Upon the Effective Date, Plaintiff, the Settlement Class, and the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Plaintiff, the Settlement Class, and the Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown

Claims they may have, as that term is defined in this Section.

2. SETTLEMENT RELIEF

2.1 Settlement Payments to Settlement Class Members.

a. The Settlement Administrator shall send each Settlement Class Member a Settlement Payment by check within twenty-eight (28) days of the Effective Date via First Class U.S. Mail to their last known mailing address, as updated through the NCOA database if necessary by the Settlement Administrator.

b. All Settlement Payments will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance.

c. To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void, and such funds

shall be distributed to the Illinois Bar Foundation pursuant to 735 ILCS 5/2-807(b), subject to approval of the Court.

d. In no event shall any amount paid by IFCO into the Escrow Account revert to IFCO.

2.2 Prospective Relief. IFCO agrees that in the event it employs people in Illinois and utilizes a biometric device of any sort, it shall implement the following policies and procedures, which shall remain in effect for a period of three (3) years after the Effective Date, for its Illinois employees or independent contractors:

a. IFCO shall establish a written policy, made available to the public, creating a retention schedule and guidelines for permanently destroying “biometric identifiers” and “biometric information,” as those terms are defined by BIPA, when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three (3) years of the individual’s last interaction with IFCO, whichever occurs first;

b. IFCO shall destroy all “biometric identifiers” and “biometric information” of former employees and former independent contractors within its possession, except where as otherwise provided by law;

c. IFCO shall inform in writing all persons whose “biometric identifiers” or “biometric information” it collects that (i) a “biometric identifier” or “biometric information” is being collected or stored; and (ii) of the specific purpose and length of term for which the “biometric identifier” or “biometric information” is being collected, stored, or used; and

d. IFCO shall obtain a written release, from all persons whose “biometric identifiers” or “biometric information” it collects, captures, purchases, receives through

trade, or otherwise obtains, to collect those persons' "biometric identifiers" or "biometric information."

3. RELEASE

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief described herein, the Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Judgment shall have, fully, finally, and forever, released, relinquished and discharged all Released Claims against each and every one of the Released Parties. As of the Effective Date, all Releasing Parties will be forever barred and enjoined from prosecuting any action against the Released Parties asserting any and/or all Released Claims. Each Releasing Party waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.

4. NOTICE TO THE CLASS

4.1 The Notice shall include:

a. *Class List.* IFCO shall provide the Settlement Administrator and Class Counsel a list of all names, e-mail addresses (if known), and telephone numbers (if known) and last known U.S. mail addresses of all persons in the Settlement Class (the "Class List") as soon as practicable, but by no later than twenty-one (21) days after the execution of this Agreement. The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity, mailing, and e-mail addresses of all persons strictly confidential. The Class List may not be used by the Settlement Administrator for any purpose other than advising specific individual Settlement Class Members of their rights, mailing Settlement Payments, and otherwise effectuating the

terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement. Class Counsel may contact the persons on the Class List relating to the Action.

b. *Direct Notice.* No later than the Notice Date, the Settlement Administrator shall send Notice via e-mail substantially in the form attached as Exhibit A to all persons in the Settlement Class for whom an email address is available on the Class List. In addition, the Settlement Administrator shall, no later than thirty (30) days after the entry of Preliminary Approval, send a postcard notice via First Class U.S. Mail substantially in the form attached as Exhibit B, to each physical address in the Class List.

c. *Internet Notice.* Within ten (10) days after the entry of Preliminary Approval, Class Counsel will post on its Internet site this Agreement and the details of the Class settlement.

4.2 The Notice shall advise the Settlement Class of their rights under the Settlement Agreement, including the right to be excluded from or object to the Settlement Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making an objection shall file notice of his or her intention to do so and at the same time (a) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court, (b) file copies of such papers through the Court's electronic filing system, and (c) send copies of such papers via mail, hand, or overnight delivery service to Class Counsel and IFCO's Counsel.

4.3 Right to Intervene and Object or Comment. Any member of the Settlement Class who intends to intervene and object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Member's full name and current address, (b) a statement that he or she believes himself or herself to be a member of the Settlement Class, (c) the specific grounds for the objection, with factual and legal support for the stated objection, including any supporting materials, (d) all documents or writings that the Settlement Class Member desires the Court to consider, (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (f) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed with the Court and postmarked, e-mailed or delivered to Class Counsel and IFCO's Counsel no later than the Objection/Exclusion Deadline. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

4.4 Right to Request Exclusion. Any Person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be valid, any request for exclusion must (a) be in writing; (b) identify the case name *Anthony Gordon*

v. *IFCO, Inc. et al*, Case No. 2019-L-144 (Will Cty.); (c) state the full name and current address of the Person in the Settlement Class seeking exclusion; (d) be physically signed by the Person(s) seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. Each request for exclusion must also contain a statement to the effect that “I/We hereby request to be excluded from the proposed Settlement Class in *Anthony Gordon v. IFCO, Inc. et al*, Case No. 2019-L-144 (Will Cty.).” A request for exclusion that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice, or that is not postmarked or delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any Person who elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or Final Judgment entered in the Action, (b) receive a Settlement Payment under this Settlement Agreement, (c) gain any rights by virtue of this Settlement Agreement, or (d) be entitled to object to any aspect of this Settlement Agreement. No Person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

5. SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator’s Duties.

a. *Dissemination of Notices.* The Settlement Administrator shall disseminate the Settlement Class Notice as provided in Section 4 of this Settlement Agreement.

b. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class

Counsel and IFCO's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and IFCO's Counsel with information concerning Notice, administration and implementation of the Settlement Agreement.

c. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from Persons in the Settlement Class and provide to Class Counsel and IFCO's Counsel a copy thereof within five (5) days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the deadline for the submission of requests for exclusion, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and IFCO's Counsel.

d. *Creation of Toll Free Telephone Number.* The Administrator shall include a toll-free telephone number and mailing address through which Settlement Class Members may contact Class Counsel directly.

e. *Timing of Settlement Payments.* The Settlement Administrator shall make all Settlement Payments contemplated in Section 2 of this Settlement Agreement by check and mail them to Settlement Class Members within twenty-eight (28) days after the Effective Date.

6. PRELIMINARY APPROVAL AND FINAL APPROVAL

6.1 Preliminary Approval. Promptly after execution of this Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court and shall move the Court to enter an

order granting Preliminary Approval, which shall include, among other provisions, a request that the Court:

- a. Appoint Plaintiff as Class Representative of the Settlement Class;
- b. Appoint Class Counsel to represent the Settlement Class;
- c. Certify the Settlement Class under 735 ILCS 5/2-801 *et seq.* for settlement purposes only;
- d. Preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Class;
- e. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Class; and
- f. Schedule a Final Approval Hearing to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness and adequacy, to consider whether the Court shall issue a Final Judgment approving this Settlement Agreement, to consider Class Counsel's application for the Fee Award and the incentive award to the Class Representative, and to dismiss the Action with prejudice.

6.2 Final Approval. At least fourteen days prior to the Final Approval Hearing, Class Counsel shall move the Court for entry of a Final Judgment, the text of which the Parties shall agree upon, which shall include, among other provisions, a request that the Court:

- a. find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement, including all attached Exhibits;
- b. approve the settlement of the Action as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their

counsel to implement and consummate the Settlement Agreement according to its terms and conditions; and declare the Settlement Agreement to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members and Releasing Parties;

c. find that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of Due Process and 735 ILCS 5/2-801;

d. find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

e. dismiss the Action on the merits and with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement, and waiving any rights of appeal;

f. incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

g. permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other

action in any jurisdiction based on the Released Claims but that specifically shall not include any claim not released against MTIL;

h. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all Exhibits to this Settlement Agreement) that (i) shall be consistent in all material respects with the Final Judgment, and (ii) do not limit the rights of Settlement Class Members;

i. without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

j. incorporate any other provisions, consistent with the material terms of this Settlement Agreement, as the Court deems necessary and just.

6.3 Cooperation. The Parties shall, in good faith, cooperate, assist and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

7. TERMINATION OF THE SETTLEMENT AGREEMENT

7.1 Termination. Subject to Section 9 below, the Class Representative, on behalf of the Settlement Class, or IFCO, shall have the right to terminate this Agreement by providing written notice of the election to do so to all other Parties hereto within ten (10) days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant Final Approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the

date upon which the Final Judgment is modified or reversed in any material respect by the appellate court or the Supreme Court; or (v) the date upon which an Alternative Judgment, as defined in Section 9.1 of this Agreement, is modified or reversed in any material respect by the appellate court or the Supreme Court.

8. INCENTIVE AWARD AND CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

8.1 IFCO agrees that Class Counsel is entitled to reasonable attorneys' fees and unreimbursed expenses incurred in or related to the Action as the Fee Award. The amount of the Fee Award shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed, with no consideration from IFCO, to limit their request for attorneys' fees and unreimbursed costs to thirty-five percent (35%) of the Settlement Fund. Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund and be distributed to Settlement Class Members.

8.2 The Fee Award shall be payable within five (5) business days after the deadline set forth in Section 1.25.

8.3 IFCO agrees that the Class Representative shall be paid an incentive award in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) from the Settlement Fund, in addition to any Settlement Payment pursuant to this Settlement Agreement and in recognition of Plaintiff's efforts on behalf of the Settlement Class, subject to Court approval. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Escrow Account and be distributed to Settlement Class Members. Any award shall be paid from the Escrow Account (in the form of a

check to the Class Representative that is sent care of Class Counsel), within five (5) business days after the deadline set forth in Section 1.25.

8.4 In no event will Defendant's liability for attorneys' fees, expenses, and costs, Settlement Administration Expenses, and/or an incentive award exceed the funding obligations set out in this Agreement. Defendants shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Defendants 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. Defendants will have no responsibility, obligation, or liability for allocation of fees and expenses among Class Counsel.

8.5 Tax Liability. The Parties take complete responsibility for their respective tax liability from the payment or receipt of all or any portion of the Settlement Fund and shall not take any action to cause the other to incur any unanticipated tax liability.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

9.1 The Effective Date shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs:

- a. This Agreement has been signed by the Parties, Class Counsel and IFCO's Counsel;
- b. The Court has entered an order granting Preliminary Approval of the Agreement;

c. The Court has entered an order finally approving the Agreement, following Notice to the Settlement Class and a Final Approval Hearing, and has entered the Final Judgment, or a judgment substantially consistent with this Settlement Agreement; and

d. In the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) to which the Parties have consented, that Alternative Judgment has become final and unappealable.

9.2 If some or all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to Section 9.3, unless Class Counsel and IFCO’s Counsel mutually agree in writing to proceed with this Settlement Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties.

Notwithstanding anything herein, the Parties agree that the Court’s decision as to the amount of the Fee Award to Class Counsel set forth above or the incentive award to the Class Representative, or any proceedings incident thereto, including any appeal thereof, regardless of the amounts awarded, shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

9.3 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall

be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into, and the Parties will negotiate in good faith to establish a new schedule for the Action.

9.4 For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Settlement Class shall be conditionally certified in accordance with the definition and on the terms contained above, that Plaintiff shall be conditionally appointed Class Representative, and that Plaintiff's Counsel shall be conditionally appointed as Class Counsel. If for any reason the Settlement Agreement is not granted Preliminary and/or Final Approval, IFCO'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.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate 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 Settlement Agreement. Class Counsel and IFCO's Counsel agree to cooperate with one another in seeking entry of an order granting Preliminary Approval of this Agreement and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

10.2 Each signatory to this Agreement represents and warrants (a) that he, she, or it has all requisite power and authority to execute, deliver and perform this Settlement

Agreement and to consummate the transactions contemplated herein, (b) that the execution, delivery and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory, and (c) that this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

10.3 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 Plaintiff and the Settlement Class, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by IFCO, or each or any of them, in bad faith or without a reasonable basis.

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

10.5 Whether the Effective Date occurs or this Settlement Agreement is terminated, neither this Settlement Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the settlement:

- a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiff,

the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

b. is, may be deemed, or shall be used, offered or received against IFCO as, an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

c. is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact alleged by IFCO, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

d. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal;

e. is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

f. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.6 Notwithstanding Section 10.5, 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) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (c) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (d) in connection with any motion to enjoin, stay, or dismiss any other action, or (e) to obtain Court approval of the Settlement Agreement.

10.7 Except as provided herein, there shall be no comments made to the press or any other similar disclosure by or through the Parties or their attorneys or agents comprising opinions as to the Action by Plaintiff and Class Counsel and Defendant and IFCO's counsel regarding the settlement of the Action. This Section shall not be construed to limit or impede the notice requirements of Section 4 above, nor shall this Section be construed to prevent Class Counsel or IFCO from notifying or explaining to potential Settlement Class Members of this case and that it has settled, nor shall this Section limit the representations that the Parties or their attorneys may make to the Court to assist in its evaluation of the proposed Settlement Agreement. A Party may also provide necessary and

accurate information about the settlement to its shareholders and other persons or entities as required by securities laws or other applicable laws or regulations.

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

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

10.10 All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

10.11 This Settlement 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 Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.12 Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action except that if IFCO fails to timely make the settlement payment required herein after notice and a 5 day opportunity to cure, then Plaintiff's counsel shall be entitled to reasonable attorney fees and costs incurred in enforcing this Agreement.

10.13 Plaintiff represents and warrants that Plaintiff has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other Person or party and that she is fully entitled to release the same.

10.14 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

10.15 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Settlement Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.16 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

10.17 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to the conflicts of laws provisions thereof.

10.18 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Whereas all Parties

have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.

10.19 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.

10.20 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.

10.21 If any provision of this Agreement or any part of any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such shall not affect the validity of any other provision(s) or part(s) of this Agreement.

10.22 Where this Settlement Agreement requires notice to the Parties, such notice shall be in writing and sent by electronic mail or hand delivery, postage prepaid, as follows:

If to Class Counsel:

David Fish
dfish@fishlawfirm.com
John Kunze
jkunze@fishlawfirm.com
The Fish Law Firm, P.C.
200 E. 5th Ave., Suite 123
Naperville, IL 60563

If to IFCO's Counsel:

John McIlwee
jmcilwee@bakerlaw.com
Baker & Hostetler, LLP
One North Wacker Drive, Suite 4500
Chicago, Illinois 60606-2841

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

ANTHONY GORDON

Dated: _____

By (signature): _____

Name (printed): Anthony Gordon

THE FISH LAW FIRM PC

Dated: _____

By (signature): _____

Name (printed): David Fish

IFCO SYSTEM US, LLC

Dated: May 28, 2019

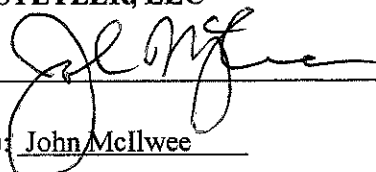
By (signature): 

Name (printed): Shawn Galey

Its (title): Vice President

BAKER & HOSTETLER, LLC

Dated: 5/28/19

By (signature): 

Name (printed): John McIlwee

05/23/2019
Dated: _____

ANTHONY GORDON

By (signature) Anthony Gordon

Name (printed): Anthony Gordon

05/23/2019
Dated: _____

THE FISH LAW FIRM PC

By (signature): DF

Name (printed): David Fish

Dated: _____

IFCO SYSTEM US, LLC

By (signature): _____

Name (printed): _____

Its (title): _____

Dated: _____

BAKER & HOSTETLER, LLC

By (signature): _____

Name (printed): John McIlwee

Exhibit A

[4.25 x 6 postcard notice –]

<p style="text-align: center;"><u>LEGAL NOTICE</u></p> <p style="text-align: center;">If you are a current or former IFCO SYSTEMS employee and used finger-scanning option to clock in at its Bolingbrook, Illinois location a class action settlement may affect your rights.</p> <p style="text-align: center;">An Illinois State Court authorized this notice. You are <u>not</u> being sued. This is <u>not</u> a solicitation from a lawyer.</p> <p style="text-align: center;"><i>For complete information, visit <u>www.fishlawfirm.com/to be determined/</u></i></p>	<div data-bbox="779 420 950 493"><p>IFCO SYSTEMS Fingerprint Settlement [admin address]</p></div> <div data-bbox="1039 420 1177 556"><p>Fir st-Class Mail U S Postage Pa</p></div> <div data-bbox="779 609 1120 829"><p><<BARCODE>> Postal Service: Please do not mark barcode.</p><p><<FIRST>><<LAST>> <<CO>> <<ADDR1>><<ADDR2>> <<CITY>><<ST>><<ZIP>> <<COUNTRY>></p></div>
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A settlement has been reached in a class action lawsuit between *IFCO Systems US, LLC* ("IFCO") and some of its current and former Illinois employees. The lawsuit alleges that IFCO violated an Illinois law called the Biometric Information Privacy Act ("BIPA") by collecting Illinois employees' fingerprints on time clocks in Illinois without obtaining their informed written consent. IFCO denies any wrongdoing and maintains that it has not violated any laws. The settlement does not establish who is correct, but rather is a compromise to end the lawsuit and avoid the uncertainties and expenses associated with ongoing litigation. The lawsuit is called *Anthony Gordon v. IFCO SYSTEMS US, LLC and MTIL*, 2019 L 144.

How do I know if I am a Class Member? The Settlement Class includes all current and former employees of IFCO who worked at facilities in the State of Illinois and used IFCO's biometric time clock finger-scanning option between February 8, 2014 and March 2016. Our records indicate that you may be a Settlement Class member.

What can I get out of the settlement? If you're eligible and the Court approves the settlement, a check will automatically be mailed to you for approximately \$700 if you are a class member which accounts for payment of the costs—if approved by the Court—of administrative expenses and legal fees. The settlement also requires IFCO to comply with the BIPA in the future.

What are my options? You can do nothing, comment on, or object to any of the settlement terms, or exclude yourself from the settlement. If you do nothing, you will receive a payment, and you won't be able to sue IFCO and certain related companies in a future lawsuit about the claims addressed in the settlement. If you exclude yourself, you won't get a payment but you'll keep your right to sue IFCO on the issues the settlement concerns. You must contact the settlement administrator by mail to exclude yourself. You can also object to the settlement if you disagree with any of its terms. ***All Requests for Exclusion and Objections must be received by [objection/exclusion deadline].***

Do I have a lawyer? Yes. The Court has appointed lawyers from The Fish Law Firm, PC in Naperville as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that IFCO agreed to pay to the class members. You can hire your own lawyer, but you'll need to pay that lawyer's legal fees if you do. The Court has also chosen Anthony Gordon—a class member like you—to represent the Settlement Class.

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] before the Honorable _____ Joliet, Illinois. The Court will hear objections, determine if the settlement is fair, and consider Class Counsel's request for fees of up to 35% plus expenses of the amounts recovered for each class member and an incentive award of \$7,500.

Visit www.fishlawfirm.com/tobedetermined.com for complete information.

Exhibit B

Class List

Employee ID

Z0001378
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Z0001507
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