

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Illinois Central Railroad Company (“Defendant” or “ICRC”) and Richard Rogers (“Plaintiff”), individually and on behalf of the Settlement Class, in the case of *Rogers v. Illinois Central Railroad Company*, No. 2019-CH-05129, currently pending in the Circuit Court of Cook County, Illinois, Chancery Division before the Honorable Cecilia A. Horan, and formerly pending in U.S. District Court for the Northern District of Illinois before the Honorable Chief Judge Rebecca Pallmeyer, No. 19-CV-03647 (the “Litigation”). Defendant and Plaintiff are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

I. FACTUAL BACKGROUND AND RECITALS

1. On April 22, 2019, Plaintiff Richard Rogers filed a class action lawsuit against CN Transportation Limited, an affiliate of Defendant’s parent company, alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1, *et seq.* (“BIPA”), in the Circuit Court of Cook County, Illinois, where it was assigned to the Honorable Sanjay T. Tailor.
2. On May 31, 2019, CN Transportation Limited timely removed the Litigation to the United States District Court for the Northern District of Illinois, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. The case was assigned to the Honorable Rebecca R. Pallmeyer and captioned *Rogers v. CN Transportation Limited*, No. 19-cv-03647.
3. On June 28, 2019, CN Transportation Limited filed a Motion to Dismiss Plaintiff’s Complaint. (Dkt. 11). On July 26, 2019, Plaintiff filed his First Amended Complaint, dismissing CN Transportation Limited from this Litigation and naming Illinois Central Railroad Company, its parent company Canadian National Railway Company, and Remprex, LLC as defendants. (Dkt. 19).
4. On September 30, 2019, Remprex, LLC and Illinois Central Railroad Company moved to dismiss Plaintiff’s First Amended Complaint. (Dkts. 38, 41-42). On November 8, 2019, Canadian National Railway Company moved to dismiss Plaintiff’s First Amended Complaint. (Dkts. 53-54).
5. On November 14, 2019, pursuant to Fed. R. Civ. P. 14(a), Plaintiff dismissed Remprex, LLC and Canadian National Railway Company from this Litigation. (Dkt. 56).
6. Following full briefing on Illinois Central Railroad Company’s Motion to Dismiss (Dkts. 41-42, 59, 62), on February 25, 2020, Judge Pallmeyer issued an Order granting Defendant’s Motion to Dismiss without prejudice, directing Plaintiff to file a Second Amended Complaint, and directing Defendant to file an Answer in response to Plaintiff’s Second Amended Complaint. (Dkt. 65).

7. On March 3, 2020, Plaintiff filed his Second Amended Complaint. (Dkt. 67). On June 9, 2020, Defendant filed its Answer. (Dkt. 77).
8. Following Defendant's Answer, the Parties began discovery. (Dkt. 90). Over the following months, each Party served interrogatories and requests for production upon the other, and the Parties exchanged numerous formal and informal correspondence related to each Party's written responses in discovery. (Dkt. 106). On February 8, 2021, Defendant took the deposition of Plaintiff Richard Rogers via remote means. (*Id.*) Plaintiff noticed five party depositions and two non-party depositions, as well as a Fed. R. Civ. P. 30(b)(6) deposition of Defendant. (*Id.*)
9. On June 29, 2021, Defendant moved to stay this litigation pending the appeals of: *Cothron v. White Castle Sys., Inc.*, Case No. 20-3202; *Tims v. Black Horse Carriers, Inc.*, Case No. 1-28-0563; and *Marion v. Ring Container Technologies, LLC*, Case No. 3-20-0184. (Dkt. 94).
10. The Parties fully briefed Defendant's Motion to Stay, which included three supplemental filings. (Dkts. 97-99, 101, 107). During the pendency of Defendant's Motion to Stay, Plaintiff conducted the remote depositions of two third-party individuals. (Dkt. 90).
11. On October 26, 2021, Plaintiff moved to remand his claim made under Section 15(a) of BIPA to Cook County, Illinois on the basis that the district court lacked subject matter jurisdiction pursuant to the Seventh Circuit's decision in *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617 (7th Cir. 2020). (Dkt. 102).
12. Prior to full briefing on Plaintiff's Motion to Remand, the Parties agreed to attempt to resolve the matter through mediation overseen by the Honorable James R. Epstein (Ret.) of JAMS in Chicago, Illinois. All proceedings were stayed pending the Parties' engagement in settlement discussions. (Dkt. 105).
13. On December 9, 2021, the Parties engaged in a full-day, arm's-length mediation session with Judge Epstein. While no final resolution was reached, the mediation session was productive, and the Parties made significant process towards a resolution. (Dkt. 106).
14. On February 23, 2022, the Parties engaged in a second, arm's-length settlement conference whereby the Parties came to an agreement in principle to resolve this litigation—the details of which were negotiated over the following days and weeks and are memorialized in this Settlement Agreement.
15. In recognition of potential jurisdictional challenges presented by effectuating the entirety of the Settlement in Federal Court, the Parties stipulated to remand this matter to the Circuit Court of Cook County, Illinois in order to obtain a full release of Plaintiff's BIPA claims against Defendant, including Plaintiff's Section 15(a) claim. (Dkt. 112).

16. Accordingly, on March 1, 2022, the Parties stipulated to remand the case, and on March 2, 2022, Judge Pallmeyer entered an Order remanding this matter to the Circuit Court of Cook County, Illinois, where it is captioned *Rogers v. Illinois Central Railroad Company*, No. 2019-CH-05129. The case was assigned to the Honorable Cecilia A. Horan, who has taken over Calendar 9 following Judge Tailor's exit from the Chancery Division.
17. This Settlement represents the Parties' agreement to resolve all matters pertaining to, arising from, or associated with the Litigation, including all claims Plaintiff and Settlement Class Members have or may have had against ICRC.
18. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, discovery, time and expense.
19. Defendant denies all charges of wrongdoing or liability of any kind whatsoever that Plaintiff or Settlement Class Members have asserted in this Litigation or may in the future. Defendant contends that it complied in good faith with BIPA and has dealt legally and fairly with Settlement Class Members. Defendant also denies that, for any purpose other than settling this Litigation, the BIPA claim is appropriate for class treatment. Despite Defendant's belief that it is not liable for, and has good defenses to, the claims alleged in the Litigation, Defendant desires to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled and finally put to rest in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed or document created in relation to the Settlement Agreement or 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.
20. Following arm's-length negotiations, which included the involvement of an experienced mediator, the Parties now seek to enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding the Litigation 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 Plaintiff and the Settlement Class recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) 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 (5) Plaintiff's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

21. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.
22. 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 Litigation be settled and compromised on the following terms and conditions.

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings specified below:

23. “Administrative Expenses” shall mean all costs, fees, and expenses charged by the Settlement Administrator in connection with this Litigation.
24. “Approved Claims” shall mean complete and timely claims for cash compensation submitted by Settlement Class Members, that have been approved for payment by the Settlement Administrator.
25. “Claim Form” shall mean the form that Settlement Class Members may submit to obtain compensation under this Settlement.
26. “Claims Deadline” shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely and shall be set as a date approximately sixty (60) days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.
27. “Class,” “Settlement Class,” 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.
28. “Class Counsel” shall mean Myles McGuire, Evan M. Meyers, David L. Gerbie, and Brendan Duffner of McGuire Law, P.C.
29. “Counsel” or “Counsel for the Parties” shall mean both Class Counsel and Defendant’s Counsel, collectively.
30. “Court” shall mean the Circuit Court of Cook County, Illinois, and the Honorable Cecilia A. Horan, or any subsequent judge assigned to preside and have jurisdiction over the pending Litigation.
31. “Defendant” shall mean Illinois Central Railroad Company.

32. “Defendant’s Counsel” shall mean Scopelitis, Garvin, Light, Hanson & Feary, P.C.
33. “Effective Date” shall mean the date when the Settlement Agreement becomes Final.
34. “Fee and Expense Application” shall mean the motion to be filed by Class Counsel, in which they will seek approval of an award of attorneys’ fees, costs, and expenses, as well as a Service Award for the Class Representative.
35. “Fee Award” shall mean the amount of attorneys’ fees, costs, and expenses awarded by the Court to Class Counsel.
36. “Final” shall mean the Final Approval Order has been entered on the docket, and (a) the time to appeal from such order has expired and no appeal has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (c) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).
37. “Final Approval Hearing” shall mean the hearing before the Court where the Plaintiff will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving a Service Award to the Class Representative.
38. “Final Approval Order” shall mean an order entered by the Court that:
 - i. Certifies the Settlement Class pursuant to 735 ILCS 5/2-801;
 - ii. 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;
 - iii. Dismisses Plaintiff’s claims pending before it with prejudice and without costs, except as provided for in this Agreement;
 - iv. Approves the Release provided in Section VIII and orders that, as of the Effective Date, the Released Claims will be released as to the Released Parties;
 - v. Reserves jurisdiction over the Settlement and this Agreement; and
 - vi. Finds that, pursuant to 735 ILCS 5/2-1301, there is no just reason for delay of entry of final judgment with respect to the foregoing.

39. “Litigation” shall mean the case captioned *Rogers v. Illinois Central Railroad Company*, No. 2019-CH-05129, currently pending in the Circuit Court of Cook County, Illinois, Chancery Division before the Honorable Cecilia A. Horan, or any judge presiding in her stead and having jurisdiction over that case, and formerly pending in U.S. District Court for the Northern District of Illinois before the Honorable Chief Judge Rebecca Pallmeyer, No. 19-CV-03647.
40. “Long Form Notice” means notice of this Settlement, substantially in the form of Exhibit D hereto, which shall be posted on the Settlement Website in accordance with Section X below to inform Class Members of their rights and duties under this Settlement.
41. “Maximum Gross Settlement Amount” means or refers to the amount of \$3,800,000.00 (three million eight hundred thousand dollars), which represents the maximum gross amount that Defendant will pay pursuant to this Settlement Agreement. In no event shall Defendant be required to pay any amount beyond the Gross Settlement Amount.
42. “Notice” shall mean the direct and publication notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and in Exhibits C and D hereto and is consistent with the requirements of Due Process.
43. “Notice Date” means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than thirty (30) days after entry of Preliminary Approval.
44. “Objection/Exclusion Deadline” shall mean the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court, which shall be designated as a date forty-five (45) days after the Notice Date, or as approved by the Court.
45. “Parties” shall mean Plaintiff and Defendant, collectively.
46. “Plaintiff” or “Class Representative” shall mean the named class representative, Richard Rogers.
47. “Preliminary Approval” shall mean the date of entry of the Preliminary Approval Order.
48. “Preliminary Approval Order” 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.

49. “Released Claims” shall mean all federal, state, and local law claims; common law claims; liabilities; rights; demands; suits; matters; obligations; damages; including consequential damages, losses or costs, restitution, equitable relief, liquidated damages; statutory damages; punitive damages; attorneys’ fees and costs; and actions or causes of action of every kind and description, which Plaintiff or any Settlement Class Member asserted in the Litigation, or could have asserted in the Litigation, against the Defendant, including, but not limited to, claims arising out of, derived from, or related to the facts and circumstances alleged in the Complaint. This shall specifically include, but is not limited to, any claims related to (i) BIPA and all other privacy causes of action; and (ii) the Illinois Consumer Fraud and Deceptive Business Practices Act, and all other consumer protection laws.
50. “Released Parties” shall mean, jointly and severally, and individually and collectively, Illinois Central Railroad Company, Wisconsin Central Ltd., Canadian National Railway Company, CN Transportation Limited, and their parents, subsidiaries, affiliates, successors and assigns, each now existing or hereafter created or acquired, including but not limited to Canadian National Railway Company and all corporations wholly or primarily owned or controlled by Canadian National Railway Company, either directly or indirectly through a wholly or partially owned corporation, and each of their agents, servants, employees, directors, officers, insurers and shareholders .
51. “Releasing Parties” shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.
52. “Settlement Administrator” shall mean, subject to Court approval, Epiq Class Actions & Claims Solutions, the entity mutually selected by the Parties to administer the settlement.
53. “Settlement Fund” means or refers to the settlement fund to be established by Defendant in the amount of \$3,800,000.00 (three million eight hundred thousand dollars), which is the Maximum Gross Settlement Amount.
54. “Settlement Website” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies of Exhibits A and D (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all relevant Court documents related to the Settlement. The URL of the Settlement Website shall be railroadbipasettlement.com or such other similar URL agreed to by the Parties and approved by the Court. Settlement Class Members shall be able to submit Claim Forms via the Settlement Website.
55. “Service Award” shall mean an award paid from the Settlement Fund to Plaintiff Richard Rogers in acknowledgement of his participation, cooperation, and

agreement to pursue this litigation on behalf of the Settlement Class Members and shall have the qualities further set forth in Section XVI of this Agreement.

56. "SpeedGate System" shall mean the technology used by or on behalf of Defendant during the Class period to allow commercial motor vehicle truck drivers access to Defendant's Illinois facilities.
57. "Short Form Notice" means direct individual summary notice, substantially in the form of Exhibit C hereto, which shall be sent to Class Members in accordance with Section X below.

III. SETTLEMENT CLASS CERTIFICATION

58. For the purposes of the Settlement only, the Parties stipulate and agree that: (1) the Class shall be certified in accordance with the definition contained in Paragraph 61 below; (2) Plaintiff shall represent the Class for settlement purposes and shall be the Class Representative; and (3) McGuire Law, P.C. shall be appointed as Class Counsel.
59. Defendant does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter the Final Approval Order, or if for any other reason final approval of the Settlement 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.
60. In the event that the Final Approval Order is not entered: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.
61. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes:

"All individuals who accessed an Illinois Central Railroad Company (d/b/a "CN") facility in Illinois through the SpeedGate System at any time between April 22, 2014 through the [date of Preliminary Approval]."
62. Excluded from the Settlement Class are all persons who timely elect to exclude themselves from the Settlement Class, the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

IV. SETTLEMENT OF THE LITIGATION

63. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of Plaintiff and the Settlement Class, the Litigation and the Released Claims as to the Released Parties.

V. SETTLEMENT FUND

64. Establishment of Settlement Fund

- a. Within fourteen (14) days of Preliminary Approval, Defendant shall create the Settlement Fund by paying to the Settlement Administrator the amount of \$200,000.00 (two hundred thousand dollars).
- b. Within fourteen (14) days of the Effective Date, Defendant shall remit the remainder of the Gross Settlement Amount to the Settlement Administrator.
- c. All funds required to be paid by Defendant under this paragraph shall be provided by Defendant to the Settlement Administrator and 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 interest-bearing account.
- d. The Settlement Fund shall be used to pay all monetary obligations relating to the Settlement Agreement, including, but not limited to: (i) Approved Claims, (ii) a Service Award to the Class Representative, (iii) the Fee Award; and (iv) costs of administration of this Settlement Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses. In no event shall Defendant be required to pay any amount beyond the Maximum Gross Settlement Amount.
- e. In accordance with Section VI below, the amount of any uncashed checks after the expiration date, less any funds necessary for settlement administration, will be distributed to a *cy pres* recipient(s) selected by the Parties and approved by the Court.
- f. The Maximum Gross Settlement Amount represents the total extent of Defendant's monetary obligations under the Settlement Agreement. Defendant's contribution of the Maximum Gross Settlement Amount to the Settlement Fund shall be fixed under this Section and be final. Defendant and 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 Maximum Gross Settlement Amount.

- g. The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not altered, including but not limited to the scope of the Release, the scope of the Settlement Class, and the Maximum Gross Settlement Amount.

- 65. A Settlement Class Member who timely submits a valid Claim Form shall be entitled to a *pro rata* payment from the Settlement Fund after deductions for Administrative Expenses, any Fee Award, and any Service Award. Each Settlement Class Member who timely submits a valid Claim Form shall receive the same amount of the Settlement Fund as each other Settlement Class Member who timely submits a valid Claim Form.

- 66. **Procedure for Approving Settlement**
 - a. **Unopposed Motion for Preliminary Approval of the Settlement by the Court.**
 - i. Plaintiff will file an unopposed motion for an order conditionally certifying the Settlement Class, granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Claim Form (the “Unopposed Motion for Preliminary Approval”) under the terms specified herein.
 - ii. At the hearing on Plaintiff’s Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of Plaintiff’s Unopposed Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative and Class Counsel; approving the Claim Form and the Notice to the Settlement Class; and setting the Final Approval Hearing.
 - iii. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified, that Plaintiff shall be conditionally appointed class representative, and that Class Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve this Settlement in substantially the same form as that submitted by the Parties, or a Court of Appeals reverses the Court’s order granting final approval of this Settlement, the Settlement will be null and void, provided, however, that the Parties agree to work cooperatively and in good faith for a period of fifteen (15) calendar days following any denial or reversal of approval to address and resolve any concerns identified by the Court in declining to enter a Preliminary Approval Order or an order granting final approval to this Settlement, or by the Court of Appeals in reversing the entry of an order by the Court

granting final approval to this Settlement. Should such efforts fail, the Parties will have no further obligations under the Settlement, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

VI. SUBMISSION AND EVALUATION OF CLAIMS

67. All claims must be submitted via a Claim Form. The Claim Form will require the Settlement Class Member to provide their full name, mailing address, contact telephone number, and contact email address; an affirmation that they were subject to Defendant's SpeedGate System at issue in the Litigation; and a signature.
68. The Claim Form must be submitted (either electronically submitted or else postmarked) on or before the Claims Deadline. The Claim Form shall be substantially in the form attached hereto as Exhibit A.
69. Completed Claim Forms shall be submitted directly to the Settlement Administrator electronically via the Settlement Website; via electronic mail; or via U.S. Mail, FedEx, or UPS, for processing, assessment, and payment.
70. Any Claim Form that lacks the requisite information may be deemed to be incomplete and ineligible for payment. However, for any partially-completed Claim Forms, the Settlement Administrator shall attempt to contact the Settlement Class Member who submitted the Claim Form at least one time by e-mail or, if no e-mail address is available, by telephone or, if no telephone is available, regular U.S. mail to: (i) inform the Settlement Class Member of any error(s) and/or omission(s) in the Claim Form; and (ii) give the Settlement Class Member an opportunity to cure any errors and/or omissions in the Claim Form. The Settlement Class Member shall have until the Claims Deadline, or fourteen (14) days after the Settlement Administrator sends the e-mail or regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form, whichever is later, to cure the error(s) and/or omission(s) in the Claim Form.
71. A Settlement Class Member is not entitled to any compensation from the Settlement Fund if they submit a Claim Form after the Claims Deadline, and/or if the Claim Form remains incomplete after an opportunity to cure any error(s) and/or omission(s) or contains false information.
72. Within fourteen (14) days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Class Members and shall determine which claims are valid and initially approved and which claims are initially rejected. The Settlement Administrator may accept or reject any Claim Form submitted, and may, upon its sole discretion, request additional information prior to initially rejecting or accepting any Claim Form submitted. The Settlement Administrator shall employ reasonable procedures to screen Claim Forms for abuse

and/or fraud, and shall deny Claim Forms which are incomplete and/or where there is evidence of abuse and/or fraud.

73. Within fourteen (14) days of the Claims Deadline, the Settlement Administrator will submit to Counsel for the Parties a report listing all initially approved Claims (“Initially Approved Claims List”), and, at Counsel for the Parties’ request, shall include an electronic PDF copy of all such initially approved Claim Forms. Within fourteen (14) days after the Claims Deadline, the Settlement Administrator will also submit to the Parties a report listing all initially rejected Claims (“Initially Rejected Claims List”), and, at Counsel for the Parties’ request, shall include an electronic PDF copy of all such initially rejected Claim Forms.
74. Counsel for the Parties shall have fourteen (14) days after the date they receive the Initially Approved Claims List and related Claim Forms to audit and challenge any initially approved claims. Within fourteen (14) days after Counsel for the Parties receive the Initially Approved Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially approved claim they wish to challenge and the reasons for the challenge.
75. Similarly, Counsel for the Parties may challenge any claim initially rejected by the Settlement Administrator. Counsel for the Parties shall have fourteen (14) days after the date they receive the Initially Rejected Claims List and related Claim Forms to audit and challenge any initially rejected claims. Within fourteen (14) days after Counsel for the Parties receive the Initially Rejected Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially rejected claim they wish to challenge and the reasons for the challenge.
76. Counsel for the Parties shall meet and confer in an effort to resolve any disputes over any challenged claims. If the challenges are not withdrawn or resolved, the decision of the Settlement Administrator will be upheld. The date all claims are finalized without any further dispute shall be referred to as the “Claims Finalization Date.” If neither Class Counsel nor Defendant’s Counsel have any challenges to the initial claims determination reached by the Settlement Administrator, then the Claims Finalization Date shall be the date both Class Counsel and Defendant’s Counsel inform each other by email that the Parties do not have any objection to the claims determination made by the Settlement Administrator or the time for informing each other of such challenges has lapsed.
77. Within seven (7) days of the Claims Finalization Date, the Settlement Administrator shall provide Counsel for the Parties a spreadsheet setting forth the claim number, claimant name, and claimant address, and totaling the amount to be paid for each claimant, which shall be an equal amount for each approved claim (the “Final Claims List”). Within ten (10) days of the Claims Finalization Date, the Settlement Administrator shall send a check by First Class U.S. Mail to each

Settlement Class Member on the Final Claims List. The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within five (5) business days of the last such payment.

78. In the event that checks sent to Settlement Class Members are not cashed within one hundred twenty (120) days after their date of issuance, whether because the checks were not received or otherwise, those checks will become null and void. The amount of the uncashed checks after the expiration date, less any funds necessary for settlement administration, will be distributed to a *cy pres* recipient(s) selected by the Parties and approved by the Court. The Court may revise this *cy pres* provision as necessary without terminating or otherwise impacting this Settlement Agreement, provided the Court's revision does not increase the Maximum Gross Settlement Amount.

VII. PROSPECTIVE RELIEF

79. Without admitting any liability, Defendant represents that, in response to this Litigation, it has reviewed its biometric collection and handling practices. Defendant agrees to comply with all BIPA requirements by: (a) disclosing to individuals who use its SpeedGate System that their finger-scan data is being collected or stored, (b) obtaining BIPA-compliant written releases from such individuals, including modification of its current consent form, and (c) establishing a publicly-available retention schedule and guidelines for permanently destroying the finger-scan data when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with Defendant, whichever occurs first. Compliance with BIPA, as currently in force or as amended, shall satisfy the foregoing provision.

VIII. RELEASE

80. In addition to the effect of any final judgment entered in accordance with this Agreement, upon final approval of this Agreement, and for other valuable consideration as described herein, Released Parties shall be released as to all Released Claims.
81. As of the Effective Date, and with the approval of the Court, all Releasing Parties hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel all Released Claims.
82. 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.
83. The Released Parties do not admit any liability or wrongdoing. The Settlement Agreement may not be construed in whole or in part as an admission of fault by the

Released Parties. The Released Parties agree to this settlement to avoid the burden and expense of litigation without in any way acknowledging any fault or liability.

IX. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

84. This Settlement shall be subject to approval of the Court. As set forth in Section XV, either Party shall have the right to withdraw from the Settlement if the Court does not approve the material aspects of the Settlement.
85. Plaintiff, through Class Counsel, shall submit this Agreement, together with its Exhibits, to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representative, and entry of the Preliminary Approval Order, substantially in the form of Exhibit B, which order shall seek a Final Approval Hearing date and approve the Notices and Claim Form for dissemination in accordance with the Notice Plan.
86. 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 one hundred (100) days after entry of the Preliminary Approval Order and approve the settlement of the Litigation as set forth herein.
87. At least ten (10) days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiff will move for (i) final approval of the Settlement; (ii) final appointment of the Class Representative and Class Counsel; and (iii) final certification of the Settlement Class, including for the entry of a Final Order and Judgment consistent with Section XIV below, and file a memorandum in support of the motion for final approval.

X. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS

88. **Class List**
 - a. Defendant shall create a Class List, based on readily available information already within its possession (“Class List”). Defendant is under no obligation to seek out or provide information for the Class List not already in its possession.
 - b. Within seven (7) days of Preliminary Approval, if not sooner, Defendant shall provide the Class List, which consists of Settlement Class Members’ names, Commercial Drivers License numbers (CDL’s), and states of issuance (or in a minority of instances, CDL numbers and states of issuance), to Epiq and to Class Counsel, who shall use such information for no purpose other than the execution or enforcement of the Court’s orders approving this Settlement and shall otherwise keep such information confidential.

89. Type of Notice Required

- a. The Notice, which shall be substantially in the form of Exhibits C and D attached hereto, shall be used for the purpose of informing 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 (a) obtain a copy of the Claim Form for review and submittal; (b) protect their rights regarding the settlement; (c) request exclusion from the Settlement Class and the proposed settlement, if desired; (d) object to any aspect of the proposed settlement, if desired; and (e) participate in the Final Approval Hearing, if desired. The Notice shall provide that Settlement Class Members may claim cash compensation in the form of a *pro rata* payment from the Settlement Fund, following the deduction of: (i) any award of attorneys' fees, costs, and expenses; (ii) any Service Award to the named Plaintiff; and (iii) the costs of notice and administration. Additionally, the Notice shall make clear the binding effect of the Settlement on all persons who do not timely request exclusion from the Settlement Class.
- b. 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 forms attached as Exhibits C and D hereto.
- c. Prior to disseminating Notice, the Settlement Administrator, using the Class List, shall perform an address lookup in order to determine address information for the Settlement Class Members. Short Form individual notice (substantially in the form of Exhibit C) shall be sent via U.S. mail to all individuals for whom address information can be determined by the Settlement Administrator.
- d. Notice of the Settlement (substantially in the form of Exhibits C and D) shall be posted on the Settlement Website by the Notice Date.

90. Notice Deadline

- a. By the Notice Date, the Settlement Administrator shall disseminate by mail a copy of the Notice in the form of Exhibit C to the Settlement Class Members identified on the Class List for whom an address is determined in accordance with paragraph 89(c). For any Settlement Class Member whose notice mailing is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall again attempt to determine a valid mailing address. If the Settlement Administrator is able to determine a valid mailing address, the Settlement Administrator shall mail a copy of the Notice in the form of Exhibit C to the Settlement Class Member's valid mailing address within ten (10) days of receiving the notice mailing returned as undeliverable.

XI. EXCLUSIONS

91. Exclusion Period

- a. On or before the Objection/Exclusion Deadline, Settlement Class Members may exclude themselves from the Settlement in accordance with this Section. If the Settlement is finally approved by the Court, all Settlement Class Members who have not validly excluded themselves by the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasing Party as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the Released Claims.

92. Exclusion Process

- a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing. Such exclusion requests must be received by the Settlement Administrator electronically via the Settlement Website, or at the address specified in the Class Notice in written form, by first class mail (or FedEx or UPS), postage prepaid, and postmarked before the Objection/Exclusion Deadline.
- b. In order to exercise the right to be excluded, a member of the Settlement Class must timely request exclusion by providing their name, address, and telephone number; the name and number of this case, a statement that they wish to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not electronically submitted or 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 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 also cannot object to the Settlement.
- d. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be permitted.
- e. Within three (3) business days after the Objection/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.

- f. 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.
- g. In the event that more than fifty (50) of the settlement class timely and validly request to be excluded from the Settlement, Defendant has the right, in its sole discretion, to void this Settlement in its entirety.
- h. If Defendant voids the agreement on this basis, then the Parties shall return to their original position as if no settlement had been negotiated or entered into.

XII. OBJECTIONS

- 93. The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices 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, the person making an objection shall file notice of their intention to do so and at the same time: (i) file copies of such papers they propose to submit at the Final Approval Hearing with the Clerk of the Court, and send copies of such papers via U.S. mail or FedEx, hand delivery or overnight delivery, to both Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement.
- 94. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (i) their full name, address, email address, and current telephone number; (ii) the case name and number of the Litigation; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) the identification of any other objections they have filed, or have had filed on their behalf, in any other class action cases in the last four years; and (v) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of their 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.

95. 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 Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.
96. Settlement Class Members cannot both object to and exclude themselves from this Settlement Agreement. Any Settlement Class Member who attempts to both object to and exclude themselves from this Settlement Agreement will be deemed to have excluded themselves and will forfeit the right to object to this Settlement Agreement or any of its terms. If a Settlement Class Member returns both a Claim Form and a written request for exclusion, the request for exclusion shall be deemed void and of no force and effect, and the Claim Form shall be processed under the terms of this Settlement Agreement.
97. If (50) fifty or more individuals timely submit requests for exclusion from the Settlement, Defendant shall have the exclusive right to void this Settlement. Defendant shall make any such election within seven days of the Settlement Administrator providing Defendant with the final list of opt-outs.

XIII. FINAL APPROVAL HEARING

98. The Parties will jointly request that the Court hold a Final Approval Hearing approximately one hundred (100) days after entry of the Preliminary Approval Order. 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 and, if so, (i) consider any properly-filed objections, (ii) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith, and (iii) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

XIV. FINAL APPROVAL ORDER

99. Class Counsel will seek entry of a 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 a dismissal with prejudice and waiving any rights of appeal.
100. The proposed final order submitted by Class Counsel will request that the Court, without limitation:
 - a. Approves, with finality, this Agreement and its terms as being fair, reasonable, and adequate as to the Settlement Class Members within the meaning of 735 ILCS 5/2-801 and directing its consummation according to its terms;

- b. Dismisses, with prejudice, all Released Claims of the Settlement Class against Defendant in the Litigation, without costs and fees except as provided for in this Agreement; and
 - c. Reserves continuing and exclusive jurisdiction over the Settlement and this Agreement, including but not limited to the Litigation, the Settlement Class, the Settlement Class Members, Defendant, and the Settlement for the purposes of administering, consummating, supervising, construing and enforcing the Settlement Agreement and the Settlement Fund.
101. Defendant's Counsel agree not to oppose the proposed final order or motion for final approval, provided that Defendant is afforded the opportunity to review and approve, and has approved, the form and substance of the proposed final order, motion for final approval, and supporting papers in advance of filing.

XV. TERMINATION OF THE SETTLEMENT

102. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, any Party may elect to terminate and cancel this Settlement Agreement within ten (10) days of any of the following events:
- a. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;
 - b. The Court refuses to grant Preliminary Approval of this Settlement Agreement in any material respect;
 - c. The Court refuses to grant Final Approval of this Settlement Agreement in any material respect;
 - d. The Court refuses to enter a Final Judgment in this Litigation in any material respect; or
 - e. The Court's order granting Preliminary or Final Approval is substantially modified or reversed.
103. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with the provisions herein, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been entered into, and the Parties will negotiate in good faith to establish a new schedule for the Litigation.

XVI. ATTORNEYS' FEES, COSTS AND EXPENSES AND SERVICE AWARD

104. At least twenty-one (21) days prior to the Objection/Exclusion Deadline, Class Counsel will move the Court for an award of attorneys' fees plus their reasonable costs and expenses.
105. The amount of the Fee Award shall be determined by the Court based on a petition from Class Counsel. Class Counsel has agreed, with no consideration from Defendant, to limit their attorney fee request to no more than thirty-eight percent (38%) of the Settlement Fund, plus reasonable costs and expenses. 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 on a *pro rata* basis as part of their Approved Claims.
106. The Fee Award shall be paid solely from the Settlement Fund by wire transfer from the Settlement Administrator within seven (7) days of the Effective Date and sent to an account designated by Class Counsel.
107. Notwithstanding any contrary provision 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.
108. Prior to or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for a Service Award for the Class Representative in an amount not to exceed \$15,000.00 (fifteen thousand dollars). The Service Award shall be paid solely from the Settlement Fund by check written by the Settlement Administrator within seven (7) days of the Effective Date.
109. In no event will Defendant's liability for the Fee Award, Administration Expenses, and/or a Service Award exceed the funding obligations set out this Agreement. Defendant shall have no financial responsibility for this Settlement Agreement outside of the Maximum Gross Settlement Amount. 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.

XVII. MISCELLANEOUS REPRESENTATIONS

110. For income tax purposes, the Parties agree that payments made pursuant to this Agreement shall be allocated as statutory penalties and shall not be subject to required withholdings and deductions and may be reported as non-wage income, as required by law. If required by IRS regulations, the Settlement Administrator shall issue to each Class Participant who cashes a Settlement Check, and the Class Representative who cashes any Service Award, an IRS Form 1099. Other than the reporting requirements herein, Class Participants shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received pursuant to this Settlement Agreement. It is understood and agreed that Defendant takes no position and offers no advice regarding how any Class Member chooses to treat any payment made hereunder for tax or any other purpose.
111. Each Party to this Settlement Agreement acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers regarding this Settlement Agreement, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) each Party (A) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (B) has not entered into this Settlement Agreement based upon the recommendation of any Party or any attorney or advisor to any other Party, and (C) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.
112. The terms and conditions of this Agreement are to be considered confidential between the Parties and shall not be disclosed except as shall be necessary to effectuate its terms and otherwise represent the interests of the Parties. Plaintiff and his counsel agree that they will state only that "the parties have resolved the matter," if inquiry is made by the media. This paragraph shall not be construed to limit or impede the notice requirements of Section X above; nor shall this paragraph be construed to prevent Class Counsel or Defendant from notifying or explaining to potential Settlement Class Members or others that this case has settled and how to obtain settlement benefits; nor shall this paragraph limit the representations that the Parties or Counsel for the Parties may make to the Court to assist in its evaluation of the proposed settlement. Plaintiff agrees he will not publish any statements related to this Agreement on social media.

113. 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.
114. The Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement, and (ii) 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 Agreement. Class Counsel may contact Settlement Class Members upon preliminary approval in order to notify them of the Settlement. 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.
115. 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, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Litigation was brought by Plaintiff or defended by Defendant, in bad faith or without a reasonable basis.
116. 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.
117. Any headings used herein are used for the purpose of convenience only and are not meant to have legal effect.
118. 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.
119. 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.

120. This Agreement may not be amended, modified, altered, or otherwise changed in any manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.
121. The Parties agree that Exhibits A through D to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.
122. 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.
123. Except as otherwise provided herein, each Party shall bear its own costs.
124. Plaintiff represents and warrants that he has not assigned any claim or right or interest therein as against the Released Parties to any other person or party.
125. 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.
126. 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 Rules of Evidence Rule 408, and any other equivalent or similar rule of evidence, and shall not (1) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation 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 (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.
127. 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.
128. 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 Order and Judgment.

129. 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 (1) to enforce the terms and provisions hereof or thereof, (2) as may be specifically authorized by a court of competent jurisdiction after an adversarial hearing upon application of a Party hereto, (3) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (4) in connection with any motion to enjoin, stay or dismiss any other action, and/or (5) to obtain Court approval of the Settlement Agreement.
130. This Agreement may be executed in one or more counterparts exchanged by hand, messenger, facsimile, or PDF as an electronic mail attachment. 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.
131. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.
132. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and the Parties hereby submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.
133. This Agreement shall be governed by and construed in accordance with the laws of the state of Illinois.
134. This Agreement is deemed to have been prepared by Counsel for the 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 Agreement and its Exhibits, it shall not be construed more strictly against one Party than another.
135. 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:

David L. Gerbie
MCGUIRE LAW, P.C.
55 W. Wacker Drive, 9th Fl.
Chicago, IL 60601
dgerbie@mcgpc.com

If to Defendant's Counsel:

Andrew J. Butcher
SCOPELITIS, GARVIN, LIGHT, HANSON &
FEARY, P.C.
30 West Monroe Street, Suite 1600
Chicago, IL 60603

abutcher@scopelitis.com

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

[Signatures on following page. Remainder of this page intentionally left blank.]

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

RICHARD ROGERS, individually and as Class Representative

Signature: Richard D. Rogers Jr.
Date: 4/27/2022

MCGUIRE LAW, P.C., as Class Counsel

By: David L. Gerbie
Print Name: David L. Gerbie

Date: 5/9/2022

ILLINOIS CENTRAL RAILROAD COMPANY, as Defendant

By: John Furlan
Print Name: John Furlan
Date: April 26, 2022

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C. as Defendant's Counsel

By: Andrew J. Butcher
Print Name: Andrew J. Butcher
Date: 4/26/2022

Exhibit A

**ILLINOIS CENTRAL RAILROAD COMPANY (D/B/A "CN")
CLASS ACTION SETTLEMENT**

CLAIM FORM

TO RECEIVE APAYMENT FROM THE SETTLEMENT FUND, YOU MUST COMPLETE A CLAIM FORM AND SUBMIT IT BY _____, 2022.

IMPORTANT NOTE: You must complete and submit a Claim Form by [Date] to receive payment. You may submit a Claim Form online at RailroadBIPASettlement.com. If you choose instead to complete a paper Claim Form, read the instructions below in Step 1; truthfully provide the requested information in Step 2; sign the certification in Step 3; and submit the Claim Form using one of the methods stated in Step 4.

Each Settlement Class Member is entitled to submit only one Claim Form regardless of the number of times they accessed an ICRC (d/b/a "CN") facility in Illinois through the SpeedGate System between April 22, 2014 and [Date of Preliminary Approval]. There can be only one claim for any given Settlement Class Member.

STEP 1 – DIRECTIONS
In the spaces below, print your (i) name, (ii) address, (iii) email address, and (iv) telephone number. Remember that only individuals who accessed an ICRC facility in Illinois through the SpeedGate System at any time between April 22, 2014 through [Date of Preliminary Approval] are eligible to submit a claim.
STEP 2 – CLAIMANT INFORMATION
Name: _____ <i>(First) (Middle Initial) (Last)</i>
Address: _____ <i>(Street)</i>
_____ <i>(City) (State) (Zip Code)</i>
Email Address: _____
Telephone number: (____) ____ - _____

STEP 3 – CERTIFICATION

I hereby certify that:

On at least one occasion between April 22, 2014 and [Preliminary Approval], I accessed an ICRC (d/b/a “CN”) facility in Illinois through the SpeedGate System.

I certify that the above statement is true and correct, and that this is the only Claim Form that I have submitted and/or will submit. I understand that this Claim Form will be reviewed for authenticity and completeness and that, if my claim is validated, I may be contacted by the Settlement Administrator and required to provide additional information as necessary to process the payments due to me under the Settlement.

Signature

Date

STEP 4 – METHODS OF SUBMISSION

If you choose not to submit a Claim Form online at RailroadBIPASettlement.com, please complete the Claim Form above and return it by one of the following methods:

1. By scanning or photographing the completed Claim Form and then emailing it to claims@RailroadBIPASettlement.com no later than midnight, U.S. Eastern Time, on [Date]; OR
2. By mailing via U.S. mail, FedEx, or UPS a completed and signed Claim Form to the Settlement Administrator, postmarked no later than [Date], and addressed to:

[ICRC BIPA Settlement](#)
[c/o \[Settlement Administrator\]](#)
[\[Address\]](#)

Exhibit B

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

RICHARD ROGERS, individually and on)	
behalf of similarly situated individuals,)	
<i>Plaintiff,</i>)	No. 19-CH-05129
)	
v.)	Hon. Cecilia A. Horan
)	
ILLINOIS CENTRAL RAILROAD)	
COMPANY, an Illinois corporation,)	
)	
<i>Defendant.</i>)	
_____)	

[PROPOSED] 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 Illinois Central Railroad Company. and Plaintiff Richard Rogers, (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,

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. 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, and was reached after a full-day, arm’s-length mediation with the Hon. James R. Epstein (Ret.) of JAMS Chicago and a second arm’s-length mediation whereby the Parties finally came to an agreement in principle.

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 accessed an Illinois Central Railroad Company (d/b/a “CN”) facility in Illinois through the SpeedGate System at any time between April 22, 2014 through [Date of Preliminary Approval].

5. For settlement purposes only, Plaintiff Richard Rogers is hereby appointed as Class Representative.

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

Myles McGuire
Evan M. Meyers
David L. Gerbie
Brendan Duffner
McGuire Law, P.C.
55 W. Wacker Drive, 9th Fl.
Chicago, IL 60601

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, with the Parties’ agreement in Section III of the Settlement Agreement to control.

8. The Court approves, in form and content, the Claim Form, the Short Form Class Notice, and the Long Form Class Notice attached to the Settlement Agreement as Exhibits A, C, and D, respectively, and finds that they meet the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfy Due Process.

9. The Court finds that the Notice Plan 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 individuals who have used Defendant's SpeedGate System to access Defendant's facilities in Illinois 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 Notice Plan and its attendant documents in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. Epiq Class Actions & Claims Solutions 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 execution of the Notice Plan as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Claim Form in accordance with the instructions provided in the Notice Plan on or before _____, **2022**.

13. All Claim Forms must be either mailed via U.S. Mail or by FedEx or UPS to the address specified in the Claim Form or be electronically submitted to the Settlement Administrator

via the Settlement Website or via email no later than _____, **2022**. Settlement Class Members who do not timely submit a Claim Form deemed to be valid in accordance with Section VI of the Settlement Agreement shall not be entitled to receive any portion of the Settlement Fund.

14. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, 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 Defendant or the Releasees relating to the claims released under the terms of the Settlement Agreement.

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 electronically via the Settlement Website, or at the address specified in the Class Notice in written form, by first class mail (or by FedEx or UPS), postage prepaid, and postmarked, no later than the Objection/Exclusion Deadline: _____, **2022**.

16. In order to exercise the right to be excluded, a person within the Settlement Class must timely mail or electronically submit 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 a signature. Any request for exclusion submitted via first class mail must be personally signed by the Person requesting exclusion. Any request for exclusion submitted online may be signed electronically. 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. Mass or class exclusions are not permitted.

17. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any order or 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.

18. Class Counsel may file any motion seeking an award of attorneys’ fees, costs and expenses, as well as an Incentive Award for the Class Representative, in accordance with the terms of the Settlement Agreement, no later than _____, 2022.

19. 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 intends 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 20 of this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant’s Counsel, and the Settlement Administrator no later than _____, 2022. Contact Information for Class Counsel, Defendant’s Counsel, the Settlement Administrator, and the Clerk of Court are as follows:

<p>Class Counsel</p> <p>Myles McGuire Evan M. Meyers David L. Gerbie Brendan Duffner McGuire Law, P.C. 55 W. Wacker Drive, 9th Floor Chicago, IL 60601</p>	<p>Defendant’s Counsel</p> <p>Andrew J. Butcher Charles Andrewscavage Jared S. Kramer Scopelitis, Garvin, Light, Hanson & Feary, P.C. 30 W. Monroe Street, Suite 1600 Chicago, IL 60603</p>
<p>Settlement Administrator</p> <p>Epiq Class Actions & Claims Solutions P.O. Box _____ XXXXXXXXXXXX</p>	<p>Clerk of Court</p> <p>Clerk of the Circuit Court of Cook County Chancery Division 50 W. Washington Street, #802 Chicago, IL 60602</p>

20. 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) the objector's full name, address, email address, and current telephone number; (ii) the case name and number of the Litigation; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) the identification of any other objections they have filed, or has had filed on their behalf, in any other class action cases in the last four years; and (v) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of their 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. 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 shall be deemed to have waived and shall be 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.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement, may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the 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 are required to 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 must also include in their written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. 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 their objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

23. All papers in support of the final approval of the proposed Settlement shall be filed no later than ten (10) days before the Final Approval Hearing.

24. Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Releasees.

25. A hearing (the "Final Approval Hearing") shall be held before the Court on _____, **2022** at ____:____ a.m./p.m. in Courtroom 2008 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602 (or via remote means as the Court may without further notice direct)

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.

26. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. 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.

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

28. 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.

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

Notice to be completed by: _____, 2022
Fee and Expense Application: _____, 2022
Objection Deadline: _____, 2022
Exclusion Request Deadline: _____, 2022
Final Approval Submissions: _____, 2022
Final Approval Hearing: _____, 2022 at _____ a.m.
Claims Deadline: _____, 2022

IT IS SO ORDERED.

ENTERED: _____

Hon. Cecilia A. Horan,
Circuit Court Judge
Circuit Court of Cook County, Illinois

Exhibit C

PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU ACCESSED AN ILLINOIS CENTRAL RAILROAD COMPANY (D/B/A "CN") FACILITY IN ILLINOIS THROUGH THE SPEEDGATE SYSTEM AT ANY TIME SINCE APRIL 22, 2014.

*For more information, visit www.RailroadBIPASettlement.com.
Para una notificación en Español, visite www.RailroadBIPASettlement.com.*

A proposed settlement has been reached in a class action lawsuit against Illinois Central Railroad Company d/b/a "CN" ("ICRC" or "Defendant") regarding the use of finger scan technology through the SpeedGate System at ICRC facilities from April 22 2014, to [Date of Preliminary Approval], allegedly in violation of the law. The case is *Rogers v. Illinois Central Railroad Co.*, No. 2019-CH-05129, pending in the Circuit Court of Cook County, Illinois, Chancery Division. The proposed Settlement is not an admission of wrongdoing by ICRC, and ICRC denies that it violated the law. The Court has not decided who is right or wrong. Rather, to save the time, expense, and distraction of litigation, the Parties have agreed to settle the lawsuit. That Settlement has been preliminarily approved by a court in Chicago, Illinois.

Am I a Member of the Settlement Class? You are a member of the Settlement Class if, at any time between April 22, 2014, and [Date of Preliminary Approval], you accessed an ICRC (d/b/a "CN") facility in Illinois through the SpeedGate System.

What Can I Get From the Proposed Settlement? ICRC has agreed to create a Settlement Fund with a total value of \$3,800,000.00 to pay valid claims, settlement administration expenses, attorneys' fees, costs and expenses, and a Class Representative incentive award. Each Class Member who submits a timely, valid Claim Form will receive an equal *pro rata* payment from the Settlement Fund. To receive this benefit, you must submit a Claim Form by XX XX, XXXX. Class Members can file a Claim Form online at www.RailroadBIPASettlement.com. Alternatively, Class Members can visit the website and download a claim form and submit by email to _____ or by U.S. mail, FedEx, or UPS to _____. Visit the website below or call for more information on filing your claim.

What are my Options? Please contact the Settlement Administrator at _____ or visit the settlement website, www.RailroadBIPASettlement.com, for details about your options and related deadlines, or if you have questions. If you do not want to be legally bound by the Settlement, you must exclude yourself by XX XX, XXXX. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at www.RailroadBIPASettlement.com or by contacting the Settlement Administrator. You may also object to the Settlement by making a valid objection by XX XX, XXXX. The long form notice, available on the settlement website or through the Settlement Administrator, explains how to exclude yourself or object. The Court will hold a hearing on XX XX, XXXX, to consider whether to approve the Settlement and a request by Class Counsel for attorneys' fees of up to 38 percent of the Settlement Fund, plus costs and expenses, for their work in the case. The Court will also consider a service award payment in an amount up to \$15,000 to the Class Representative. You can appear at the hearing, but you do not have to. If you want, you can hire your own attorney, at your own expense, to appear or speak for you at the hearing. Please check the settlement website for updates on the date, time, and format of the final approval hearing. Visit the settlement website, www.RailroadBIPASettlement.com, or contact the Settlement Administrator at _____, for details about options and deadlines.

**For more information and for a Claim Form, visit www.RailroadBIPASettlement.com
or call 1-xxx-xxx-xxxx.**

By order of: Hon. Cecilia A. Horan, Circuit Court of Cook County, Illinois
QUESTIONS? CALL TOLL FREE 1-xxx-xxx-xxxx.

Exhibit D

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Rogers v. Illinois Central Railroad Company, No. 2019-CH-05129 (Cir. Ct. Cook Cnty.)

For more information, visit www.RailroadBIPASettlement.com.

Para una notificación en Español, visite www.RailroadBIPASettlement.com.

PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU ACCESSED AN ILLINOIS CENTRAL RAILROAD COMPANY (D/B/A “CN”) FACILITY IN ILLINOIS THROUGH THE SPEEDGATE SYSTEM AT ANY TIME SINCE APRIL 22, 2014.

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, *Rogers v. Illinois Central Railroad Company*, No. 2019-CH-05129, pending in the Circuit Court of Cook County, Illinois before the Honorable Cecilia A. Horan. The Settlement would resolve a lawsuit regarding the use of finger scan technology through the SpeedGate System at ICRC facilities from April 22 2014, to [Date of Preliminary Approval], allegedly in violation of the law. If you received this notice, you have been identified as someone who may have accessed an ICRC Illinois facility through its SpeedGate System between **April 22, 2014, and [DATE OF PRELIMINARY APPROVAL]**. The court has granted preliminary approval of the Settlement and has conditionally certified the Settlement Class for purposes of settlement only. This notice explains the nature of the class action lawsuit, the terms of the Settlement, and the legal rights and obligations of the Settlement Class Members. Please read the instructions and explanations below so that you can better understand your legal rights.

WHAT IS THIS LAWSUIT ABOUT?

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, prohibits private companies from capturing, obtaining, storing, transferring, and/or using the biometric identifiers and/or information, such as fingerprints, of another individual for any purpose without first providing such individual with certain written disclosures and obtaining written consent. This lawsuit alleges that Defendant ICRC (d/b/a “CN”) violated BIPA by requiring individuals visiting its Illinois facilities and using its SpeedGate System to provide their fingerprints in order to identify them between **April 22, 2014, and [DATE OF PRELIMINARY APPROVAL]** without first providing the requisite disclosures or obtaining the requisite consent. Defendant contests these claims and denies that it violated BIPA.

WHY IS THIS A CLASS ACTION?

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

WHY IS THERE A SETTLEMENT?

Questions? Visit www.RailroadBIPASettlement.com or call toll free **1-999-999-9999**.

By order of: Hon. Cecilia A. Horan, Circuit Court of Cook County, Illinois

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

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

WHO IS IN THE SETTLEMENT CLASS?

You are a member of the Settlement Class if, at any time between **April 22, 2014, and [Date of Preliminary Approval]**, you accessed an Illinois Central Railroad Company (d/b/a "CN") facility in the state of Illinois through the SpeedGate System. If you accessed an ICRC facility in Illinois using the SpeedGate System at any time during this time period, then you may visit the settlement website, www.RailroadBIPASettlement.com, to submit a claim for cash benefits.

WHAT ARE MY OPTIONS?

(1) Accept the Settlement

To accept the Settlement, you must submit a Claim Form by **XX, XX, 2022**. You may obtain a Claim Form at www.RailroadBIPASettlement.com and you may submit your Claim Form online at the same website. You may also download a Claim Form at www.RailroadBIPASettlement.com and submit it to the Settlement Administrator via email at [REDACTED] or via U.S. Mail, FedEx or UPS at [REDACTED]. If the Settlement is approved and your claim is deemed valid, a check will be mailed to you. ***Submitting a valid and timely Claim Form is the only way to receive a payment from this Settlement, and is the only thing you need to do to receive a payment.***

(2) Exclude yourself

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against Defendant and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have by pursuing your own lawsuit against the Released Parties at your own risk and expense. To exclude yourself from the Settlement, you must mail a signed letter to the Settlement Administrator at [REDACTED], postmarked by **XX, XX, 2022**. You may also exclude yourself online at www.RailroadBIPASettlement.com. If you choose to exclude yourself by mail, the exclusion letter must state that you exclude yourself from this Settlement and must include the name and case number of this litigation, as well as your full name, address, telephone number, a statement that you wish to be excluded, and your signature. So-called "mass" or "class" exclusion requests are not permitted.

(3) Object to the Settlement

If you wish to object to the Settlement, you must submit your objection in writing to the Clerk of the Court of the Circuit Court of Cook County, Illinois, Richard J. Daley Center, 50 West Washington Street, Courtroom 2008, Chicago, Illinois 60602. The objection must be received by the Court no later than XX, XX, 2022. You must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including Class Counsel (Evan M. Meyers, David Gerbie and Brendan Duffner, MCGUIRE LAW, P.C., 55 West Wacker Drive, 9th Floor, Chicago, Illinois 60601), as well as the attorneys representing the Defendant (Andrew J. Butcher, Charles Andrewsavage, and Jared S. Kramer of SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C., 30 West Monroe Street, Suite 1600, Chicago, Illinois 60603), postmarked no later than XX, XX, 2022. Any objection to the proposed Settlement must include your (i) full name, address, email address, and current telephone number; (ii) the case name and number of the Litigation; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) the identification of any other objections you have filed, or have had filed on your behalf, in any other class action cases in the last four years; and (v) your signature. If represented by counsel in your objection, you must also provide the name and telephone number of your counsel. If you decide to object and you intend to appear at the Final Approval Hearing, either with or without counsel, you must state so in the written objection, and must also identify any witnesses you may call to testify at the Final Approval Hearing and all exhibits you intend to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, your written objection. 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 XX, XX, 2022. 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 _____, 2022 at _____ a.m., in Courtroom 2008 of the Circuit Court of Cook County, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602 (or remotely via Zoom if ordered by the Court), in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the request for attorneys' fees and expenses, and/or the request for a service award to the Class Representative are required to indicate in their written objection their intention to appear at the hearing on their own behalf or through counsel and to identify the names of any witnesses they intend to call to testify at the Final Approval Hearing, as well as any exhibits they intend to introduce at the Final Approval Hearing.

(4) Do Nothing

If you do nothing, you will receive no money from the Settlement Fund, but you will still be bound by all orders and judgments of the court. Unless you exclude yourself from the Settlement, you will not be able to file or continue a lawsuit against the Releasees regarding any of the Released Claims.

Submitting a valid and timely Claim Form is the only way to receive a payment from this Settlement. To submit a Claim Form, or for information on how to request exclusion from the class or file an objection, please visit the settlement website, www.RailroadBIPASettlement.com, or call 1-999-999-9999.

WHAT DOES THE SETTLEMENT PROVIDE?

Payment. Defendant has agreed to create a \$3,800,000.00 Settlement Fund. All Settlement Class Members are entitled to submit a Claim Form in order to receive a payment out of the Settlement Fund. If the

Settlement is approved, each Settlement Class Member who submits a timely, valid Claim Form will be entitled to an equal, *pro rata* payment paid out of the Settlement Fund after payment is made for administrative expenses, attorneys' fees and expenses, and a Class Representative service award. The Settlement also provides prospective relief. Such relief includes Illinois Central Railroad Company's agreement to comply with all BIPA requirements by: (a) disclosing to individuals who use its SpeedGate System that their finger-scan data is being collected or stored, (b) obtaining BIPA-compliant written releases from such individuals, including modification of its current consent form, and (c) establishing a publicly-available retention schedule. Further details can be found in the Settlement Agreement available at www.RailroadBIPASettlement.com. The exact amount of each Class Member's payment is unknown at this time and depends on several factors, including how many valid claims are submitted and the amount of costs, attorneys' fees and expenses awarded by the Court. The Settlement Administrator will issue a check to each Class Member who submits a valid Claim Form following the final approval of the Settlement. All checks issued to Settlement Class Members will expire and become void 120 days after they are issued. Additionally, the attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees of up to thirty-eight percent of the Settlement Fund, plus reasonable expenses, for the substantial time, expense and effort spent investigating the facts, litigating the case and negotiating the Settlement. The Class Representative also will apply to the Court for a payment of up to \$15,000.00 for his time, effort, and service in this matter.

WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?

Unless you exclude yourself from this Settlement, you will be considered a member of the Settlement Class, which means you give up your right to file or continue a lawsuit against Defendant and its related entities, agents, and vendors (as defined in the Settlement Agreement), and relating to accessing Illinois Central Railroad Company (d/b/a "CN") facilities located in the state of Illinois through its SpeedGate System from **April 22, 2014, to [Date of Preliminary Approval]**. Giving up your legal claims is called a release. The precise terms of the release are in the Settlement Agreement, which is available on the settlement website. Unless you formally exclude yourself from this Settlement, you will release your claims whether or not you submit a Claim Form and receive payment. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

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 60 days after the Settlement has been finally approved. If there is an appeal of the Settlement, payment may be delayed. Updated information about the case is available at www.RailroadBIPASettlement.com, or you can call the Settlement Administrator at **1-999-999-9999** or contact Class Counsel at the information provided below.

WHEN WILL THE COURT RULE ON THE SETTLEMENT?

The Court has already given preliminary approval to the Settlement. A final hearing on the Settlement, called a Final Approval Hearing, will be held to determine the fairness of the Settlement. At the Final Approval Hearing, the Court will also consider whether to make final the certification of the Class for settlement purposes, hear any proper objections and arguments to the Settlement, as well as any requests for an award of attorneys' fees, costs, and expenses and a Class Representative Service Award that may be sought by Class Counsel. The Court will hold the Final Approval Hearing on **XX, XX, 2022 at XX am/pm** at the Richard J. Daley Center, 50 West Washington Street, Courtroom **2008**, Chicago, Illinois 60602. The

Court may direct that the hearing be conducted by videoconference, and the hearing is otherwise subject to being changed by the Court, so please visit www.RailroadBIPASettlement.com for updates.

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

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

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.

Myles McGuire Evan M. Meyers David Gerbie Brendan Duffner MCGUIRE LAW, P.C. 55 W. Wacker Drive, 9 th Fl. Chicago, IL 60601 mmcguire@mcgpc.com emeyers@mcgpc.com dgerbie@mcgpc.com bduffner@mcgpc.com Tel: 312-893-7002
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WHERE CAN I GET ADDITIONAL INFORMATION?

This Notice is only a summary of the proposed Settlement of this lawsuit. More details are in the Settlement Agreement which, along with other documents, can be obtained at www.RailroadBIPASettlement.com. If you have any questions, you can also call the Settlement Administrator at [1-999-999-9999](tel:1-999-999-9999) or contact Class Counsel at the numbers or email addresses set forth above. In addition to the documents available on the case website, all pleadings and documents filed in court may be reviewed or copied in the Office of the Clerk. Please do not call the Judge or the Clerk of the Court about this case. They will not be able to give you advice on your options.