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10 BUSINESS MACHINES CORPORATION

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

13 THE PEOPLE OF THE STATE OF
CALIFORNIA,

14 Plaintiff,

15 vs.

16 TWC PRODUCT AND TECHNOLOGY, LLC,
a Delaware corporation; INTERNATIONAL
17 BUSINESS MACHINES CORPORATION, a
New York corporation; and DOES 2-50,
18 inclusive,

19 Defendants.

Case No.: 19STCV00605

**JOINT STIPULATION AND ~~PROPOSED~~
ORDER REGARDING SETTLEMENT
AND DISMISSAL OF THE CASE WITH
PREJUDICE**

Assigned for All Purposes to
The Hon. Mark V. Mooney
Dept. 68

Action Filed: January 3, 2019

Trial Date: May 17, 2021

FILED
Superior Court of California
County of Los Angeles

08/14/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: A. Williams Deputy

1 **JOINT STIPULATION OF SETTLEMENT AND DISMISSAL**

2 Plaintiff, The People of the State of California (the “People”), represented by the Los
3 Angeles City Attorney (“City Attorney”), and Defendants TWC Product and Technology, LLC
4 (“TWC”) and International Business Machines Corporation (“IBM”) (collectively, “Defendants”),
5 respectfully submit this Joint Stipulation and [Proposed] Order regarding settlement and dismissal
6 of the case with prejudice (the “Stipulation”):

7 WHEREAS, on January 3, 2019, the People filed a Complaint against TWC alleging, *inter*
8 *alia*, that, TWC violated the Unfair Competition Law (Bus. & Prof. Code §§ 17200 *et seq.*) (“UCL”)
9 by employing deceptive, misleading, and unfair statements and omissions through The Weather
10 Channel App (the “App”), including in the App’s location-access permission prompt, regarding
11 Defendants’ advertising and commercial uses of location data collected through the App and the
12 sharing of such data with third-parties;

13 WHEREAS, on February 26, 2019, TWC filed an Answer to the Complaint asserting, *inter*
14 *alia*, that the information that the People claim TWC allegedly omitted from the App’s location-
15 access permission prompt was in fact disclosed in the App’s online privacy policy, in compliance
16 with the California Online Privacy Protection Act (Bus. & Prof. Code §§ 22575, *et seq.*)
17 (“CalOPPA”), and also in the App’s in-app Privacy Settings page;

18 WHEREAS, on June 12, 2019, the People amended their Complaint to add TWC’s parent
19 company, IBM, as a defendant, and on July 17, 2019, IBM answered the Complaint;

20 WHEREAS, on April 10, 2020, Defendants amended their Answers to add the defense of
21 equitable abstention;

22 WHEREAS, since January 23, 2019, the parties have engaged in substantial discovery;

23 WHEREAS, on June 11, 2020, Defendants filed two motions for summary judgment, one
24 seeking summary judgment on the People’s UCL cause of action, and the other seeking summary
25 judgment on Defendants’ equitable abstention defense;

26 WHEREAS, the parties have reached agreement on terms for the settlement and dismissal
27 of the case with prejudice;

28

1 WHEREAS, Defendants maintain that, at all relevant times, their disclosures to App users
2 were transparent and fully complied with all applicable laws, including CalOPPA, the California
3 Consumer Privacy Act (Cal. Civ. Code §§ 1798, *et seq.*) (“CCPA”), and, to the extent it could be
4 argued to apply, the UCL, and, accordingly, Defendants deny liability or fault of any kind;

5 WHEREAS, Defendants maintain that they routinely evaluate their disclosures to App users
6 in light of evolving technologies, practices, laws, and regulations;

7 WHEREAS, the People have requested that Defendants make certain changes to the App’s
8 existing disclosures contained in the App’s “just-in-time” notices to highlight and clarify certain of
9 Defendants’ practices relating to location data collected through the App, including certain practices
10 that Defendants maintain previously were, and currently are, disclosed in the App’s online privacy
11 policy;

12 WHEREAS, Defendants maintain that, although the requested changes are not required
13 under existing law, the requested changes are not inconsistent with existing law;

14 ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED THAT:

15 1. The People release any and all claims against Defendants relating to the conduct
16 alleged in the Complaint, including any claims that Defendants’ disclosures to App users regarding
17 Defendants’ alleged use and sharing of location data collected through the App failed to comply
18 with the UCL or any other applicable laws.

19 2. Defendants release any and all claims against the People related to the above-
20 captioned action.

21 3. This case shall be dismissed with prejudice upon entry of this Stipulation.

22 4. Defendants will revise the App’s existing “Blue Screen” disclosure to reflect the
23 language in Exhibit A.¹

24 5. Defendants will revise the App’s existing “Learn More” page to reflect the language
25 in Exhibit B (collectively with the revisions reflected in Exhibit A, the “Revisions”).²

26 _____
27 ¹ The Blue Screen is a prompt screen shown to users after they download the App, or when they update to the latest
28 version of the App.

² The Learn More page is a page displayed to a user of the App when they click the “Learn More” hyperlink in the

1 6. Defendants will make good faith efforts to implement the Revisions as soon as
2 feasible, and in no event later than October 15, 2020.

3 7. The parties agree that, as of the date of this Stipulation, the Blue Screens and Learn
4 More page are subject to the CCPA.

5 8. The parties agree that, as of the date of this Stipulation, the Blue Screens and Learn
6 More page, as modified by the Revisions, comply with the CCPA.

7 9. The parties recognize that Defendants may, in the near future, need to change their
8 disclosures—including the Revisions—in light of, *inter alia*, changes to: (a) applicable disclosure
9 laws (*i.e.*, CCPA) and regulations; (b) changes to the operating systems' (*i.e.*, Android's and
10 Apple's) terms of service, functions, and disclosures; and/or (c) Defendants' practices.

11 10. Defendants agree to give reasonable notice to the People (through the City Attorney)
12 in advance of any future changes to the Revisions. In the event the People determine, in good faith,
13 that Defendants' proposed change violates the UCL, and Defendants are not willing to modify the
14 proposed change in a manner that is mutually acceptable to all parties, the People may move this
15 Court for appropriate relief. Nothing in this Stipulation shall prevent Defendants from making
16 changes to the Revisions notwithstanding the People's stated objection to such changes, or to the
17 People's filing of a motion regarding the changes.

18 11. None of the terms of this Stipulation shall prevent Defendants from making changes
19 to their disclosures to App users that do not materially change or omit the Revisions.

20 12. Any obligations under this agreement will expire two (2) years from the date of this
21 Stipulation (the "Settlement Period"). The parties recognize that future changes to: (a) applicable
22 disclosure laws (*i.e.*, CCPA) and regulations; (b) changes to the operating systems' (*i.e.*, Android's
23 and Apple's) terms of service, functions, and disclosures; and/or (c) Defendants' practices, may
24 render certain terms herein impractical or unnecessary before the Settlement Period
25 expires. Accordingly, the parties (either jointly or individually) may seek relief from the Court to
26 shorten the Settlement Period in light of any such changes.

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1 13. The Court shall retain jurisdiction over the parties during the Settlement Period
2 pursuant to Cal. Civ. Proc. Code § 664.6 solely for the purpose of enforcing the terms of this
3 Stipulation.
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