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Superior Court of California
County of Los Angeles

JAN 27 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By: Berta Guerrero, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

EVELIA DAVILA and LARRY WADE,
individually and on behalf of similarly
situated individuals,

Plaintiffs,

v.

ABM INDUSTRIES INCORPORATED, a
Delaware Corporation,

Defendant.

CASE NO.: BC699176

[Honorable Judge Kenneth R. Freeman, Dept.
014]

CLASS ACTION

**[PROPOSED] ORDER
CONDITIONALLY CERTIFYING A
SETTLEMENT CLASS, GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AGREEMENT,
APPROVING THE FORM AND
MANNER OF NOTICE, AND
SCHEDULING FINAL APPROVAL
HEARING**

Complaint Filed: March 22, 2018
Trial Date: None

This cause is before the Court on Plaintiffs Evelia Davila's and Larry Wade's (collectively, "Plaintiffs") Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion"). The Court, having considered the Motion, the supporting brief, the Parties' Modified Stipulation and Settlement Agreement, dated January 21, 2021 (the "Settlement Agreement"), the

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1 proposed forms of notice to the Settlement Class, the pleadings and other papers filed in this
2 Action, and the statement of counsel and the parties, and for good cause shown;

3 **IT IS HEREBY ORDERED** as follows:

4 **Preliminary Approval of Settlement Agreement**

5 1. Unless otherwise defined herein, all terms that are capitalized herein shall have the
6 meanings ascribed to those terms in the Settlement Agreement, which is attached hereto as Exhibit

7 1.

8 2. This Court has jurisdiction over the Litigation, Plaintiffs, all Settlement Class
9 Members, Defendant ABM INDUSTRIES INCORPORATED (“ABM”), and any party to any
10 agreement that is part of or related to the Settlement.

11 3. The Court finds that the proposed Settlement set forth in the Settlement Agreement
12 is sufficiently fair, reasonable, and adequate such that it is hereby preliminarily approved and
13 notice of the settlement should be provided to the Settlement Class and that a hearing should be
14 held as set forth below.

15 **Class Certification**

16 4. Solely for purposes of the Settlement, the Court conditionally certifies the
17 following class pursuant to California Code of Civil Procedure §§ 382, *et seq.* (“Settlement
18 Class”):

19 All individuals notified by ABM of either the July 2017 Phishing Incident
20 or the June 2018 Phishing Incident and previously offered credit monitoring
services as a result of the Phishing Incident(s).

21 The Settlement Class specifically excludes: the officers and directors of ABM during 2017 and
22 2018 and those persons or entities that timely and validly request exclusion from the Settlement
23 Class.

24 5. Subject to final approval of the Settlement, the Court finds and concludes for
25 settlement purposes only that the prerequisites to a class action, set forth in California Code of
26 Civil Procedure §§ 382, *et seq.*, are satisfied in that:
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- a. The Settlement Class is so numerous that joinder of all members impracticable;
- b. There are questions of law or fact common to the Settlement Class;
- c. Plaintiffs and Class Counsel (each defined below) fairly and adequately represent the Settlement Class;
- d. The claims of Plaintiffs are typical of those of Settlement Class members, as demonstrated by the Declarations of Plaintiffs Larry Wade and Evelia Davila, attached hereto as Exhibits 2 and 3, respectively;
- e. Common issues predominate over any individual issues affecting the members of the Settlement Class;
- f. Plaintiffs fairly and adequately protect and represent the interests of all members of the Settlement Class, and Plaintiffs' interest are aligned with the interests of all other members of the Settlement Class; and
- g. Settlement of this Action on a class action basis is superior to other means of resolving this matter.

6. The Court appoints Ebby S. Bakhtiar and Francis Flynn of LIVINGSTON BAKHTIAR, and Evan M. Meyers and Eugene Y. Turin of MCGUIRE LAW, P.C., as Class Counsel to represent the Settlement Class in this Action.

7. The Court hereby appoints Plaintiffs Evelia Davila and Larry Wade to serve as class representatives for settlement purposes only on behalf of the Settlement Class.

Notice to Settlement Class Members

8. The Court approves the Notices of Pendency and Proposed Settlement of Class Action (the "Settlement Notices"), and finds that the dissemination of the Notices substantially in the manner and form set forth in Section III, Paragraph 20 of the Settlement Agreement ("Notice

1 Plan”) complies fully with the requirements of California Code of Civil Procedure §§ 382, *et seq.*
2 and due process of law, and is the best notice practicable under the circumstances.

3 9. The notice procedures described in the Notice Plan are hereby found to be the best
4 means of providing notice under the circumstances and, when completed, shall constitute due and
5 sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all
6 persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance
7 with the notice requirements of California Code of Civil Procedure §§ 382, *et seq.* and due process
8 of law.

10 10. No later than fourteen (14) days from the date of this Order preliminarily approving
11 the Settlement, ABM shall provide to the Claims Administrator a list containing the names and
12 last known addresses for every potential Class member then reasonably available to Defendant,
13 based upon its existing employment records and data at the time the information was provided
14 (“Class Member Information”),
15

16 11. No later than thirty (30) days from the date of this Order preliminarily approving
17 the Settlement, Class Counsel shall cause the Claims Administrator to send the Postcard Notices
18 to each Settlement Class Member via U.S. mail to the postal address provided to the Claims
19 Administrator by ABM. Prior to mailing, the Claims Administrator will perform a search based
20 on the National Change of Address Database information to update and correct for any known or
21 identifiable address changes. If a new address is obtained by a way of a returned Notice mailing
22 or a change of address form, then the Claims Administrator shall promptly forward the original
23 Notice mailing to the updated address via U.S. mail and indicate on the mailing the date of such
24 re-mailing.
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26 12. All costs incurred in disseminating and otherwise in connection with Settlement
27 Notices shall be paid by ABM pursuant to the Settlement Agreement,
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1 13. The Settlement Notices, including the two postcard notices, attached as Exhibits A
2 and B to the Settlement Agreement, and the long notice, attached as Exhibit C to the Settlement
3 Agreement, satisfy the requirements of due process and of the California Code of Civil Procedure
4 and thus are approved for dissemination to the Settlement Class. The Credit Monitoring Request
5 Form, attached as Exhibit D to the Settlement Agreement, which is also hereby approved, shall be
6 made available to the Settlement Class as set forth in the Notice Plan and shall be made available
7 to any Settlement Class member who requests one.

9 **Responses by Settlement Class Members and the Scheduling of a Final Approval**

10 **Hearing**

11 14. Settlement Class Members may opt-out (the “Opt-Out Deadline”) or object up to
12 sixty (60) days from the date on which the Notice Program commences.

13 15. Any member of the Settlement Class who or that wishes to be excluded (“opt out”)
14 from the Settlement Class must, on or before the Opt-Out Deadline, send a letter that says they
15 want to be excluded from the Settlement in *Davila, et al. v. ABM Industries Incorporated*, Case
16 No. BC699176, pending in the Superior Court of the State of California, County of Los Angeles,
17 to the Claims Administrator and include their name, address, and signature by the date set by the
18 Court and as outlined in the Notice. All Settlement Class members that exclude themselves from
19 the Settlement Class will not be eligible to receive any benefits under the Settlement, will not be
20 bound by any further orders or judgments entered for or against the Settlement Class, and will
21 preserve their ability to independently pursue any claims they may have against ABM.

22 16. The Claims Administrator shall cause copies of requests for exclusion from
23 Settlement Class members to be provided to Class Counsel and ABM’s Counsel as they are
24 received. No later than ten (10) calendar days after the final date for mailing requests for
25 exclusion, the Claims Administrator shall provide Class Counsel and ABM’s Counsel a complete
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1 and final list of all known Settlement Class members who have excluded themselves from the
2 Settlement. Class Counsel shall provide this information to the Court before the final approval
3 hearing.

4 17. Any member of the Settlement Class that does not properly and timely request
5 exclusion from the Settlement Class shall, upon entry of the Order and Final Judgment, be bound
6 by all terms and provisions of the Settlement Agreement and Release, whether or not such
7 Settlement Class Member objected to the Settlement and whether or not such Settlement Class
8 Member received consideration under the Settlement Agreement.

9 18. The Court adopts the following schedule for the remaining events in this case:

| Event | Date |
|---|---|
| ABM Provides the Claims Administrator with the Class Member Information | Within 14 days after entry of the Preliminary Approval Order |
| Notice Program Commences | Within 30 days after entry of the Preliminary Approval Order |
| Notice Program Concludes | Within 45 days after entry of the Preliminary Approval Order |
| Exclusion (Opt-Out) or Objections | 60 days after commencement of the Notice Program |
| Postmark/Filing Deadline for Filing Claims | 90 days after Commencement of the Notice Program or, for Settlement Class members to whom the Claims Administrator had to re-mail notice, 90 days from the date of the re-mailing |
| Filing Motion for Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards to be Filed by Class Counsel | At least 15 days before the Objection Deadline |
| Filing Motion for Final Approval to be Filed by Class Counsel | At least 21 days before the Final Approval Hearing |
| Final Approval Hearing | June 22, 2021 at 10:00 a.m. |

1 19. Thus, a hearing on the Settlement (“Final Approval Hearing”) shall be held before
2 this Court on June 22, 2021, at 10:00 a.m., in Courtroom 014 of the Superior Court of California,
3 County of Los Angeles Spring Street Courthouse, located at 312 North Spring Street, Los Angeles,
4 CA 90012.

5 20. At the Final Approval Hearing, the Court will consider (a) the fairness,
6 reasonableness, and adequacy of the proposed class settlement and whether the settlement should
7 be granted final approval by the Court; (b) dismissal with prejudice of the Action; (c) entry of an
8 order including the Release; (d) entry of the Final Approval Order; and (e) entry of final judgment
9 in this Action. Class Counsel’s application for award of attorneys’ fees and costs, and request for
10 the Court to award an incentive award to the named plaintiffs, shall also be heard at the time of
11 the hearing.
12

13 21. The date and time of the Final Approval Hearing shall be subject to adjournment
14 by the Court without further notice to the members of the Settlement Class, other than that which
15 may be posted by the Court. Should the Court adjourn the Final Approval Hearing, that shall not
16 alter the deadlines for mailing and publication of notice, the Opt-Out deadline, or the deadlines
17 for submissions of settlement objections, claims, and notices of intention to appear at the Final
18 Approval Hearing unless those dates are explicitly changed by a subsequent Order.
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20 22. Any person or entity who or which does not elect to be excluded from the
21 Settlement Class may, but need not, enter an appearance through its own attorney. Settlement
22 Class members that do not timely object or opt out and that do not have an attorney enter an
23 appearance on their behalf will be represented by Class Counsel.
24

25 23. Any person or entity who or which does not elect to be excluded from the
26 Settlement Class may object to the proposed Settlement. Any Settlement Class Member may
27 object to, among other things, (a) the proposed Settlement, (b) entry of Final Approval Order and
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1 the judgment approving the Settlement, (c) Class Counsel's application for fees and expenses; or
2 (d) incentive award requests, by serving a written objection upon Class Counsel, ABM's counsel,
3 and the Court.

4 24. Any Class Member making an objection (an "Objector") must send a written
5 objection, postmarked no later than sixty (60) days after the Notice Date, to the Claims
6 Administrator, with copies also sent vis U.S. Mail to Class Counsel and to ABM Counsel at he
7 addresses below. Once received, Class Counsel will file the Objection with the Court.
8

| CLASS COUNSEL | ABM'S COUNSEL |
|---|---|
| Ebby S. Bakhtiar Livingston Bakhtiar 3435 Wilshire Boulevard Suite 1669 Los Angeles, CA 90010 | Casie D. Collignon Baker & Hostetler LLP 1801 California Street Suite 4400 Denver, CO 80202 |
| and | |
| Evan M. Meyers McGuire Law, P.C. 55 West Wacker Drive 9th Floor Chicago, IL 60601 | |

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19 25. To be valid, an objection must state: (i) the objector's full name, address, telephone
20 number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class
21 member; (iii) a written statement of all grounds for the objection, accompanied by any legal
22 support the objector cares to submit; (iv) the identity of all lawyers (if any) representing the
23 objector; (v) the identity of all of the objector's lawyers (if any) who will appear at the Final
24 Fairness Hearing; (vi) a list of all persons who will be called to testify at the Final Fairness Hearing
25 in support of the objection; (vii) a statement confirming whether the objector intends to personally
26 appear and/or testify at the Final Fairness Hearing; and (viii) the objector's signature or the
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1 signature of the objector's duly authorized lawyer or other duly authorized representative (along
2 with documentation setting forth such representation).

3 26. In addition to the foregoing, objections should also provide the following
4 information: (i) a list, by case name, court, and docket number, of all other cases in which the
5 objector (directly or through a lawyer) has filed an objection to any proposed class action
6 settlement within the last three (3) years; (ii) a list, by case name, court, and docket number, of all
7 other cases in which the objector's lawyer (on behalf of any person or entity) has filed an objection
8 to any proposed class action settlement within the last three (3) years; and (iii) a list, by case
9 number, court, and docket number, of all other cases in which the objector has been a named
10 plaintiff in any class action or served as a lead plaintiff or class representative.
11

12 27. Any Settlement Class Members that do not timely file and serve an objection in
13 writing in accordance with the procedure set forth in the Class Notice and mandated in this Order
14 shall be deemed to have waived any objection to (a) the Settlement; (b) the Release; (c) entry of
15 Final Approval Order or any judgment; (d) Class Counsel's application for fees, costs, and
16 expenses; and/or (e) incentive award requests for the named Plaintiffs, whether by appeal,
17 collateral attack, or otherwise.
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19 28. Settlement Class Members need not appear at the hearing or take any other action
20 to indicate their approval.
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22 29. Upon entry of the Order and Final Judgment all members of the Settlement Class
23 that have not personally and timely requested to be excluded from the Settlement Class will be
24 barred from proceeding against any of the Release Persons with respect to any of the Released
25 Claims.
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1 **Administration of the Settlement**

2 30. The Court hereby appoints the claims administrator proposed by the parties, KCC,
3 LLC (the "Claims Administrator"). Responsibilities of the Claims Administrator shall include:
4 (a) establishing a post office box for purposes of communicating with Class members; (b)
5 disseminating notice to the Class; (c) developing a website to enable class members to access
6 documents; (d) accepting and maintaining documents sent from Class members relating to claims
7 administration; and (e) distributing settlement checks to Class members. Pursuant to the
8 Settlement Agreement, the Claims Administrator and costs of administration shall be paid by
9 ABM.
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11 31. In the event the Settlement Agreement and the proposed settlement are terminated
12 in accordance with the applicable provisions of the Settlement Agreement, the Settlement
13 Agreement, the proposed Settlement, and all related proceedings shall, except as expressly
14 provided to the contrary in the Settlement Agreement, become null and void, shall not further
15 force and effect, and Settlement Class Members shall remain all of their current rights to assert
16 any and all claims against ABM and any other Released Persons, and ABM and any other released
17 parties shall retain any and all of their current defenses and arguments thereto (including but not
18 limited to arguments that the requirements of California Code of Civil Procedure §§ 382, *et seq.*
19 are not satisfied for purposes of continued litigation). The Action shall thereupon revert forthwith
20 to its respective procedural and substantive status prior to the date of execution of the Settlement
21 Agreement and shall proceed as if the Settlement Agreement and all other related orders and
22 papers had not been executed.
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24 32. Neither this Order nor the Settlement Agreement nor any other settlement-related
25 document nor anything contained herein or therein or contemplated hereby or thereby nor any
26 proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or
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1 herein or in any other settlement-related document, shall constitute, be construed as or be deemed
2 to be evidence of or an admission or concession by ABM as to the validity of any claim that has
3 been or could have been asserted against it or as to any liability by it as to any matter set forth in
4 this Order, or as to the propriety of class certification for any purposes other than for purposes of
5 the current proposed settlement.
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8 **KENNETH R. FREEMAN**

9 Dated: 1-27-2021

The Honorable Kenneth R. Freeman
California Superior Court Judge

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