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15 Chicago, IL 60601

16 Attorneys for Plaintiffs and the Putative Class

17 **SUPERIOR COURT OF CALIFORNIA**
18 **COUNTY OF LOS ANGELES**
19 **CENTRAL JUDICIAL DISTRICT**

20 EVELIA DAVILA and LARRY WADE
21 individually and on behalf of all others
22 similarly situated,

23 Plaintiff,

24 v.

25 ABM INDUSTRIES, INC.,

26 Defendant.

CASE NO.: BC 699176

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CERTIFICATION OF A
SETTLEMENT CLASS, AND RELATED
RELIEF**

Date: March 12, 2020
Time: 10:00
Dept.: 14

Action Filed: March 22, 2018
Trial Date: None Set

27 COME NOW Plaintiffs Evelia Davila and Larry Wade (hereinafter, "Plaintiffs"), and
28 move this Court for its Order and state as follows:

1. Plaintiffs and Defendant have entered into a CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE ("Settlement Agreement") executed in this case.

1 2. Plaintiffs incorporate by reference the Memorandum of Points and Authorities and
2 all attachments including Exhibits and Declarations as if fully set forth herein.

3 3. Plaintiffs, Defendant, and their respective counsel believe that the Settlement
4 Agreement is fair, adequate, and reasonable in light of the risks of litigation, the stage of the
5 proceedings, and the expense, likely duration, and complexity of the action. During the action's
6 pendency, the parties have conducted substantial investigation pertaining to Plaintiffs' and the
7 proposed Class' claims, and have analyzed and evaluated the merits of those claims and of this
8 Settlement Agreement as it impacts all parties, including members of the Settlement Class as set
9 forth below.
10

11 4. The Settlement Agreement is the result of good faith and arm's-length bargaining
12 between the Plaintiffs and Defendant and was not reached through collusion. After negotiations,
13 Plaintiffs and Plaintiffs' counsel believe settlement of Plaintiffs' and the proposed Class' claims
14 on the terms and conditions set forth in this Settlement Agreement are fair, just, equitable, and in
15 the best interests of the members of the Settlement Class as set forth below.
16

17 5. The Settlement Class ("Settlement Class"), which the parties have negotiated, is
18 defined as follows¹:

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

22 (Settlement Agreement ¶ 16).

23 6. Plaintiffs and Defendant have stipulated to certification of the Settlement Class
24 solely for the purposes of this settlement. For the purpose of approval of this Settlement alone,
25 Plaintiffs and Defendant further stipulate and agree that the Members of the Settlement Class are
26 so numerous as to make their joinder impractical; that questions of law and fact are common to
27

28 ¹ Definitions for certain capitalized terms or phrases in the class definition may be found in the
Footnote continued on next page

1 the Settlement Class and that those questions predominate; that the interests of the representative
2 party are typical of the interests of the Settlement Class; that the representative party will fairly
3 and adequately protect the interests of the Settlement Class; and that Defendant allegedly acted or
4 refused to act on grounds generally applicable to all of the Settlement Class Members. Such
5 stipulation shall not be deemed nor construed as an admission, or used as evidence of any
6 violation of law or any wrongdoing by Defendant in any further proceedings in this matter,
7 including class certification proceedings in the event this settlement is not consummated for any
8 reason.

10 7. Certification of the Settlement Class for purposes of the Settlement is in the best
11 interests of the Plaintiffs, the Settlement Class Members, and the Defendant.

12 8. The Notice (collectively, Exhibit A to Exhibit 1), in a form substantially similar to
13 the Settlement Agreement, adequately and clearly informs absent Settlement Class Members of
14 the terms of the Settlement Agreement, their right to additional information, their right to object
15 to the Settlement Agreement, their right to opt-out of and be excluded from the Settlement
16 Agreement, and the time and location of the hearing on final approval.

18 9. Accordingly, Plaintiffs and Defendant request the Court's Order, to wit:

19 (a) Determining that all the requirements of California Code of Civil
20 Procedure §§ 382, *et seq.* and Civil Code § 1781 of Civil Procedure have been satisfied with
21 respect to the conditional maintenance of this action as a Class Action for the sole purpose of
22 considering and acting on the Settlement contemplated by the Class Action Settlement Agreement
23 and Release executed in this case and preliminarily approving the Settlement Agreement;

25 (b) Certifying this action as a Class Action on behalf of the Settlement Class
26 under California Code of Civil Procedure §§ 382, *et seq.* and Civil Code § 1781 for the sole

27 _____
28 *Footnote continued from previous page*
Settlement Agreement

1 purpose of considering and acting on the Settlement and defining the Settlement Class consistent
2 with the definitions set forth in the Settlement Agreement;

3 (c) Appointing Plaintiff's counsel shown on this Motion as Class Counsel,
4 designating Plaintiffs Evelia Davila and Larry Wade, as a Class Representative, and appointing
5 KCC LLC as Settlement Administrator empowered to provide for or assist in the issuance of
6 Notice to Settlement Class members and otherwise administer the Settlement;

7
8 (d) Providing that reasonable efforts shall be undertaken to notify Settlement
9 Class Members of this Settlement by mailing, by postage pre-paid, 1st Class U.S. Mail a copy of
10 a Claim Form and a Notice, in forms substantially similar to that shown as Settlement Agreement
11 Exhibit A (depending on whether the Settlement Class member was notified of one or both of the
12 Data Incidents), said mailed Notice to be attempted to all Class Members whom the Defendant
13 can and does identify from its records;

14
15 (e) Finding that the mailing of Notices constitutes the best notice practical
16 under the circumstances to the Settlement Class and that such Notice comports with due process
17 and is sufficient notice for all purposes to all persons entitled thereto;

18 (f) Establishing a procedure by which putative class members may opt-out and
19 thereby withdraw from the Class and the Settlement Agreement;

20
21 (g) Providing that any Member of the Settlement Class, who does properly and
22 timely object to the approval of the Settlement may appear at the aforesaid hearing and show
23 cause why the Settlement should not be approved as fair, reasonable, and adequate;

24 (h) Requiring that all objections to the Settlement which are to be heard at the
25 hearing on final approval of the Settlement and any papers or briefs submitted in support of said
26 objections, will be considered only if said objectors properly and timely make all of their
27 objections in writing and filed with the Superior Court of California, County of Los Angeles,
28

1 Central Judicial District by the date indicated in the Notice, and served therewith upon both of
2 the following: Class Counsel, Thomas V. Girardi, Ebby S. Bakhtiar, and Jad Sheikali at McGuire
3 Law, P.C., 55 West Wacker Drive 9th Floor, Chicago IL 60601, and, counsel for the Defendant,
4 Casie D. Collignon, Baker & Hostetler LLP 1801 California Street Suite 4400 Denver, CO
5 80202.
6

7 (i) Authorizing Class Counsel to respond to inquiries from Settlement Class
8 members at Class Counsel's discretion concerning the Settlement, and the status of the case;

9 (j) Granting a preliminary injunction in aid of the Court's jurisdiction, which
10 would enjoin all other efforts to certify a Class consisting of the members of this Settlement Class
11 that involve the same claims against Defendant; and,

12 (k) Setting a date, time, and location for a hearing on final approval of the
13 Settlement and a hearing on objections and approval of class counsel fees and expenses.
14

15 (l) Staying and suspending all discovery and other pretrial proceedings in this
16 Action except such actions as may be necessary to implement the Agreement and the Court's
17 order regarding preliminary approval of the settlement.

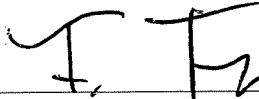
18 WHEREFORE, Plaintiffs and the Defendant request that this Court enter an Order
19 containing the provisions set forth above. Plaintiff and Defendant have provided a Proposed
20 Order to the Settlement Agreement.
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This 10th day of March, 2020.

LIVINGSTON • BAKHTIAR

Baker & Hostetler LLP



Francis J. "Casey" Flynn, Jr.
CA State Bar No. 304712

Casie D. Collignon (admitted *pro hac vice*)
Matthew D. Pearson (SBN: 294302)
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Counsel for Plaintiffs and Class

1
2 PROOF OF SERVICE
3 1013A (3) CCP Revised 1/1/88

4 STATE OF CALIFORNIA)
5) ss
6 COUNTY OF LOS ANGELES)

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action. My business address is 3435 Wilshire Boulevard, Suite 1669,
9 Los Angeles, California 90010.

10 On **March 10, 2020**, I served the forgoing documents described as: **JOINT MOTION FOR
11 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF
12 A SETTLEMENT CLASS, AND RELATED RELIEF**; a true copy thereof enclosed in a sealed
13 envelop(s) addressed as follows:

14 Casie D. Collignon (admitted pro hac vice)
15 Matthew D. Pearson, Esq.
16 Baker & Hostetler, LLP
17 1801 California Street, Suite 4400
18 Denver, Colorado 80202-2662

19 JAD SHEIKALI (admitted pro hac vic)
20 McGuire Law P.C.
21 55 West Wacker Dr., 9th Floor
22 Chicago, IL 60601

23 Thomas V. Girardi, Esq.
24 GIRARDI KEESE
25 1126 Wilshire Blvd.
26 Los Angeles, CA 90017

27 **[X] BY MAIL:** I caused such envelope to be deposited in the mail at Los Angeles, California.
28 The envelope was mailed with postage thereon fully pre-paid. I am readily familiar with the
firm's practice of collection and processing of correspondence for mailing. Under that practice,
the correspondence is deposited with the U.S. Postal Service on that same day in the ordinary
course of business. I am aware that on motion of the party served, service is presumed invalid if
postal cancellation date or postage meter date is more than one day after the date of deposit for
mailing contained in the affidavit.

I declare under penalty of perjury, under the law of the State of California, that the
foregoing is true and correct.

Executed on March 10, 2020, at Los Angeles, California.

Sandy Barela
DECLARANT