

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
James R. Asperger (Bar No. 83188)
2 jimasperger@quinnemanuel.com
Stephen A. Broome (Bar No. 314605)
3 stephenbroome@quinnemanuel.com
Lauren B. Lindsay (Bar No. 280516)
4 laurenlindsay@quinnemanuel.com
Josef Ansorge (*pro hac* application pending)
5 josefansorge@quinnemanuel.com
William R. Sears (Bar No. 330888)
6 willsears@quinnemanuel.com
865 South Figueroa Street, 10th Floor
7 Los Angeles, California 90017-2543
Telephone: (213) 443-3000
8 Facsimile: (213) 443-3100

FILED
Superior Court of California
County of Los Angeles
08/14/2020
Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Williams Deputy

9 Attorneys for Defendants TWC PRODUCT AND
10 TECHNOLOGY, LLC and INTERNATIONAL
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

21
22
23
24
25
26
27
28

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;

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
version of the App.

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

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.

27
28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 10, 2020

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: 

Stephen A. Broome
Attorney for Defendants TWC PRODUCT
AND TECHNOLOGY, LLC and
INTERNATIONAL BUSINESS
MACHINES CORPORATION

Dated: August 10, 2020

TWC PRODUCT AND TECHNOLOGY, LLC
INTERNATIONAL BUSINESS MACHINES
CORPORATION

By: *R. Tulloss Delk*

R. Tulloss Delk
Senior Counsel, IBM Corporation

Dated: August 10, 2020

OFFICE OF THE LOS ANGELES CITY ATTORNEY
AFFIRMATIVE LITIGATION DIVISION

By: 

Adam Teitelbaum
Attorney for Plaintiff THE PEOPLE OF
THE STATE OF CALIFORNIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

Pursuant to California Code of Civil Procedure § 581 after full consideration of the Parties' stipulation in this matter and good cause appearing,

IT IS HEREBY ORDERED THAT:

The case is dismissed with prejudice.

Defendants shall promptly make the changes reflected in Exhibits A and B.

The Court shall retain jurisdiction over the parties for a period of two years following the date of the foregoing Stipulation pursuant to Cal. Civ. Proc. Code § 664.6 solely for the purpose of enforcing the settlement terms described above.

08/14/2020
_____, 2020



Mark V. Mooney

The Honorable Mark V. Mooney
JUDGE OF THE SUPERIOR COURT
Mark V. Mooney / Judge

EXHIBIT A – REVISED TEXT FOR BLUE SCREEN PROMPT

Location and Your Weather

Did you know that if you allow access to your device's location and barometric pressure sensor data, it enables us automatically to provide you with more accurate local forecasts?

As our [Privacy Policy](#) describes, if you grant permission, we use your device's location to deliver forecasts and weather alerts. We also may use and share this information with trusted partners for ads, and to provide and improve our Services. Regardless of whether or not you allow location access, you can always receive accurate local forecasts by manually entering a location. You can change permissions at any time. [Learn More](#).

I Understand

EXHIBIT B – REVISED TEXT FOR LEARN MORE PAGE

How We Use and Share Location Information

We collect your device's location information and pressure sensor data through our applications so that we can offer you certain location-based features like forecasts, weather alerts, and ads, and to provide and improve our Services. The way we collect that information is different depending on whether you are accessing the Services through a website or mobile application.

You can still use our application without giving us permission to access your device's location services by manually entering a location in the search field. However, if you disable your device's location services, you will not have access to some of our features like real-time weather alerts for an exact location.

If you grant permission, we may use and share your device's location to deliver you ads relevant to your location, and to provide and improve the Services. If you've also enabled personalized advertising, we may use and share your device's location data with trusted partners to deliver ads that are relevant to you based on places you may have visited (for example, coffee shops). For more information on these trusted partners and the use and sharing of location data, you can review the section on sharing data in our Privacy Policy.

To learn more about how we use and share your device's data and our commitment to protecting your privacy, visit our [Privacy Policy](#).