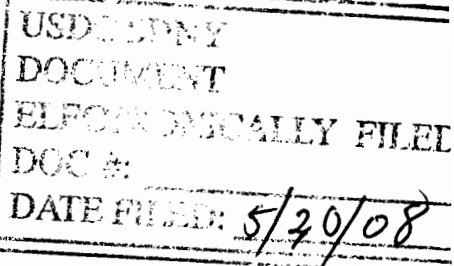


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



IN RE INTERNATIONAL BUSINESS MACHINES
CORP. SECURITIES LITIGATION

Civil Action No. 1:05-cv-6279 (AKH)
ECF CASE

**~~PROPOSED~~ ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR NOTICE TO THE CLASS**

WHEREAS:

A. Plaintiffs, Joseph Anchinovski, Nilda Anchinovski and Donald Rubenstein (collectively, "Plaintiffs") on behalf of themselves and as representatives of the Class, and defendants International Business Machines Corporation ("IBM" or the "Company"), and Mark Loughridge (collectively, the "Defendants"), have entered into a settlement of the claims asserted in the above-captioned class action (the "Action"), the terms of which are set forth in a Stipulation and Agreement of Settlement dated May 22, 2008 (the "Stipulation");

B. Plaintiffs and Defendants have moved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for an Order preliminarily approving the proposed Settlement and directing the issuance of notice to the Class in accordance with the terms of the Stipulation; and

C. The Court, on March 14, 2007, certified a class (the "Class") of all persons or entities who purchased or otherwise acquired common stock of IBM between April 5, 2005, and April 14, 2005, inclusive (the "Class Period"), and who were damaged thereby. Excluded from the Class are any parents, subsidiaries, affiliates, officers, or directors of defendant IBM and their immediate families; any entity in which any excluded person has a controlling interest and the legal representatives, heirs, successors and assigns of any excluded person. Also

excluded from the Class are all persons and entities who have previously properly excluded themselves from the Class pursuant to the Notice of Pendency of Class Action or who exclude themselves pursuant to the instructions set forth in the proposed Notice of Proposed Settlement of Class Action, Application for Attorneys Fees and Expenses and Fairness Hearing (the “Notice”), a list of whom will be attached to the Judgment when it is submitted to the Court in connection with the Fairness Hearing.

D. The Court having read and considered the Stipulation and exhibits thereto, including the proposed Notice, the proposed Proof of Claim and Release (“Proof of Claim”), the proposed Summary Notice of Proposed Settlement of Class Action, Application for Attorneys’ Fees and Expenses and Fairness Hearing (“Summary Notice”) and the proposed Judgment and Order of Dismissal (“Judgment”), and finding that substantial and sufficient grounds exist for entering this Order Preliminarily Approving Settlement and Providing for Notice to the Class (“Preliminary Approval Order”);

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court, for purposes of this Preliminary Approval Order, adopts all defined terms as set forth in the Stipulation. Any inconsistencies between the Stipulation and the Notice will be controlled by the language of the Stipulation.

2. The Court preliminarily approves the proposed Settlement of this consolidated class action on the terms set forth in the Stipulation as being fair, reasonable and adequate, subject to further consideration at a hearing to be held before this Court on Sept. 9, 2008 at 3:00 p.m. in the Daniel Patrick Moynihan United States Courthouse, Courtroom 14D, 500 Pearl Street, New York, New York 10007 (the “Fairness Hearing”) to determine (i) whether the proposed settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and should be approved by the

Court and whether the proposed Plan of Allocation of the Net Settlement Amount is fair, reasonable and adequate and should be approved by the Court; (ii) whether a judgment substantially in the form of Exhibit B to the Stipulation should be entered herein; and (iii) whether Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of expenses, including an award of costs and expenses to the Plaintiffs for their efforts in prosecuting the Action (the "Fee and Expense Request") should be granted.

3. The Court approves the form, substance and requirements of the Notice, Proof of Claim, and Summary Notice, attached hereto as Exhibits 1, 2 and 3, and finds that the procedures established for mailing and distribution of such Notice and Proof of Claim and for publishing the Summary Notice, substantially in the manner set forth in paragraphs 5 and 6 hereof constitute the best notice practicable under the circumstances and are in full compliance with the notice requirements of due process, Fed. R. Civ. P. 23 and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7).

4. The Court appoints A.B. Data, Ltd. (the "Claims Administrator") to administer the notice procedure as well as the processing of claims under the supervision of Plaintiffs' Counsel, as more fully set forth below.

5. Within twenty-eight (28) calendar days of entry of this Preliminary Approval Order (the "Notice Date"), Plaintiffs' Counsel shall cause the Notice and the Proof of Claim, substantially in the forms annexed hereto as Exhibits 1 and 2, to be mailed, first class mail, postage prepaid, to each Class Member at the address of each such person as set forth in the records of IBM or its transfer agent, or who otherwise can be identified through reasonable effort. Defendants' Counsel shall cause IBM's transfer records concerning the identity and address of Class Members and their transactions to be transmitted to the Class Administrator no later than fourteen (14) calendar days after entry of this Preliminary Approval Order.

6. Not later than ten (10) calendar days after the Notice Date, the Claims Administrator shall cause the Summary Notice, substantially in the form annexed hereto as Exhibit 3, to be published once in the national edition of the *Wall Street Journal*.

7. No later than seven (7) days prior to the Fairness Hearing: (a) Plaintiffs' Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of the mailings and publication required in paragraphs 5 and 6 of this Preliminary Approval Order; and (b) Defendants' Counsel shall serve on Plaintiffs' Counsel and file with the Court proof, by affidavit or declaration, of their compliance with the notice requirements of 28 U.S.C. § 1715, including the date of the last such notification provided.

8. Plaintiffs' Counsel or their agents shall be responsible for the receipt of all responses from the Class and shall preserve all entries of appearance, Proofs of Claim, and all other written communications from members of the Class, nominees or any other Person in response to the Notice for three (3) years after the Effective Date of the Settlement, or as otherwise ordered by the Court.

9. The costs of notification to Class Members of the proposed Settlement in accordance with paragraphs 5 and 6 hereof, up to \$250,000, including printing and mailing or publication of all required notices, shall be paid out of the Settlement Amount. In accordance with the Stipulation, IBM shall advance to Plaintiffs' Counsel, upon notice and reasonable supporting documentation, up to \$250,000 from the Settlement Amount to pay the costs of notice and settlement administration without further order of the Court. Any amounts advanced pursuant to this paragraph shall not be recoverable by Defendants in the event the proposed Settlement does not become Final.

10. No Person that is not a Plaintiff, Class Member or Plaintiffs' Counsel shall have any right to any portion of, or in the distribution of, the Settlement Amount unless otherwise ordered by the Court or otherwise provided in the Stipulation.

11. Any member of the Class who did not previously submit a timely and valid request for exclusion from the Class in accordance with the Notice of Pendency and who now wishes to be excluded from the Class must submit a request for exclusion, in accordance with the instructions in the Notice, to the Claims Administrator, by first class mail no later than fourteen (14) days before the Fairness Hearing. All persons who submit valid and timely requests for exclusion in the manner set forth in the Notice shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Amount, and shall not be bound by any of the terms and provisions of the Stipulation, including the releases provided for in the Judgment, or any proceedings, rulings, orders, and judgments in this Action. The Claims Administrator shall provide copies of requests for exclusion to Plaintiffs' Counsel and Defendants' Counsel within three (3) days after such requests are received, and at least ten (10) days before the Fairness Hearing. Any Class Member who did not, or does not, submit a valid and timely written request for exclusion from the Class in accordance with the instructions in the Notice of Pendency or Notice is a Class Member and shall be bound by all of the terms and provisions of the Stipulation, including the releases provided for in the Judgment, and by all proceedings, rulings, orders, and judgments in this Action, whether favorable or unfavorable to the Class.

12. Any Class Member who wishes to participate in the distributions from the Net Settlement Amount must complete and submit a Proof of Claim in accordance with the instructions contained therein. All Proof of Claim forms must be submitted by first-class mail, postmarked no later than fourteen (14) days before the Fairness Hearing or such other time as

may be set by the Court. If a Class Member chooses to return his, her or its Proof of Claim form in a manner other than by first-class mail, then it must be actually received at the address on the Proof of Claim form no later than fourteen (14) days before the Fairness Hearing or such other date as may be set by the Court. Except as otherwise ordered by the Court, any Class Member who fails to return a timely and signed Proof of Claim form shall be barred from receiving a distribution of the Net Settlement Amount, but shall nevertheless be bound by and subject to the Stipulation, the Judgment, and all proceedings, rulings, orders and judgments in this Action, including, without limitation, the release provided for in the Judgment and the dismissal with prejudice of this Action. Notwithstanding the foregoing, Plaintiffs' Counsel may, in their sole discretion, accept for processing late claims so long as the distribution of the Net Settlement Amount to Authorized Claimants is not materially delayed.

13. Any Class Member may enter an appearance in the Action, individually or through counsel of his, her or its own choice, at his, her or its own expense. Any Class Member who chooses not to enter an appearance in the Action will be represented by Plaintiffs' Counsel.

14. Any Class Member who wishes to object to the fairness, reasonableness or adequacy of the proposed Settlement, to the entry of the Judgment, to the Plan of Allocation or to the Fee and Expense Request must file with the Court (c/o Clerk of the United States District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, New York 10007), in the manner provided in the Notice and no later than fourteen (14) days before the Fairness Hearing or as the Court may otherwise direct, notice of the Class Member's intention to object, the grounds for such objection, and all papers the Class Member intends to present to the Court in opposition to the proposed Settlement, the Judgment, the Plan of Allocation or the Fee and Expense Request, including proof of all purchases of IBM common stock during the Class Periods and price(s) paid, any legal support the Class Member wishes to

bring to the Court's attention and any evidence the Class Member wishes to introduce in support of his, her or its objection. In addition to filing such papers and materials with the Court, the Class Member must serve copies of such papers and materials, served by hand or by overnight delivery, upon each of the following:

Jonathan M. Plasse
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

*Lead Counsel for Plaintiffs
and the Class*

Evan R. Chesler
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

*Attorneys for Defendants International
Business Machines Corp. and Mark
Loughridge*

15. Any Class Member may file an objection of the nature described in paragraph 14 on his, her or its own or through an attorney hired at his, her or its own expense. Any Class Member who files and serves such an objection may, but is not required to, appear at the Fairness Hearing, either in person or through an attorney hired at the Class Member's own expense. If a Class Member hires an attorney to represent him, her or it at the Fairness Hearing, the attorney must file a notice of appearance with the Clerk of the Court and deliver a copy of that notice to the counsel identified in paragraph 14 hereof at the addresses set forth therein, no later than fourteen (14) days before the date of the Fairness Hearing.

16. Persons who intend to object to the proposed Settlement, the Judgment to be entered herein, the Plan of Allocation or to the Fee and Expense Request and present evidence at the Fairness Hearing must include in their written objections the identity of any witnesses they may seek to call to testify and any exhibits they may seek to introduce into evidence at the Fairness Hearing. Any Party has the right to object to any testimony or other evidence that a person presenting an objection seeks to introduce.

17. Unless the Court otherwise directs, no member of the Class or other Person shall be entitled to object to the proposed Settlement, the Judgment to be entered herein, the Plan of Allocation or the Fee and Expense Request or otherwise be heard, except by serving and filing written objections as described above. Any Person who does not object in the manner prescribed above shall be deemed to have waived such objection in this or any other action or proceeding and shall be bound by all the terms and provisions of the Stipulation and by all proceedings, orders and judgment in the Action.

18. The Court expressly reserves the right to adjourn the Fairness Hearing, or any adjournment thereof, without any further notice other than an announcement at the Fairness Hearing, or any adjournment thereof, and to approve the Stipulation with modification approved by the parties to the Stipulation and without further notice to members of the Class.

19. At or after the Fairness Hearing, the Court shall determine whether the Plan of Allocation and the Fee and Expense Request shall be approved. Neither the Defendants nor Defendants' Counsel shall have any responsibility for any plan of allocation of the Settlement Amount or any application for attorneys' fees or reimbursement of expenses submitted by Plaintiffs' Counsel, and such matters will be considered separately from the fairness, reasonableness and adequacy of the proposed Settlement.

20. If the proposed Settlement, including any amendment made in accordance with the Stipulation, is not approved by the Court or shall not become effective for any reason whatsoever, the proposed Settlement and Stipulation (including any modification thereof), and any action taken or to be taken in connection therewith (including this Preliminary Approval Order and any judgment entered herein) shall be terminated and shall become null and void and of no further force and effect except for Defendants' obligation to pay for Notice and Administration Expenses as set forth in paragraph 7 of the Stipulation, and neither the

Stipulation, nor any provision contained in the Stipulation, nor any action undertaken pursuant thereto, nor the negotiation thereof by any party, shall be deemed an admission or offered or received as evidence at any proceeding in this or any other action or proceeding.

21. All proceedings in the Action, other than proceedings as may be necessary to carry out the terms and conditions of the proposed Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination of whether the proposed Settlement and Stipulation should be approved, Plaintiffs and all members of the Class are barred and enjoined from commencing or prosecuting, instigating or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any of the Settled Plaintiffs' Claims, as defined in the Stipulation.

22. Plaintiffs' Counsel shall submit papers in support of final approval of the proposed Settlement, the Plan of Allocation and their application for an award of attorneys' fees and expenses and an award of reasonable costs and expenses to Plaintiffs by no later than one week prior to the date set for the Fairness Hearing.

23. In any event, neither the Stipulation or any provisions contained in the Stipulation, nor any negotiations, statements or proceedings in connection therewith, shall be construed as, or deemed to be evidence of, any presumption, concession or admission on the part of any of the Plaintiffs, Defendants, any Class Member or any other person or entity with respect to any liability or wrongdoing by them, or any of them as to any claim alleged or asserted in the Action or otherwise, and shall not be offered or received in evidence in any action or proceeding (except in an action or proceeding to enforce the terms and conditions of the Stipulation), or be used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession

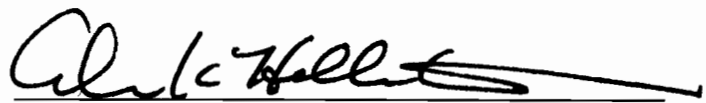
that Plaintiffs, their counsel and the members of the Class, or any present or former shareholders of the Company, or any other person or entity, has or has not suffered any damage.

24. If the proposed settlement provided for in the Stipulation is approved by the Court following the Fairness Hearing, a Judgment shall be entered as described in the Stipulation.

25. The administration of the proposed Settlement and the determination of all disputed questions of law and fact with respect to the validity of any claim or right of any person to participate in the distribution of the Settlement Amount shall be under the authority of this Court.

26. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the proposed Settlement.

Dated: New York, New York
May 29 2008



Honorable Alvin K. Hellerstein
United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE INTERNATIONAL BUSINESS MACHINES
CORP. SECURITIES LITIGATION

Civil Action No. 1:05-cv-6279 (AKH)
ECF CASE

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”) is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation is entered into among (i) plaintiffs, Joseph Anchinovksi, Nilda Anchinovski (“Lead Plaintiffs”) and Donald Rubenstein (collectively, “Plaintiffs”) on behalf of themselves and as representatives of the Class (as hereinafter defined) in the above-captioned consolidated action (the “Action”), and (ii) defendants International Business Machines Corporation (“IBM or the “Company”) and Mark Loughridge (collectively, “Defendants”), by and through their respective counsel. The Plaintiffs and the Defendants are referred to herein as the “Parties”.

WHEREAS:

A. Beginning on July 19, 2005, two class actions alleging violations of federal securities laws—Lomax v. International Business Machines Corporation, and Mark Loughridge, 05-6279 (AKH) and Al-Araj v. International Business Machines Corporation, Samuel Palmisano and Mark Loughridge, 05-6729 (AKH)—were filed in this Court. By Order entered on March 29, 2006, these actions were consolidated under lead case number 05-6279 (AKH) and the Court also appointed Joseph Anchinovski and Nilda Anchinovski as lead plaintiffs and Labaton Sucharow LLP (then known as Labaton Sucharow & Rudoff LLP) as lead counsel for the proposed class.

B. The Corrected Consolidated Class Action Complaint, dated May 19, 2006, in the Action (the “Complaint”) (the operative complaint in the Action) generally alleges, among other things, that on April 5, 2005, Defendants made material misrepresentations and omissions concerning IBM’s first quarter 2005 operational performance and IBM’s first quarter 2005 options expense in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. Plaintiffs’ Complaint further alleges that as a result of IBM’s misrepresentations and omissions on April 5, 2005, the price of IBM’s common stock was artificially inflated until April 14, 2005.

C. By order dated March 14, 2007, the District Court certified the Action as a class action, approved Plaintiffs as class representatives, and appointed Labaton Sucharow LLP, assisted by Klafter & Olsen LLP on behalf of a class consisting of:

“All persons and entities that purchased or otherwise acquired the common stock of [IBM] between April 5, 2005 and April 14, 2005, inclusive, (“the Class Period”) and were damaged thereby (the “Class”).

“Excluded from the Class are any parents, subsidiaries, affiliates, officers, or directors of defendant IBM and their immediate families; any entity in which any excluded person has a controlling interest and the legal representatives, heirs, successors and assigns of any excluded person.”

D. Notice of Pendency of the Action was disseminated to members of the Class on or about May 30, 2007, pursuant to Order of the Court entered April 20, 2007. Also excluded from the Class are all persons and entities who have properly excluded themselves from the Class pursuant to that notice or who exclude themselves from the Class in accordance with the Notice of Proposed Settlement of Class Action, Application for Attorneys’ Fees and Fairness Hearing, attached as Exhibit A-1, hereto (“Notice”).

E. The Defendants have denied and continue to deny any wrongdoing whatsoever. This Stipulation, whether or not consummated, any proceedings relating to any

settlement, or any of the terms of any settlement, whether or not consummated, shall in no event be construed as, or deemed to be evidence of, or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any defense that the Defendants have or could have asserted. Defendants state that they are entering into this Settlement (as defined below) to eliminate the burden, expense, uncertainty and risk of further litigation.

F. Plaintiffs believe that the claims asserted in the Action have merit and that the evidence developed to date supports the claims asserted. However, Plaintiffs' Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against the Defendants through trial and appeals. Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Plaintiffs' Counsel also are mindful of the inherent problems of proof under and possible defenses to the violations asserted in the Action. Plaintiffs' Counsel believe that the settlement set forth in this Stipulation confers substantial benefits upon the Class. Based on their evaluation, Plaintiffs' Counsel have determined that the settlement set forth in this Stipulation is in the best interests of Plaintiffs and the Class.

NOW, THEREFORE, without any admission or concession on the part of Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession on the part of Defendants as to the merit of the Action, or as to any liability or wrongdoing whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the Settlement, that all Settled Claims (as defined below) as against the

Released Parties (as defined below) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Action” means In re IBM Securities Litigation, Case No. 1:05-6279 (AKF), pending in the United States District Court for the Southern District of New York.

(b) “Authorized Claimant” means a Class Member that submits a timely and valid Proof of Claim form to the Claims Administrator.

(c) “Claimant” means a person or entity that submits a Proof of Claim form to the Claims Administrator seeking to share in the proceeds of the Settlement of the Action.

(d) “Claims” means any and all claims, rights or causes of action, demands, attorneys’ fees, costs, obligations, controversies, debts, damages, losses or liabilities of any kind whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation (whether foreign or domestic), including known and unknown, accrued and not accrued, foreseen and unforeseen, matured and not matured.

(e) “Claims Administrator” means A.B. Data, Ltd., which has been retained by Plaintiffs’ Counsel to provide Notice, process Proofs of Claim and administer the settlement payments to Authorized Claimants.

(f) “Class” and “Class Members” are all persons or entities who purchased or otherwise acquired common stock of IBM between April 5, 2005, and April 14, 2005, inclusive (the “Class Period”), and who were damaged thereby. Excluded from the Class are any parents, subsidiaries, affiliates, officers or directors of defendants IBM and their immediate families; any entity in which any excluded person has a controlling interest and the legal representatives, heirs, successors and assigns of any excluded person. Also excluded from the Class are all

persons and entities that properly opted out of the Class pursuant to the Notice of Pendency of Class Action mailed, in accordance with an Order by the Court, on or about May 30, 2007, or who exclude themselves from the Class in accordance with the Notice. A list of the requests for exclusion will be attached to the Judgment when it is submitted to the Court in connection with the Fairness Hearing.

(g) “Class Distribution Order” means an order of the Court approving the Claims Administrator’s administrative determinations concerning the acceptance and rejection of the claims submitted herein as supervised by Plaintiffs’ Counsel, and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Amount by IBM into the Escrow Account for distribution to Authorized Claimants.

(h) “Class Period” means the period of time from April 5, 2005, through April 14, 2005, inclusive.

(i) “Court” means the United States District Court for the Southern District of New York, the Honorable Alvin K. Hellerstein presiding.

(j) “Defendants” means International Business Machines Corporation and Mark Loughridge, collectively.

(k) “Defendants’ Counsel” means the law firm of Cravath, Swaine & Moore LLP.

(l) “Effective Date” means the date upon which the Settlement contemplated by this Stipulation shall become effective as provided in paragraph 25 below.

(m) “Escrow Account” means the interest bearing account to be established by Lead Counsel at a federally-insured banking institution. With the sole exception of making payment into the Escrow Account as provided for in paragraph 19, Defendants shall have no

responsibility or liability relating to the Escrow Account or the monies maintained in the Escrow Account including, without limitation, responsibility or liability related to any fees, taxes and tax expenses, investment decisions, maintenance, supervision and distributions of any portion of the Settlement Amount. Plaintiffs' failure to establish the Escrow Account shall not impair the enforceability of the Settlement.

(n) "Fairness Hearing" means the hearing held to determine whether the Settlement embodied by this Stipulation is fair, reasonable and adequate to the Class, and whether the Court should enter the Judgment approving the Settlement.

(o) "Final" means: (i) the issuance of a Judgment by the Court; (ii) if the Judgment is appealed and affirmed, the day after the expiration of the time in which a party could seek, but did not, a petition for a writ of certiorari; (iii) if, after any affirmance of the Judgment, a person seeks a petition for a writ of certiorari, the day after any such petition for a writ of certiorari is denied; (iv) if no appeal is filed, the day after the expiration date of the time for the filing or noticing of any appeal from the Court's Judgment approving the Stipulation, i.e., thirty (30) days after entry of the Judgment, such that the Judgment represents a final, unappealable and binding judgment with respect to the Action; and (v) the final denial of any objections or collateral attacks or challenges to the Settlement made prior to the last to occur of subparts (i) through (iv) of this paragraph. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation, application for attorneys' fees or expenses and/or application of an award to Plaintiffs as described in paragraph 5(d) shall not in any way delay or preclude the Judgment from becoming Final.

(p) "Individual Defendant" means Mark Loughridge.

(q) "Judgment" means the proposed Final Judgment and Order of Dismissal to be entered approving the Settlement substantially in the form attached hereto as Exhibit B.

(r) “Lead Counsel” means the law firm of Labaton Sucharow LLP.

(s) “Net Settlement Amount” means the remainder of the Settlement Amount after deductions of (i) Court awarded attorneys’ fees and expenses as described in paragraphs 5(a) through (c); (ii) Notice and Administration Expenses, as described in paragraphs 6 to 8; (iii) any award to Plaintiffs, as described in paragraph 5(d); and (iv) any other fees or expenses approved by the Court.

(t) “Notice” means the Notice of Proposed Settlement of Class Action, Application for Attorneys’ Fees and Expenses and Fairness Hearing, which is to be sent to members of the Class substantially in the form attached hereto as Exhibit A-1.

(u) “Notice and Administration Expenses” means all expenses incurred in connection with the preparation, printing and mailing of the Notice and Proof of Claim and to the Class, publication of the Summary Notice and all expenses of administering the Settlement.

(v) “Person” means an individual, corporation, general or limited partnership, association, joint stock company, joint venture, limited liability company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof and any other business or legal entity and its heirs, predecessors, successors, representatives or assigns.

(w) “Plaintiffs” means Joseph Anchinovski, Nilda Anchinovski and Donald Rubenstein, collectively.

(x) “Plaintiffs’ Counsel” means the law firms of Labaton Sucharow LLP and Klafter & Olsen LLP, collectively.

(y) “Plan of Allocation” means the plan and procedures for allocating the Net Settlement Amount to be distributed to Authorized Claimants as approved by the Court.

(z) “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class substantially in the form attached hereto as Exhibit A.

(aa) “Proof of Claim” or “Proof of Claim Form” means the proof of claim and release form substantially in the form attached as Exhibit A-2 hereto.

(bb) “Released Defendant Parties” means any and all of the Defendants and/or their current or former respective agents, servants, attorneys, auditors, investment advisors, underwriters, officers, directors, employees, partners, subsidiaries, affiliates, insurers, stockholders, heirs, executors, representatives, parents, predecessors, successors, assigns, trusts, benefits committees, related companies or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants or any of the parties listed above.

(cc) “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties, collectively.

(dd) “Released Plaintiff Parties” means any and all of the Plaintiffs, the members of the Class, and their respective heirs, executors, administrators, successors and assigns and all persons acting in concert with any such person, and/or Plaintiffs’ Counsel and their respective partners, employees, predecessors and successors.

(ee) “Settled Claims” means the Settled Plaintiffs’ Claims and the Settled Defendants’ Claims, collectively.

(ff) “Settled Defendants’ Claims” means any and all Claims which Defendants may have that could have been asserted by Defendants against any of the Plaintiffs, members of the Class and Plaintiffs’ Counsel, relating to the institution, prosecution or settlement of the Action, except Claims relating to the enforcement of the Settlement.

(gg) “Settled Plaintiffs’ Claims” means all Claims that were asserted in the Complaint, and any and all Claims that have been or could have been raised in the Action, or in any forum, arising out of or relating to the allegations, transactions, facts, matters or occurrences, representations alleged or that could have been alleged in the Action and relating to the purchase, transfer or acquisition of shares of the common stock of IBM, except “Settled Plaintiffs’ Claims” does not include Claims relating to the enforcement of the Settlement. With respect to the release of Settled Plaintiffs’ Claims, it is the intention of the Lead Plaintiffs and Class Members to expressly waive and relinquish, to the fullest extent permitted by law: (a) the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides that: A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor; and (b) the provisions, rights and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

(hh) “Settlement” means the proposed settlement contemplated by this Stipulation.

(ii) “Settlement Amount” means the principal amount of twenty million dollars (\$20,000,000) cash plus any interest that may accrue thereon as provided for herein.

(jj) “Summary Notice” means the proposed Summary Notice of Proposed Settlement of Class Action, Application for Attorneys’ Fees and Expenses and Fairness Hearing for publication in the Wall Street Journal, substantially in the form attached as Exhibit A-3 hereto.

2. The obligations incurred pursuant to this Stipulation shall, subject to approval by the Court and such approval becoming Final, be in full and final disposition of the Action and any and all Settled Claims as against any and all Released Parties.

3. (a) By operation of the Judgment, upon the Effective Date of this Settlement, Plaintiffs and all other Class Members, on behalf of themselves and their respective heirs, executors, administrators, successors and assigns and all persons acting in concert with any such person, shall, with respect to each and every Settled Plaintiffs' Claim, waive, release, forever discharge and dismiss and agree not to institute, maintain or prosecute any or all Settled Plaintiffs' Claims against any or all of the Released Defendant Parties, and shall be permanently and finally enjoined from commencing or prosecuting any actions or other proceedings asserting any of the Settled Plaintiffs' Claims either directly, indirectly, representatively, derivatively or in any other capacity against any of the Released Defendant Parties herein. This injunction expressly extends to all claims covered by this Stipulation and all Class Members defined herein. In the event that it becomes necessary for the Defendants to enforce the injunction provided in this paragraph, the Defendants need not, subject to the approval of the court presiding over the proceeding, post a bond.

(b) By operation of the Judgment, upon the Effective Date of this Settlement, each of the Defendants, on behalf of themselves and their respective heirs, executors, administrators, successors and assigns and all persons acting in concert with any such person, shall waive, release and forever discharge each and every of the Settled Defendants' Claims, and shall forever be enjoined from instituting, maintaining or prosecuting any or all of the Settled Defendants' Claims as against any and all of the Released Plaintiff Parties.

4. (a) In settlement of the Settled Plaintiffs' Claims of Plaintiffs and all the other members of the Class herein, IBM, on behalf of itself and the Individual Defendant,

will pay twenty million dollars (\$20,000,000) cash plus interest as provided in paragraph 4(b) which shall resolve and satisfy any claim for attorneys' fees and costs approved by the Court and any and all amounts to be paid to Class members, and shall also cover all Notice and Administration Expenses.

(b) The Settlement Amount will accrue interest from the execution of this Stipulation of Settlement, until IBM transfers the Settlement Amount in accordance with paragraph 19, less any advanced payments made pursuant to paragraph 7 or otherwise ordered by the Court, to the Escrow Account, at an interest rate equal to 3.04188% per annum calculated on the basis of a 360 day year, compounded daily, for the actual number of days elapsed.

(c) Neither IBM nor Lead Counsel shall transfer the Settlement Amount, or any portion thereof, except as provided in the Stipulation or by Order of the Court.

5. (a) Plaintiffs' Counsel will apply to the Court for attorneys' fees and reimbursement of collective litigation expenses, including the fees and expenses of experts and notice to the Class, and costs and expenses incurred by the Plaintiffs directly related to their representation of the Class, plus any interest on such amounts at the same rate and for the same periods as earned by the Settlement Amount (until paid) as may be awarded by the Court ("Fee and Expense Application"). Defendants take no position with respect to Plaintiffs' Counsel's collective Fee and Expense Application. Such matters are not the subject of any agreement between the Parties.

(b) To the extent that the Fee and Expense Application is granted by the Court (the "Fee and Expense Award"), such award shall be paid after the Effective Date as directed by order of the Court. In no event will Defendants be responsible for payment of any attorneys'

fees, expenses or costs of Plaintiffs or the Class other than out of the Settlement Amount as set forth above.

(c) The procedure for and the allowance or disallowance by the Court of the Fee and Expense Application are not part of the Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Any order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the Settlement set forth herein.

(d) Defendants will take no position with respect to any award by the Court out of the Settlement Amount of an award of reasonable costs and expenses to Plaintiffs. Such award as contemplated by this paragraph is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy and good faith of the Settlement. Any order or proceedings relating to an award contemplated by this paragraph, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the Settlement. The award provided pursuant to this paragraph shall be payable at the same time as the Fee and Expense Award provided in paragraph 5(b), on the same terms and conditions.

6. Plaintiffs' Counsel is solely responsible for the designation of the Claims Administrator. The Claims Administrator shall administer the Settlement under Plaintiffs' Counsel's supervision and subject to the jurisdiction of the Court. Except as provided by paragraph 7, Defendants will not have any responsibility for, involvement in, or liability for, and Defendants will not be requested or required to pay any costs, fees or expenses in connection

with, providing notice to the Class, the administration of the Settlement, the allocation of the Settlement proceeds, or the reviewing or challenging of claims of Class Members.

7. All reasonable Notices and Administration Expenses shall be paid from the Settlement Amount when incurred. Lead Counsel may be advanced up to \$250,000 to pay actual out-of-pocket Notice and Administration Expenses. Within ten (10) business days after notice from Lead Counsel, and receipt of reasonable supporting documentation, IBM will transfer to Lead Counsel up to \$250,000 from the Settlement Amount to pay Administration Expenses. Any amounts advanced pursuant to this paragraph shall not be recoverable by Defendants in the event the Settlement does not become Final.

8. Plaintiffs' Counsel will apply to the Court, on notice to Defendants' Counsel, for the Class Distribution Order: (i) approving the Claims Administrator's administrative determinations, as supervised by Plaintiffs' Counsel, concerning the acceptance and rejection of the claims submitted herein; (ii) approving payment from the Settlement Amount of the Notice and Administration Expenses to the extent not previously approved; and (iii) if the Effective Date has occurred, directing payment of the Settlement Amount by IBM into the Escrow Account, less any payment advanced pursuant to paragraph 7 or otherwise ordered by the Court, for distribution to the Authorized Claimants as contemplated herein.

9. It is the sole responsibility of the Class Members to pay taxes, plus any penalties and interest, on any amounts received by them pursuant to the Settlement that are construed to be income, and Defendants shall have no liability for such taxes, penalties or interest.

10. The Claims Administrator shall determine each Authorized Claimant's pro rata share of the Net Settlement Amount based upon a reasonable Plan of Allocation to be

proposed by Plaintiffs' Counsel and approved by the Court. The Defendants will take no position with respect to such proposed Plan of Allocation.

11. The Plan of Allocation to be proposed by Plaintiffs' Counsel is not a necessary term of this Stipulation, and it is not a condition of this Stipulation that any particular Plan of Allocation be approved. Any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the Settlement.

12. Each Authorized Claimant shall be allocated a pro rata share of the Net Settlement Amount based on his, her or its recognized claim compared to the total recognized claims of all Authorized Claimants. This is not a claims-made settlement. The Defendants shall not be entitled to get back any of the Settlement Amount once the Effective Date has occurred. The Defendants shall have no involvement in reviewing or challenging claims.

13. (a) Within twenty-eight (28) calendar days of the entry of the Preliminary Approval Order (the "Notice Date"), Plaintiffs' Counsel shall cause the Notice and Proof of Claim and Release Form, substantially in the forms annexed hereto as Exhibits A-1 and A-2, to be mailed by First Class United States mail, postage prepaid to all Class Members. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms, including causing IBM's transfer records concerning the identity and addresses of Class Members and their transactions to be transmitted to the Claims Administrator no later than fourteen (14) calendar days after the entry of the Preliminary Approval Order.

(b) Not later than ten (10) calendar days after the Notice Date, Plaintiffs' Counsel shall cause the Summary Notice, substantially in the form annexed hereto as Exhibit A-3 to be published once in the national edition of the Wall Street Journal.

14. Any member of the Class who does not submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Amount but will otherwise be bound by all of the terms of this Stipulation, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred and enjoined from bringing any action against the Released Defendant Parties concerning the Settled Plaintiffs' Claims.

15. Plaintiffs' Counsel shall be solely responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Amount by the Claims Administrator. Except for the obligation to pay the Settlement Amount, to provide reasonable cooperation in the production of information with respect to the identification of Class Members from IBM's shareholder transfer records and to advance payments as contemplated by paragraph 7, Defendants shall have no liability, obligation or responsibility for the administration of the Settlement or disbursement of the Settlement Amount or Net Settlement Amount. Plaintiffs' Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.

16. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an "Authorized Claimant", the following conditions shall apply:

(a) Each Class Member shall be required to submit a Proof of Claim (substantially in the form of Exhibit A-2 hereto), signed under penalty of perjury and supported by such documents as are designated therein, including proof of the Claimant's loss, or such other documents or proof as Plaintiffs' Counsel, in their discretion, may deem acceptable and subject to the approval of the Court;

(b) All Proofs of Claim must be submitted by the date specified in the Notice unless such period is extended by Order of the Court. Any Class Member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by Order of the Court, a late submitted Proof of Claim by such Class Member is approved), but shall in all other respects be bound by all of the terms of the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Defendant Parties concerning the Settled Plaintiffs' Claims.

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Plaintiffs' Counsel, who shall determine in accordance with this Stipulation the extent, if any, to which each claim shall be allowed, subject to review by the Court; and

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the Claimant in order to afford the Claimant the opportunity to remedy curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under supervision of Plaintiffs' Counsel, shall notify, in a timely fashion and in writing, all Claimants whose Proofs of Claim they propose to reject in whole or in part and setting forth the reasons therefor.

17. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's claim. No discovery shall be allowed on the merits of the Action or the Settlement.

18. Payment pursuant to this Stipulation shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Amount, but otherwise shall be bound by the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Defendant Parties concerning the Settled Plaintiffs' Claims.

19. The Settlement Amount, less any advanced payments made pursuant to paragraph 7 or otherwise ordered by the Court, shall be paid by IBM into the Escrow Account within fifteen (15) business days after the Effective Date. Upon payment of the Settlement Amount by IBM to the Escrow Account, such funds shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation, the Plan of Allocation and/or further order(s) of the Court.

20. Upon payment of the Settlement Amount into the Escrow Account by IBM, Lead Counsel shall cause it to be invested, less any payments authorized herein, in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at the then-current market rates, provided however, that any residual cash balances and cash pending investment in United States Treasury Bills, may be invested and reinvested in a money market mutual fund comprised exclusively of investments secured by the full faith and credit of the United States. Neither Defendants nor Defendants' Counsel shall have any responsibility or liability for investment decisions.

(a) The Parties agree to treat the Settlement Amount after it has been transferred by IBM into the Escrow Account in accordance with paragraph 19 hereof, as being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, Lead Counsel shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Lead Counsel to timely and properly prepare and deliver, or cause to be prepared and delivered, the necessary documentation for signature by all necessary parties, and thereafter take all such actions as may be necessary or appropriate to cause the appropriate filing to occur.

(b) For the purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the “administrator” shall be Lead Counsel or its successor, which shall timely and properly file, or cause to be filed, all informational and other tax returns necessary or advisable with respect to the interest earned on the fund deposited in the Escrow Account (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in paragraph 20(a)) shall be consistent with this paragraph and in all events shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned on the funds deposited in the Escrow Account shall be paid out of such funds as provided in paragraph 20(c) hereof.

(c) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned on the funds deposited in the Escrow Account (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of this paragraph (including, without limitation, expenses of tax attorneys and/or accountants, mailing

and distribution costs, and expenses relating to filing (or failing to file) the returns described in this paragraph) (“Tax Expenses”), shall be paid solely out of the Escrow Account. In all events, the Defendants shall have no liability or responsibility for the Taxes, the Tax Expenses or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority. In the event any Taxes and Tax Expenses are owed by any Defendant on any interest earned on the funds on deposit in the Escrow Account, such amounts shall also be paid out of the Escrow Account. Any taxes or tax expenses owed on any interest earned on the Settlement Amount prior to its transfer to the Escrow Account shall be the sole responsibility of IBM.

(d) Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid, or caused to be paid, by Lead Counsel out of the Escrow Account without prior order from the Court, and Lead Counsel shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties agree to cooperate with Lead Counsel, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

21. Defendants shall comply with the notice provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

22. The Claims Administrator shall not distribute, unless otherwise ordered by the Court, the Net Settlement Amount to Authorized Claimants until after: (i) all claims have been processed, and all Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all matters with respect to attorneys’ fees, costs and disbursements have

been resolved by the Court, all appeals therefrom have been resolved or the time therefor has expired; and (iii) all Notice and Administration Costs have been paid. If the funds remaining from the Settlement Amount following pro rata distribution(s) to all Authorized Claimants is such an amount that it is not cost effective or efficient to redistribute the amount to the Class, then such remaining funds, after payment of any further Notice and Administration Expenses, shall be contributed to not-for-profit organizations designated by Plaintiffs and Plaintiffs' Counsel.

23. Promptly after signing, Plaintiffs' Counsel and Defendants' Counsel will submit this Stipulation to the Court, together with accompanying papers. During the period from the entry of the Preliminary Approval Order to the Effective Date, each of the Parties, and their respective heirs, executors, administrators, successors and assigns and all persons acting in concert with any such person, agree not to institute, maintain or prosecute any or all Settled Claims against any or all of the Released Parties. Nothing in this paragraph shall affect the Parties' rights to enforce the Settlement after the Effective Date.

24. If the Settlement is approved by the Court, Plaintiffs' Counsel and Defendants' Counsel shall jointly request that the Court (a) enter a Judgment substantially in the form attached as Exhibit B hereto; (b) approve the Settlement as final, fair, reasonable, adequate and binding on all Class Members; and (c) dismiss the Action with prejudice.

25. The Effective Date of this Settlement shall be the date when all of the following shall have occurred:

(a) entry of the Preliminary Approval Order in all material respects in the form annexed hereto as Exhibit A;

(b) approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(c) a Judgment, in all material respects in the form set forth in Exhibit B attached hereto, has been entered by the Court and has become Final, or, in the event that the Court enters a judgment in form materially different than that provided above (“Alternative Judgment”) and either of the Parties do not elect to terminate this Settlement, the date that such Alternative Judgment becomes Final.

26. Any of the Parties shall have the right to terminate the Settlement by providing written notice of their election to do so (“Termination Notice”) to all other signatories hereto, within thirty (30) days of: (a) the Court’s declining to enter, or modification of, the Preliminary Approval Order in any material respect; (b) the Court’s modification of the Settlement in any material respect; (c) the Court’s declining to enter, or modification of, the Judgment in any material respect; (d) the date upon which any court on appeal modifies the Stipulation, Judgment or Alternative Judgment in any material respect; (e) the date upon which the Judgment is reversed or vacated in any material respect by any court on appeal; or (f) the date upon which an Alternative Judgment is reversed or vacated in any material respect by any court on appeal.

27. In addition, no later than seven (7) days before the Fairness Hearing, Defendants may unilaterally withdraw from and terminate this Stipulation if valid and timely requests for exclusion are received from Class Members who, in the aggregate, purchased an amount greater than five percent (5%) of the aggregate number of damaged shares of IBM common stock purchased by all Class Members during the Class Period. Requests for exclusion that were not timely submitted or that failed to provide all of the information required by the Settlement Agreement shall not be counted. Lead Counsel shall provide to Defendants’ Counsel, not less than ten (10) days prior to the Fairness Hearing, the aggregate number of

shares of IBM common stock purchased during the Class Period by Class Members who submit valid and timely requests for exclusion.

28. In addition to all of the rights and remedies that Plaintiffs and Plaintiffs' Counsel have under the terms of this Stipulation, they shall also have the right to terminate this Stipulation in the event that IBM does not pay or cause to be paid the Settlement Amount as provided in paragraph 19 above, by providing written notice of their election to do so to all other Parties to this Stipulation no later than ten (10) days after such failure.

29. If an option to withdraw from and terminate this Stipulation arises under paragraphs 26 to 28 hereof, (i) neither Defendants nor Plaintiffs will be required for any reason or under any circumstance to exercise that option; and (ii) any exercise of that option shall be made in good faith, but in the sole and unfettered discretion of the Defendants or Plaintiffs, as applicable.

30. If the Settlement is not approved by the Court for whatever reason or the Judgment or Alternative Judgment does not become Final for whatever reason, then (a) the Settlement shall be terminated without prejudice, and none of its terms shall be effective or enforceable, except that paragraphs 7, 30 and 31 survive termination; (b) the Parties shall revert to their litigation positions immediately prior to the execution of the Agreement in Principle between the Parties, dated February 14, 2008; and (c) the fact and terms of the Agreement in Principle, dated February 14, 2008 and this Stipulation of Settlement and all settlement discussions shall not be admissible in any trial of the Action or any other proceeding.

31. This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

(a) does not constitute, and shall not be offered or received against the Defendants as evidence of, or construed as, or deemed to be evidence of any

presumption, concession or admission by any of the Defendants with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, including but not limited to the Settled Plaintiffs' Claims, or of any liability, negligence, fault or wrongdoing of the Defendants;

(b) does not constitute, and shall not be offered or received against the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant, or against the Plaintiffs or any other members of the Class as evidence of any infirmity in the claims of Plaintiffs or the other members of the Class;

(c) does not constitute, and shall not be offered or received against the Defendants or against the Plaintiffs or any other members of the Class, as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendants may refer to it to effectuate the liability protection granted them under any applicable insurance policies;

(d) does not constitute, and shall not be construed against Defendants, Plaintiffs or any other members of the Class, as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) does not constitute, and shall not be construed as or received in evidence as, an admission, concession or presumption against Plaintiffs or any other members of the Class or any of them that any of their claims are without merit or that damages recoverable under the Complaints, would not have exceeded the Settlement Amount.

32. Defendants may file this Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate the liability protection granted them under any applicable insurance policies. Any Party may file this Stipulation and/or the Judgment in any action that may be brought to enforce the terms of this Stipulation and/or the Judgment. All Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

33. Other than as may be required by law or disclosures to Defendants' insurers and auditors, the Parties shall maintain the existence and terms of the Settlement confidential until Preliminary Approval from the District Court. After Preliminary Approval, if either Party elects to issue a press release concerning this Action, such a release shall be in the form attached hereto as Exhibit C (a "Press Release"). Except as required by law or disclosures to Defendants' insurers and auditors, and other than a Press Release, if any, the Parties shall make no public statement concerning the Action other than a statement limited to, and without characterization of, the facts and allegations contained in the Press Release or the Notice, other than as the Parties may agree. Plaintiffs and Plaintiffs' Counsel shall not disparage Defendants and shall refrain from publicly or in the media taking any action designed to harm the public perception of the Defendants in relation to the Settled Claims. Defendants and Defendants' Counsel shall not disparage Plaintiffs or Plaintiffs' Counsel and shall refrain from publicly or in

the media taking any action designed to harm the public perception of Plaintiffs or Plaintiffs' Counsel in relation to the Settled Claims.

34. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

35. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs, any other members of the Class and their attorneys against the Released Defendant Parties with respect to the Settled Plaintiffs' Claims. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length in good faith by the Parties following mediation, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

36. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all signatories hereto or their successors-in-interest, and approval by the Court.

37. Following the Effective Date, if any aspect of this Stipulation is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable for any reason, then this Stipulation will be interpreted to be enforceable to the extent allowable under the law such that it is consistent with the intent of this Stipulation.

38. The administration and consummation of the Settlement shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation.

39. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

40. This Stipulation and its exhibits constitute the complete and final agreement among the Parties hereto concerning the Settlement of the Action, and no representations, warranties or inducements have been made by any Party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

41. Plaintiffs' Counsel and Defendants' Counsel shall not be deemed to have waived any attorney-client or work product privilege or immunity due to the transmission of information and documents between Plaintiffs' Counsel and Defendants' Counsel in connection with this Settlement and any such transmissions shall be inadmissible in accordance with Federal Rule of Evidence 408.

42. This Stipulation may be executed in one or more original and/or faxed counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the signatories of this Stipulation shall exchange among themselves original signed counterparts.

43. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

44. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

45. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared initially by counsel for one of the Parties, it being recognized that it is the result of arm's length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

46. All counsel and any other Person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

47. Plaintiffs' Counsel and Defendants' Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation and the Settlement, and to promptly agree upon and execute all such other procedural documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

48. Unless otherwise indicated, any notice or other communication that may or must be given by any Party or its counsel, or by the Claims Administrator, under this Stipulation shall be in writing and shall be delivered by prepaid overnight mail to counsel for the Party or Parties to which such notice or communication is directed at the address for such counsel set forth below.

Dated: May 22, 2008

INTERNATIONAL BUSINESS
MACHINES CORP.

By

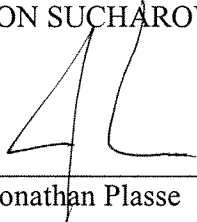
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*Additional Counsel for Plaintiffs and
the Class*

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Dated: May 22, 2008

INTERNATIONAL BUSINESS
MACHINES CORP.

By



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