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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EDVIN RUSIS, HENRY GERRITS, PHIL :  
MCGONEGAL, and DAVID HO ENG, :  
*individually and on behalf of all other similarly* :  
*situated individuals,* :  
Plaintiffs, :  
: :  
-against- :  
: :  
INTERNATIONAL BUSINESS :  
MACHINES CORP., :  
Defendant. :  
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18-CV-8434 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS on May 12, 2021, the parties appeared before the Court for a conference;

IT IS HEREBY ORDERED that, except for amendments permitted by Fed. R. Civ. P. 15(a)(1) and this Court’s Individual Practices in Civil Cases, amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Any motion to amend or to join additional parties must be filed within 30 days from the date of this Order.

IT IS FURTHER ORDERED that Plaintiffs are granted leave to file an amended complaint to add a Massachusetts state law class claim. That amended complaint must be filed no later than 30 days after the Court issues an order on Defendant’s motion for summary judgment filed after the conclusion of phase one of discovery, as discussed below.

IT IS FURTHER ORDERED that the Court adopts the parties’ proposed approach to stipulated dismissals of certain opt-ins based on the Court’s March 26, 2021 Order. Not later than **May 28, 2021**, Plaintiffs must identify to Defendant the opt-ins they agree must be dismissed. Not later than **June 4, 2021**, the parties must file a Stipulation of Dismissal for the

opt-ins they agree must be dismissed from this action based on the Court's March 26, 2021 Order.

IT IS FURTHER ORDERED that discovery in this matter shall be bifurcated. The first phase includes discovery pertaining to the Named Plaintiffs and opt-ins whose claims are subject to dismissal from this action for non-merits reasons based on the Court's March 26, 2021 Order. These issues include: (1) the substance and timing of disputed opt-ins' claims; (2) the EEOC investigation into alleged age discrimination at IBM, including the charges that underlay the EEOC Determination Letter; and (3) Named Plaintiff McGonegal's claim and EEOC charge. In addition, the parties' ongoing discovery efforts concerning the undisputed opt-ins shall continue during the first phase of discovery.

IT IS FURTHER ORDERED that, beginning on June 15, 2021, on the fifteenth day of each month or the first business day thereafter, the parties must file a joint letter on the status of discovery.

IT IS FURTHER ORDERED that the parties must complete the first phase of discovery not later than **September 30, 2021**. This is a firm deadline, and the parties must undertake every effort to meet this deadline; the Court is unlikely to grant any extensions.


IT IS FURTHER ORDERED that the parties must appear for a conference on **October 1, 2021, at 11:00 a.m.** At the conference, the Court will discuss anticipated motions, including Defendant's anticipated motion for summary judgment and Plaintiffs' request to file a renewed motion for conditional certification. The Court will also discuss the second phase of discovery and whether discovery may proceed during the pendency of any motions or whether phase two discovery shall be stayed pending decision on the parties' motions. Not later than **September 23, 2021**, the parties must file a joint letter which includes a brief description of the status of

phase one discovery, including any additional discovery that remains outstanding, and the parties' updated proposal concerning motions' briefing schedules and phase two of discovery.

IT IS FURTHER ORDERED that the parties must meet and confer to resolve outstanding disputes concerning the entry of a protective order in this matter. To the extent the parties are unable to resolve their disputes concerning the protective order, they must promptly notify the Court so that the Court can issue a referral to the Magistrate Judge.

**SO ORDERED.**

**Date: May 13, 2021**  
**New York, New York**

  
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**VALERIE CAPRONI**  
**United States District Judge**