

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Craig Russell (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Nutanix, Inc. (“Defendant”) on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.”

I. RECITALS

WHEREAS, on June 8, 2020, Plaintiff filed a Representative and Class Action Complaint (“the Lawsuit”) against Defendant in the matter entitled *Craig Russell v. Nutanix, Inc.*, Santa Clara County Superior Court Case No. 20CV366943, alleging a putative class definition of all employees who worked for Defendant in California from April 6, 2016 to the present. The Parties agreed to confine the class to employees occupying positions within specific job categories. Accordingly, the Lawsuit will be amended to define the class as all employees within the following job categories within the sales organization: inside account executives, sales development representatives, commercial account executives, enterprise account executives, global account executives, and channel account executives who worked within said categories in California at any time during the Settlement Class Period (defined below). These job categories include numerous different business titles. Attached as Exhibit A are the job titles held by all the employees who worked in California within the six job categories in the sales organization during the Settlement Class Period.

WHEREAS, during the course of the litigation, the Parties engaged in informal discovery, including the exchange of information and documents. On June 22, 2021, the Parties participated in a private mediation with mediator Gig Kyriacou. As a result of the mediation, the Parties reached a settlement, which, subject to Court approval, is intended to be a full and final resolution and release of all claims alleged in the Lawsuit.

WHEREAS, the Parties desire to settle, compromise, and avoid litigation relating to the Claims described in the pleadings in the Lawsuit, and have agreed to settle the Lawsuit upon the terms and conditions and for the consideration set forth in this Settlement Agreement. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged and those released as part of this Settlement. Defendant further denies that, for any purpose other than this settlement, the Lawsuit is appropriate for class or representative action treatment. Defendant maintains, among other things, that it has complied with federal and California law in all respects. Nothing in this Settlement Agreement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of the Defendant, nor does this Settlement Agreement constitute an admission that the PAGA or class claims are properly pled.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the Parties hereto as follows.

II. SETTLEMENT TERMS

A. Definitions

1. “Covered Class Members”: Plaintiff and Defendant stipulate to the certification of the following individuals included in the settlement:

Defendant’s sales employees, using a wide variety of business titles during the Class Period (defined below), that fall within the following job categories: (i) inside account executives, (ii) sales development representatives, (iii) commercial account executives, (iv) enterprise account executives, (v) global account executives, and (vi) channel account executives (hereinafter the “In Scope Job Categories”). The Covered Class Members consist of Defendant’s employees that occupied a position within the In Scope Job Categories in California from April 6, 2016 to September 20, 2021 (“Class Period”). See Exhibit A for the job titles held by the Covered Class Members during the Class Period.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. “Defense Counsel”: Counsel for Defendants in this Action, Fermin Llaguno and Elisa Nadeau of Littler Mendelson, P.C.

3. “Effective Date”: This Settlement Agreement shall become effective when all of the following events have occurred (“Effective Date”): (i) this Settlement Agreement has been executed by Plaintiff, Defendant, Settlement Class/PAGA Counsel and Defendant’s Counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been sent to the Class Members, providing them the opportunity to object to the Settlement, and the opportunity to opt out of the Settlement; (iv) the Notice has been sent to the LWDA; (v) the Court has held a formal fairness hearing and entered the Court’s Final Order and Judgment; and (vi) the later of the following events: (A) when the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; (B) when any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (C) when any appeal, writ or other appellate proceeding has upheld the Court’s Final Order and Judgment with no right to pursue further remedies or relief. If the Court declines to approve the Settlement, the entire Settlement Agreement is deemed void and unenforceable as if no settlement of any claim was ever reached. All negotiations, statements and proceedings and data relating thereto shall be protected by California Evidence Code §1152 and shall be without prejudice to the rights of any of the Parties.

4. “Gross Settlement Amount (GSA)”: To implement the terms of this Settlement, Defendant agrees to pay a maximum total payment of Two Million, Three Hundred Seventy-Five Thousand Dollars and Zero Cents (\$2,375,000.000), subject to the Pro Rata Increase described below, which includes payments to Settlement Class Members (excluding any appropriate and lawfully required employer-side payroll taxes owed by Defendant on such payments which Defendant shall be separately responsible for apart from the Gross Settlement Amount), any Enhancement Award to Plaintiff, payments to the LWDA, to the PAGA Members or the Settlement Class Members, the Settlement Administrator’s fees and costs, approved attorneys’ fees and litigation costs, and any other payments provided by this Settlement. Except as otherwise specified herein, Defendant shall not be required to pay any additional monies beyond the amount of the Gross Settlement Amount plus the employer-side payroll taxes. Further, no portion of the Gross Settlement Amount shall revert to Defendant, and any amount of the Gross Settlement Amount not required to pay the above-referenced amounts shall be paid to the Settlement Class Members on a pro rata basis according to the formula contained herein.

5. “Lawsuit”: The lawsuit entitled *Craig Russell v. Nutanix, Inc.* currently pending in Santa Clara County Superior Court, Case No. 20CV36694.

6. “Net Settlement Amount (NSA)”: Attorneys’ costs and fees, Plaintiff’s enhancement award, LWDA payment, and settlement administration costs will be deducted from the GSA to calculate the Net Settlement Amount (NSA). The NSA will be distributed to all Settlement Class Members who, by definition, have not opted out, and all PAGA Members. The Net Settlement Amount shall be distributed to the Settlement Class Members and PAGA Members based on pay periods during which they occupied In Scope Job Categories in California during the Settlement Class Period and PAGA Period.

7. “PAGA Members”: Any Covered Class Member who occupied a position within the In Scope Job Categories in California from April 6, 2019 to September 20, 2021 (“PAGA Period”).

8. “PAGA Period”: April 6, 2019 to September 20, 2021.

9. “

10. “Released Parties”: Defendant Nutanix, Inc. and any of its past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, meaning any entity controlling, controlled by, or under common control with Nutanix, Inc., as well as each of its past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant.

11. “Settlement Class Member”: Any individual who is a Covered Class Member and who does not opt out of the Settlement.

12. “Settlement Class/PAGA Counsel”: Counsel for Covered Class Members and PAGA Members, which is Aegis Law Firm, PC and Lebe Law, APLC.

13. “Settlement Period”: April 6, 2016 to September 20, 2021.

B. Consideration

1. Release by Settlement Class and PAGA Members and Plaintiff. As of the Effective Date, Plaintiff and every member of the Settlement Class (except those who opt out) and PAGA Members will fully release and discharge Defendant and Released Parties, as follows:

Upon the Effective Date, the claims released by the Settlement Class Members and PAGA Members will include all claims pled in the operative complaints and/or alleged in any of the letters (or attachment(s)) sent to the LWDA by or on behalf of Plaintiff, or based upon the factual allegations and/or claims pled, against the Released Parties, for work performed during the Settlement Period and PAGA Period, including the following:

- (a) Any and all claims pled, or based on the factual allegations of *Russell v. Nutanix*, and/or alleged in any of the letters (or attachment(s)) sent to the LWDA by or on behalf of Plaintiff, including, but not limited to, failure to pay wages, such as overtime, minimum and regular wages; failure to provide required meal periods; failure to pay meal period premiums as required by law; failure to provide required rest periods; failure to pay rest period premiums as required by law; failure to timely pay wages; failure to pay all wages due upon termination of employment; failure to maintain required records; failure to furnish accurate itemized wage statements or maintain required records; failure to reimburse business expenses; and unfair and unlawful business practices, as well as any claims that could have been pled which relate to such claims or arise from the same or similar facts concerning the Plaintiff and Covered Class Members, as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in *Russell v. Nutanix* or any of Plaintiff's letters (or attachment(s)) to the LWDA;
- (b) Any and all claims pled, or based on the factual allegations of *Russell v. Nutanix* and/or alleged in any of the letters (or attachment(s)) sent to the LWDA by or on behalf of Plaintiff, whether known or unknown, to which Settlement Class Members, including Plaintiff, may have been entitled or may be entitled from April 6, 2016 to September 20, 2021 against any of the Released Parties, including claims based on or arising from alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802; and to the fullest extent permissible under governing law, Business and Professions Code section 17200, *et seq.*, the California Code of Regulations and/or Industrial Welfare Commission Wage Orders, 29 U.S.C. § 201, *et seq.*, and any and all other statutes, laws, or regulations on which a claim could be made;
- (c) Any and all claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts, allegations and/or claims pled in the complaints filed as part of any of *Russell v. Nutanix* and/or alleged in any of the letters (or attachment(s)) sent to the LWDA by or on behalf of Plaintiff; and

- (d) Any and all other claims under California or federal law that are based on the factual allegations and/or claims pled in *Russell v. Nutanix* and/or alleged in any of the letters (or attachment(s)) sent to the LWDA by or on behalf of Plaintiff. In addition, to the extent required by law, the cashing of the settlement check by the Settlement Class Members shall be deemed to be an opt-in for purposes of releasing releasees from any claims predicated under the FLSA that could have been alleged under the same or similar facts, allegations and/or claims pled in *Russell v. Nutanix* and/or alleged in any of the letters (or attachment(s)) sent to the LWDA by or on behalf of Plaintiff. The Settlement Administrator shall include a legend on the settlement check stating “By cashing this check, I am to the extent required by law opting into the settlement in *Craig Russell v. Nutanix, Inc.*, Santa Clara County Superior Court Case No. 20CV366943, under FLSA, 29 U.S.C. § 216(b), and releasing all claims under the FLSA described in the Settlement Agreement.” The claims set forth in subparagraphs herein and immediately above shall be collectively referred to as the “Released Claims.”

In addition, as to the claims of Plaintiff only, the Released Claims further include, without limitation, any and all claims whatsoever regarding Plaintiff’s employment and/or the termination of employment including, but not limited to, any claims for wages, bonuses, severance pay, vacation pay, penalties, employment benefits, stock options, violation of any personnel policy, any claims based on discrimination, harassment, unlawful retaliation, violation of public policy, or damages of any kind whatsoever, arising out of any common law torts, contracts, express or implied, any covenant of good faith and fair dealing, any theory of wrongful discharge, any theory of negligence, any theory of retaliation, any legal restriction on any Defendant’s right to terminate the employment relationship, or any federal, state, or other governmental statute, executive order, regulation or ordinance, or common law, or any other basis whatsoever, to the fullest extent provided by law. Plaintiff shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Further, Plaintiff attests, for himself, to having read Section 1542 of the Civil Code of the State of California, which provides as follows

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands that Section 1542 gives the right not to release existing claims of which he is not now aware, unless Plaintiff voluntarily chooses to waive this right. Having been so apprised, Plaintiff nevertheless voluntarily waives the rights described in Section 1542, and elects to assume all risks for claims that now exist in his favor, known or unknown. The release of the claims of

Plaintiff as set forth in this Paragraph is a condition precedent to enforcement of this Settlement Agreement.

2. Gross Settlement Amount. As consideration for the Released Claims, Defendant agrees to pay a non-reversionary Gross Settlement Amount (“GSA”) of Two Million and Three Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$2,375,000.000) in full and complete settlement of the Lawsuit, which includes as follows:

- (a) All costs of the Settlement Administrator, up to \$7,750.00. Any unused funds of this cost allocation will revert to Settlement Class Members.
- (b) Seven Thousand and Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff’s Class Representative Enhancement Award in recognition of Plaintiff’s contributions to the Lawsuit (“Class Representative Enhancement Award”). If the Court reduces or does not approve the requested Class Representative Enhancement Award, Plaintiff shall not have the right to revoke this settlement, and it will remain binding. Any portion of the Class Representative Enhancement Awards allocation not approved by the court will revert to Settlement Class Members. This award will be in addition to Plaintiff’s Settlement Award as a Settlement Class Member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.
- (c) Up to thirty-five percent (35%) of the GSA can be contributed to Settlement Class/PAGA Counsel’s attorneys’ fees, plus actual costs and expenses of up to \$17,000.00 incurred by Settlement Class/PAGA Counsel related to the Lawsuit as supported by declaration. In the event the Court reduces or does not approve the requested attorneys’ fees or costs, Settlement Class/PAGA Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding. Any portion of the fee allocation not approved by the court will revert to Settlement Class Members.
- (d) Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000) for PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or One Hundred, Eighty-Seven Thousand, Five Hundred Dollars and Zero Cents (\$187,500), shall be paid to the California Labor & Workforce Development Agency (“LWDA”) and the remaining 25%, or Sixty-Two Thousand, Five Hundred Dollars and Zero Cents (\$62,500), shall be distributed to the PAGA Members (“PAGA Allocation”). PAGA Members shall not have the opportunity to opt out of the PAGA portion of the Settlement Agreement. The PAGA allocation to the PAGA Members shall be allocated pro-rata on a pay period basis equally to all PAGA Members for all pay periods during which PAGA Members worked in an In Scope Job Category in California during the PAGA Period. The Parties agree that the PAGA payment distributed to each PAGA Member will be treated entirely as civil penalties, and will be reported as such to each PAGA Member on an IRS Form 1099 misc., if applicable.
- (e) All payments (including interest) to the Settlement Class Members (“Individual Settlement Payments”). Settlement Class Members will receive a share of the NSA. The Parties agree that 30% of the NSA distributed to each Settlement Class Member

will be considered wages and will be reported as such to each Settlement Class Member on an IRS Form W-2. The Parties agree that 70% of the NSA distributed to each Settlement Class Member will be considered penalties and interest and will be reported as such to each Settlement Class Member on an IRS Form 1099 misc., if applicable.

3. Pro Rata Increase. Defendant will supply pay data information for the Covered Class Members to the Settlement Administrator. If the number of workweeks that the Covered Class Members worked in California in In Scope Job Categories exceeds 23,686 by more than 110% (e.g. if there are more than 26,054 workweeks), the GSA will increase pro rata per additional workweek.

4. Employer Payroll Taxes. The GSA does not include Employer Payroll Taxes, which shall be paid by Defendant separately, and in addition to, the GSA.

5. No Admission of Liability. The Defendant contends, and continue to contend, that the allegations in the Lawsuit have no merit and do not give rise to liability. The Defendant specifically denies all of the allegations in the PAGA Letter and operative Complaint. This Settlement Agreement is a compromise of such disputed claims. Nothing contained in this Settlement Agreement and no documents referred to herein and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever.

C. Settlement Administration Procedures

1. Amendment of First Amended Complaint. Before the filing for Preliminary Approval, Plaintiff shall file a Second Amended Complaint in the Lawsuit to replace any class and subclass definitions with the following Class Definition, “All current and former employees of Defendant that occupied a position within the Job Categories of: Inside Account Executives, Sales Development Representatives, Commercial Account Executives, Global Account Executives, Enterprise Account Executives, and Channel Account Executives in California from April 6, 2016 to September 20, 2021.”

2. Settlement Administrator. Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. The Settlement Administrator shall be responsible for depositing into an account and holding the various payments from Defendant comprising the Gross Settlement Amount, sending Notice Packets to the Covered Class Members, calculating settlement awards and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after awards have been mailed to all participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the final judgment to its website.

The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities, and shall not mail any payments to Plaintiff, the LWDA, Settlement Class/PAGA Counsel or any Settlement Class Members or PAGA Members until the amounts are approved by the Parties. Any legally mandated tax reports, tax filings, or other tax

documents required by the administration of this Settlement will be prepared by the Settlement Administrator. Any expenses incurred in connection with such preparation will be part of the Settlement Administration Costs.

3. Preliminary Approval. Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- (a) Conditionally certifying the Covered Class Members for settlement purposes only;
- (b) Appointing Settlement Class/PAGA Counsel Aegis Law Firm, PC and Lebe Law, APLC as Class Counsel;
- (c) Appointing Plaintiff as Class Representative;
- (d) Approving Phoenix Settlement Administrators as Settlement Administrator;
- (e) Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- (f) Approving the form and content of the Notice Packet, and directing the mailing of same; and
- (g) Scheduling a Final Approval hearing.

4. Notice to Settlement Class. Following preliminary approval, the Covered Class Members shall be notified as follows:

- (a) Providing Employee List. Within fifteen (15) business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, employee ID numbers, last known mailing addresses, phone numbers, social security numbers, dates of employment, and number of weeks worked for Defendant in California for each Covered Class Members member during the Class Period. This information will otherwise remain confidential and will not be disclosed to anyone (including Settlement/PAGA Counsel, or Plaintiff), except as required to applicable taxing authorities, or pursuant to the Defendant's express written authorization or by order of the Court. The Employee List will be used for settlement notification and settlement administration and will not be used for any other purpose. Because Covered Class Members' sensitive personal information is included in the Employee List, the Settlement Administrator shall maintain the Employee List securely and in confidence, maintaining the strictest standards of data privacy. Access to the Employee List will be limited to employees of the Settlement Administrator with a need to use the Employee List for administration of this Settlement and the Employee List will be returned to Defendant once settlement administration is concluded.

- (b) Mailing Class Notice. Within ten (10) business days from receipt of the Employee List, the Settlement Administrator shall (i) run the names of all Covered Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Covered Class Members; (ii) update the address of any Covered Class Members for whom an updated address was found through the NCOA search; (iii) calculate the estimated settlement amount for each Covered Class Member; and (iv) mail a Notice Packet to each Covered Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

Each Notice Packet will contain a summary of the Lawsuit, each Covered Class Member’s estimated Individual Settlement Payment and any PAGA Member’s individual PAGA Allocation Covered Class Member’s dates of employment, the time and location of the Final Approval Hearing, and instructions on how to submit valid and timely Requests for Exclusion and Objections.

Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Covered Class Member immediately, and in any event within three (3) business days of obtaining the updated address. Covered Class Member to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, Objection, or dispute. Notice Packets that are re-sent shall inform the recipient of this adjusted deadline. If a Covered Class Member’s Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. There shall be no obligation to re-mail a notice packet more than one time. Nothing else shall be required of, or done by, the Parties, Settlement Class/PAGA Counsel, or Defendant’s Counsel to provide notice of the proposed settlement.

- (c) Requests for Exclusion. Any Covered Class Members who wishes to opt out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).

The Notice Packet shall state that Covered Class Members who wish to exclude themselves from the Settlement must submit a valid Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Covered Class Member; (2) contain a statement that the Covered Class Member wishes to be excluded from the Settlement; (3) be signed by the Covered Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at

the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Covered Class Member who requests to be excluded from the Settlement Agreement will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Notwithstanding the foregoing, the PAGA settlement and release provisions will apply to all Covered Class Members whether or not they exclude themselves from the class action settlement. Covered Class Members who were employed by Defendant at any time during the PAGA Period and submit a valid and timely Request for Exclusion shall still be entitled to their portion of the PAGA Allocation, and will release all claims for civil penalties under the PAGA that were alleged or which could have been alleged or otherwise raised based on the facts in the Lawsuit, whether they submit a valid and timely Request for Exclusion or not.

At no time will the Parties or their counsel seek to solicit or otherwise encourage any Covered Class Members to object to the Settlement or opt out of the Settlement or encourage any Covered Class Members to appeal from the final judgment.

- (d) Objections. Covered Class Members may submit Objections to the Settlement as follows:

Covered Class Members who do not opt out of the Settlement may object to this Settlement Agreement as explained in the Class Notice by sending a written objection to the Settlement Administrator (who shall send all objections as received on Settlement Class/PAGA Counsel and Defendant's counsel, who will file all such objections with the Court) within the Response Deadline. The Parties shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Settlement Class/PAGA Counsel shall have ten (10) days to file a response to the objections. To be valid, any objection must: (1) contain the objecting Covered Class Member's full name and current address, as well as contact information for any attorney representing the objecting Covered Class Member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Covered Class Members may also appear at the final approval hearing to orally object, even if they have not submitted a written objection.

- (e) Disputes. Covered Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice Packet, including the calculated workweeks allocated to them, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. To be valid, a dispute must: (1) be in writing, (2) state the Covered

Class Member's name, address and telephone number, (3) contain the number of workweeks the Covered Class Member contends is correct, (4) contain written documentation supporting the contended number of workweeks, (5) state the name and number of the case, (6) be dated, and (7) be signed by the Covered Class Member. In calculating each individual Covered Class Members' share of the Net Settlement Amount, Defendant's records will be presumed to be correct. In no case will a dispute result in a payment by the Defendant's in excess of the Gross Settlement Amount. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement awards under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement award shall be binding upon the Covered Class Member and the Parties, subject to modification by the Court in response to a valid Objection or valid Dispute as defined in this Agreement.

- (f) Administrator's Final Declaration. Not later than ten (10) calendar days before the date by which the Plaintiff must file the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Requests for Exclusion it received (including the numbers of valid and deficient Requests for Exclusion), disputes, and Objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

5. Final Approval. Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- (a) Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- (b) Approving Settlement Class/PAGA Counsel's application for attorneys' fees and costs, Plaintiff's Enhancement Award, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- (c) Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the website of the Settlement Administrator.

6. Funding of the Settlement. Within 15 calendar days following the Effective Date, the Defendant shall fund the Settlement by delivering the Gross Settlement Amount to the Settlement Administrator.

- (a) Payment of Attorneys' Fees and Costs. Within twenty-one (21) calendar days following the funding of the Settlement by the Defendant, the Settlement Administrator shall distribute the Court-approved attorney's fees and costs. Settlement Class/PAGA

Counsel agrees to provide the Settlement Administrator with an executed IRS Form W-9 before payments for attorney's fees and costs are issued. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the payments made pursuant to this paragraph. Neither Settlement Class/PAGA Counsel nor any other current or past counsel for Plaintiff shall be permitted to petition the Court for, or to accept, any additional payments for attorney's fees, costs, interest, or any other amount from the Defendant except as specified above. The Defendant's payment of the attorney's fees and costs will constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law firm, including but not limited to Settlement Class/PAGA Counsel, or attorney's fees, expenses, and/or costs in the Lawsuit incurred by any other attorney or law firm for attorney's fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of Plaintiff and/or Settlement Class Members. The Parties further agree that Settlement Class/PAGA Counsel's attorney's fees and costs will be for all attorney's fees, expenses, and/or costs, present and future, incurred in the Lawsuit by all attorneys working on behalf of Plaintiff and/or Covered Class Members.

- (b) Payment of Enhancement Award. Within twenty-one (21) calendar days following the funding of the Settlement, the Settlement Administrator shall distribute the Court-approved Class Representative Enhancement Award to Plaintiff. Plaintiff agrees to provide the Settlement Administrator with an executed IRS Form W-9 before the Class Representative Enhancement Award is issued. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for this payment. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on her Class Representative Enhancement Award and shall hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Award. The Class Representative Enhancement Award will be in addition to Plaintiff's Individual Settlement Payment and individual portion of the PAGA Allocation, which he will receive as a Settlement Class Member and PAGA Member.
- (c) Settlement Administration Costs. Within twenty-one (21) calendar days following the funding of the Settlement, the Settlement Administrator shall distribute the Court-approved settlement administration Costs to itself.
- (d) Payment to LWDA. Within twenty-one (21) calendar days following the funding of the Settlement, the Settlement Administrator shall issue a check payable to the LWDA for seventy-five percent (75%) of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000), or \$187,500.
- (e) Settlement Class Members, and PAGA Members. Settlement Class and PAGA Members are not required to submit a claim form to receive a payment from the Settlement. Within twenty-one (21) calendar days following the funding of the Settlement, the Individual Settlement Award and individual portions of the PAGA Allocation will be determined and paid as follows:

- i. The Settlement Administrator shall deduct from the Gross Settlement Amount the amounts approved by the Court for Settlement Class/PAGA Counsel's attorneys' fees, Settlement Class/PAGA Counsel's costs and expenses, Plaintiff's Class Representative Enhancement Award, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount (NSA)."
- ii. From the NSA, the Settlement Administrator will calculate each Settlement Class and PAGA Member's award(s) based on the following:
 1. Payments to all Settlement Class Members: The following In Scope Job Categories will share a total of 60% of the Net Settlement Amount: inside account executives and sales development representatives ("Inside Categories"). The following Outside Scope Job Categories will share a total of 40% of the Net Settlement Amount: commercial account executives, enterprise account executives, global account executives, and channel account executives ("Outside Categories"). The amount of each Settlement Class Member's individual Settlement Award will be calculated on a pro rata basis by (a) multiplying the Net Settlement Amount by the applicable percentage to determine each respective Inside Categories' and Outside Categories' share of the NSA (b) dividing the two resulting shares by the total number of pay periods (total workweeks divided by two) that all Settlement Class Members worked in either the Inside Categories or Outside Categories, respectively and as applicable during the Settlement Period to determine the Inside Categories and Outside Categories payment per pay period, (c) multiplying the applicable payment per pay period by each individual Settlement Class Member's total number of pay periods worked in either the Inside Categories or Outside Categories as applicable that occurred during the Settlement Period; and (d) adding together the results from those calculations for each Settlement Class Member. Payments will be reduced as necessary to account for mandatory employee-side payroll withholdings. Recipients of payments pursuant to this Settlement Agreement are exclusively responsible for all other tax obligations except employer-side taxes. The Parties agree that 30% of the NSA distributed to each Settlement Class Member will be considered wages and will be reported as such to each Settlement Class Member on an IRS Form W-2. The Parties agree that 70% of the NSA distributed to each Settlement Class Member will be considered penalties and interest and will be reported as such to each Settlement Class Member on an IRS Form 1099 misc., if applicable.
 2. Payments to all PAGA Members: Each Covered Class Member who was employed by Defendant during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement), shall receive a pro-rata portion of the Gross Settlement Amount that has been designated as the "PAGA Allocation", proportionate to all

PAGA Members for all pay periods during which PAGA Members worked in an In Scope Job Category in California during the PAGA Period. The amount of each PAGA Member's portion of the PAGA Allocation will be calculated by: (a) dividing the PAGA Allocation by the total number of PAGA Pay Periods for all PAGA Members that occurred during the PAGA Period and (b) multiplying the result by each individual PAGA Member's number of PAGA Pay Periods that occurred during the PAGA Period.

- iii. Each member of the Settlement and PAGA Class who receives an Individual Settlement Payment and/or portion of the PAGA Allocation must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable whose checks are not cashed within 180 days after mailing shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Class member to whom the check was issued, until such time that they claim their property.
 - iv. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
- (f) Approval. The Settlement Administrator will calculate the Individual Settlement Payments, as well as the amount of the employer's share of payroll taxes due on the wage portion of the awards, and provide the same to Defense Counsel for review and approval within seven (7) calendar days of the funding of the settlement. Defense counsel will review and provide any necessary feedback within seven (7) calendar days of receiving notice from the Settlement Administrator of the Individual Settlement Payments and taxes. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail the checks, less applicable taxes and withholdings, to Settlement Class Members and PAGA Members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.
- (g) Administration of Taxes. The Settlement Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA Members, and Class Counsel Form 1099s or other tax forms as may be required by law for all amounts paid pursuant to this Settlement, and for forwarding all penalties to the appropriate government authorities.
- (h) Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties. Class Counsel shall file this declaration with the Court within seven (7) calendar days of receipt or by the deadline set by the Court if later.

D. Miscellaneous Provisions

1. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

2. Judgment and Continued Jurisdiction. After entry of the Final Approval Order and Judgment, the Court will have continuing and exclusive jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement; (b) matters relating to the administration of the Settlement; and (c) such post-Judgment matters as may be appropriate under Court rules or as set forth in this Settlement Agreement.

3. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

4. No Pending Lawsuits By Plaintiff. Other than this Action, Plaintiff represents that he has no unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement, and has no unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories specifically alleged in the operative complaint in this Action. Plaintiff further represents that, other than the instant Action, he has no current intention of asserting any other “Released Claims” against Defendant in any judicial or administrative forum.

5. Authorization to Enter Into Settlement Agreement. The Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms.

6. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

7. Publicity. Plaintiff and Settlement Class/PAGA Counsel agree not to issue a press release or otherwise notify the media about the terms of the Settlement or advertise or market any of the terms of the Settlement through written, recorded, or electronic communications. In addition, Plaintiff and Settlement Class/PAGA Counsel will not put details about the Settlement on their website. However, this will not prevent Plaintiff and Settlement Class/PAGA Counsel from undertaking required submissions and disclosures that are required to obtain approval of the Settlement, including and not limited to, submission of the Settlement to the LWDA in conformity with the PAGA statute. This also will not prevent Class Counsel from listing the case in declarations describing their qualifications as counsel for other cases.

8. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

9. Confidentiality. The terms of the settlement will be confidential until preliminary approval, except Class Counsel shall submit this proposed Settlement Agreement to the LWDA at the same time that it is submitted to the court in accordance with Labor Code § 2699(1)(2).

10. Counterparts. This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

11. Non-approval. In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Effective Date does not occur for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions.

12. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing before the Court

13. Additional Briefing and Final Approval. Settlement Class/PAGA Counsel will file with the Court their application for the Attorneys' Fees and Costs no later than the date the Plaintiff files his motion for final approval of the Settlement, and the application will be scheduled to be heard by the Court at the Final Approval Hearing. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Settlement Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Settlement Class/PAGA Counsel for the Settlement, Class Representative Enhancement Award, or Attorneys' Fees and Costs, will not constitute a material modification to the Settlement within the meaning of this paragraph.

14. No Effect on Employee Benefits. Amounts paid to Plaintiff and other Covered Class Members pursuant to this Settlement Agreement do not count as earnings or compensation for purposes of any benefits (e.g., 401(k) plans or retirement plans) sponsored by the Defendant.

15. Tax Liability. The Parties make no representation as to the tax treatment or legal effect of the payments called for hereunder, and the Parties are not relying on any statement, representation, or calculation by any of the Parties or by the Settlement Administrator in this regard. Plaintiff understands and agrees that he will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein and will hold Class Counsel, the Company, the Released Parties, Defense Counsel, and the Settlement Administrator free and harmless from and against any claims resulting from treatment of such payments as non-taxable

damages. Each Party to this Settlement (for purposes of this section, the “Acknowledging Party” and each Party to this Settlement Agreement other than the Acknowledging Party, an “other Party”) acknowledges and agrees that: (a) no provision of this Settlement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor will any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended); (b) the Acknowledging Party (i) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement, (ii) has not entered into this Settlement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (iii) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (c) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

16. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

17. California Law Governs. All terms of this and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

18. Acknowledgement that the Settlement is Fair, Adequate and Reasonable. The Parties believe this Agreement is a fair, adequate and reasonable settlement of the Lawsuit and have arrived at this Settlement after arm’s-length negotiations facilitated by an experienced wage and hour class action mediator, and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness, adequacy and reasonableness of this Settlement.

19. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

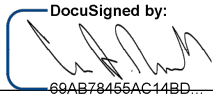
20. Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement will be: (a) in writing; (b) deemed given on the third business day after mailing; and (c) sent via United States registered or certified mail, return receipt requested, addressed as follows:

if to Plaintiff, to Class Counsel at the most recent address on record with the California Bar Association.

if to Defendant, to Defense Counsel at Littler Mendelson, 50 W. San Fernando St.,
7th Floor, San Jose, CA 95113.

Dated: 11/17/2021 _____

PLAINTIFF CRAIG RUSSELL

DocuSigned by:

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Craig Russell

Dated: _____

DEFENDANT NUTANIX, INC.

By:

if to Defendant, to Defense Counsel at Littler Mendelson, 50 W. San Fernando St.,
7th Floor, San Jose, CA 95113.

Dated: _____

PLAINTIFF CRAIG RUSSELL

Craig Russell

Dated: 11/30/2021

DEFENDANT NUTANIX, INC.

DocuSigned by:

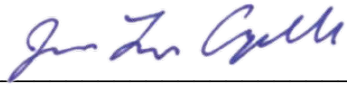
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By: Tyler wall

APPROVED AS TO FORM:

Dated: 11/17/2021

AEGIS LAW FIRM, PC

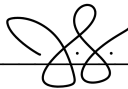


Jessica L. Campbell

Attorneys for Plaintiff

Dated: 11/22/21

LEBE LAW, APLC



Jonathan M. Lebe

Attorneys for Plaintiff

Dated: _____

LITTLER MENDELSON P.C.

Fermin H. Llaguno

Attorneys for Defendant

APPROVED AS TO FORM:

Dated: _____

AEGIS LAW FIRM, PC

Jessica L. Campbell

Attorneys for Plaintiff

Dated: _____

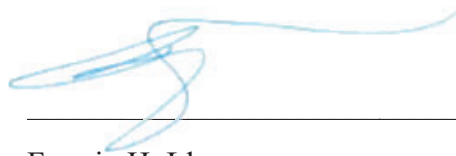
LEBE LAW, APLC

Jonathan M. Lebe

Attorneys for Plaintiff

Dated: November 30, 2021

LITTLER MENDELSON P.C.



Fermin H. Llaguno

Attorneys for Defendant

EXHIBIT A

Job Title
Inside Account Executive
Inside Sales Representative
Account Development Representative
Account Executive
Account Manager
Account Manager, OEM
Associate Customer Success Representative
Channel Sales Manager - Healthcare
Channel Sales Manager - SLED
Channel Sales Manager - US Nationals - Business Development
Channel Sales Manager - US West Region
Commercial Account Manager
Commercial Regional Partner Manager
District Sales Manager - SoCal Enterprise
Enterprise Account Manager
Federal Account Manager
Federal Account Manager - DoD
Federal Account Manager - Navy
Federal Inside Sales Representative
Global Account Manager
Global Systems Integrators Manager
Healthcare Account Executive
Healthcare Account Manager
Healthcare-Account Manager
Inside Account Executive
Inside Account Executive
Inside Channel Account Manager
Inside Sales Rep - Overlay Quota 5
Inside Sales Rep - Team Lead
Inside Sales Representative
Inside Sales Representative, Lenovo
Inside Sales Representative, OEM
Inside/Contract Renewal Sales Mgmt 4
Major Account Manager
Manager of Sales Development
Manager, Inside Sales
Manager, Sales Development
Named SLED
National Channel Manager
National Partner Manager
NorCal - Account Manager
Norcal Channel Manager
OEM Inside Sales Representative
OEM Sales - Americas, West
OEM Sales Team Lead
OEM Sales, Americas, West

Orange County - Account Manager
Regional Channel Manager
Regional Manager, Northwest Commercial
Regional Partner Manager, SLED
Regional Sales Manager
Regional Sales Manager, Healthcare
Regional Sales Manager, Service Provider
Regional Sales Mgr - LatAm
Renewal Representative
Renewals Representative
Sales Acct Mgr - Direct - New Accounts 5
Sales Development Representative
Sales Manager Lenovo Americas, West
Sales Manager, Lenovo
Sales Specialist, Cloud Governance - West
San Diego/Hawaii Account Manager
Senior Manager, Global System Integrators
Service Provider Offering Development Manager
SLED Account Manager
SLED Name Account Manager
SLED Named Account Manager
SLED Territory Account Manager
SLED Territory Account Manager - Southwest
SLED-Commercial Account Manager
Specialist Inside Account Executive
Specialist Inside Sales Representative
Sr Manager, GSI Sales
Sr Renewals Representative
Sr. Channel Account Manager
Sr. Channel Sales Manager - US West Leader
Sr. Channel Sales Manager - US West Region
Sr. Commercial Account Manager
Sr. Global System Integrators Manager
Sr. Global Systems Integrators Sales - Americas West
Sr. GSI Inside Sales Representative
Sr. Manager of System Integrator Alliances
Sr. Manager, Renewals
Sr. Manager, Sales Development
Sr. Manager, Strategic Alliances
Sr. Renewals Manager, OEM
Sr. Renewals Representative
Sr. Sales Development Representative
Territory Account Manager
Territory Account Manager - SLED

EXHIBIT B

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Craig Russell v. Nutanix, Inc., Case No. 20CV366943

(Santa Clara County Superior Court)

**If you worked for Nutanix, Inc. in California
at any time from April 6, 2016 to September 20, 2021,
a settlement of a class action lawsuit may affect your rights.**

THIS IS AN IMPORTANT COURT APPROVED NOTICE. PLEASE READ CAREFULLY.

It is not a solicitation from a lawyer.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
PARTICIPATE IN THE SETTLEMENT – <u>NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Cannot pursue your own lawsuit. By doing nothing, you become part of the Class and will collect a settlement award as detailed below. But you will not be able to bring your own lawsuit against Nutanix for wage and hour violations that relate to the claims brought in this Lawsuit.
OBJECT TO THE SETTLEMENT	Stay in this Lawsuit. Receive a payment. Object. Cannot pursue your own lawsuit. To object to the Settlement, you must write to the Settlement Administrator about why you do not like the settlement. You will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the settlement in the same way as Class Members who do not object.
ASK TO BE EXCLUDED	Get out of this Lawsuit. Receive a smaller or no payment from it. Keep your right to pursue your own lawsuit for damages. If you ask to be excluded from the Settlement, you keep your right to sue Nutanix separately about the legal claims in this Lawsuit, except as to the claim under the California Private Attorneys General Act (“PAGA”). If you choose this option, you must exclude yourself, in writing, from the Settlement. As a result, you may receive no payment at all. At most, you will receive a very small payment for resolution of the PAGA claim if you are a member of the PAGA Group, which is a subset of the Class.
EXCLUDE ONLY YOUR FLSA CLAIMS	Stay in the Lawsuit, but exclude any potential claims under the Fair Labor Standards Act (“FLSA”). If you stay in the lawsuit and do not ask to be excluded, you will receive a payment for non-PAGA wage and hour claims and you will give up your right to separately pursue those claims under California state law (the “release”). If you choose <i>not</i> to sign and cash this check within the stated deadline, you will exclude any possible FLSA claims you might have from your release of claims.

- **Regardless of the option you choose, you will not be retaliated against for exercising your rights.** To object to the Settlement or to ask to be excluded, you must act before [DATE].
- **Any questions?** Read on or contact the Settlement Administrator listed below at [PHONE NUMBER].

BASIC INFORMATION ABOUT THIS LAWSUIT

1. Why did I get this notice?

You are being sent this Notice because records show that you currently work, or previously worked, for Nutanix, Inc. (“Defendant” or “Nutanix”) in California at any time from April 6, 2016 to September 20, 2021 (the “Settlement Period”) in one of the following job categories within the sales organization: inside account executives, sales development representatives, commercial account executives, enterprise account executives, global account executives, and channel account executives (“Class Members”).

This Notice relates to a proposed settlement (“Settlement”) of class action litigation brought against Defendant. This Notice contains important information about your rights to a payment from the Settlement or to object or be excluded from the Settlement according to the procedures described in this Notice.

2. What is this lawsuit about?

This is about whether Defendant paid all minimum and overtime wages; provided required meal periods, or paid premiums in lieu thereof; provided required rest periods, or paid premiums in lieu thereof; timely paid wages; paid all wages due upon termination of employment; maintained all required records; furnished accurate itemized wage statements; reimbursed business expenses; violated the Business and Professions Code §§ 17200, *et. seq.*; and violated California’s Private Attorneys General Act (“PAGA”). The operative complaint in this action was filed in Santa Clara County Superior Court on November 1, 2021, Case Number 20CV366943.

Throughout the litigation, Defendant has denied—and continues to deny—the factual and legal allegations in the case and has maintained that it has valid defenses to the claims. Defendant denies any wrongdoing and asserts that its pay practices at all times complied with the law. Defendant further denies that it owes the monies claimed in the lawsuit. Defendant also denies that this action can or should proceed as a class and/or PAGA action. Notwithstanding, Defendant has voluntarily agreed to the terms of a negotiated settlement in order to avoid the burden and expense of continued litigation.

3. What is a class action and who is involved?

In a class action lawsuit such as this, a person called the “Class Representative” sues on behalf of other people who may have similar claims. The people together are a “Class” or “Class Members” who worked for Defendant during the Settlement Period defined above. The person who is the Class Representative is also called the Plaintiff, here Mr. Craig Russell. The companies sued are called the Defendant, here Nutanix, Inc.

4. What are the terms of the proposed Settlement?

The major terms of the settlement are as follows:

1. Defendant has agreed to pay \$2,375,000.00 to settle the claims made in this lawsuit. This amount is also known as the “Gross Settlement Amount.”
2. Plaintiff has agreed to release all of his claims in his lawsuit against Defendant.
3. Plaintiff seeks the following deductions from the \$2,375,000.00 Gross Class Settlement Amount:
 - a. Up to thirty-five percent (35%) of the Gross Class Settlement Amount (approximately \$831,250.00) for Class Counsel’s attorneys’ fees.
 - b. Up to \$17,000.00 for reimbursement of Class Counsel’s litigation costs.
 - c. An enhancement award of up to \$7,500.00 to Plaintiff for filing the Lawsuit, performing work in connection with the Lawsuit, and undertaking the risks of filing the Lawsuit.
 - d. Up to \$7,750.00 to cover the costs of the Settlement Administrator.
 - e. Payment of \$250,000.00 to the California Labor and Workforce Development Agency for release of Private Attorneys General Act claims.

If the Court approves each of the requested deductions from the Gross Class Settlement Amount, the Parties estimate there will be approximately \$1,261,500.00 remaining. The remaining funds will be referred to as the “Net Settlement Amount.” The Net Settlement Amount will be distributed to Class Members who do not request exclusion (the “Participating Class Members”) no later than 21 calendar days after receipt of the Gross Class Settlement Amount, and according to the following formula:

To calculate each individual Settlement Award, the Net Settlement Amount will be split: 60% shared by inside account executives and sales development representatives (“Inside Categories”), and 40% shared by commercial account executives, enterprise account executives, global account executives, and channel account executives (“Outside Categories”). The amount of each individual Settlement Award will be calculated on a pro rata basis by (a) multiplying the Net Settlement Amount by the applicable percentage to determine the respective Inside Categories’ and Outside Categories’ share of the Net Settlement Amount, (b) dividing the two resulting shares by the total number of pay periods (total workweeks divided by two) that all Settlement Class Members worked in either the Inside Categories or Outside Categories, respectively and as applicable during the Settlement Period to determine the Inside Categories and Outside Categories payment per pay period, (c) multiplying the applicable payment per pay period by each individual Settlement Class Member’s total number of pay periods worked in either the Inside Categories or Outside Categories as applicable that occurred during the Settlement Period; and (d) adding together the results from those calculations for each Settlement Class Member.

The Gross Settlement Amount may be subject to a pro rata increase. If the number of workweeks that the Class Members worked in California exceeds 23,686 by more than 110% (e.g. if there are more than 26,054 workweeks), the Gross Settlement Amount will increase pro rata per additional workweek.

Your estimated Individual Settlement Payment is listed in Section 5 of this Notice. Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: twenty percent (30%) allocated to wages and eighty percent (70%) allocated to interest and penalties. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.).

FLSA Release.

If you sign and cash the check that is sent to you with the Individual Settlement Payment, you will have “opted in” to the settlement with respect to any potential claims under the FLSA that you may have. If you do not sign the check containing the Individual Settlement Payment, then you will exclude yourself from the release of any potential FLSA claims you may have. This does not mean that you will be able to pursue such claims. Rather it simply means this settlement agreement will not be a barrier to doing so.

PAGA Settlement Payments.

A portion of the Gross Settlement Amount in the amount of \$250,000.00 will be set aside for Class Members who worked for Nutanix in California at some point between April 6, 2019 to September 20, 2021 (“PAGA Period”) (collectively, the “PAGA Group”). If you are a member of the PAGA Group, you will receive a pro rata share of the PAGA Group Payment, regardless of whether you opt-out of the settlement. You will not be able to pursue any claim on behalf of the State for such penalties.

Disputing Your Payment Amount

If you dispute your Individual Settlement Payment in Section 5 of this Notice, you have the opportunity to dispute the information stated in this Notice Packet and provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation related to the number of workweeks worked, must be mailed to the Settlement Administrator and postmarked by [DEADLINE]. To be valid, an objection a dispute must: (1) be in writing, (2) state your name, Social Security Number, address and telephone number, (3) contain the number of workweeks you contend you worked for Defendant between April 6, 2016 to September 20, 2021, (4) contain written documentation supporting the contended number of workweeks, (5) state the name and number of the case, (6) be dated, and (7) be signed. The Settlement Administrator will attempt to resolve any dispute based upon Defendant’s records and any information you provide. Defendant’s records will be presumed determinative, absent evidence to rebut Defendant’s records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and make the final decision as to the validity of such evidence. Any such dispute must be mailed to the Settlement Administrator no later than [DATE].

5. What is my approximate Individual Settlement Payment if I participate in the Settlement?

According to payroll records maintained by Defendant, the number of Qualifying Workweeks you worked in California for Defendant as a non-exempt employee during the Settlement Period is [REDACTED].

Based on information provided above, anticipated court-approved deductions, and preliminary calculations, it is estimated your share of the settlement will be \$ [REDACTED], less applicable taxes and withholdings.

YOUR RIGHTS AND OPTIONS

PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED

6. How do I participate in the Settlement?

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 12, below, of any changes to your mailing address for timely payment.

Settlement Payment checks returned as undeliverable and unclaimed and uncashed 180 days after issuance and delivered checks remaining uncashed for more than 180 days after issuance will be void. The funds from any voided checks will be paid to State of California's State Controller Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Participating Class Member.

7. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement and you do not opt out of the Settlement, you will be deemed to have released or waived the Released Claims below against Defendant, including any of its past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, meaning any entity controlling, controlled by, or under common control with Nutanix, Inc., as well as each of its past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant (collectively, the "Released Parties")

The "Released Claims" includes all claims pled in the operative complaint and/or alleged in letters sent to the Labor and Workforce Development Agency by or on behalf of Plaintiff, or based upon the factual allegations and/or claims pled, against the Released Parties, for work performed during the Settlement Period and PAGA Period, including the following:

- (a) Any and all claims pled, or based on the factual allegations in the *Russell v. Nutanix* lawsuit, and/or alleged in letters sent to the Labor and Workforce Development Agency by or on behalf of Plaintiff, including, but not limited to, failure to pay wages, such as overtime, minimum and regular wages; failure to provide required meal periods; failure to pay meal period premiums as required by law; failure to provide required rest periods; failure to pay rest period premiums as required by law; failure to timely pay wages; failure to pay all wages due upon termination of employment; failure to maintain required records; failure to furnish accurate itemized wage statements or maintain required records; failure to reimburse business expenses; and unfair and unlawful business practices, as well as any claims that could have been pled which relate to such claims or arise from the same or similar facts concerning the Plaintiff and Class Members, as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged or which could have been alleged under the same

or similar facts, allegations and/or claims pleaded in *Russell v. Nutanix* or any of Plaintiff's letters sent to the Labor and Workforce Development Agency;

(b) Any and all claims pled, or based on the factual allegations of *Russell v. Nutanix* and/or alleged in any of the letters sent to the Labor and Workforce Development Agency by or on behalf of Plaintiff, whether known or unknown, to which Class Members, including Plaintiff, may have been entitled or may be entitled from April 6, 2016 to September 20, 2021 against any of the Released Parties, including claims based on or arising from alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802; and to the fullest extent permissible under governing law, Business and Professions Code section 17200, *et seq.*, the California Code of Regulations and/or Industrial Welfare Commission Wage Orders, 29 U.S.C. § 201, *et seq.*, and any and all other statutes, laws, or regulations on which a claim could be made;

(c) Any and all claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts, allegations and/or claims pled in the complaints filed as part of any of *Russell v. Nutanix* and/or alleged in any of the letters (or attachment(s)) sent to the LWDA by or on behalf of Plaintiff; and
(d) Any and all other claims under California or federal law that are based on the factual allegations and/or claims pled in *Russell v. Nutanix* and/or alleged in any of the letters (or attachment(s)) sent to the LWDA by or on behalf of Plaintiff. (collectively, the "Released Claims").

OBJECT TO THE SETTLEMENT

8. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not request exclusion (*i.e.*, must not opt-out). You may mail a written Notice of Objection to the Settlement Administrator (at the address in Section 12 below) no later than [DATE]. All valid objections will be filed with the Court. To be valid, the Objection must: (1) contain your full name and current address, as well as contact information for any attorney representing you for purposes of the objection; (2) include all objections and the factual and legal bases for the objection; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than [DATE]. Class Members may also appear at the final approval hearing to orally object, even if they have not submitted a written objection.

ASK TO BE EXCLUDED

9. How do I ask to be excluded from the Class?

You have the right to exclude yourself from the Class. If you exclude yourself from the Class—referred to as "opting out" – you won't get any money or benefits from the settlement. However, you may then be able to sue or continue to sue Defendant for your own claims if permitted by law. If you opt out, you will not be legally bound by the Court's disposition of this lawsuit. If you opt out, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations (thus, claims may expire in a short period of time).

If you are a member of the Class described above and would like to exclude yourself from the Class (“opt out”), you, or your authorized representative, MUST validly request exclusion from the Class. To validly request exclusion, you MUST submit a letter to the Settlement Administrator which (1) states your name, address, telephone number and the last four digits of the Social Security number; (2) contains a statement that you wish to be excluded from the Settlement; (3) is signed by you; and (4) is postmarked no later than [DATE] and mailed to the Settlement Administrator at the address specified in Section 12.

Any Class Member who validly requests to be excluded from the Class will not be entitled to any recovery under the Class settlement and will not be bound by the Class settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid request for exclusion on or before [DATE] will be bound by all terms of the settlement and any final disposition entered in this Class Action if the Settlement is approved by the Court.

THE LAWYERS REPRESENTING YOU

10. How will the lawyers be paid?

As part of the Settlement with Defendants, Class Counsel has requested thirty-five percent (35%) of the Gross Class Settlement Amount (approximately \$831,250.00) for Class Counsel’s attorneys’ fees, plus costs not to exceed \$17,000, to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel’s fees and costs from your Individual Settlement Payment.

11. How will the Plaintiff be paid?

As part of the Settlement with Defendant, Class Counsel has requested an enhancement payment of up to \$7,500.00 to be paid to Plaintiff for his efforts in this matter during initial investigation, discovery, and mediation, while serving as Class Representative and taking on the burden and risks of litigation.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

12. Who is handling the Settlement Administration process?

[PHOENIX SETTLEMENT ADMINISTRATORS]

Address

Phone: (*) ***-******

Facsimile: (*) ***-******

13. When is the Final Fairness and Approval Hearing and do I have to attend?

The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the Final Fairness and Approval Hearing. The Final Fairness and Approval Hearing has been set for [DATE OF FINAL APPROVAL HEARING], at XX:00 a.m. in Department 3 of the Santa Clara County Superior Court for the State of California, located at Downtown Superior Court, 191 North First Street,

San Jose, California 95113. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. Please note that the hearing may be continued without further notice to the Class.

14. When will I receive my share of the settlement proceeds?

The Court will hold a hearing on [DATE OF FINAL APPROVAL HEARING], to decide whether to approve the settlement. Even if the Court approves the settlement, there may be appeals if anyone objects and challenges the Settlement. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement and the status of your payment, contact the Settlement Administrator or Class Counsel at the phone number or address listed in Section 19.

If the Court approves the settlement and if you do not opt out, your payment set forth in Section 5 above is expected to be distributed no later than twenty-one (21) calendar days after the Settlement Administrator receives the Gross Settlement Amount.

GETTING MORE INFORMATION

15. Are more details available?

This Notice only summarizes the lawsuit, the Settlement, and related matters. Plaintiff's lawsuit was filed in the Santa Clara County Superior Court, located at 191 North First Street, San Jose, California 95113, open on Monday through Thursday from 8:30 a.m. through 1:30 p.m., and Fridays from 8:30 a.m. through 12:00 p.m. You may view the case record online on the Court's Case Information Public Portal: <https://portal.sccscourt.org/>. You may search by case number (20CV366943) and party (Nutanix Inc.) to view the case record, including any hearings and rescheduled hearings related to the Settlement.

Any questions regarding this Class Notice or the Lawsuit may be directed to the Claims Administrator at the below address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact Class Counsel at the address or telephone number set forth below. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

Settlement Administrator:

[Phoenix Settlement Administrator]

Address

Phone: (***) ***-****

Facsimile: (***) ***-****

Class Counsel:

Kashif Haque

Samuel A. Wong

Jessica L. Campbell

AEGIS LAW FIRM, PC

Joseph M. Szilagyi

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

khaque@aegislawfirm.com

swong@aegislawfirm.com

icampbell@aegislawfirm.com
jszilagyi@aegislawfirm.com

Jonathan M. Lebe
Zachary Gershman
LEBE LAW, APLC
777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Telephone: (213) 358-7046
jon@lebelaw.com
zachary@lebelaw.com

**PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR TO THE COURT CLERK FOR
INFORMATION ABOUT THE SETTLEMENT.**