



FILED
San Francisco County Superior Court

OCT 07 2024

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

PAUL THAI and LAWRENCE
SACHARTOFF,

Plaintiffs,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION, A New
York Corporation; and DOES 1 to 100,
inclusive,

Defendant.

CASE NO. CGC-20-588422

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

Before the Court is a motion by named plaintiffs Paul Thai and Lawrence Sachartoff (“Plaintiffs”) for preliminary approval of the settlement of putative class and PAGA claims reached with defendant International Business Machines Corporation (“IBM”). The unopposed motion was set to be heard on October 8, 2024, at 10:30 a.m. in Department 613, the Honorable Andrew Y.S. Cheng presiding. The Court has thoroughly reviewed and considered the briefing, supporting declarations, and pleadings on file in this proceeding. On that basis, the Court **VACATES** the October 8 hearing, **GRANTS** the motion, preliminarily **APPROVES** the Settlement Agreement attached here as **Exhibit A**, **RESERVES** a final approval hearing for **March 12, 2025, at 9:30 a.m.**¹, and **ORDERS** as follows.

¹ The motion for final approval and the motion for attorney’s fees, costs, and service awards— together with all supporting evidence—shall be filed no later than **February 14, 2025**. The motion for final approval should propose and provide support for the selection of a *cy pres*

- 1 1. Except as otherwise specified here, the Court adopts and incorporates by reference the terms
2 and definitions of the Settlement Agreement.
- 3 2. The following Settlement Class is conditionally certified for settlement purposes: "*California*
4 *residents actively employed by IBM for at least one month during the time that their office in*
5 *California was closed to them due to the coronavirus pandemic from March 20, 2020, to*
6 *April 1, 2022.*"
- 7 3. The Court finds that the Settlement Class meets the requirements for certification under Code
8 of Civil Procedure section 382 because: (1) the proposed Settlement Class is numerous and
9 ascertainable; (2) there are predominant common questions of law or fact; (3) Plaintiffs'
10 claims are typical of the claims of the members of the proposed Settlement Class; and (4) a
11 class action is superior to other methods to efficiently adjudicate this controversy.
- 12 4. The Court has considered the *Dunk/Kullar* factors and the circumstances surrounding the
13 settlement and preliminarily approves the settlement because it appears to be within the range
14 of possible final approval as a fair, adequate, and reasonable settlement in the best interest of
15 the members of the Settlement Class.
- 16 5. For settlement purposes, the Court appoints Paul Thai and Lawrence Sachartoff as class
17 representatives and preliminarily finds they will adequately represent members of the
18 Settlement Class.
- 19 6. For settlement purposes, the Court appoints Ackermann & Tilajef, P.C., Gerstein Harrow
20 LLP, and India Lin Bodien, Attorney at Law as Class Counsel. Class Counsel shall represent
21 the Settlement Class in carrying out the terms of the Agreement. The Court preliminarily finds
22 that Class Counsel will fairly and adequately represent the Settlement Class. Any Settlement
23 Class Member may enter an appearance through counsel of his or her own choosing at his or
24 her own expense. Any Settlement Class Member who does not enter an appearance or appear
25 on his or her own will be represented by Class Counsel.

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recipient.

- 1 7. CPT Group, Inc. is hereby appointed as settlement administrator. CPT Group, Inc. shall carry
2 out all of the duties and responsibilities as set forth in the Agreement and this order, including
3 *inter alia* the provision of notice to the Settlement Class. The costs and expenses of
4 administration by CPT Group, Inc. shall be paid from the Gross Settlement Amount in an
5 amount not to exceed \$35,750, which is the flat fee to be charged by CPT Group, Inc. The
6 Settlement Administrator shall not be paid for costs above \$35,750 absent court approval.
- 7 8. The Court approves the proposed form of notice attached to the Ackermann Declaration.
8 The Court finds that distribution of the approved notice in accordance with the plan set forth
9 in the Agreement (a) constitutes the best notice practicable under the circumstances,
10 (b) constitutes valid, due, and sufficient notice to all members of the Settlement Class, and
11 (c) complies fully with the requirements of California Code of Civil Procedure section 382,
12 and California Rules of Court 3.766 and 3.769.
- 13 9. On **March 12, 2025, at 9:30 a.m.**, in Department 613 this Court will hold a Final Fairness
14 Hearing to determine whether the Agreement should be finally approved as fair, reasonable,
15 and adequate as well as the amounts of attorney's fees, costs, and service awards that should
16 be approved.
- 17 a. All briefing and evidence for the (1) motion for final approval and (2) motion for
18 attorney's fees, costs, and service awards shall be filed no later than **February 14,**
19 **2025.**
- 20 b. Electronic courtesy copies of a proposed order for each motion and a proposed
21 final form of judgment (in Word and PDF format) shall be delivered to the
22 Department 613 email inbox contemporaneously with e-filing.
- 23 c. Class Counsel shall promptly inform the Court of contemplated appearances by
24 members of the Settlement Class.
- 25 d. The Court reserves the right to adjourn or continue the date of the final approval
26 hearing without further notice to the Settlement Class.
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1 **10.** All discovery and pretrial proceedings and deadlines in this action are stayed and
2 suspended until further notice from the Court, except for such actions as are necessary to
3 implement the Settlement Agreement and this Preliminary Approval Order.

4 **11.** Class Counsel shall promptly deliver a copy of this order to the LWDA.

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6 **IT IS SO ORDERED.**

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9 DATED: 10/7/24

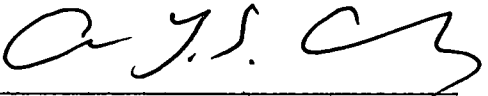
BY: 
 ANDREW Y.S. CHENG
 Judge of the Superior Court

Exhibit A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

PAUL THAI, as representative action on
behalf of the LWDA and the other aggrieved
employees,

Plaintiff,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION, A New
York Corporation; and DOES 1 to 100,
inclusive,

Defendant.

CASE NO. CGC-20-588422

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

Dept. 613
Hon. Andrew Y.S. Cheng

4AC Filed: November 20, 2023
Trial Date: None set

1 This Class Action Settlement Agreement and Release, including Exhibits A, B, and C
2 hereto (“Agreement”), is made and entered into by, between, and among Plaintiffs Paul Thai
3 (“Thai”) and Lawrence Sachartoff (“Sachartoff”) (collectively, the “Plaintiffs”) on behalf of
4 themselves, the Settlement Class (as defined below), and the State of California Labor and
5 Workforce Development Agency (“LWDA”), on the one hand, and Defendant International
6 Business Machines Corporation (“IBM” or “Defendant”) on the other hand. Plaintiffs and
7 Defendant (collectively, the “Parties”) enter into this Agreement to effect a full and final
8 settlement and preclusive judgment (“Settlement”) resolving all claims brought against
9 Defendant in *Paul Thai v. IBM Corporation*, Case No. CGC-20-588422, filed in the Superior
10 Court of California for the County of San Francisco on December 14, 2020 (the “Action”). This
11 Agreement is intended to fully and finally compromise, resolve, discharge, and settle the
12 Released Claims (as defined below), and on the terms set forth below, and to the full extent
13 reflected herein, subject to the approval of the Court.

14 **I. BACKGROUND**

15 1.1 On December 14, 2020, Umair Javed (“Javed”) initiated the Action by filing a
16 complaint against Experis US, Inc. (“Experis”), asserting representative claims on behalf of
17 himself and other allegedly aggrieved employees. Javed sought penalties under the Private
18 Attorneys General Act (“PAGA”) based on claims that he and other California employees who
19 were subject to stay-at-home orders and/or whose offices were closed during the coronavirus
20 pandemic had incurred unreimbursed work-related home office expenses in violation of California
21 Labor Code § 2802. On March 11, 2021, Javed filed a First Amended Complaint adding IBM as a
22 defendant. On July 27, 2021, Javed filed a Second Amended Complaint adding Thai as a second
23 named plaintiff. On December 1, 2021, Javed and Thai filed a Third Amended Complaint. IBM
24 successfully demurred to the Second and Third Amended Complaints and judgement was entered
25 in IBM’s favor on April 29, 2022. Javed and Thai appealed, and the California Court of Appeal,
26 First Appellate District, Division 5, reversed and remanded the Court’s judgment on October 11,
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2023. While the appeal was pending, Javed settled his individual claims against Experis and dismissed his individual claims against IBM on November 28, 2022.

1.2 Following remand, Thai filed a Fourth Amended Complaint on November 20, 2023, removing Javed and Experis as parties. On April 12, 2024, Thai served IBM with a purported amendment to his PAGA notice, adding Sachartoff as a new PAGA representative.

1.3 Defendant denies the allegations in the Action; denies that it has engaged in any wrongdoing; denies that Plaintiffs' allegations constitute valid claims; denies that a litigation class could properly be certified in the Action; denies that Plaintiffs' claims could properly be maintained as a PAGA representative action; and states that it is entering into this Agreement solely to eliminate the burden, expense, and delay of further litigation, and on the express conditions that (a) if for any reason the Settlement is not finalized according to the terms of this Agreement, the Settlement and the documents generated as a result of the Settlement shall not be usable for any purpose in the Action, and (b) this Settlement and the documents generated as a result of the Settlement are not admissible or usable in any other civil or administrative proceeding or any arbitration, except to the extent necessary to enforce this Settlement and the orders, judgment and agreements arising from this Settlement.

1.4 A *bona fide* dispute exists as to whether any amount of penalties or expense reimbursements are due to the Plaintiffs, Settlement Class Members (as defined herein), or the LWDA.

1.5 In preparation for mediation, the Parties engaged in informal discovery, exchanging information, data points, and documents made available by Defendant, which enabled Plaintiffs and the mediator to thoroughly evaluate Plaintiffs' claims and the claims of the putative class, and the likely outcomes, risks, and expense of pursuing litigation.

1.6 The Parties attended a virtual mediation session with experienced professional mediator Michael Loeb, Esq., on May 22, 2024, during which the Parties discussed potential settlement terms at length before agreeing to the terms of this arm's-length Settlement.

1 1.7 As a result of the mediation and discussions thereafter, Plaintiffs and Class Counsel
2 (as defined below) believe that the Settlement provides a favorable recovery for the Settlement
3 Class (as defined below), based on the claims asserted, the evidence developed, the damages that
4 might be proven against Defendant in the Action, and the uncertain outcome of the Action.
5 Plaintiffs and Class Counsel further recognize and acknowledge the expense and length of
6 continued proceedings necessary to prosecute the Action against Defendant through trial and
7 appeals. They also have considered the risk of any litigation, especially in complex litigation such
8 as the Action, as well as the difficulties and delays inherent in any such litigation. They are also
9 mindful of the inherent challenges of proof and the strength of the defenses to the alleged claims,
10 and therefore believe that it is desirable that the Released Claims be fully and finally compromised,
11 settled, and resolved with prejudice as set forth herein, subject to the approval of the Court.

12 1.8 Plaintiffs and Class Counsel, based on their own independent investigations and
13 evaluations, have examined the benefits to be obtained under the terms of this Agreement, have
14 considered the claims of Plaintiffs, the claims of the average Settlement Class Member, the risks
15 associated with the continued prosecution of the Action, and the likelihood of success on the merits
16 of the Action, and believe that, after considering all the circumstances, including the uncertainties
17 surrounding the risk of further litigation and the defenses that Defendant has asserted and could
18 assert, the proposed Settlement set forth in this Agreement is fair, reasonable, adequate, in the best
19 interests of Plaintiffs and the Settlement Class, and confers substantial benefits upon the Settlement
20 Class.

21 1.9 Plaintiffs warrant and represent that they are effecting this Settlement and executing
22 this Agreement after having received full legal advice as to their rights and have had the
23 opportunity to obtain independent counsel to review this Agreement.

24 1.10 The Parties further agree that the Agreement, the fact of this Settlement, any of the
25 terms of this Agreement, and any documents filed in connection with the Settlement shall not
26 constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding, or
27 evidence of: (i) any wrongdoing, (ii) any violation of any statute or law, (iii) any liability on the
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1 claims or allegations in the Action on the part of any Released Parties, (iv) the propriety of
2 certifying a litigation class or pursuing representative relief under the PAGA in the Action or any
3 other proceeding, and shall not be used by any person for any purpose whatsoever in any legal
4 proceeding, including but not limited to arbitrations, and/or other civil and/or administrative
5 proceedings, other than a proceeding to enforce the terms of the Agreement, or (v) the
6 enforceability or waiver of any IBM arbitration agreement.

7 1.11 The Parties desire to compromise and settle all issues and claims that have been
8 brought against Defendant or related persons in the Action, including all claims brought on a
9 putative class and PAGA representative basis in the Action.

10 **II. DEFINITIONS**

11 2.1 "Class Counsel" means Ackermann & Tilajef, P.C., Gerstein Harrow LLP, and
12 India Lin Bodien, Attorney at Law.

13 2.2 "Class Counsel Award" means (i) the attorneys' fees for Class Counsel's litigation
14 and resolution of the Action, as awarded by the Court, which will be paid exclusively from the
15 Gross Settlement Amount (as defined below), and may not exceed thirty-three and one-third
16 percent (33 1/3%) of the Gross Settlement Amount (equaling \$325,000) and (ii) all expenses and
17 costs incurred by Class Counsel in litigation and resolution of the Action, not to exceed \$10,000,
18 which will be paid exclusively from the Gross Settlement Amount.

19 2.3 "Class Information" means information regarding Settlement Class Members that
20 Defendant will in good faith compile from its records and provide to the Settlement Administrator
21 (as defined below). Class Information shall include, if possible, for each Settlement Class Member:
22 full name, last known mailing address, last four digits of the social security number, whether they
23 received reimbursement for home internet expenses from IBM, and information sufficient to
24 determine the number of "qualifying employee-months" (defined as months worked as an active
25 employee while their office in California was closed to them) during the Class Period (as defined
26 below). Because Settlement Class Members' private information is included in the Class
27 Information, the Settlement Administrator and Class Counsel shall maintain any Class Information
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received in confidence and shall use and disclose Class Information only for purposes of this Settlement and for no other purpose, and pursuant to the restrictions as described in Paragraph 9.1. Further, within the Settlement Administrator's operations, access shall be limited to those personnel with a need to use the Class Information as part of the administration of the Settlement and to the extent that such personnel have been instructed to maintain the confidentiality of Class Information.

2.4 "Class Notice" means the notice of class action settlement approved by the Court to be provided to Settlement Class Members, without material variation from Exhibit B except as may be both required by the Court and agreed to by the Parties.

2.5 "Class Period" means the period from March 20, 2020 to April 1, 2022.

2.6 "Court" means the Superior Court of California for the County of San Francisco.

2.7 "Effective Date" means one (1) business day after entry of the Court's Final Approval order and Judgment and after Judgment has become final, which date of finality shall be the latest of the following dates, as applicable: (i) in the event that any Settlement Class Member objected to the Settlement, and thereafter filed any appeal relating thereto, the date any appellate court has rendered a final ruling affirming the Court's final approval of the Settlement without modification and the time for seeking any further appellate review is fully exhausted without any further appeal having been filed; (ii) in the event that any Settlement Class Member objected to the Settlement, the date that the deadline for seeking appellate review of the Court's final approval of the Settlement (including any extensions sought and granted) has passed without the filing of a timely appeal or timely request for review, or (iii) in the event that no Settlement Class Member has objected to the Settlement, the date that the Court enters its Final Approval order and Judgment and the time for seeking appeal is fully exhausted with no appeal having been filed. The Parties waive their rights to bring an appeal relating to this Settlement.

2.8 "Final Approval" means the Court's entry of a Final Approval order finally approving this Settlement in accordance with this Agreement and consistent with the form agreed to by the Parties.

2.9 “Final Approval Hearing” means the hearing at or after which the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, finally approved by the Court.

2.10 “Individual Settlement Payment” means the amount payable to each Settlement Class Member from the Gross Settlement Amount. The Individual Settlement Payment shall encompass the Settlement Class Member’s portion of the Net Settlement Amount, as further described in Paragraphs 3.2 and 9.1 to 9.3.

2.11 “Judgment” means the judgment to be entered in the Action on Final Approval of this Settlement and consistent with the form agreed to by the Parties.

2.12 “Legally Authorized Representatives” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed person responsible for handling the business affairs of a Settlement Class Member.

2.13 “Opt-Out List” means the Court-approved list of all persons who timely and properly request exclusion from the Settlement Class.

2.14 “PAGA Claims” means the Plaintiffs’ representative claims seeking penalties pursuant to PAGA predicated on alleged violations of § 2802 of the California Labor Code.

2.15 “PAGA Payment” means a total payment of \$25,000, or such other amount as the Court may require, to settle all claims under PAGA. From this amount, 75% will be paid to the LWDA for civil penalties pursuant to PAGA (“LWDA Payment”) and 25% will be distributed to Settlement Class Members and considered penalties for tax reporting purposes (“PAGA Allocation”). Should the Court alter the amount to be allocated for this purpose, it shall not affect the Gross Settlement Amount or any other term of the Agreement.

2.16 “Preliminary Approval Date” means the date that the Court enters the Preliminary Approval Order and: (i) preliminarily approves the Settlement, and the exhibits thereto, and (ii) enters an order providing for notice to the Settlement Class, an opportunity to opt out of the

Settlement Class, an opportunity to submit timely and proper objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement, including approval of the Class Counsel Award.

2.17 “Preliminary Approval Hearing” means the hearing at or after which the Court will make a preliminary decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, preliminarily approved by the Court.

2.18 “Preliminary Approval Order” means the order that Plaintiffs and Defendant will seek from the Court, without material variation from Exhibit C. Entry of the Preliminary Approval Order shall constitute preliminary approval of the Agreement.

2.19 “Released Claims” means the claims described in Paragraph 8.1.

2.20 “Released Parties” means IBM and its present and former parents, owners, subsidiaries, and any affiliated or related persons or entities and each of their respective officers, directors, employees, partners, shareholders, attorneys, and agents and any other successors, assigns, affiliates, or legal representatives and any individual or entity who or which could be jointly liable with IBM and all persons or entities acting by, through, under, or in concert with any of them.

2.21 “Service Award” means the amounts approved by the Court to be paid to Plaintiffs, in recognition of their efforts in coming forward as named Plaintiffs. The Service Award amount payable to Plaintiffs shall come exclusively from the Gross Settlement Amount and is not to exceed \$10,000 for each Plaintiff (totaling \$20,000). Should the Court alter the amount to be allocated for this purpose, it shall not affect the Gross Settlement Amount or any other term of the Agreement.

2.22 “Settlement Administrator” means CPT Group, or such other entity as is approved by the Court to serve as settlement administrator for the Settlement.

2.23 “Settlement Administrator Expenses” means the amount to be paid to the Settlement Administrator exclusively from the Gross Settlement Amount, including the total costs, expenses, and fees of the Settlement Administrator. The amount is not to exceed \$35,750.00, or such other amount as is approved by the Court. If the actual amount of the Settlement

Administration Expenses is less than \$35,750.00, the difference between \$35,750.00 and the actual Settlement Administration Expenses shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$35,750.00 and are approved by the Court, then such excess will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay these additional costs.

2.24 "Settlement Class" consists of California residents actively employed by IBM for at least one month during the time that their office in California was closed to them due to the coronavirus pandemic from March 20, 2020 to April 1, 2022.

2.25 "Settlement Class Member" means any member of the Settlement Class.

2.26 "Void Date" means the date by which any checks issued to Settlement Class Members shall become void, *i.e.*, on the 181st day after mailing.

III. SETTLEMENT CONSIDERATION

3.1 The total amount Defendant will pay in consideration of the Settlement and dismissal with prejudice and release of all individual, class, and representative claims brought by Plaintiffs, including all claims alleged in the operative complaint, is \$975,000.00 ("Gross Settlement Amount"). The Gross Settlement Amount includes all payments to the Settlement Class members, named Plaintiffs, Class Counsel's attorneys' fees and costs, PAGA penalties, any taxes, and the costs of settlement administration. Under no circumstances will IBM or any Released Party be required to pay anything more than the Gross Settlement Amount, except that if the actual number of Settlement Class Members included in the Class Information provided by IBM pursuant to Paragraph 5.1 is more than 6,680 (*i.e.*, 5% more than 6,362), Defendant will have the option of increasing the Gross Settlement Amount a proportional amount based on the increase in total qualifying employee-months worked by the Settlement Class Members over 87,821 (*i.e.*, 5% over 83,639), valued at \$11.66 per qualifying employee-month. Defendant shall provide Plaintiffs with the total number of Settlement Class Members and qualifying employee-months at the time it provides the Class Information to the Settlement Administrator pursuant to Paragraph 5.1. If Defendant elects not to increase the Gross Settlement Amount, then Plaintiffs have the option to

withdraw from the settlement by providing IBM with written notice of such withdrawal within five (5) business days after IBM provides Plaintiffs with the total number of Settlement Class Members and qualifying employee-months. In the event of a withdrawal, the Parties would proceed to status quo ante as of May 21, 2024, in accordance with the provisions of Paragraph 11.3, as applicable.

3.2 The Gross Settlement Amount shall be allocated to pay the Settlement Administrator Expenses, Plaintiffs' Service Awards, Class Counsel Award, and the LWDA Payment in such amounts as are approved by the Court, with all remaining funds allocated to the Individual Settlement Payments ("Net Settlement Amount"). No portion of the Gross Settlement Amount will be retained by, or revert to, Defendant.

3.3 Defendant shall not be required to pay any settlement payments in any amounts under this Agreement unless and until the Court conducts the Final Approval Hearing, fully and finally approves all terms of this Agreement, the time to appeal from the Court's order has expired (including any extensions sought and granted), any appeals that may have been filed have been fully resolved by a final judgment not subject to further appellate review, and all other conditions specified in this Agreement are fully satisfied.

IV. SUBMISSION OF THE AGREEMENT TO THE COURT FOR PRELIMINARY AND FINAL APPROVAL

4.1 After execution of this Agreement and after expiration of the Revocation Period (defined and set forth more fully in Paragraph 8.2), Plaintiffs shall file a Notice of Withdrawal of the pending Memorandum of Costs and the Parties shall stipulate to the filing of the Fifth Amended Complaint attached hereto as Exhibit A. At least thirty days before the Preliminary Approval Hearing Date set by the Court (or consistent with any other deadline for that filing that the Court may order) and provided that the Fifth Amended Complaint has been accepted by the Court, Plaintiffs shall submit to the Court a motion for preliminary approval of the Settlement, which shall seek approval of the Class Notice attached hereto as Exhibit B and entry of the [Proposed] Preliminary Approval Order attached hereto as Exhibit C.

4.2 IBM will not oppose the provisional certification of the Settlement Class under Rule 3.769(d) of the California Rules of Court, for settlement purposes only. IBM's agreement to certification for settlement purposes is in no way an admission that class certification is proper for litigation purposes, and evidence of this limited stipulation will not be deemed admissible in this or any other proceeding except for purposes of effectuating settlement.

4.3 Class Counsel will comply with subs. (s)(2) of Labor Code § 2699 and notify the LWDA of the proposed settlement prior to the submission of the motion for preliminary approval.

4.4 Class Counsel shall be responsible for ensuring that a duly noticed motion, accompanying memorandum of points and authorities prepared by Class Counsel, and such other pleadings, evidence or other documents as may be necessary for the Court to determine that the settlement documented by this Agreement is fair, adequate, and reasonable are filed with the Court in advance of the Final Approval Hearing.

4.5 At the Final Approval Hearing, Plaintiffs shall request entry of a Final Approval order and a Judgment, in forms to be agreed upon by the Parties, that among other things:

4.5.1 Finally approves the Settlement as fair, reasonable, and adequate and directs its consummation pursuant to the terms of the Agreement;

4.5.2 Approves the Settlement as to PAGA claims under Labor Code § 2699(l);

4.5.3 Finds that Class Counsel and Plaintiffs adequately represented the Settlement Class for the purpose of entering into and implementing the Agreement;

4.5.4 Re-confirms the appointment of the Settlement Administrator and finds that the Settlement Administrator has fulfilled its duties under the Settlement to date;

4.5.5 Finds that the Class Notice (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, and their right to exclude themselves from or object to the proposed settlement and to appear at the

Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of Rule 3.769 of the California Rules of Court, due process, and any other applicable rules or law;

4.5.6 Approves the Opt-Out List and determines that the Opt-Out List is a complete list of all Settlement Class Members who have timely and properly requested exclusion from the Settlement Class;

4.5.7 Directs that the Final Approval order and Judgment, in forms agreed upon by the Parties, shall be final and entered forthwith;

4.5.8 Adjudges that Plaintiffs, all Settlement Class Members not included in the Opt-Out List, and their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have received actual notice of the proposed Settlement, have conclusively compromised, settled, discharged, and released their respective Released Claims against IBM and the Released Parties, and are bound by the provisions of this Agreement;

4.5.9 Affirms that, notwithstanding the submission of any timely and proper request for exclusion, any Settlement Class Members included in the Opt-Out List will still be bound by the settlement and release of the PAGA Claims under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), and further affirms that any claims by the LWDA for civil penalties pursuant to PAGA are also extinguished;

4.5.10 Declares this Agreement and the Final Approval order and Judgment to be binding on, and have res judicata and preclusive effect, including as to Settlement Class Members who may not have received actual notice of the Action or this proposed Settlement;

4.5.11 Authorizes the Parties, without further approval from the Court, to mutually agree to and adopt such amendments, modifications, and expansions of this Agreement, including all Exhibits hereto, as (i) shall be consistent in all material respects with the Final Approval order and (ii) do not limit the rights of Settlement Class Members;

4.5.12 Dismisses the Action with prejudice; and

4.5.13 Contains such other and further provisions consistent with the terms of this Agreement as may be necessary obtain Final Approval.

4.6 At the Final Approval Hearing and as a part of the final approval of this Settlement, Class Counsel will also request approval of the Plan of Allocation set forth in Section IX. Any modification to the Plan of Allocation by the Court shall not (i) affect the enforceability of the Agreement, (ii) provide any of the Parties with the right to terminate the Agreement, or (iii) impose any obligation on the Defendant or any Released Party to increase the consideration paid in connection with the Settlement.

4.7 At the Final Approval Hearing, Class Counsel may also request entry of an Order approving the Class Counsel Award and the Service Awards to the Plaintiffs, which shall be paid exclusively from the Gross Settlement Amount. In no event shall any Released Party otherwise be obligated to pay for any attorneys' fees and expenses or any Service Awards. The disposition of Class Counsel's application for a Class Counsel Award and for the Service Awards is within the sound discretion of the Court and is not a material term of this Agreement, and it is not a condition of this Agreement that such application be granted. Any disapproval or modification of such application by the Court shall not (i) affect the enforceability of the Agreement, (ii) provide any of the Parties with the right to terminate the Agreement, or (iii) increase the consideration Defendant or any Released Party pays in connection with the Settlement. If the Court modifies the amount of the Class Counsel Award to be lower than the maximum amount allocated to the class Counsel Award in the Agreement, the difference shall be allocated to the Individual Settlement Payments. Released Parties shall have no liability to Class Counsel arising from any claim

regarding the division of the Class Counsel Award between and among Class Counsel or any other counsel representing Plaintiffs or the Settlement Class Members.

4.8 Within ten (10) calendar days after entry of Judgment, Class Counsel will comply with subs. (s)(3) of Labor Code § 2699 and provide a copy of the Judgment to the LWDA.

4.9 Class Counsel shall provide IBM with a draft of all filings to be submitted in connection with the Preliminary and Final Approval Hearings and other any post-approval filings the Court may require for review and approval at least five (5) business days before filing any such documents with the Court. IBM shall not unreasonably withhold its approval.

4.10 The settlement documented by this Agreement is contingent upon entry of Preliminary and Final Approval orders consistent with the terms of this Agreement, including the terms set forth in Exhibit C and Paragraph 4.5. An Order from the Court denying preliminary or final approval without prejudice and with instructions to amend terms and conditions of the Settlement or make adjustments to the moving papers that does not otherwise increase the total amount of the Gross Settlement Amount will not be grounds to automatically void the Settlement. If Preliminary and Final Approval orders consistent with the terms of this Agreement, including the terms set forth in Exhibit C and Paragraph 4.5 are not entered, the Parties will negotiate in good faith in an attempt to obtain approval, and in the event negotiations are not successful or approval is not then granted, IBM maintains sole discretion to either proceed or void the Settlement in which event the Action shall revert back to its status quo ante as of May 21, 2024, in accordance with the provisions of Paragraph 11.3.

V. CLASS NOTICE

5.1 No more than twenty (20) business days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class Information for purposes of sending the Class Notice to Settlement Class Members.

5.2 The Class Notice, subject to Court approval, will inform each Settlement Class Member of their right to request exclusion from the Settlement, their right to object to the Settlement, and their right to dispute certain information upon which their share of the Settlement

1 will be calculated as further provided in Paragraph 5.4. Settlement Class Members will be provided
2 forty-five (45) calendar days after the mailing of their Class Notice or fifteen (15) calendar days
3 after any re-mailing of their notice, whichever is longer, (the "Response Deadline") to take the
4 above-referenced actions. Settlement Class Members who disagree with their dates of active
5 employment during the Class Period as set forth on their Class Notice or the statement on their
6 Class Notice regarding whether they received reimbursement for home internet costs from IBM
7 may dispute such information by providing wage statements or other documentation or
8 information to the Settlement Administrator. The Settlement Administrator shall review any
9 documentation or information submitted by a Settlement Class Member and consult with the
10 Parties to determine whether an adjustment is warranted. There will be a presumption that IBM's
11 records are correct, absent evidence produced by a Settlement Class Member to the contrary. The
12 Settlement Administrator's determinations shall be binding upon the Settlement Class Member
13 and the Parties and shall not increase the amount of the Gross Settlement Amount, and a Settlement
14 Class Member's Individual Settlement Payment will be calculated according to the Settlement
15 Administrator's determinations.

16 5.3 No more than thirty (30) business days after receipt of the Class Information from
17 IBM, the Settlement Administrator shall send a copy of the Class Notice by First Class U.S. mail
18 to each potential Settlement Class Member (the "Notice Date"). Before the initial mailing of the
19 Class Notice, the Settlement Administrator shall make a good-faith attempt to obtain the most-
20 current names and postal mail addresses for all potential Settlement Class Members to receive such
21 postal mail, including (a) cross-checking the names and/or postal mail addresses it received from
22 IBM and (b) reviewing the addresses with the National Change of Address Database.

23 5.4 Each Settlement Class Member's respective Class Notice will include (a) the
24 Settlement Class Member's dates of active employment within the Class Period, (b) whether the
25 Settlement Class Member received reimbursement for home internet costs from IBM; and (c) an
26 estimated Settlement Class Member award amount based on the assumption that no Settlement
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Class Member objections, opt-out requests, or other disputes will be submitted and that no Settlement Class Members will be added to the Settlement Class.

5.5 The Settlement Administrator shall remail or attempt to remail any Class Notices that are returned as undeliverable provided that the returned Class Notice is received by the Settlement Administrator within 45 days of the initial Class Notice mailing. If any Class Notice sent via First Class U.S. mail to any potential Settlement Class Member is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the Class Notice to that address within five (5) days of having received the returned Class Notice. If the Settlement Administrator is not provided a forwarding address, the Settlement Administrator shall attempt to locate a current mailing address for the Settlement Class Member by skip tracing using the Settlement Class Member's social security number and will re-mail the Class Notice to any updated address identified within five (5) days of having received the returned Class Notice. In the event that any Class Notice is returned as undeliverable a second time, no further efforts shall be required. The Settlement Administrator shall maintain a log detailing the Class Notices returned as undeliverable.

5.6 All Settlement Class Members' names and postal mail addresses obtained by the Settlement Administrator through these sources shall be protected as confidential and not used for purposes other than the notice and administration of this Settlement. The address determined by the Settlement Administrator as the current mailing address through this process shall be presumed to be the best mailing address for the applicable Settlement Class Member.

5.7 The Parties agree that the procedures set forth in this Section constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Settlement Class Members such that no additional efforts to do so shall be required unless ordered by the Court.

5.8 At least twenty-one (21) calendar days before the Final Approval Hearing, the Settlement Administrator shall prepare a declaration of due diligence and proof of dissemination with regard to the mailing of the Class Notice, any attempts by the Settlement Administrator to

1 locate Settlement Class Members, its receipt of valid requests for exclusion, and its inability to
2 deliver the Class Notice to Settlement Class Members due to invalid addresses (“Due Diligence
3 Declaration”), to Class Counsel and counsel for IBM for presentation to the Court. Class Counsel
4 shall be responsible for filing the Due Diligence Declaration with the Court.

5 **VI. PROCEDURES FOR REQUESTS FOR EXCLUSION**

6 6.1 Settlement Class Members (with the exception of Plaintiffs) may opt out of the
7 Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement Class must
8 submit timely, written requests for exclusion to the Settlement Administrator. To be effective, the
9 request must include the Settlement Class Member’s name, address, and telephone number; a clear
10 and unequivocal statement that the Settlement Class Member wishes to be excluded from the
11 Settlement Class (with words to the effect of “I WISH TO BE EXCLUDED FROM THE
12 SETTLEMENT CLASS. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
13 SETTLEMENT CLASS, THE ONLY MONEY THAT I WILL RECEIVE FROM THE
14 SETTLEMENT OF THIS LAWSUIT IS MY PROPORTIONATE SHARE OF THE PAGA
15 ALLOCATION.”); and the signature of the Settlement Class Member. The request must be mailed
16 via First-Class U.S. Mail to the Settlement Administrator at the address provided in the Class
17 Notice and must be postmarked no later than the Response Deadline. The date of the postmark
18 shall be the exclusive means used to determine whether a request for exclusion has been timely
19 submitted, unless the Settlement Administrator determines that the postmark is not legible. If the
20 postmark is not legible, it will be assumed that the request for exclusion was sent on the date it is
21 received by the Settlement Administrator, except that in no event will a request for exclusion that
22 is received by the Settlement Administrator thirty (30) or more days after the Response Deadline
23 be deemed to be timely submitted. Requests for exclusion must be exercised individually by the
24 Settlement Class Member. Attempted collective group, class, or subclass requests for exclusions
25 shall be ineffective and disregarded by the Settlement Administrator.

26 6.2 The Settlement Administrator shall promptly log each request for exclusion that it
27 receives and provide copies of the log and all such requests for exclusion to counsel for IBM. Class
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Counsel shall be permitted access to the log if, and only if, necessary to resolve disputes arising from the administration of the Settlement.

6.3 The Settlement Administrator shall prepare a list of all persons who timely and properly requested exclusion from the Settlement Class (the Opt-Out List). Plaintiffs shall submit an affidavit from the Settlement Administrator to the Court attesting to the accuracy of the list concurrently with their motion for Final Approval.

6.4 All Settlement Class Members who are not included in the Opt-Out List approved by the Court shall be bound by this Agreement and any Court orders relating to it, even if they did not receive actual notice of the Action or this proposed Settlement.

6.5 The Settlement Administrator, in its sole discretion, shall determine whether a request for exclusion was timely and properly submitted. The Settlement Administrator's decision shall be final, binding, and nonappealable.

6.6 Plaintiffs agree not to request exclusion from the Settlement Class.

6.7 Settlement Class Members may object to or opt out of the Settlement, but may not do both. Any Settlement Class Member who submits a timely and proper request for exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under the Agreement, except that such Settlement Class Member shall receive a payment of his or her pro rata share of the PAGA Allocation based on the number of qualifying employee-months during the Class Period, in consideration of the individual's release of the PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). If a Settlement Class Member files both an objection and a valid and timely request for exclusion, the request for exclusion will override the objection, and the objection shall be ignored, except that the Court shall have discretion to consider the objection to the extent it applies to the PAGA portion of the Settlement. Settlement Class Members cannot opt out of the PAGA portion of the Settlement.

VII. PROCEDURES FOR OBJECTIONS

7.1 Any Settlement Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Agreement, the proposed Settlement, or any terms therein must submit a timely written statement of objection by directing such objection to the Settlement Administrator within the Response Deadline via First-Class U.S. Mail. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether an objection is timely submitted, unless the Settlement Administrator determines that the postmark is not legible. If the postmark is not legible, it will be assumed that the objection was sent on the date it is received by the Settlement Administrator, except that in no event will an objection that is received by the Settlement Administrator thirty (30) or more days after the Response Deadline be deemed to be timely submitted.

7.2 A written objection must contain at least the following: (i) the objector's full name, address, telephone number, and signature; (ii) a clear reference to the Action; (iii) a statement of the specific legal and factual basis for each objection argument; and (iv) a statement whether the objecting person or entity intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number. All objections shall be signed by the objecting Settlement Class Member, even if the Settlement Class Member is represented by counsel.

7.3 Settlement Class Members who object to the proposed Settlement shall remain Settlement Class Members bound by the Final Approval order and Judgment.

7.4 It shall be Class Counsel's sole responsibility to respond to any objections made with respect to any application for the Class Counsel Award and Service Awards.

7.5 A participating Settlement Class Member does not waive the right to appear or object at the Final Approval Hearing by failing to timely submit a written objection. A Settlement Class Member who fails to timely submit a written objection does not forfeit the right to appear or object at the Final Approval Hearing.

VIII. RELEASES

8.1 Released Claims. The Released Claims are comprised of the claims included in the Class Release and PAGA Release described in Paragraphs 8.1.1 to 8.1.3.

8.1.1 Class Release. Upon the date Defendant fully funds the Gross Settlement Amount pursuant to Paragraph 10.3 and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, all Settlement Class Members who are not included on the Opt-Out List, individually and on behalf of their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, successors, and assigns, and/or anyone claiming through them or acting or purporting to act on their behalf, past or present, fully and without limitation release and discharge each and all of the Released Parties from any and all claims for damages, costs, losses, debts, and/or expenses (including attorneys' fees and costs) for alleged violations of Labor Code § 2802 relating to work performed for IBM during the time period of March 20, 2020 through April 1, 2022, including but not limited to claims brought under Labor Code § 2802 or under California's Unfair Competition Law ("UCL") (whether asserted under the UCL's unlawful prong or otherwise) or any other law based on alleged violations of Labor Code § 2802. Except as set forth in Paragraphs 8.1.2 and 8.2 of this Agreement, all Settlement Class Members who are not included on the Opt-Out List do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

8.1.2 PAGA Release. Upon the date Defendant fully funds the Gross Settlement Amount pursuant to Paragraph 10.3 and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, all Settlement Class Members, individually and on behalf of the State of California, and their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, successors, and assigns, and/or anyone claiming through them or acting or purporting to act on

their behalf, past or present, fully and without limitation release and discharge each and all of the Released Parties from any and all claims for PAGA penalties premised upon alleged violations of Labor Code § 2802 relating to work performed for IBM during the time period of March 20, 2020 through April 1, 2022.

8.1.3 The Class Release and the PAGA Release described above both cover, without limitation, any and all claims for interest and for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or by Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement of the Action, the administration of such Settlement, and/or the Released Claims, except to the extent otherwise specified in the Agreement.

8.2 **Named Plaintiffs' General Released Claims.** In addition to the paragraphs above, for all periods up to and including the dates of Plaintiffs' respective executions of this Agreement, Plaintiffs for themselves and also on behalf of their respective heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, successors, and assigns, and/or anyone claiming through them or acting or purporting to act on their behalf, past or present (collectively, their respective "Affiliates"), hereby fully and without limitation release and discharge the Released Parties from any and all claims, known and unknown, asserted and unasserted, suspected and unsuspected, including but not limited to: any and all claims arising under the laws of the State of California or the United States; all claims raised or that could have been raised in the Action; all other statutory, constitutional, contractual, and/or common law claims for wages, damages, restitution, unreimbursed expenses, equitable or declaratory relief, penalties, liquidated damages, and/or punitive damages (including, without limitation, claims under any applicable Industrial Welfare Commission Wage Order, PAGA, or any other provision of the California Labor Code); any and all claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, the federal Age Discrimination In Employment Act, the Americans With Disabilities Act, Sections 503 and 504 of the Rehabilitation Act of 1973, the Family Medical Leave Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, the

Worker Adjustment and Retraining Notification Act, as amended, the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.), and/or the California Fair Employment and Housing Act; any state, civil, or statutory laws, including any and all human rights laws and laws against discrimination; any other federal, state, or local statutes, codes, or ordinances; any common law, contract law, or tort law cause of action; and any claims for interest, attorneys' fees, and/or costs.

8.2.1 Plaintiffs expressly acknowledge that they are aware of and familiar with the provisions of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT 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.

With full awareness and understanding of the above provision, Plaintiffs on behalf of themselves and their Affiliates hereby waive and relinquish any and all rights and benefits that they may have under Section 1542 of the California Civil Code, or the law of any other state or jurisdiction, or common law principle, to the same or similar effect, and agree and acknowledge that this waiver of rights under Section 1542 extends beyond the waiver provided in Paragraph 8.2.

8.2.2 Plaintiffs further acknowledge, agree, and understand that: (i) they have read and understand the terms of this Agreement; (ii) they are hereby advised in writing to consult with an attorney before executing this Agreement; (iii) they have obtained and considered such legal counsel and advice; (iv) Plaintiffs are not waiving claims that arise after the date they execute this Agreement; and (v) the Service Awards they will receive pursuant to this Agreement are consideration in exchange for their General Release of claims and are payment in addition to anything of value to which Plaintiffs are entitled.

1 8.2.3 Plaintiffs have been given a period of at least twenty-one (21) days to
2 consider and review this Agreement, and each Plaintiff will have seven (7) days
3 following the date they sign the Agreement to revoke the Agreement (the
4 "Revocation Period"). If either Plaintiff revokes the Agreement within their
5 Revocation Period, neither Plaintiffs nor IBM shall become bound by the
6 Agreement's terms. If Plaintiffs do not revoke the Agreement within the
7 Revocation Period, it will become effective on the Effective Date as set forth above.
8 Under no circumstances shall the Agreement become effective or enforceable until
9 the Revocation Period has expired.

10 8.2.4 Plaintiffs hereby represent, covenant, and warrant that they have not directly
11 or indirectly assigned, transferred, encumbered or purported to assign, transfer, or
12 encumber, to any person or entity, any portion of any liability, claim, demand,
13 action, cause of action, or rights herein released and discharged.

14 8.2.5 Plaintiffs understand that the facts with respect to which this Agreement is
15 entered into may be materially different from those the Parties now believe to be
16 true. The Parties accept and assume this risk, and agree that this Agreement,
17 including specifically the releases contained herein, shall remain in full force and
18 effect, and legally binding, notwithstanding the discovery or existence of any
19 additional or different facts, or any claims with respect to those facts.

20 8.3 As of the date of Final Approval, Plaintiffs and all Settlement Class Members who
21 have not been excluded from the Settlement Class as provided in the Opt-Out List shall be
22 permanently barred and enjoined from initiating, asserting, or prosecuting against the Released
23 Parties in any federal or state court or tribunal any and all of the Released Claims.

24 **IX. PLAN OF ALLOCATION**

25 9.1 The Settlement Administrator will be responsible for calculating the Individual
26 Settlement Payment amounts due to each Settlement Class Member, which shall consist of each
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Settlement Class Member's proportionate share of the Net Settlement Amount, as applicable, as set forth in Paragraphs 3.2, 9.2, and 9.3.

9.2 Each Settlement Class Member shall receive their proportionate share of the PAGA Allocation. The calculation of each Settlement Class Member's pro rata share shall be based on the individual's qualifying employee-months during the Class Period, as a percentage of all Settlement Class Members' qualifying employee-months during the Class Period.

9.3 Each Settlement Class Member who does not request exclusion ("Participating Settlement Class Members") shall be paid their pro rata share of the remaining Net Settlement Amount after the PAGA Allocation has been distributed, taking into account whether a Participating Settlement Class Member was reimbursed for home internet expenses. The calculation of each Participating Settlement Class Member's pro rata share shall be based on their qualifying employee-months during the Class Period as a percentage of all Participating Settlement Class Members' qualifying employee-months during the Class Period, except that no Participating Settlement Class Member shall receive less than \$10. For the purposes of these calculations, the qualifying employee-months for the Participating Settlement Class Members who did not receive home internet reimbursement during the Class Period will be multiplied by an enhancement factor of five in calculating both the total employee-months worked by all Participating Settlement Class Members and the employee-months worked by an individual Participating Settlement Class Member. The employee-months worked by Participating Settlement Class Members who did receive home internet reimbursement during the Class Period will not be multiplied by an enhancement factor.

X. FUNDING AND ADMINISTRATION OF THE SETTLEMENT FUND

10.1 The Settlement Administrator will establish a "qualified settlement fund" within the meaning of Treasury Regulations § 1.468B-1, et seq. ("QSF"), to which IBM will pay the Gross Settlement Amount as set forth herein. In connection with IBM's transfer of funds into the QSF, the following definitions will apply:

10.1.1 IBM will be a “transferor” within the meaning of Treasury Regulation § 1.468B-1(d)(1) to the QSF with respect to the amounts transferred;

10.1.2 The Settlement Administrator will be the “administrator” of the QSF within the meaning of Treasury Regulation § 1.468B-2(k)(3), responsible for the filing of all tax returns required to be filed by or with respect to the QSF, paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable information reporting requirements imposed by Treasury Regulation § 1.468B-2(1)(2) or any other applicable law on or with respect to the QSF, and in accordance with this Settlement Agreement; and

10.1.3 IBM and the Settlement Administrator shall reasonably cooperate in providing any statements or making any elections or filings necessary or required by applicable law for satisfying the requirements for qualification as a QSF, including the relation-back election within the meaning of Treasury Regulation § 1.468B-1(j).

10.2 The Settlement Administrator shall promptly provide a current Internal Revenue Service (“IRS”) Form W-9 of the QSF to IBM.

10.3 Within thirty (30) business days of the Effective Date, IBM shall provide the Gross Settlement Amount to the QSF established by the Settlement Administrator.

10.4 Within sixty (60) calendar days of the Effective Date, the Settlement Administrator shall pay the Individual Settlement Payments, Class Counsel Award, Service Awards, LWDA Payment, and Settlement Administrator Expenses as approved by the Court from the QSF.

10.4.1 The Settlement Administrator shall issue the Individual Settlement Payments from the Gross Settlement Amount to each Settlement Class Member. The Settlement Administrator shall issue an IRS Form 1099 and its state and local equivalents to each Settlement Class Member for the portion of their Individual Settlement Payment constituting their pro rata share of the PAGA Allocation. Each Settlement Class Member shall be solely responsible for paying any taxes and

penalties on such portion and shall defend, indemnify, and hold IBM and the Released Parties harmless from any claims, demands, actions, causes of action, losses, costs, attorney's fees, penalties, or expenses arising from any classification of the Individual Settlement Payment as taxable income.

10.4.2 The Class Counsel Award will be subject to allocation amongst Class Counsel according to their agreement. The Settlement Administrator shall issue an IRS Form 1099 and its state and local equivalents to Class Counsel for any awarded attorney's fees and costs.

10.4.3 Any Service Awards shall be considered non-wages and shall not be subject to withholding. The Settlement Administrator shall issue an IRS Form 1099 for the payment. Plaintiffs shall be solely responsible for paying any taxes and penalties on the Service Awards and shall defend, indemnify, and hold IBM and the Released Parties harmless from any claims, demands, actions, causes of action, losses, costs, attorney's fees, penalties, or expenses arising from any classification of the service payment as taxable income.

10.4.4 All Individual Settlement Payments made pursuant to this Agreement, other than the PAGA Allocation amounts, constitute restitution for purposes of Section 162(k) of the Internal Revenue Code of 1986, as amended.

10.5 If any portion included in the Individual Settlement Payments remains uncashed after the Void Date (*i.e.* checks are not cashed or checks are returned as undeliverable after distribution), then the Settlement Administrator shall void the check and shall direct such unclaimed funds to be paid to the State of California Unclaimed Property Fund.

10.6 Settlement Class Members who are not on the Opt-Out List approved by the Court shall be subject to and bound by the provisions of the Agreement, the releases contained herein, and the Judgment, regardless of whether they obtained any distribution from the Gross Settlement Amount.

10.7 Payment from the Gross Settlement Amount made pursuant to and in the manner set forth herein shall be deemed conclusive of compliance with this Agreement as to all Settlement Class Members.

10.8 No Settlement Class Member shall have any claim against the Plaintiffs, Class Counsel, or the Settlement Administrator based on distributions made substantially in accordance with this Agreement and/or orders of the Court. No Settlement Class Member shall have any claim against any Released Party or its counsel relating to distributions made under this Settlement.

XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF AGREEMENT

11.1 No later than ten (10) business days after the Response Deadline, the Settlement Administrator shall provide to counsel for IBM the Opt-Out List together with copies of the opt-out requests. Notwithstanding any other provision of this Agreement, if 100 or more Settlement Class Members exercise their right to opt out of the Settlement, Defendant at its sole and absolute discretion may elect to rescind and revoke the entire Agreement by sending written notice that it revokes the Settlement pursuant to this paragraph to Class Counsel within ten (10) business days following receipt of the Opt-Out List. Should Defendant exercise its rights under this Paragraph, Defendant shall bear all of the Settlement Administrator's costs incurred up to the point of the revocation.

11.2 If the Court does not approve the Settlement as set forth in this Agreement, or does not enter the Final Approval order and Judgment on the terms described herein (including but not limited to because Plaintiffs exercised their right under Paragraph 3.1 or Defendant exercised its right under Paragraph 11.1), or if the Court enters the Judgment and appellate review is sought, and on such review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final Approval order does not otherwise become final as provided in Paragraph 2.7, then this Agreement shall be cancelled and terminated, unless, in the event the Judgment is so modified, all Parties, in their sole discretion, provide written notice to all other Parties hereto of their intent to

proceed with the Settlement under the terms of the Judgment as it may be modified by the Court or any appellate court.

11.3 In the event that the Settlement is cancelled and terminated under Paragraph 11.2:

(a) the Settlement, this Agreement, the Class Information, the Opt-Out List, and all documents exchanged and filed in connection with the Settlement shall be treated as privileged mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b) the Settlement shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable, with the exception of this Paragraph, which shall remain effective and enforceable; (c) Plaintiffs shall withdraw the Fifth Amended Complaint; (d) the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of May 21, 2024, including with respect to any Court-imposed deadlines; (e) all Orders entered in connection with the Settlement, including the certification of the Settlement Class, shall be vacated without prejudice to any party's position on the issue of class certification or any other issue in the Action or any other action, and the Parties shall be restored to their litigation positions existing as of May 21, 2024; and (f) the Parties shall proceed in all respects as if the Agreement and related documentation and orders had not been executed, and without prejudice in any way from the negotiation or fact of the Settlement or the terms of the Agreement. The Agreement, the Settlement, all documents, orders, and evidence relating to the Settlement, its negotiation, and any steps taken in pursuit of its effectuation shall not be admissible in any proceeding, and shall not be offered, received, or construed as evidence of a presumption, concession, or admission of liability, of the certifiability of a litigation class, or of any misrepresentation or omission in any statement or written document approved or made, or otherwise used by any person for any purpose whatsoever, in any trial of the Action or any other action or proceedings. Plaintiffs, Class Counsel and the Settlement Administrator shall return to counsel for IBM all copies of Class Information and Opt-Out Lists received and shall not use or disclose the Class Information or Opt-Out List for any purpose or in any proceeding.

XII. ADDITIONAL PROVISIONS

12.1 Neither Plaintiffs nor Plaintiffs' counsel shall engage in any publicity, including website or social media postings, of any type related to this lawsuit, settlement, or litigation against Defendant. The Parties understand and agree that this clause does not apply to any court order requiring Plaintiffs' counsel to publish and/or make case documents available to the public and/or prohibit Plaintiffs and Plaintiffs' counsel from communicating with Settlement Class Members regarding this case and/or this settlement and/or Plaintiffs' counsel disclosing this settlement in declarations submitted in support of a finding of adequacy regarding class certification or settlement approval in other cases.

12.2 All of the Exhibits to this Agreement are an integral part of the Settlement and are incorporated by reference as though fully set forth herein.

12.3 Plaintiffs and Class Counsel acknowledge that an adequate factual record has been established that supports the Settlement.

12.4 This Agreement constitutes the full and complete agreement of the Parties hereto, and supersedes all prior negotiations and agreements, whether oral, written or otherwise, and may be amended or modified only by a written instrument signed by counsel for all Parties.

12.5 The Parties reserve the right, subject to the Court's approval when necessary, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such agreements must be in writing to be enforceable.

12.6 The Released Parties shall have the right to file the Agreement, the Final Approval order and Judgment, and any other documents or evidence relating to the Settlement 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, reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.7 The Parties to the Agreement agree that the Gross Settlement Amount and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, resulted from an arm's-length mediation session facilitated by Michael Loeb, Esq., and subsequent

discussions between the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

12.8 Plaintiffs and Class Counsel have concluded that the Settlement set forth herein constitutes a fair, reasonable, and adequate resolution of the claims that Plaintiffs asserted against Defendant, including the claims on behalf of the Settlement Class, and that it promotes the best interests of the Settlement Class.

12.9 To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Agreement.

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

12.11 This Agreement constitutes the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement, other than the representations, warranties, and covenants contained and memorialized in this Agreement.

12.12 This Agreement may be executed in one or more counterparts and by hard copy, facsimile, or PDF. All executed counterparts and copies thereof shall be deemed to be one and the same instrument.

12.13 The Parties hereto and their respective counsel agree that they will use their best efforts to obtain all necessary approvals of the Court required by this Agreement.

12.14 This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto, including any and all Released Parties.

12.15 This Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in the Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Agreement.

12.16 Except where this Agreement itself provides otherwise, all terms, conditions, and Exhibits are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement.

12.17 This Agreement shall be governed by California law. Any action based on this Agreement, or to enforce any of its terms, shall be venued in the Superior Court of California for the County of San Francisco, which shall retain jurisdiction over all such disputes. All Parties to this Agreement shall be subject to the jurisdiction of the Superior Court of California for the County of San Francisco for all purposes related to this Agreement. This paragraph relates solely to the law governing this Agreement and any action based thereon, and nothing in this paragraph shall be construed as an admission or finding that California law applies to the Released Claims of any Plaintiffs or Settlement Class Members who reside outside of the state. In any action or other proceeding brought by a party to this Agreement to enforce this Agreement, the prevailing party shall be entitled to recover its/their reasonable attorneys' fees and legal costs incurred.

12.18 The Parties to this Agreement warrant that that they are acting upon independent judgment and upon the advice of counsel, and not in reliance upon any warranty or representation, express or implied, of any nature of any kind by any other Party, other than the warranties and representations expressly made in this Agreement.

Dated: August 28, 2024

DocuSigned by:
By: Paul Thai
448F0F96B0354851
Paul Thai, Plaintiff

Dated: August 28, 2024

DocuSigned by:
By: Lawrence Sachartoff
E2D18ED559924EC
Lawrence Sachartoff, Plaintiff

Dated: _____, 2024

By: _____
Defendant IBM Corporation
By: _____
Its: _____

Dated: August 28, 2024

Signed by:
By: Avi Kreitenberg
AVI KREITENBERG

1 12.16 Except where this Agreement itself provides otherwise, all terms, conditions, and
2 Exhibits are material and necessary to this Agreement and have been relied upon by the Parties in
3 entering into this Agreement.

4 12.17 This Agreement shall be governed by California law. Any action based on this
5 Agreement, or to enforce any of its terms, shall be venued in the Superior Court of California for
6 the County of San Francisco, which shall retain jurisdiction over all such disputes. All Parties to
7 this Agreement shall be subject to the jurisdiction of the Superior Court of California for the
8 County of San Francisco for all purposes related to this Agreement. This paragraph relates solely
9 to the law governing this Agreement and any action based thereon, and nothing in this paragraph
10 shall be construed as an admission or finding that California law applies to the Released Claims
11 of any Plaintiffs or Settlement Class Members who reside outside of the state. In any action or
12 other proceeding brought by a party to this Agreement to enforce this Agreement, the prevailing
13 party shall be entitled to recover its/their reasonable attorneys' fees and legal costs incurred.

14 12.18 The Parties to this Agreement warrant that that they are acting upon independent
15 judgment and upon the advice of counsel, and not in reliance upon any warranty or representation,
16 express or implied, of any nature of any kind by any other Party, other than the warranties and
17 representations expressly made in this Agreement.

18
19 Dated: _____, 2024

By:

Paul Thai, Plaintiff

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21 Dated: _____, 2024

By:

Lawrence Sachartoff, Plaintiff

22
23 Dated: Sep. 4, 2024

By:

Defendant IBM Corporation

By: Lesley Bark

Its: Senior Counsel

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25
26
27 Dated: _____, 2024

By:

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Craig J. Ackermann
Avi Kreitenberg

Attorneys for Plaintiffs
PAUL THAI & LAWRENCE
SACHARTOFF

Dated: August 28, 2024

By:

DocuSigned by:
Jason Harrow

Jason Harrow
Charles Gerstein

Attorneys for Plaintiffs
PAUL THAI & LAWRENCE
SACHARTOFF

Dated: August 28, 2024

By:

DocuSigned by:
India Lin Bodien

India Lin Bodien

Attorneys for Plaintiffs
PAUL THAI & LAWRENCE
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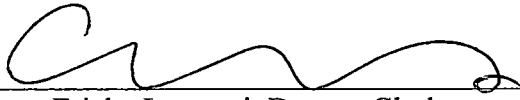
CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 7, 2024, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: October 7, 2024

Brandon E. Riley, Clerk

By: 
Ericka Larnauti, Deputy Clerk