

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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claims or allegations in the Action on the part of any Released Parties, (iv) the propriety of certifying a litigation class or pursuing representative relief under the PAGA in the Action or any other proceeding, and shall not be used by any person for any purpose whatsoever in any legal proceeding, including but not limited to arbitrations, and/or other civil and/or administrative proceedings, other than a proceeding to enforce the terms of the Agreement, or (v) the enforceability or waiver of any IBM arbitration agreement.

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

II. DEFINITIONS

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

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

2.3 “Class Information” means information regarding Settlement Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator (as defined below). Class Information shall include, if possible, for each Settlement Class Member: full name, last known mailing address, last four digits of the social security number, whether they received reimbursement for home internet expenses from IBM, and information sufficient to determine the number of “qualifying employee-months” (defined as months worked as an active employee while their office in California was closed to them) during the Class Period (as defined below). Because Settlement Class Members’ private information is included in the Class Information, the Settlement Administrator and Class Counsel shall maintain any Class Information

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

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

4 2.17 “Preliminary Approval Hearing” means the hearing at or after which the Court will
5 make a preliminary decision as to whether the Settlement is fair, reasonable, and adequate, and
6 therefore, preliminarily approved by the Court.

7 2.18 “Preliminary Approval Order” means the order that Plaintiffs and Defendant will
8 seek from the Court, without material variation from Exhibit C. Entry of the Preliminary Approval
9 Order shall constitute preliminary approval of the Agreement.

10 2.19 “Released Claims” means the claims described in Paragraph 8.1.

11 2.20 “Released Parties” means IBM and its present and former parents, owners,
12 subsidiaries, and any affiliated or related persons or entities and each of their respective officers,
13 directors, employees, partners, shareholders, attorneys, and agents and any other successors,
14 assigns, affiliates, or legal representatives and any individual or entity who or which could be
15 jointly liable with IBM and all persons or entities acting by, through, under, or in concert with any
16 of them.

17 2.21 “Service Award” means the amounts approved by the Court to be paid to Plaintiffs,
18 in recognition of their efforts in coming forward as named Plaintiffs. The Service Award amount
19 payable to Plaintiffs shall come exclusively from the Gross Settlement Amount and is not to exceed
20 \$10,000 for each Plaintiff (totaling \$20,000). Should the Court alter the amount to be allocated for
21 this purpose, it shall not affect the Gross Settlement Amount or any other term of the Agreement.

22 2.22 “Settlement Administrator” means CPT Group, or such other entity as is approved
23 by the Court to serve as settlement administrator for the Settlement.

24 2.23 “Settlement Administrator Expenses” means the amount to be paid to the
25 Settlement Administrator exclusively from the Gross Settlement Amount, including the total costs,
26 expenses, and fees of the Settlement Administrator. The amount is not to exceed \$35,750.00, or
27 such other amount as is approved by the Court. If the actual amount of the Settlement
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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

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

6 3.2 The Gross Settlement Amount shall be allocated to pay the Settlement
7 Administrator Expenses, Plaintiffs' Service Awards, Class Counsel Award, and the LWDA
8 Payment in such amounts as are approved by the Court, with all remaining funds allocated to the
9 Individual Settlement Payments ("Net Settlement Amount"). No portion of the Gross Settlement
10 Amount will be retained by, or revert to, Defendant.

11 3.3 Defendant shall not be required to pay any settlement payments in any amounts
12 under this Agreement unless and until the Court conducts the Final Approval Hearing, fully and
13 finally approves all terms of this Agreement, the time to appeal from the Court's order has expired
14 (including any extensions sought and granted), any appeals that may have been filed have been
15 fully resolved by a final judgment not subject to further appellate review, and all other conditions
16 specified in this Agreement are fully satisfied.

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

19 4.1 After execution of this Agreement and after expiration of the Revocation Period
20 (defined and set forth more fully in Paragraph 8.2), Plaintiffs shall file a Notice of Withdrawal of
21 the pending Memorandum of Costs and the Parties shall stipulate to the filing of the Fifth Amended
22 Complaint attached hereto as Exhibit A. At least thirty days before the Preliminary Approval
23 Hearing Date set by the Court (or consistent with any other deadline for that filing that the Court
24 may order) and provided that the Fifth Amended Complaint has been accepted by the Court,
25 Plaintiffs shall submit to the Court a motion for preliminary approval of the Settlement, which
26 shall seek approval of the Class Notice attached hereto as Exhibit B and entry of the [Proposed]
27 Preliminary Approval Order attached hereto as Exhibit C.
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1 4.2 IBM will not oppose the provisional certification of the Settlement Class under
2 Rule 3.769(d) of the California Rules of Court, for settlement purposes only. IBM's agreement to
3 certification for settlement purposes is in no way an admission that class certification is proper for
4 litigation purposes, and evidence of this limited stipulation will not be deemed admissible in this
5 or any other proceeding except for purposes of effectuating settlement.

6 4.3 Class Counsel will comply with subs. (s)(2) of Labor Code § 2699 and notify the
7 LWDA of the proposed settlement prior to the submission of the motion for preliminary approval.

8 4.4 Class Counsel shall be responsible for ensuring that a duly noticed motion,
9 accompanying memorandum of points and authorities prepared by Class Counsel, and such other
10 pleadings, evidence or other documents as may be necessary for the Court to determine that the
11 settlement documented by this Agreement is fair, adequate, and reasonable are filed with the Court
12 in advance of the Final Approval Hearing.

13 4.5 At the Final Approval Hearing, Plaintiffs shall request entry of a Final Approval
14 order and a Judgment, in forms to be agreed upon by the Parties, that among other things:

15 4.5.1 Finally approves the Settlement as fair, reasonable, and adequate and
16 directs its consummation pursuant to the terms of the Agreement;

17 4.5.2 Approves the Settlement as to PAGA claims under Labor Code §
18 2699(l);

19 4.5.3 Finds that Class Counsel and Plaintiffs adequately represented the
20 Settlement Class for the purpose of entering into and implementing the Agreement;

21 4.5.4 Re-confirms the appointment of the Settlement Administrator and finds
22 that the Settlement Administrator has fulfilled its duties under the Settlement to
23 date;

24 4.5.5 Finds that the Class Notice (i) constituted the best practicable notice; (ii)
25 constituted notice that was reasonably calculated, under the circumstances, to
26 apprise Settlement Class Members of the pendency of the Action, and their right to
27 exclude themselves from or object to the proposed settlement and to appear at the
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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

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

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

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

9 4.10 The settlement documented by this Agreement is contingent upon entry of
10 Preliminary and Final Approval orders consistent with the terms of this Agreement, including the
11 terms set forth in Exhibit C and Paragraph 4.5. An Order from the Court denying preliminary or
12 final approval without prejudice and with instructions to amend terms and conditions of the
13 Settlement or make adjustments to the moving papers that does not otherwise increase the total
14 amount of the Gross Settlement Amount will not be grounds to automatically void the Settlement.
15 If Preliminary and Final Approval orders consistent with the terms of this Agreement, including
16 the terms set forth in Exhibit C and Paragraph 4.5 are not entered, the Parties will negotiate in good
17 faith in an attempt to obtain approval, and in the event negotiations are not successful or approval
18 is not then granted, IBM maintains sole discretion to either proceed or void the Settlement in which
19 event the Action shall revert back to its status quo ante as of May 21, 2024, in accordance with the
20 provisions of Paragraph 11.3.

21 **V. CLASS NOTICE**

22 5.1 No more than twenty (20) business days after entry of the Preliminary Approval
23 Order, Defendant shall provide the Settlement Administrator with the Class Information for
24 purposes of sending the Class Notice to Settlement Class Members.

25 5.2 The Class Notice, subject to Court approval, will inform each Settlement Class
26 Member of their right to request exclusion from the Settlement, their right to object to the
27 Settlement, and their right to dispute certain information upon which their share of the Settlement
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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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1 Class Member objections, opt-out requests, or other disputes will be submitted and that no
2 Settlement Class Members will be added to the Settlement Class.

3 5.5 The Settlement Administrator shall remail or attempt to remail any Class Notices
4 that are returned as undeliverable provided that the returned Class Notice is received by the
5 Settlement Administrator within 45 days of the initial Class Notice mailing. If any Class Notice
6 sent via First Class U.S. mail to any potential Settlement Class Member is returned to the
7 Settlement Administrator with a forwarding address, the Settlement Administrator shall forward
8 the Class Notice to that address within five (5) days of having received the returned Class Notice.
9 If the Settlement Administrator is not provided a forwarding address, the Settlement Administrator
10 shall attempt to locate a current mailing address for the Settlement Class Member by skip tracing
11 using the Settlement Class Member's social security number and will re-mail the Class Notice to
12 any updated address identified within five (5) days of having received the returned Class Notice.
13 In the event that any Class Notice is returned as undeliverable a second time, no further efforts
14 shall be required. The Settlement Administrator shall maintain a log detailing the Class Notices
15 returned as undeliverable.

16 5.6 All Settlement Class Members' names and postal mail addresses obtained by the
17 Settlement Administrator through these sources shall be protected as confidential and not used for
18 purposes other than the notice and administration of this Settlement. The address determined by
19 the Settlement Administrator as the current mailing address through this process shall be presumed
20 to be the best mailing address for the applicable Settlement Class Member.

21 5.7 The Parties agree that the procedures set forth in this Section constitute reasonable
22 and the best practicable notice under the circumstances and an appropriate and sufficient effort to
23 locate current addresses for Settlement Class Members such that no additional efforts to do so shall
24 be required unless ordered by the Court.

25 5.8 At least twenty-one (21) calendar days before the Final Approval Hearing, the
26 Settlement Administrator shall prepare a declaration of due diligence and proof of dissemination
27 with regard to the mailing of the Class Notice, any attempts by the Settlement Administrator to
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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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1 Counsel shall be permitted access to the log if, and only if, necessary to resolve disputes arising
2 from the administration of the Settlement.

3 6.3 The Settlement Administrator shall prepare a list of all persons who timely and
4 properly requested exclusion from the Settlement Class (the Opt-Out List). Plaintiffs shall submit
5 an affidavit from the Settlement Administrator to the Court attesting to the accuracy of the list
6 concurrently with their motion for Final Approval.

7 6.4 All Settlement Class Members who are not included in the Opt-Out List approved
8 by the Court shall be bound by this Agreement and any Court orders relating to it, even if they did
9 not receive actual notice of the Action or this proposed Settlement.

10 6.5 The Settlement Administrator, in its sole discretion, shall determine whether a
11 request for exclusion was timely and properly submitted. The Settlement Administrator's decision
12 shall be final, binding, and nonappealable.

13 6.6 Plaintiffs agree not to request exclusion from the Settlement Class.

14 6.7 Settlement Class Members may object to or opt out of the Settlement, but may not
15 do both. Any Settlement Class Member who submits a timely and proper request for exclusion
16 may not file an objection to the Settlement and shall be deemed to have waived any rights or
17 benefits under the Agreement, except that such Settlement Class Member shall receive a payment
18 of his or her pro rata share of the PAGA Allocation based on the number of qualifying employee-
19 months during the Class Period, in consideration of the individual's release of the PAGA Claims
20 or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). If a
21 Settlement Class Member files both an objection and a valid and timely request for exclusion, the
22 request for exclusion will override the objection, and the objection shall be ignored, except that
23 the Court shall have discretion to consider the objection to the extent it applies to the PAGA portion
24 of the Settlement. Settlement Class Members cannot opt out of the PAGA portion of the
25 Settlement.
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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

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

5 8.1.3 The Class Release and the PAGA Release described above both cover,
6 without limitation, any and all claims for interest and for attorneys' fees, costs or disbursements
7 incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class
8 Members, or by Plaintiffs or Settlement Class Members, or any of them, in connection with or
9 related in any manner to the Action, the Settlement of the Action, the administration of such
10 Settlement, and/or the Released Claims, except to the extent otherwise specified in the Agreement.

11 8.2 **Named Plaintiffs' General Released Claims.** In addition to the paragraphs above,
12 for all periods up to and including the dates of Plaintiffs' respective executions of this Agreement,
13 Plaintiffs for themselves and also on behalf of their respective heirs, estates, trustees, executors,
14 administrators, principals, beneficiaries, representatives, agents, successors, and assigns, and/or
15 anyone claiming through them or acting or purporting to act on their behalf, past or present
16 (collectively, their respective "Affiliates"), hereby fully and without limitation release and
17 discharge the Released Parties from any and all claims, known and unknown, asserted and
18 unasserted, suspected and unsuspected, including but not limited to: any and all claims arising
19 under the laws of the State of California or the United States; all claims raised or that could have
20 been raised in the Action; all other statutory, constitutional, contractual, and/or common law
21 claims for wages, damages, restitution, unreimbursed expenses, equitable or declaratory relief,
22 penalties, liquidated damages, and/or punitive damages (including, without limitation, claims
23 under any applicable Industrial Welfare Commission Wage Order, PAGA, or any other provision
24 of the California Labor Code); any and all claims under Title VII of the Civil Rights Act of 1964,
25 42 U.S.C. § 1981, the federal Age Discrimination In Employment Act, the Americans With
26 Disabilities Act, Sections 503 and 504 of the Rehabilitation Act of 1973, the Family Medical Leave
27 Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, the
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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

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

5 10.4.2 The Class Counsel Award will be subject to allocation amongst Class
6 Counsel according to their agreement. The Settlement Administrator shall issue an
7 IRS Form 1099 and its state and local equivalents to Class Counsel for any awarded
8 attorney's fees and costs.

9 10.4.3 Any Service Awards shall be considered non-wages and shall not be
10 subject to withholding. The Settlement Administrator shall issue an IRS Form 1099
11 for the payment. Plaintiffs shall be solely responsible for paying any taxes and
12 penalties on the Service Awards and shall defend, indemnify, and hold IBM and
13 the Released Parties harmless from any claims, demands, actions, causes of action,
14 losses, costs, attorney's fees, penalties, or expenses arising from any classification
15 of the service payment as taxable income.

16 10.4.4 All Individual Settlement Payments made pursuant to this Agreement,
17 other than the PAGA Allocation amounts, constitute restitution for purposes of
18 Section 162(k) of the Internal Revenue Code of 1986, as amended.

19 10.5 If any portion included in the Individual Settlement Payments remains uncashed
20 after the Void Date (*i.e.* checks are not cashed or checks are returned as undeliverable after
21 distribution), then the Settlement Administrator shall void the check and shall direct such
22 unclaimed funds to be paid to the State of California Unclaimed Property Fund.

23 10.6 Settlement Class Members who are not on the Opt-Out List approved by the Court
24 shall be subject to and bound by the provisions of the Agreement, the releases contained herein,
25 and the Judgment, regardless of whether they obtained any distribution from the Gross Settlement
26 Amount.

1 10.7 Payment from the Gross Settlement Amount made pursuant to and in the manner
2 set forth herein shall be deemed conclusive of compliance with this Agreement as to all Settlement
3 Class Members.

4 10.8 No Settlement Class Member shall have any claim against the Plaintiffs, Class
5 Counsel, or the Settlement Administrator based on distributions made substantially in accordance
6 with this Agreement and/or orders of the Court. No Settlement Class Member shall have any claim
7 against any Released Party or its counsel relating to distributions made under this Settlement.

8 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
9 **AGREEMENT**

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

19 11.2 If the Court does not approve the Settlement as set forth in this Agreement, or does
20 not enter the Final Approval order and Judgment on the terms described herein (including but not
21 limited to because Plaintiffs exercised their right under Paragraph 3.1 or Defendant exercised its
22 right under Paragraph 11.1), or if the Court enters the Judgment and appellate review is sought,
23 and on such review, the entry of Judgment is vacated, modified in any way, or reversed, or if the
24 Final Approval order does not otherwise become final as provided in Paragraph 2.7, then this
25 Agreement shall be cancelled and terminated, unless, in the event the Judgment is so modified, all
26 Parties, in their sole discretion, provide written notice to all other Parties hereto of their intent to
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1 proceed with the Settlement under the terms of the Judgment as it may be modified by the Court
2 or any appellate court.

3 11.3 In the event that the Settlement is cancelled and terminated under Paragraph 11.2:
4 (a) the Settlement, this Agreement, the Class Information, the Opt-Out List, and all documents
5 exchanged and filed in connection with the Settlement shall be treated as privileged mediation
6 communications under Cal. Evid. Code §§ 1115 *et seq.*; (b) the Settlement shall be without force
7 and effect upon the rights of the Parties hereto, and none of its terms shall be effective or
8 enforceable, with the exception of this Paragraph, which shall remain effective and enforceable;
9 (c) Plaintiffs shall withdraw the Fifth Amended Complaint; (d) the Parties shall be deemed to have
10 reverted *nunc pro tunc* to their respective status as of May 21, 2024, including with respect to any
11 Court-imposed deadlines; (e) all Orders entered in connection with the Settlement, including the
12 certification of the Settlement Class, shall be vacated without prejudice to any party's position on
13 the issue of class certification or any other issue in the Action or any other action, and the Parties
14 shall be restored to their litigation positions existing as of May 21, 2024; and (f) the Parties shall
15 proceed in all respects as if the Agreement and related documentation and orders had not been
16 executed, and without prejudice in any way from the negotiation or fact of the Settlement or the
17 terms of the Agreement. The Agreement, the Settlement, all documents, orders, and evidence
18 relating to the Settlement, its negotiation, and any steps taken in pursuit of its effectuation shall
19 not be admissible in any proceeding, and shall not be offered, received, or construed as evidence
20 of a presumption, concession, or admission of liability, of the certifiability of a litigation class, or
21 of any misrepresentation or omission in any statement or written document approved or made, or
22 otherwise used by any person for any purpose whatsoever, in any trial of the Action or any other
23 action or proceedings. Plaintiffs, Class Counsel and the Settlement Administrator shall return to
24 counsel for IBM all copies of Class Information and Opt-Out Lists received and shall not use or
25 disclose the Class Information or Opt-Out List for any purpose or in any proceeding.
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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

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

4 12.8 Plaintiffs and Class Counsel have concluded that the Settlement set forth herein
5 constitutes a fair, reasonable, and adequate resolution of the claims that Plaintiffs asserted against
6 Defendant, including the claims on behalf of the Settlement Class, and that it promotes the best
7 interests of the Settlement Class.

8 12.9 To the extent permitted by law, all agreements made and orders entered during the
9 course of the Action relating to the confidentiality of information shall survive this Agreement.

10 12.10 The waiver by one Party of any breach of this Agreement by any other Party shall
11 not be deemed a waiver of any other prior or subsequent breach of this Agreement.

12 12.11 This Agreement constitutes the entire agreement among the Parties, and no
13 representations, warranties, or inducements have been made to any Party concerning this
14 Agreement, other than the representations, warranties, and covenants contained and memorialized
15 in this Agreement.

16 12.12 This Agreement may be executed in one or more counterparts and by hard copy,
17 facsimile, or PDF. All executed counterparts and copies thereof shall be deemed to be one and the
18 same instrument.

19 12.13 The Parties hereto and their respective counsel agree that they will use their best
20 efforts to obtain all necessary approvals of the Court required by this Agreement.

21 12.14 This Agreement shall be binding upon and shall inure to the benefit of the
22 successors and assigns of the Parties hereto, including any and all Released Parties.

23 12.15 This Agreement shall not be construed more strictly against one Party than another
24 merely because of the fact that it may have been prepared by counsel for one of the Parties, it being
25 recognized that because of the arm's-length negotiations resulting in the Agreement, all Parties
26 hereto have contributed substantially and materially to the preparation of the Agreement.
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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
Paul Thai, Plaintiff

Dated: August 28, 2024

DocuSigned by:
By: Lawrence Sachartoff
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

20
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
SACHARTOFF

EXHIBIT A

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann, CA Bar No. 229832

cja@ackermanntilajef.com

315 South Beverly Drive, Suite 504

Beverly Hills, California 90212

Telephone: (310) 277-0614

Facsimile: (310) 277-0635

INDIA LIN BODIEN, ATTORNEY AT LAW

India Lin Bodien, WA Bar. No. 44898

(*Pro Hac Vice* Admission Forthcoming)

india@indialinbodienlaw.com

2522 North Proctor Street, No. 387

Tacoma, Washington 98406

Telephone: (253) 212-7913

Facsimile: (253) 276-0081

Attorneys for Plaintiffs on behalf of the Class,
the LWDA, and the other Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

PAUL THAI and LAWRENCE SACHARTOFF,
individuals, on behalf of the State of California,
as private attorney generals, and on behalf of all
Aggrieved Employees and all others similarly
situated,

Plaintiffs,

v.

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

Defendants.

CASE NO: CGC-20-588422

**FIFTH AMENDED CLASS AND
PAGA REPRESENTATIVE
COMPLAINT FOR:**

- (1) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE § 2802)'**
- (2) UCL VIOLATIONS (CAL. BUS. &
PROF. CODE §§ 17200-17204);
AND**
- (3) PENALTIES PURSUANT TO
LABOR CODE § 2699 *ET SEQ.***

Plaintiffs PAUL THAI and LAWRENCE SACHARTOFF (“Plaintiffs”), on behalf of the Aggrieved Employees, the State of California’s LWDA (hereinafter “Aggrieved Employees”), and on behalf of all others similarly situated (“Class Members”) complain and allege as follows:

OVERVIEW OF CLAIMS

1. Plaintiffs bring this action as a class action pursuant to Code of Civil Procedure section 382 and as a Representative Action on behalf of the LWDA and other aggrieved employees against Defendant INTERNATIONAL BUSINESS MACHINES CORPORATION, and DOES 1 to 100 (“Defendant”) for their failure to reimburse their current and former employees for their work-related home office expenses in California incurred for which they have not been fully or even partially reimbursed; unfair business practices based on the foregoing; and PAGA penalties based on the foregoing.

2. The “Class Period” is designated as the period from March 20, 2020 to April 1, 2022. The Class Period is co-extensive with the PAGA Period.

VENUE

3. Venue is proper in this county under section 395.5 of the California Code of Civil Procedure as the allegations herein took place within the County of San Francisco. Further, Defendant keeps and maintains offices in San Francisco, California. Many of the Class Members and Aggrieved Employees were employed and/or performed work during the Class Period by Defendant in San Francisco County. Finally, many of the acts alleged herein including Defendant’s failure to reimburse Plaintiffs, Class Members, and Aggrieved Employees for a reasonable portion of their home office expenses, occurred in San Francisco County. Venue is therefore proper in San Francisco County.

JURISDICTION

4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of dollars of business by providing workforce and IT solutions throughout California. Thus, Defendant has obtained the benefits of the laws of the State of California. In addition, Plaintiffs assert no claims arising under federal law. Rather, Plaintiffs bring causes of action based solely on, and arising from, California law. The claims at issue are also only for violations of California law described herein.

THE PARTIES

5. Plaintiff Thai resides in Folsom, California in Sacramento County. Plaintiff Sachartoff resides in Los Angeles, California in Los Angeles County. During the Class Period, Defendant employed Plaintiffs.

6. Plaintiffs represent the following group of employees: *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*. The Aggrieved Employees are co-extensive with the Class. All such Class Members and Aggrieved Employees were subject to Defendant's unlawful failure to reimburse practices, as described in further detail below. On information and belief, Defendant employed several thousand employees who have worked from home in California during the Class Period.

7. Defendant International Business Machines Corporation ("IBM") is a New York Corporation with its headquarters in Armonk, New York. IBM produces and sells computer hardware, middleware, and software, and provides hosting and consulting services in areas ranging from mainframe computers to nanotechnology. IBM operates throughout California. IBM was the direct employer of Plaintiffs, and was an employer of the Class Members and Aggrieved Employees for all relevant time periods.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100 inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs re informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

9. Plaintiff, Class Members, and the Aggrieved Employees were employed by Defendant in California at various times during the Class Period. Due to turnover during the Class Period, the total number of Class Members is estimated to be several thousand.

FACTUAL ALLEGATIONS

1 10. Defendant operates and, at all times during the Class Period, has done and does
2 business in California. Defendant, in the course of operating its business in California during the
3 Class Period, employed Plaintiff, the Class, and the Aggrieved Employees.

4 11. From at least March 20, 2020, Plaintiffs, the Class, and the other Aggrieved
5 Employees, at the direction of Defendant and with Defendant's knowledge and acquiescence, have
6 incurred work-related home office expenses including, among other things, home internet service,
7 equipment, telephone, and electricity in order to perform necessary work-related duties.

8 12. Specifically, in or around March 2020, Defendant notified and instructed the Class
9 and all other Aggrieved Employees, in writing and verbally, that they are no longer to work from
10 Defendant's offices until further notice and instructed them to continue performing their regular job
11 functions for Defendant remotely from their homes. While some Class Members and Aggrieved
12 Employees worked from home prior to around March 2020, and of that group, some were afforded
13 the option to work from an office space provided by Defendant through around March 2020, that
14 option was revoked by Defendant as of the announcements made in or around March 2020. All Class
15 Members and Aggrieved Employees were instructed by Defendant to work from home as of around
16 March 2020.

17 13. In order to perform their job functions remotely, Defendant required and caused
18 Plaintiffs, the Class, and the other Aggrieved Employees to have, without limitation, a personal
19 computer or mobile device and an operating system capable of receiving, accessing, displaying, and
20 either printing or storing information, as well as a home internet connection, and internet browser
21 software to receive electronic notices from Defendant. Defendant also instructed and caused Class
22 Members and Aggrieved Employees to use telecommunication devices, computer peripherals, and
23 other home-office expenses in furtherance of the discharge of their employment duties for
24 Defendant.

25 14. Plaintiffs, the Class, and the other Aggrieved Employees were thus expected by
26 Defendant to pay for, and have personally paid for, among other things, home internet service,
27 electricity, and the purchase and maintenance of all hardware used for work-purposes, including
28 laptops, keyboards, mouses, and Bluetooth headsets in the discharge of their job duties (the "home

1 office expenses”). These expenses ranged, but typically amounted from \$50 to \$100 per month per
2 employee. Thus, Defendant not only instructed Class Members and Aggrieved Employees to work
3 from home, but also required, instructed, and caused them to incur expenses in connection with the
4 above-described items in order to perform their job functions without reimbursing a reasonable
5 portion of such expenses.

6 15. In sum, Defendant’s expense-related policies and/or practices require and expect,
7 and/or with Defendant’s knowledge thereof permit, Plaintiffs, the Class, and the aggrieved
8 employees to pay for home office expenses incurred in direct consequence of discharging their
9 necessary and business-related job duties on behalf of Defendant, without some reimbursement of a
10 reasonable portion of such expenses by Defendant, as required by California law.

11 16. Defendant does not maintain an expense reimbursement policy and/or practice stating
12 that Defendant will affirmatively reimburse Plaintiffs, the Class, and the aggrieved employees for a
13 reasonable portion of their home office expenses necessarily incurred in their discharge of their
14 duties as required by Labor Code sections 2802(a) and (c).

15 17. California Labor Code section 2802 requires an employer to “indemnify his or her
16 employee for all necessary expenditures or losses incurred by that employee in direct consequence
17 of the discharge of his or her duties.” See Cal. Labor Code section 2802(a); *see also* 2802(c) where
18 necessary is defined to include all “reasonable” costs. “The elements of a claim under Section
19 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses were
20 incurred in direct consequence of the employee’s discharge of his or her duties, or obedience to the
21 directions of the employer; and (iii) the expenditures or losses were reasonable and necessary.” *Marr*
22 *v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8, 2011) (*citing Gattuso v. Harte-*
23 *Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)).

24 18. In addition, to trigger an affirmative obligation to reimburse employees, the employer
25 “must either know or have reason to know that the employee has incurred [the] expense.” *Id.* (*citing*
26 *Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)). Where an employer has
27 knowledge that employees are incurring a reimbursable expense, the employer must “exercise due
28 diligence to ensure each employee is reimbursed.” *Marr*, at *1.

1 19. The right of an employee to expense reimbursements is not waivable. *See* Cal. Labor
2 Code sections 2804 and 219(a). Any contract to waive them is null and void. *Edwards v. Arthur*
3 *Anderson*, 44 Cal. 4th 937, 951 (2008)

4 20. Furthermore, under Labor Code section 2802, employers must reimburse employees
5 for all reasonable work-related expenses, regardless of whether or not the employees incurred any
6 additional out-of-pocket expense from that work-related use. *See, Cochran v. Schwan's Home*
7 *Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when employees must use
8 their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to
9 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited
10 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”).

11 21. Thus, where employees are expected or mandated to use their internet at home for
12 work, courts have held that they incurred home internet expenses in “direct consequence of the
13 discharge of his or her duties” and were entitled to reimbursement. *See Aguilar v. Zep, Inc.*, 2014
14 US Dist LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales
15 reps used home internet and computers for work, and even admitted that they would have incurred
16 the same expenses without work duties, the court nevertheless held that the employer was obligated
17 to reimburse some reasonable portion of these expenses); see also *Ritchie v. Blue Shield of*
18 *California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class
19 of home office claims processors with 2802 phone reimbursement claims for landline
20 reimbursements where company required claims processors working from home to have a landline,
21 but rejecting certification of claims for home office supplies as individualized).

22 22. In short, Defendant’s policies and/or practices require and expect, and/or with
23 Defendant’s knowledge thereof permit, Plaintiffs, the Class, and the aggrieved employees to pay for
24 home office expenses incurred in direct consequence of discharging their duties on behalf of
25 Defendant, without reimbursement by Defendant for such expenses. Defendant has maintained their
26 policies and/or practices of denying reimbursement of a reasonable portion of Plaintiffs’ and the
27 Class’ and aggrieved employees’ necessarily incurred home internet and other business expenses
28 throughout California during the Class Period.

23. Defendant is aware or should have been aware that Plaintiffs, the Class, and the aggrieved employees regularly incur home office expenses in the discharge of their duties as employees by virtue of Defendant's instructions to Plaintiffs, the Class, and the aggrieved employees to work from home during the Class Period. Defendant nevertheless has, during work from home orders during the Class Period, failed and refused to reimburse Plaintiffs, the Class, and the aggrieved employees for a reasonable portion of such home office expenses incurred by them in connection with their work.

24. Plaintiffs, the Class, and the Aggrieved Employees have been harmed by Defendant's unlawful home office expense policies and/or practices in that they have not been reimbursed for certain home office expenses incurred while employed by Defendant in California, thereby diminishing their agreed-upon compensation, in substantial amounts.

25. Plaintiffs have fully and completely exhausted and/or will have fully and completed and exhausted his administrative remedies under PAGA prior to proceeding with the PAGA claim. Pursuant to Labor Code § 2699.3(a)(2)(A), On January 4, 2021, Umair Javed filed his Amended PAGA Notice with the LWDA and sent a letter by certified mail to IBM setting forth the facts and theories of the violations alleged against Defendant, prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Umair Javed submitted the \$75.00 filing fee with the LWDA by regular mail. On May 7, 2021, Umair Javed and Plaintiff Thai filed their Second Amended PAGA Notice with the LWDA and sent a letter by certified mail to IBM setting forth the facts and theories of the violations alleged against Defendant, prescribed by Labor Code § 2698 *et seq.* On April 12, 2024, Plaintiffs filed their Third Amended PAGA Notice with the LWDA and sent a letter by certified mail to IBM setting forth the facts and theories of the violations alleged against Defendant, prescribed by Labor Code § 2698 *et seq.* Plaintiffs' April 12, 2024, 2021 LWDA notice relates back to the January 4, 2021 LWDA notice submitted by Umair Javed because this Complaint rests on the same general set of facts, involves the same injury, and involves the same "instrumentality" or cause of injury. All these requirements are met because the Javed LWDA notice dated January 4, 2021 involves the same set of facts and legal theories under PAGA as Plaintiffs' PAGA letter dated April 12, 2024 and the instant case (Defendant's failure to reimburse for home offices expenses including

1 during the work from home period of the pandemic), involves the same injury (PAGA penalties
2 based on unreimbursed expenses under Labor Code section 2802), and involves the same
3 “instrumentality” or cause of injury (Defendant’s failure to reimburse). Moreover, Defendant was
4 aware of the PAGA claims due to Javed’s LWDA letter. Accordingly, Plaintiffs have fulfilled all
5 administrative prerequisites to the filing and pursuit of the PAGA penalty claims on behalf of the
6 Aggrieved Employees. All administrative prerequisites have now been satisfied.

7 CLASS ACTION ALLEGATIONS

8 26. Plaintiffs bring this action on behalf of themselves and all others similarly situated as
9 a class action pursuant to Code of Civil Procedure § 382. *California residents actively employed by*
10 *IBM for at least one month during the time that their office in California was closed to them due to*
11 *the coronavirus pandemic from March 20, 2020 to April 1, 2022* (“Class Members”). All such Class
12 Members were subject to Defendant’s policy and practice of not reimbursing various home office
13 expenses, including but not limited to home internet, cell phone, computer peripherals, and
14 rent/electricity.

15 27. This action has been brought and may properly be maintained as a class action under
16 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
17 the proposed class is easily ascertainable, and Plaintiffs are proper representatives of the Class:

18 a. Numerosity: The potential members of the Class as defined are so numerous that
19 joinder of all the members of the Class is impracticable. On information and belief, Defendant
20 employed thousands of employees who Plaintiffs contend were subject to Defendant’s unlawful
21 reimbursement policy during the Class Period. The Class Members are dispersed throughout
22 California. Joinder of all members of the proposed classes is therefore not practicable.

23 b. Commonality: There are questions of law and fact common to Plaintiffs and the Class
24 that predominate over any questions affecting only individual members of the Class. These common
25 questions of law and fact include, without limitation:

26 i. Whether Plaintiffs and Class Members incurred unreimbursed business
27 expenses in the discharge of their duties, including but not limited to home office expenses, in
28 violation of Labor Code § 2802;

ii. Whether Defendant intended, suffered and/or permitted, and/or knew and/or should have known that Plaintiffs and Class Members incurred unreimbursed home office expenses, in the discharge of their duties;

iii. Whether Plaintiffs are entitled to restitution under Business and Professions Code § 17200;

iv. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiffs and the Class Members;

v. The nature and extent of class-wide damages.

c. Typicality: Plaintiffs' claims are typical of the claims of the Class. Both Plaintiffs and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct in violation of law as alleged herein, in similar ways and for the same types of expenses.

d. Adequacy of Representation: Plaintiffs are members of the Class and will fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiffs' interests do not conflict with those of Class and Class Members. Counsel who represents Plaintiffs are competent and experienced in litigating large wage and hour class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and Class Members.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices of not fully reimbursing home office expenses. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful home office expense reimbursement policies and/or practices, and will thereby effectuate California's strong public policy of protecting employees from deprivation or

offsetting of compensation earned in their employment. If this action is not certified as a Class Action, it will be impossible as a practical matter for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from Defendant, due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation

FIRST CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Cal. Labor Code § 2802]
On Behalf of Plaintiffs and the Class Against Defendant

28. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

29. The actionable period for this cause of action is March 20, 2020 to April 1, 2022.

30. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” Section 2802(c) defines “necessary” to include all “reasonable costs.”

31. In order to discharge their duties for Defendant during stay-at-home orders and/or when Defendant’s offices were closed, Plaintiffs and similarly situated Class Members regularly incurred home office expenses in the discharge of their duties as employees by virtue of Defendant’s instructions to Plaintiffs and the Class. Defendant nevertheless has, throughout the Class Period, failed to affirmatively reimburse Plaintiffs and the Class for such home office expenses incurred by them in connection with their work.

32. Although having knowledge of such usage, Defendant did not reimburse Plaintiffs and similarly situated Class Members for a reasonable percentage of their work-related expenses, as required by California law as stated in *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (August 12, 2014) (“Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”). *See also, Aguilar v. Zep, Inc.*, 2014 US Dist LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used home internet and computers for work, and even admitted that

they would have incurred the same expenses without work duties, the court nevertheless held that the employer was obligated to reimburse some reasonable portion of these expenses); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office claims processors with 2802 phone reimbursement claims for landline reimbursements where company required claims processors working from home to have a landline, but rejecting certification of claims for home office supplies as individualized); *see also*, *Herrera v. Zumiez, Inc.*, 953 F.3d 1063 at fn. 10 (9th Cir. March 19, 2020).

33. Defendant's failure to pay for or reimburse the work-related business expenses of Plaintiffs and Class Members violated non-waivable rights secured to Plaintiffs and Class Members by Labor Code §2802. See Labor Code §2804. Plaintiffs and similarly situated Class Members are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802(c).

SECOND CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
[Bus. & Prof. Code § 17200
On Behalf of Plaintiffs and the Class Against Defendant

34. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

35. Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

36. Under section 17208 of the California Business and Professions Code, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is from four years ago through the present.

37. Section 90.5(a) of the Labor Code states that it is the public policy of California to enforce vigorously minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from

1 those who attempt to gain competitive advantage at the expense of their workers by failing to comply
2 with minimum labor standards. The Wage Orders that Defendant is subject to also set forth
3 minimum standards.

4 38. During the Class Period, Defendant has committed unlawful, and/or unfair business
5 acts and practices as defined by the UCL, by failing to reimburse and indemnify Plaintiffs and
6 similarly situated Class Members for employment-related home office expenses from March 20,
7 2020 to April 1, 2022, in violation of Labor Code § 2802.

8 39. As a direct and proximate result of Defendant's unlawful and/or unfair acts and
9 practices described herein, Defendant has received and continues to hold unlawfully obtained
10 property and money belonging to Plaintiffs and the Class in the form of unreimbursed employee
11 home office business expenses that reduced or offset compensation earned by Plaintiffs and Class
12 Members.

13 40. As a direct and proximate result of Defendant's unlawful business practices, Plaintiffs
14 and the Class Members have suffered economic injuries including, but not limited to out-of-pocket
15 business expenses. Defendant has profited from their unlawful and/or unfair acts and practices in the
16 amount of those business expenses and interest accrued thereon.

17 41. Plaintiffs and similarly situated Class Members are entitled to monetary relief
18 pursuant to Business & Professions Code §§ 17203 and 17208 for all unreimbursed business
19 expenses, and interest thereon, from at least March 20, 2020 through to the date of such restitution,
20 at rates specified by law. Defendant should be required to disgorge all the profits and gains it has
21 reaped and restore such profits and gains to Plaintiffs and Class Members from whom they were
22 unlawfully taken.

23 42. During the Class Period, Defendant committed, and continues to commit, acts of
24 unfair competition, as defined in sections 17200 *et seq.* of the California Business and Professions
25 Code by, among other things, failing to reimburse Plaintiffs and the Class members for a reasonable
26 portion of their monthly home office expenses as required by California law, and therefore was
27 substantially injurious to Plaintiffs and the Class members.

28 43. Defendant engaged in unfair competition in violation of sections 17200 *et seq.* of the

California Business & Professions Code by violating Section 2802 of the Labor Code.

44. Defendant's course of conduct, act, and practice in violation of the California laws mentioned above constitute independent violations of sections 17200 *et seq.* of the California Business and Professions Code.

45. The unlawful and unfair business practices and acts of Defendant, as described above, have injured Plaintiffs and the Class in that they were denied reimbursement for a reasonable percentage of their monthly business-related home office expenses, and therefore was substantially injurious to Plaintiffs and the Class Members.

46. Plaintiffs and similarly situated Class Members are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

47. Plaintiffs have assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of herself and other similarly situated Class Members previously or presently employed by Defendant in California. Plaintiffs' success in this action will enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs is appropriate pursuant to Code of Civil Procedure § 1021.5

THIRD CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
[Cal. Labor Code §§ 2698-2699.5]
On Behalf of the LWDA and the Aggrieved Employees Against Defendant

48. Plaintiffs, on behalf of the LWDA and all Aggrieved Employees, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

49. Based on the above allegations incorporated by reference, Defendant has violated Labor Code § 2802 by failing to reimburse Plaintiffs and the Aggrieved Employees for a reasonable percentage of their necessary business expenses associated with their home offices during the PAGA Period.

50. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code § 2699, *et. seq.*, because of Defendant's violations of Labor Code § 2802.

51. Plaintiffs seeks to recover the PAGA civil penalties through a representative action

as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46 Cal.4th 969. Under Labor Code §§ 2699(f)(2) and 2699.5, The LWDA and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula: \$100 for the initial violation per employee per pay period; and \$200 for each subsequent violation per employee per pay period.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of the LWDA, the Aggrieved Employees, and all others similarly situated pray for judgment against Defendant as follows:

1. An Order that this action may proceed and be maintained as a class action;
2. That the Court find and declare that Defendant's business expense policies and/or practices violate California law, including Labor Code § 2802, by refusing and/or failing to affirmatively reimburse all business expenses reasonably incurred by Plaintiffs and other and Class Members while working from home in the discharge of their duties in California as employees of Defendant;
3. That the Court award to Plaintiffs and Class Members all unreimbursed business expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, and attorney's fees, pursuant to Labor Code § 2802(c), in an amount to be proved at trial.
4. That the Court find and declare that Defendant has violated the UCL and committed unfair and unlawful business practices by failing to reimburse Plaintiffs and similarly situated Class Members for their reasonable home office business expenses incurred by them in the course of their duties for the benefit of Defendant, their employer;
5. That the Defendant be ordered to pay restitution to Plaintiffs and the Class Members due to Defendant's UCL violations under the Second Cause of Action pursuant to Business and Professions Code §§ 17200-17205, in the amount of their unreimbursed business expenses and interest thereon;
6. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for Plaintiffs and all Aggrieved Employees because of Defendant's violation of, without limitation, Labor Code § 2802;

7. A civil penalty against Defendant in the amount of \$100 for each initial violation per employee per each pay period during the PAGA Period, and \$200 for each subsequent violation per employee per each weekly pay period during the PAGA Period as specified in section 2699(f)(2) of the California Labor Code for Plaintiffs and the Aggrieved Employees;

8. An award of reasonable attorney's fees against Defendant as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

9. An award of all costs incurred by the undersigned counsel for Plaintiffs in connection with Plaintiffs' and Aggrieved Employees' PAGA claim against Defendant as provided for in Labor Code § 2699(g)(1); and

10. All other relief as this Court deems proper.

Dated: _____, 2024

Respectfully submitted,

ACKERMANN & TILAJEF, P.C.
INDIA LIN BODIEN, ATTORNEY AT LAW

By: _____

Craig Ackermann, Esq.
India Lin Bodien, Esq.
*Counsel for Plaintiffs, the LWDA, and the
Aggrieved Employees*

EXHIBIT B

Paul Thai and Lawrence Sachartoff v. IBM Corporation
Superior Court of California, County of San Francisco, Case Number CGC-20-588422

NOTICE OF CLASS ACTION SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY.

A state court authorized this notice. This is not a solicitation from a lawyer.

You have been sent this Notice because there is a proposed monetary settlement (the “Settlement”) of a class action lawsuit that Plaintiffs Paul Thai and Lawrence Sachartoff (“Plaintiffs”) filed against IBM Corporation (“IBM” or “Defendant”). You are receiving this Notice of Settlement (“Notice”) because Defendant’s records show you were a California resident actively employed by IBM for at least one month during the time that your office in California was closed to you due to the coronavirus pandemic from March 20, 2020 to April 1, 2022. Because you fit this definition, **you may be entitled to receive money from a Class Action and PAGA Settlement in this case, as described below.**

NOTE: If you were a California resident actively employed by IBM for at least one month during the time that your office in California was closed to you due to the coronavirus pandemic from March 20, 2020 to April 1, 2022, unless you opt out of the Settlement, you will receive money for your California state law claims as a class member, and you will release those California state law claims. Even if you opt out, you will still receive some money for your California PAGA claims, and you will release your California PAGA claims. You do not need to act in order to obtain a settlement share.

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself (“opt out” or submit a “Request for Exclusion”) from the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement in the event the Court denies your objection.

The Superior Court of California, County of San Francisco, has preliminarily approved the Settlement. It has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing. The Court will hold a Final Approval Hearing on [REDACTED], at [REDACTED], before the Honorable Andrew Y.S. Cheng at 400 McAllister Street, San Francisco 94102 in Department 613.

2. What Is This Case About?

This lawsuit is a class action. A class action is a device that permits one or more plaintiffs to file and prosecute a lawsuit on behalf of a larger group, or “class”. This lawsuit alleges that all individuals who were 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 (the “Class” or “Settlement Class”) were not reimbursed for all work-related home office expenses in violation of Cal. Labor Code § 2802.

This lawsuit seeks recovery of class damages under Cal. Labor Code § 2802 and California’s Unfair Competition Law (“UCL”) and penalties under the Private Attorneys General Act (“PAGA”) for violations of Cal. Labor Code § 2802, attorneys’ fees, and costs. The claims in this lawsuit are brought under California law.

Defendant denies that it violated any law and contends that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that the policies and practices at issue, including those regarding reimbursement for work-related home office expenses like home internet, are lawful and have been lawful throughout the relevant time period.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiffs and Defendant, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses.

The Settlement Administrator has designated a phone number for this Settlement, which is **PHONE NUMBER**. The Settlement phone number allows interested persons to contact the Settlement Administrator with questions about the Settlement Agreement. The Settlement Administrator can also provide contact information for Class Counsel.

3. What Are the Terms of the Settlement?¹

Defendant has agreed to pay \$975,000.00 to settle this lawsuit (“Gross Settlement Amount”). This amount will mostly be distributed to the employees who meet the definition of Settlement Class Member (which includes individuals like you who were California residents actively

¹ This notice summarizes the proposed Settlement. To review a copy of the Settlement Agreement, please contact the Settlement Administrator at the following phone number designated for this Settlement: **PHONE NUMBER**. Alternatively, on **DATE**, Plaintiffs filed Plaintiffs’ Motion For Preliminary Approval Of Class Action Settlement, Certification Of Settlement Class, Approval Of Notice Of Settlement, And Setting Of Hearing For Final Approval; the Declaration Of Craig J. Ackermann In Support Of Plaintiffs’ Motion For Preliminary Approval Of Class Action Settlement, Approval Of Notice Of Settlement And Setting Of Hearing For Final Approval; and The Class Action Settlement Agreement with the Court. For a copy of these Pleadings, please contact Class Counsel toll-free at **PHONE NUMBER** or you may access the Court’s docket in this case through the Court’s electronic public records system at <https://www.sfsuperiorcourt.org/online-services>. **It is free to use the Court’s website.**

To navigate to the pleadings online: Once at the above weblink, click on the “Access Now” button next to the “Case Query” option, and then click the box next to, “I’m not a robot.” You can then search the pleadings using the case number, CGC-20-588422, and entering it into the blank box next to “case number.” Alternatively, you can click over and search by case name and input, “Thai, Paul” into the blank box next to “party name.” After your search is complete, click on the case and the Register of Actions will populate, and you can navigate there to find: Plaintiffs’ Motion For Preliminary Approval Of Class Action Settlement, Certification Of Settlement Class, Approval Of Notice Of Settlement, And Setting Of Hearing For Final Approval; the Declaration Of Craig J. Ackermann In Support Of Plaintiffs’ Motion For Preliminary Approval Of Class Action Settlement, Approval Of Notice Of Settlement And Setting Of Hearing For Final Approval; and The Class Action Settlement Agreement with the Court.

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). The Gross Settlement Amount will also be used to pay for attorneys' fees and costs awarded by the Court, any Service Awards awarded by the Court to Plaintiffs, and the Settlement Administrator's costs.

Plaintiffs will ask the Court to allocate \$25,000.00 of the total Gross Settlement Amount to PAGA penalties ("PAGA Payment"). Seventy-five percent (75%) of this amount will be paid to the Labor and Workforce Development Agency ("LWDA Payment") and the remaining twenty-five percent (25%) shall be allocated to Class Members ("PAGA Allocation"), as required by the PAGA, as part of the Net Settlement Amount.

The attorneys for Plaintiffs and the Settlement Class ("Class Counsel") will ask the Court to award them 1/3 of the Gross Settlement Amount, which is up to \$325,000.00, to compensate them for their services in this matter. Class Counsel will also request reimbursement for their costs spent in litigating this case, not to exceed \$10,000.00. *See* Section 9 below.

Plaintiffs will ask the Court to award them a Service Award not to exceed \$10,000.00 each for their roles as the named plaintiffs bringing this lawsuit on behalf of all Class Members. This payment would also come from the Gross Settlement Amount. Plaintiffs receive this Service Award in consideration for signing a general release, which is a much broader release than the Release that applies to Participating Class Members (as defined in Section 5 of the Notice).

The Settlement Administrator's costs are capped at \$ [REDACTED], and this payment will also come from the Gross Settlement Amount.

After deductions of these amounts, what remains of the Gross Settlement Amount (the total of the "Net Settlement Amount²") will be available to pay monetary settlement awards ("Individual Settlement Payments") to the Settlement Class. All Settlement Class Members, including the Named Plaintiffs and any Settlement Class Members who opt out of the Settlement Class, will receive their portion of the PAGA Allocation. Only the Named Plaintiffs and the Settlement Class Members who do not opt out of the Settlement Class (collectively, the "Participating Settlement Class Members") will receive their portion of the remaining Net Settlement Amount after the PAGA Allocation is distributed.

The following persons will be eligible to receive a monetary award from the Net Settlement Amount: (1) Named Plaintiffs and (2) all individuals who were 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.

4. How Much Can I Expect to Receive?

² "Net Settlement Amount" means the Gross Settlement Amount less: (i) Service Awards; (ii) Class Counsel's Fee Award; (iii) Class Counsel's Costs; (iv) the LWDA Payment; and (v) Settlement Administrator Costs. The Parties acknowledge that all of these amounts are subject to the Court's approval.

All Settlement Class Members will receive a pro rata share of the PAGA Allocation based on the number of months they worked as an active employee while their office in California was closed to them between March 20, 2020 and April 1, 2022.

All Participating Settlement Class Members will receive a pro rata share of the remaining Net Settlement Amount after the PAGA Allocation has been distributed, also based on the number of months they worked as an active employee while their office in California was closed to them between March 20, 2020 and April 1, 2022 and whether they received any home internet reimbursement from IBM at any time during their employment.

All Settlement award determinations will be based on Defendant's records for Settlement Class Members. Based on Defendant's records, you were actively employed by IBM from **DATE** to **DATE** during the period between March 20, 2020 and April 1, 2022, your assigned office location(s) **was/were LOCATION(S)**, and you **did/did not** receive home internet reimbursement from IBM. Your total estimated settlement payment will be at least **\$**. This amount is an estimated amount, and your final Individual Settlement Payment is expected to differ from this amount (*i.e.*, it could be higher or lower).

If you dispute your dates of active employment or your reimbursement status as shown on this Notice of Settlement, you may produce evidence such as wage statements or other documentation or information to the Settlement Administrator establishing the dates you contend to have worked for Defendant or your reimbursement status. To do so, send a letter to the Settlement Administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence disproving the information about you reported in this Notice of Settlement, your settlement award will be determined based on Defendant's records. Any disputes must be postmarked by **[INSERT DATE – 45 calendar days after Notice mailed or 15 calendar days after re-mailing of Notice, whichever date is later]** and should be sent by First-Class U.S. mail to: **ADMINISTRATOR, ADDRESS**. The Settlement Administrator will notify you of the decision on the dispute.

For tax reporting purposes, Individual Settlement Payments will be allocated as follows: the PAGA Allocation portion of each Individual Settlement Payment shall be allocated as penalties. The remaining portions of Individual Settlement Payments shall be allocated as restitution for purposes of Section 162(k) of the Internal Revenue Code of 1986, as amended. None of the parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement.

The Settlement Administrator will be responsible for issuing to the Named Plaintiffs, Settlement Class Members, and Class Counsel and the pertinent taxing authorities any IRS Form 1099, or any other tax forms as may be required by the Internal Revenue Code of 1986 (the "Code") or state and local law. All taxes are the sole responsibility of the Settlement Class Member.

If you participate in the Settlement, you will have 180 days to cash the check that will be sent to you. If at the conclusion of the 180-day check void period, there are any uncashed checks, those

monies will be paid to the State of California Unclaimed Property Fund, subject to the Court's approval in the Final Approval Order.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Individual Settlement Payment. If you fail to keep your address current, you may not receive your Individual Settlement Payment.

5. What Are the Releases?

Upon final approval of the Settlement Agreement and payment of amounts set forth under the Settlement, all Participating Class Members release their claims as provided below ("Released Class Claims") against Defendant 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 Defendant and all persons or entities acting by, through, under, or in concert with any of them (collectively, the "Released Parties").

The Released Class Claims are as follows:

In exchange for the consideration recited in the Settlement Agreement, all Participating Settlement Class Members, 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 for alleged violations of Labor Code § 2802 for 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. This includes claims for any potential interest, attorneys' fees, or costs associated with those claims and/or this Settlement under California law.

Additionally, upon final approval of the Settlement Agreement and payment of the amounts set forth under the Settlement, all Settlement Class Members, regardless of whether they choose to opt out of the Settlement, will release their PAGA claims as provided below ("Released PAGA Claims") against the Released Parties.

The Released PAGA Claims are as follows:

In exchange for the consideration recited in the Settlement Agreement, all Settlement Class Members (regardless of whether they have opted out of the Class Settlement), 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 for the time period of March 20, 2020 through April 1, 2022. This includes claims for any potential interest, attorneys' fees, or costs associated with those claims and/or this Settlement under California law.

6. What Are My Rights?

- **Do Nothing:** If you are a Settlement Class Member and do not timely and validly opt-out, you will automatically become a part of the Settlement Class and receive your prorated settlement award, and will be bound by the Settlement including its release provisions.
- **Opt-Out – Request for Exclusion:** If you are a member of the Settlement Class and do not wish to be bound by the Settlement, you must submit a written exclusion from the Settlement (“opt-out”), postmarked by [INSERT DATE – 45 calendar days after Notice mailed or 15 calendar days after re-mailing of Notice, whichever date is later]. The written request for exclusion must contain your full name, address, and telephone number, and must be signed individually by you. No opt-out request may be made on behalf of a group, and you cannot opt-out of the PAGA portion of the settlement. The opt-out request must be sent by First-Class U.S. mail to the Settlement Administrator at ADMINISTRATOR NAME, ADDRESS, with a clear statement such as, “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, THE ONLY MONEY THAT I WILL RECEIVE FROM THE SETTLEMENT OF THIS LAWSUIT IS MY PROPORTIONATE SHARE OF THE PAGA ALLOCATION.” Any person who requests exclusion (opts out) of the settlement will not be entitled to any settlement award other than their share of the PAGA Allocation and will not be bound by the Settlement Agreement, except to the extent that the Settlement Agreement releases their PAGA claims, or have any right to object, appeal or comment thereon.
- **Object:** If you received this Notice and wish to object to the Settlement, you must submit a written statement objecting to the Settlement by [INSERT DATE – 45 calendar days after Notice mailed or 15 calendar days after re-mailing of Notice, whichever date is longer]. The statement must include (i) a clear reference to *Thai v. IBM*; (i) a statement of the specific legal and factual basis for each of your objections; and (iii) a statement whether you intend 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. The statement must state your full name, address, and telephone number, and must be signed by you. The statement must be sent by First-Class U.S. mail to the Settlement Administrator: ADMINISTRATOR NAME, ADDRESS.

If you mail a written objection, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties to the Lawsuit. To be heard at the Final Approval Hearing, you must also not opt out of the Settlement. If you

wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you may still appear and/or object to the Settlement at the Final Approval Hearing. The postmark date of mailing shall be the exclusive means for determining that an objection is timely mailed. Objections shall only be considered if the Settlement Class Member has not opted out of the Settlement.

You may also withdraw your objection in writing by mailing a withdrawal statement to the Settlement Administrator postmarked no later than **[INSERT DATE – 10 business days before Final Approval Hearing]**, orally at the Final Approval Hearing, or as otherwise ordered by the Court.

7. Can Defendant Retaliate Against Me for Participating in this Lawsuit?

No. Your decision as to whether or not to participate in this lawsuit will in no way affect your work or employment with Defendant or future work or employment with Defendant. It is unlawful for Defendant to take any adverse action against you as a result of your participation in this lawsuit.

8. Who Are the Attorneys Representing Plaintiffs and the Settlement Class?

Plaintiffs and the Settlement Class are represented by the following attorneys acting as Class Counsel:

Craig J. Ackermann
cja@ackermanntilajef.com
Avi Kreitenberg
ak@ackermanntilajef.com
ACKERMANN & TILAJEF, P.C.
315 South Beverly Drive, Suite 504
Beverly Hills, California 90212
Telephone: (310) 277-0614

Jason Harrow
jason@gerstein-harrow.com
Charles Gerstein
charlie@gerstein-harrow.com
GERSTEIN HARROW LLP
3243B S. La Cienega Blvd.
Los Angeles, CA 90016
Telephone: (323) 744-5293

India Lin Bodien
india@indialinbodienlaw.com
INDIA LIN BODIEN,
ATTORNEY AT LAW
2522 North Proctor Street, No. 387
Tacoma, Washington 98406
Telephone: (253) 212-7913

9. How Will the Attorneys for the Settlement Class Be Paid?

Class Counsel will be paid an amount not to exceed \$335,000 from the Gross Settlement Amount. You do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that Class Counsel will receive attorneys' fees of up to one-third (1/3) of \$975,000 (i.e., \$325,000.00) plus their out-of-pocket costs, not to exceed \$10,000.00. The amount of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

10. How Can I Attend the Final Approval Hearing?

The Court will hold a Final Approval Hearing on [REDACTED], at [REDACTED], before the Honorable Andrew Y.S. Cheng at 400 McAllister Street, San Francisco 94102 in Department 613. At this hearing, any Participating Class Member may attend and/or object to any terms of the Settlement. At the Final Approval Hearing, the Court will: (a) determine whether the Court

should grant Final Approval of this Settlement; (b) consider any objections made; (c) consider the request for attorney's fees and costs submitted by Class Counsel; (d) consider the Settlement Administration Costs; and (e) consider the request for the Service Awards to Plaintiffs.

A Participating Class Member may present themselves via the public phone line (as detailed below), or in person at 400 McAllister Street, San Francisco 94102 in Department 613 on [REDACTED], at [REDACTED], in order to object at the Final Hearing. Class Counsel will be present and appearing on behalf of Plaintiffs and the Settlement Class to request final approval of the Settlement terms outlined directly above, and further detailed in this Notice. Any Participating Class Member may appear on their own without counsel, or may retain their own counsel at their own cost to have counsel to represent them individually at the Final Approval Hearing.

If you cannot or do not wish to attend in person, you can still send counsel hired at your own cost and they can appear on your behalf. A Participating Class Member may also attend by telephone (listen-only) or CourtCall.

Participating Class Members who wish to simply listen to the hearing may use the public access line, but Participating Class Members who wish to speak at, object, or otherwise participate in the hearing will need to make a CourtCall reservation if they are not appearing in person. To attend the Final Approval Hearing via telephone, you may dial the Public Access listen-only number, (415) 796-6280, you will then be prompted to enter the access code, including the point or hashtag (#). The access number is 12129862#. To attend the Final Approval Hearing via CourtCall, visit www.courtcall.com, click "SCHEDULE AN APPEARANCE" on the home page, and follow the instructions to register an account and schedule your appearance either online or by email.

To obtain further information on how to attend and/or object either in person or by telephone, you may contact the Settlement Administrator, available at the Settlement-designated phone number: [REDACTED], contact Class Counsel at [REDACTED], or access the Court's docket in this case through the Court's electronic public records system at <https://www.sfsuperiorcourt.org/online-services> and check the pleadings, specifically the Court's Order regarding the Final Approval Hearing. In order to navigate the pleadings online, use the instructions in footnote 1 above.

11. Where Can I Get More Information?

If you have questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement, you should contact the Settlement Administrator.

This Notice is only a summary. For the precise terms and conditions of the Settlement, please contact the Settlement Administrator, available at the Settlement-designated phone number: [REDACTED], contact Class Counsel at [REDACTED], or access the Court's docket in this case through the Court's electronic public records system at <https://www.sfsuperiorcourt.org/online-services>.

On **DATE**, Plaintiffs filed Plaintiffs' Motion For Preliminary Approval Of Class Action Settlement, Certification Of Settlement Class, Approval Of Notice Of Settlement, and Setting Of Hearing For Final Approval; the Declaration Of Craig J. Ackermann In Support Of Plaintiffs' Motion For Preliminary Approval Of Class Action Settlement, Approval Of Notice Of Settlement, and Setting Of Hearing For Final Approval; and The Class Action Settlement Agreement with the Court.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

EXHIBIT C

ACKERMANN & TILAJEF, P.C.
Craig J. Ackerman (State Bar No. 229832)
cja@ackermanntilajef.com
315 South Beverly Drive, Suite 504
Beverly Hills, CA 90212
Telephone: +1.310.277.0614

INDIA LIN BODIEN
India Lin Bodien (WA Bar. No. 44898)
(Pro Hac Vice Admission Forthcoming)
india@indialinbodienlaw.com
2522 North Proctor Street, No. 387
Tacoma, Washington 98406
Telephone: +1.253.212.7913
Facsimile: +1.253.276.0081

Attorneys for Plaintiffs
PAUL THAI and LAWRENCE SACHARTOFF

**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

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AGREEMENT**

Dept. 613
Hon. Andrew Y.S. Cheng

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

WHEREAS, this action is pending as a putative class and representative action (the “Action”);

WHEREAS, the Plaintiffs Paul Thai (“Thai”) and Lawrence Sachartoff (“Sachartoff”) (collectively, the “Plaintiffs”) have filed a Motion for Preliminary Approval of the Settlement of the Action (“Motion”) in accordance with the Class Action Agreement and Release (the “Settlement Agreement” or the “Settlement”), which, together with its exhibits, set forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice upon the terms and conditions set forth therein, which Motion is not opposed by Defendant International Business Machines Corporation (“Defendant”); and

WHEREAS, this Order incorporates by reference the definitions in the Settlement Agreement, and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed Plaintiffs’ Motion and all declarations and exhibits filed therewith, including the Settlement Agreement executed by the Parties.

2. For reasons explained below, the Court hereby **GRANTS** preliminary approval of the class action settlement and approval of the Private Attorneys General Act (“PAGA”) settlement as set forth in the Settlement Agreement.

SETTLEMENT CLASS CERTIFICATION

3. The Court recognizes that Plaintiffs and Defendant stipulate to certification of the Settlement Class for settlement purposes only.

4. The Settlement Agreement will not be deemed admissible in this or any other proceeding for purposes of liability, and is for settlement purposes only.

5. On the basis of the findings set forth herein, the Court conditionally certifies the following Settlement Class pursuant to Rule 3.769(d) of the California Rules of Court for settlement purposes only in accordance with the terms of the Settlement Agreement: “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.”

6. The Court, for settlement purposes only, appoints Plaintiffs Thai and Sachartoff as the Class Representatives herein.

7. The Court appoints, for settlement purposes only, Ackermann & Tilajef, P.C., Gerstein Harrow LLP, and India Lin Bodien, Attorney at Law as Class Counsel.

8. Class Counsel is authorized to act on behalf of Settlement Class Members with respect to all acts or consents required by, or which may be given pursuant to, the Settlement Agreement, and such other acts reasonably necessary to consummate the Settlement. Any Settlement Class Member may enter an appearance through counsel of his or her own choosing and expense. Any Settlement Class Member who does not enter an appearance or appear on his or her own will be represented by Class Counsel.

9. It appears to the Court on a preliminary basis that the Gross Settlement Amount and terms of the Settlement are fair, adequate, and reasonable as to all Settlement Class Members when balanced against the probable outcome of further litigation relating to liability and damage issues.

10. It further appears to the Court’s satisfaction that sufficient investigation, including informal pre-mediation discovery, has been conducted into the relevant legal issues herein such that Class Counsel are able to reasonably evaluate claims and defenses alleged in the Action.

11. It further appears to the Court that settlement at this time will avoid substantial additional costs by all parties, as well as avoid the delay and risks that would be presented by further prosecution of the claims, including appeal of orders relating to class certification and/or the substantive merits of the case.

12. It further appears that the Settlement Agreement has been reached as the result of intensive, serious, non-collusive, and arm’s-length negotiations after mediation with an experienced mediator.

13. This is a non-reversionary settlement. Any amounts that are reduced by the Court under the Settlement, such as the award of attorneys’ fees or the requested class representative service awards, shall revert back to the Settlement Class Members only, to be distributed in

accordance with the distribution formula the parties have agreed to.

PAGA SETTLEMENT

14. The Court finds the Settlement was entered into in good faith, that the settlement is fair, reasonable and adequate, and that the settlement satisfies the standards and applicable requirements for approval of PAGA representative actions under California law. The Court approves the penalties to be paid to the aggrieved employees and the State of California as set forth in the Settlement Agreement, and approves all other terms of the settlement of the PAGA claims of all Settlement Class Members as set forth in the Settlement Agreement pursuant to Labor Code § 2699(1)(2).

NOTICE AND ADMINISTRATION

15. The Court approves and appoints [REDACTED] to serve as the neutral, third-party Settlement Administrator in accordance with the Settlement Agreement and consistent with this Order. Issuance of Class Notice shall be in conformity of Section V of the Settlement Agreement.

16. Promptly following entry of this order, the Settlement Administrator will prepare a final version of the Notice of Class Action Settlement consistent with the template attached as Exhibit B to the Settlement Agreement and attached hereto as Exhibit A.

17. The Settlement Administrator shall be responsible for all tasks delegated to the Settlement Administrator in the Settlement Agreement and which are reasonably necessary to effectuate the issuance of the Court-authorized Notice of Class Action Settlement, to collect and track opt outs and objections received from the Settlement Class Members, and, upon any later granting of final approval herein, to distribute funds associated with the Settlement in accordance with the terms of the Settlement Agreement.

18. Counsel for the settling Parties have the right to review and approve any documents to be mailed by the Settlement Administrator in connection with the Settlement prior to their mailing, and the Settlement Administrator may not mail/e-mail any such documents without first receiving written approval from counsel for the settling Parties or direction from the Court to send such documents.

19. Consistent with the Settlement Agreement, the Settlement Administrator is ordered

1 to take reasonable steps to protect the disclosure of information concerning members of the
2 Settlement Class provided by Defendant.

3 20. The Court authorizes notice of the Settlement as set forth in the Settlement
4 Agreement, and as ordered or modified herein, as it appears fair, reasonable, and adequate under
5 California law. The Court also approves of the PAGA notification provisions set forth in the
6 Settlement Agreement.

7 21. The parties are directed to ensure that the Notice of Class Action Settlement is
8 disseminated according to the terms of the Settlement Agreement.

9 22. The Court finds that the proposed Notice of Class Action Settlement, sent by U.S.
10 Mail, constitutes the best notice practicable under the circumstances and is in full compliance with
11 the United States Constitution and the requirements of due process. The Notice of Class Action
12 Settlement accurately informs the Settlement Class Members of the material elements of the
13 lawsuit, the Settlement, and each Settlement Class Member's right and opportunity to participate
14 in the Settlement, opt out of the Settlement, or object to the Settlement.

15 23. The Court further finds that mailing the Notice of Class Action Settlement to the
16 Class Members via U.S. Mail is an appropriate method of notice, reasonably designed to reach all
17 individuals who would be bound by the Settlement.

18 24. All costs and expenses due the Settlement Administrator in connection with its
19 administration of the Settlement, including, but not limited to, providing the Notice of Class Action
20 Settlement, locating Settlement Class Members, processing opt outs, issuing IRS forms, and
21 administering and distributing individual settlement payments, shall be paid from the Gross
22 Settlement Amount and are not anticipated to exceed \$35,750. In the event the reasonable costs
23 of the Settlement Administrator exceed \$35,750, the Settlement Administrator must file a
24 declaration with the Court explaining the basis for the costs above the cap articulated herein and
25 seeking approval for payment of the additional reasonable costs out of the amount remaining from
26 the Net Settlement Amount. The Settlement Administrator shall not be paid for costs above
27 \$35,7500 absent Court approval.

28 **EXCLUSIONS AND OBJECTIONS**

1 25. A Settlement Class Member may opt-out of or object to the Settlement.

2 26. The procedures for opting-out of or objecting to the Settlement shall be in
3 conformity with Sections VI and VII of the Settlement Agreement and as described in the Notice
4 of Class Action Settlement. As more fully described in the Settlement Agreement, the Settlement
5 Administrator shall remail or attempt to remail all notices that are returned as undeliverable within
6 45 days of the initial Class Notice remailing. Notices that are received as undeliverable will be
7 remailed within five (5) days of receipt of the Notice as undeliverable by the Settlement
8 Administrator. A Settlement Class Member who wishes to opt out of the Settlement must timely
9 complete and submit their opt out requests to the Settlement Administrator via First-Class U.S.
10 Mail, including the language required by the Settlement Agreement making their intent to opt out
11 clear. Requests must be sent on or before the "Response Deadline," which is 45 calendar days
12 from the date that a Settlement Class Member's Notice of Class Action Settlement was mailed, or
13 15 calendar days from the date their Notice of Class Action Settlement was first re-mailed,
14 whichever is later.

15 27. The date of the postmark shall be the exclusive means used to determine whether a
16 request for exclusion has been timely submitted, unless the Settlement Administrator determines
17 that the postmark is not legible. If the postmark is not legible, it will be assumed that the request
18 for exclusion was sent on the date it is received by the Settlement Administrator, except that in no
19 event will a request to opt out that is received by the Settlement Administrator thirty (30) or more
20 days after the Response Deadline be deemed to be timely submitted. Any Settlement Class
21 Member who submits a timely and proper opt out request shall no longer be a member of the
22 Settlement Class, shall be barred from participating in the non-PAGA portion of the Settlement,
23 shall be barred from objecting to the Settlement (except as to the PAGA portion), and shall receive
24 no benefit or payment from the Settlement except for his/her proportional share of the PAGA
25 Allocation under the Settlement, because the right to opt out does not apply to the PAGA claims
26 in the Action. All Settlement Class Members are bound by the release and settlement of the PAGA
27 claims in the Action regardless of whether or not they validly opt out.

28 28. In the event the Settlement receives final approval, any Settlement Class Member

1 who does not properly and timely request exclusion shall be bound by all the terms and provisions
2 of the Settlement Agreement, the final approval order, the final judgment, and the releases set forth
3 therein.

4 29. Any Settlement Class Member who does not timely opt out and wishes to object to
5 the Settlement may do so in writing by submitting a timely written statement of objection to the
6 Settlement Administrator within the Response Deadline via First-Class U.S. Mail.

7 30. The date of the postmark shall be the exclusive means used to determine whether
8 an objection has been timely submitted, unless the Settlement Administrator determines that the
9 postmark is not legible. If the postmark is not legible, it will be assumed that the objection was
10 sent on the date it is received by the Settlement Administrator, except that in no event will an
11 objection that is received by the Settlement Administrator thirty (30) or more days after the
12 Response Deadline be deemed to be timely submitted. Any written objection to the Settlement
13 Agreement should contain at least the following (i) the objector's full name, address, telephone,
14 and signature; (ii) a clear reference to the Action; (iii) a statement of the specific legal and factual
15 basis for each objection argument; and (iv) a statement whether the objecting person or entity
16 intends to appear at the Final Approval Hearing, either in person or through counsel and, if through
17 counsel, a statement identifying that counsel by name, bar number, address, and telephone number.
18 All objections shall be signed by the objecting Settlement Class Member, even if the Settlement
19 Class Member is represented by counsel.

20 31. Although it is preferred that Settlement Class Members submit written objections,
21 no objector shall be denied the ability to object at the Final Approval Hearing (whether
22 individually or through counsel).

23 **FINAL APPROVAL, SCHEDULE, AND OTHER PROVISIONS**

24 32. A hearing (the "Final Approval Hearing") shall be held before this Court on
25 [DATE] at [TIME] at the Superior Court of California for the County of San Francisco, before the
26 Hon. Andrew Y.S. Cheng, in Department 613 at 400 McAllister Street, San Francisco, CA 94102,
27 to determine all necessary matters concerning the Settlement, including: (a) whether the
28 Settlement of the Action on the terms and conditions provided for in the Stipulation is fair,

adequate, and reasonable and should be finally approved by the Court; (b) whether a final judgment should be entered herein; (c) whether the plan of allocation contained in the Settlement Agreement, including the LWDA Payment and PAGA Allocation, should be approved as fair, adequate and reasonable to the Settlement Class Members; and (d) the appropriateness of Class Counsel's attorneys' fees and costs, Plaintiff's incentive awards, and settlement administration expenses of the Settlement Administrator.

33. The Parties and the Settlement Administrator shall henceforth adhere to the following schedule:

Defendant to provide Class information to CPT	On or before [DATE]
Notice of Class Action Settlement mailed	On or before [DATE]
Response Deadline, Not Accounting for Remailings	On or before [DATE]
Motion for final approval to be filed	[DATE]
Final Approval Hearing (proposed)	[DATE] , or such other date as the Court may set

34. Class Counsel has stated their intention to request Class Counsel attorney's fees of 33 and 1/3 % of the Gross Settlement Amount (or \$325,000), Class Counsel's litigation costs and expenses not to exceed \$10,000, and a Service Award granted to Plaintiffs not to exceed \$10,000 for each Plaintiff. The Court will weigh these amounts at Final Approval.

35. If in considering final approval of the Settlement, the Court decides to award less than the amounts set forth above, any unawarded amounts shall revert back to the Settlement Class Members only, to be distributed in accordance with the approved distribution formula.

36. The Settlement Agreement is not a concession or admission and shall not be used against Defendant or any of the putative Released Parties as an admission or indication with respect to any claim of any fault or omission by Defendant or any of the Released Parties. Whether or not the Settlement is finally approved, neither the Settlement Agreement (nor any document, statement, proceeding or conduct related to the Settlement) nor any reports or accounts thereof, shall in any event be:

a. Construed as, offered or admitted in evidence as, received as or deemed to be

evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant or any of the Released Parties of any liability, culpability, negligence, fault, wrongdoing, omission, concession, or damage; or

b. Disclosed, referred to, or offered or received in evidence against Defendant or any of the Released Parties in any further proceeding in the Action, or in any other civil, criminal or administrative action or proceeding, except for purposes of settling the Action pursuant to the Settlement.

37. As of the date this Order is signed, all discovery, dates and deadlines associated with the Action shall continue to be stayed, other than those related to the approval and administration of the Settlement of the Action, subject to the Final Approval Hearing.

38. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing and all dates provided for in the Stipulation without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

Accordingly, and for the reason set forth above, the Court hereby **GRANTS** Plaintiffs' Motion for Preliminary Approval. **IT IS SO ORDERED.**

DATED: _____

BY: _____
Hon. Andrew Y.S. Cheng
S.F. Superior Court Judge