

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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MOHAMED JIMALE, UCHENNA OFODILE, RANDI	:
BUTLER and CHIEN TSAI, on behalf of themselves and all	: Index No.:
others similarly situated,	:
	: CLASS AND COLLECTIVE
Plaintiffs,	: ACTION COMPLAINT
	:
- against -	:
	:
INTERNATIONAL BUSINESS MACHINES	:
CORPORATION,	:
	:
Defendant.	X

Plaintiffs Mohamed Jimale (“Jimale”), Uchenna Ofodile (“Ofodile”), Randi Butler (“Butler”), and Chien Tsai (“Tsai”) (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, by their attorneys, Shavitz Law Group, P.A., upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover unpaid wages, including overtime compensation, for Plaintiffs and their similarly situated co-workers who have worked as Apprentices for Defendant International Business Machines Corporation (“IBM” or “Defendant”) in the United States, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (“FLSA”), the New York Labor Law (“NYLL”), Article 19, §§ 650 *et seq.*, Article 6 §§ 190 *et seq.* and the supporting New York State Department of Labor regulations, the California Labor Code §§ 201-204, 206.5, 210, 218, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2698-2699.5, *et seq.* and Wage Order No. 4-2001 (collectively, “California Wage and Hour Law”) and California Business & Professions Code §§ 17200 *et seq.*, and the Private Attorneys General Act, California Labor Code §§ 2698, *et seq.*

2. IBM is a multinational technology company headquartered in Armonk, New York.

3. As part of its workforce, IBM employs non-exempt classified Apprentices for full-time, entry-level “earn and learn” positions in various roles.

4. In order to complete their apprenticeships and be eligible for permanent roles within IBM, Apprentices are required to complete learning courses and on-the-job training. Most apprentices are typically expected to complete their apprenticeships within approximately one year.

5. Though IBM classifies Apprentices as non-exempt and entitled to overtime compensation, IBM fails to adequately track Apprentices’ hours worked and to compensate them for all overtime hours in which they worked.

6. By the conduct described in this Class and Collective Action Complaint, IBM has violated the FLSA, NYLL, and California Wage and Hour Law by, among other things, failing to pay Apprentices, including Plaintiffs, overtime and minimum wages they have earned and to which they are entitled by law.

THE PARTIES

Plaintiffs

Mohamed Jimale

7. Plaintiff Jimale is an adult individual who is a resident of Rochester, Minnesota.

8. Jimale was employed by IBM as an Apprentice in Minnesota from approximately February 2021 to approximately November 2021.

9. Jimale is a covered employee within the meaning of the FLSA.

10. A written consent form for Jimale is attached as **Exhibit A**.

Uchenna Ofodile

11. Plaintiff Ofodile is an adult individual who is a resident of Orlando, Florida.

12. Ofodile was employed by IBM as an Apprentice in Louisiana from approximately March 2020 to approximately November 2020.

13. Ofodile is a covered employee within the meaning of the FLSA.

14. A written consent form for Ofodile is attached as **Exhibit B**.

Randi Butler

15. Plaintiff Butler is an adult individual who is a resident of Poughkeepsie, New York.

16. Butler was employed by IBM as an Apprentice in New York from approximately January 2019 to September 2019.

17. Butler is a covered employee within the meaning of the FLSA and NYLL.

18. A written consent form for Butler is attached as **Exhibit C**.

19. Butler also brings this action on behalf of herself and all similarly situated current and former employees of IBM who worked as Apprentices in New York pursuant to NYLL, to remedy violations of NYLL.

Chien Tsai

20. Plaintiff Tsai is an adult individual who is a resident of San Francisco, California.

21. Tsai was employed by IBM as an Apprentice in California from approximately August 2018 to August 2019.

22. Tsai is a covered employee within the meaning of the FLSA and California Wage and Hour Law.

23. A written consent form for Tsai is attached as **Exhibit D**.

24. Tsai also brings this action on behalf of himself and all similarly situated current and former employees of IBM who worked as Apprentices in California pursuant to the California Labor Code §§ 201-204, 218, 218.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1198, and 2698-2699.5, *et seq.* and Wage Order No. 4-2001, California Business & Professions Code §§ 17200 *et seq.*, and the Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* to remedy violations of the California Wage and Hour Law.

Defendant International Business Machines Corporation

25. IBM is a multinational technology company headquartered in Armonk, New York.

26. IBM employs Apprentices throughout the United States, including in New York and California.

27. Throughout the relevant period, IBM employed Plaintiffs and similarly situated employees within the meaning of the FLSA, NYLL, and California Wage and Hour Law. IBM has had substantial control over Plaintiffs' working conditions and the unlawful policies and practices alleged herein.

28. At all times relevant, IBM maintained control, oversight and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

29. IBM applies the same employment policies, practices, and procedures to all Apprentices.

30. At all times relevant, IBM's annual gross volume of sales made or business done was not less than \$500,000.

JURISDICTION AND VENUE

31. This Court has subject matter jurisdiction pursuant to NYLL, Article 19, §§ 650 *et seq.*, 29 U.S.C. § 216(b), and agreement between the parties.

32. This Court is empowered to issue a declaratory judgment pursuant to New York Civil Practice Law and Rules (“NY CPLR”) § 3001.

33. Defendant is subject to personal jurisdiction in New York.

34. Venue is proper in this County pursuant to NY CPLR § 509.

COLLECTIVE-WIDE FACTUAL ALLEGATIONS

35. Plaintiffs bring the First Cause of Action, pursuant to FLSA, 29 U.S.C. § 216(b), on behalf of themselves and all similarly situated persons who work or have worked for IBM as Apprentices in the United States, from March 15, 2020 through present, who elect to opt-in to this action (the “FLSA Collective”).

36. All of the work that Plaintiffs and the FLSA Collective have performed has been assigned by IBM, and/or IBM has been aware of all of the work that Plaintiffs and the FLSA Collective have performed.

37. As part of its regular business practice, IBM has intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- a. willfully failing to pay Plaintiffs and the FLSA Collective members overtime and minimum wages for hours that they worked in excess of 40 hours per workweek;
- b. willfully failing to record all of the time that its employees, including Plaintiffs and the FLSA Collective, have worked for the benefit of IBM.

38. IBM is aware or should have been aware that federal law required them to pay Apprentices, including Plaintiffs and FLSA Collective members, an overtime premium for hours

worked in excess of 40 per workweek.

39. Plaintiffs and the FLSA Collective all perform or performed the same job duties, i.e., completing learning courses and participating in on-the-job training.

40. IBM's unlawful conduct has been widespread, repeated, and consistent.

CLASS ACTION ALLEGATIONS

The New York Class

41. Plaintiff Butler (the "New York Plaintiff") brings the Second and Third Causes of Action, the NYLL claims, pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of herself and all Apprentices who work or have worked for IBM in New York from March 15, 2017 through present (the "New York Class").

42. Excluded from the New York Class are all persons who will submit timely and otherwise proper requests for exclusion from the New York Class.

43. The New York Class members are so numerous that joinder of all members is impracticable.

44. Upon information and belief, the size of the New York Class is at least 50 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of IBM.

45. Common questions of law and fact exist as to the New York Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- a. whether IBM violated NYLL, Article 6 or 19, and the supporting New York State Department of Labor regulations;
- b. whether IBM failed to compensate New York Plaintiff and the New York Class for hours worked in excess of 40 hours per workweek;
- c. whether IBM failed to keep true and accurate time and pay records for all hours worked by New York Plaintiff and the New York Class, and other

records required by the NYLL;

- d. whether IBM failed to timely pay all wages due;
- e. whether IBM failed to maintain and provide accurate wage statements;
- f. whether IBM's policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- g. the nature and extent of class-wide injury and the measure of damages for those injuries.

46. The claims of the New York Plaintiff are typical of the claims of the New York Class he seeks to represent. The New York Plaintiff and all New York Class members work, or have worked, for IBM as Apprentices in New York. The New York Plaintiff and New York Class members enjoy the same statutory rights under the NYLL to be paid overtime wages. The New York Plaintiff and New York Class members have all sustained similar types of damages as a result of IBM's failure to comply with the NYLL. The New York Plaintiff and the New York Class members have all been injured in that they have been uncompensated or under-compensated due to IBM's common policies, practices, and patterns of conduct.

47. The New York Plaintiff will fairly and adequately represent and protect the interests of the New York Class members. The New York Plaintiff understands that as a class representative, she assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. The New York Plaintiff recognizes that as a class representative, she must represent and consider the interests of the class just as she would represent and consider her own interests. The New York Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, she must not favor her own interests over the interests of the class. The New York Plaintiff recognizes that any resolution of a class action must be in the best interest of the class. The New York Plaintiff understands that in order to provide adequate representation, she

must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. The New York Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between the New York Plaintiff and the New York Class members.

48. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The New York Class members have been damaged and are entitled to recovery as a result of IBM's violation of the NYLL as well as its common and uniform policies, practices, and procedures. Although the relative damages suffered by individual New York Class members is not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual plaintiffs lack the financial resources to conduct a thorough examination of IBM's timekeeping and compensation practices and to prosecute vigorously a lawsuit against IBM to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about IBM's practices.

49. This action is properly maintainable as a class action under Article 9 of the New York Civil Practice Law and Rules.

The California Class

50. Plaintiff Tsai (the "California Plaintiff") brings the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of themselves and all Apprentices who work or have worked for IBM in California at any point in time from March 15, 2019 through present (the "California Class").

51. Excluded from the California Class are all persons who will submit timely and otherwise proper requests for exclusion from the California Class.

52. The California Class members are so numerous that joinder of all members is impracticable.

53. Upon information and belief, the size of the California Class is at least 50 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of IBM.

54. Common questions of law and fact exist as to the California Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- a. whether IBM failed to pay the California Plaintiff and the California Class overtime for all hours worked over 40 in a workweek and/or in excess of eight per workday and/or hours worked on the seventh consecutive day of work in a workweek within the meaning of the California Wage and Hour Law;
- b. whether IBM failed to provide off-duty meal periods and rest breaks to the California Plaintiff and the California Class in violation of California Wage and Hour Law;
- c. whether IBM failed to provide accurate itemized wage statements to the California Plaintiff and the California Class in violation of California Wage and Hour Law;
- d. whether IBM's conduct was "unlawful," "unfair," or "fraudulent" under California Business & Professions Code §§ 17200, *et seq.*;
- e. whether IBM failed to comply with the record keeping requirements of the California Wage and Hour Law;
- f. the nature and extent of the class-wide injury and the appropriate measure of damages for the California Plaintiff and the California Class;
- g. whether IBM had a uniform policy and practice of failing to accurately track or record actual hours worked by California Plaintiff and the California Class;
- h. whether IBM furthered their uniform policy and practice of failing to accurately track or record actual hours worked by the California Plaintiff and the California Class by: (i) instructing the California Plaintiff and the California Class not to track all hours they worked; (ii) instructing the California Plaintiff and the California Class not to record overtime hours worked; (iii) failing to provide the California Plaintiff and the California

Class with a method to accurately record the hours they actually worked; and (iv) requiring the California Plaintiff and the California Class to under-state the number of hours they actually worked;

- i. whether IBM's policy and practice of failing to accurately track or record hours worked by the California Plaintiff and the California Class was willful;
- j. whether IBM failed to timely pay all final wages due;
- k. whether IBM can prove that their unlawful policies were implemented in good faith; and
- l. what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records.

55. The claims of the California Plaintiff are typical of the claims of the California Class they seek to represent. The California Plaintiff and all California Class members work, or have worked, for IBM as Apprentices in California state. The California Plaintiff and California Class members enjoy the same statutory rights under the California Wage and Hour Law and California Business & Professions Code §§ 17200 *et seq.* to be paid overtime wages. The California Plaintiff and California Class members have all sustained similar types of damages as a result of IBM's failure to comply with the California Wage and Hour Law and California Business & Professions Code §§ 17200 *et seq.* The California Plaintiff and the California Class members have all been injured in that they have been uncompensated or under-compensated due to IBM's common policies, practices, and patterns of conduct.

56. The California Plaintiff will fairly and adequately represent and protect the interests of the California Class members. The California Plaintiff understands that as class representative, he assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. The California Plaintiff recognizes that as class representative, he must represent and consider the interests of the class just as he would represent and consider his own interests. The California Plaintiff understands that in decisions regarding the conduct of the litigation and its possible

settlement, he must not favor his own interests over the interests of the class. The California Plaintiff recognizes that any resolution of a class action must be in the best interest of the class. The California Plaintiff understands that in order to provide adequate representation, he must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. The California Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between the California Plaintiff and the California Class members.

57. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The California Class members have been damaged and are entitled to recovery as a result of IBM's violation of the California Wage and Hour Law and California Business & Professions Code §§ 17200 *et seq.* as well as its common and uniform policies, practices, and procedures. Although the relative damages suffered by individual California Class members is not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual plaintiff lacks the financial resources to conduct a thorough examination of IBM's timekeeping and compensation practices and to prosecute vigorously a lawsuit against IBM to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about IBM's practices.

58. This action is properly maintainable as a class action under Article 9 of the New York Civil Practice Law and Rules and the California Wage and Hour Law, California Business & Professions Code §§ 17200 *et seq.*

COMMON FACTUAL ALLEGATIONS

59. Throughout their employment with IBM, Plaintiffs and the members of the FLSA

Collective, the New York Class, and the California Class (collectively, “Class Members”) consistently worked more than 40 hours per week.

60. Apprentices consistently worked overtime hours in order to complete the requirements of their apprenticeships consisting of learning courses and on-the-job training and to become eligible for permanent roles within IBM.

61. IBM was aware that Plaintiffs and the Class Members worked more than 40 hours per workweek, yet IBM failed to pay them proper overtime compensation for all of the hours worked over 40 in a workweek.

62. IBM did not keep accurate records of hours worked by Plaintiffs and Class Members.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Unpaid Overtime
(Brought on behalf of Plaintiffs and the FLSA Collective)

63. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

64. IBM engaged in a widespread pattern and practice of violating the FLSA, as described in this Class and Collective Action Complaint.

65. Plaintiffs have each consented in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b).

66. At all relevant times, Plaintiffs and other similarly situated current and former employees were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

67. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to IBM.

68. IBM is an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

69. At all times relevant, Plaintiffs were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

70. IBM failed to pay Plaintiffs and other similarly situated current and former employees all overtime wages to which they were entitled under the FLSA.

71. IBM's violations of the FLSA, as described in this Class and Collective Action Complaint, have been willful and intentional. IBM has failed to make a good faith effort to comply with the FLSA with respect to its compensation of Plaintiffs and other similarly situated current and former employees.

72. Because IBM's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

73. As a result of IBM's willful violations of the FLSA, Plaintiffs and all other similarly situated employees have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201 *et seq.*

74. As a result of the unlawful acts of IBM, Plaintiffs and other similarly situated current and former employees have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

New York Labor Law – Unpaid Wages and Overtime (Brought on behalf of the New York Plaintiff and the New York Class)

75. The New York Plaintiff realleges and incorporates by reference all allegations in

all preceding paragraphs.

76. IBM engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class and Collective Action Complaint.

77. At all times relevant, the New York Plaintiff and New York Class members have been employees and IBM has been their employer within the meaning of the NYLL.

78. The New York Plaintiff and the New York Class members are covered by the NYLL.

79. IBM employed the New York Plaintiff and New York Class members as an employer.

80. IBM failed to pay the New York Plaintiff and the New York Class members overtime wages to which they are entitled under the NYLL Article 19 §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

81. IBM failed to pay the New York Plaintiff and New York Class members for all overtime hours worked at a wage rate of one and one-half times their regular rates of pay.

82. IBM failed to keep, make, preserve, maintain, and furnish accurate records of time worked by the New York Plaintiff and New York Class members.

83. IBM failed to timely pay wages to the New York Plaintiff and New York Class members.

84. IBM's violations of the NYLL, as described in this Class and Collective Action Complaint, have been willful and intentional.

85. Due to IBM's violations of the NYLL, the New York Plaintiff and the New York Class members are entitled to recover from IBM unpaid wages (including overtime wages), and reasonable attorneys' fees and costs of the action, as provided for by NYLL Article 6 § 198, and

liquidated damages and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION

**New York Labor Law – Record Keeping Violations
(Brought on behalf of the New York Plaintiff and the New York Class)**

86. The New York Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

87. IBM has willfully failed to supply the New York Plaintiff and the New York Class members notice as required by NYLL Article 6, § 195, in English or in the language identified by the New York Plaintiff and the New York Class members as their primary language, containing the New York Plaintiff's and the New York Class members' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

88. IBM has willfully failed to supply the New York Plaintiff and the New York Class members with an accurate statement of wages as required by NYLL Article 6, § 195, containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked,

including overtime hours worked if applicable; deductions; allowances, if any, claimed as part of the minimum wage; and net wages.

89. Due to IBM's violations of the NYLL, the New York Plaintiff and the New York Class members are entitled to recover from IBM damages for each workweek that the violations occurred or continue to occur, as provided for by NYLL Article 6, §§ 198(1)-b and 198(1)-d, reasonable attorneys' fees, costs, injunctive and declaratory relief.

FOURTH CAUSE OF ACTION
California Wage and Hour Law – Unpaid Overtime
(Brought on behalf of the California Plaintiff and the California Class)

90. The California Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

91. California law requires employers such as IBM to pay overtime compensation to all non-exempt employees for all hours worked over 40 per workweek, over eight per day, and for hours worked on the seventh consecutive day of work in a workweek, and to pay such compensation based on the employee's regular rate of pay which takes into account all forms of nondiscretionary compensation subject to exclusions permitted by law.

92. The California Plaintiff and California Class members are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

93. IBM has engaged in a widespread policy, pattern or practice of violating the California Wage and Hour Law, as detailed in this Class and Collective Action Complaint.

94. At all times relevant, the California Plaintiff and California Class members have been employees and IBM has been an employer within the meaning of the California Wage and Hour Law. The California Plaintiff and California Class members are covered by the California Wage and Hour Law.

95. The California Plaintiff and California Class members all perform or performed the same primary duties, responsibilities and activities (i.e., completing learning courses and participating in on-the-job training), and are all subject to IBM's common policies and practices, implemented throughout the state of California, of failing to credit and pay them proper overtime compensation, in violation of the California Wage and Hour Law.

96. Defendant employed the California Plaintiff and California Class members as an employer or a joint employer, as further alleged herein.

97. IBM failed to pay the California Plaintiff and California Class members wages to which they are entitled under the California Wage and Hour Law, including California Labor Code §§ 510, 558, and 1194, *et seq.* and Wage Order No. 4-2001 (codified at Cal. Code Regs. tit. 8, § 11040). IBM failed to properly calculate the regular rate of pay and pay the California Plaintiff and California Class members for overtime at a wage rate of one and one-half times, or double-time, their regular rate of pay, as applicable, in weeks they worked more than 40 hours and for days they worked more than eight hours or worked seven consecutive days in a workweek.

98. California Labor Code § 510 and the applicable Wage Order require that an employer compensate all work performed by an employee in excess of eight hours per workday and 40 hours per workweek, at one and one-half times the employee's regular rate of pay.

99. California Labor Code § 1194 states that any employee receiving less than the legal overtime compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of his overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

100. California Labor Code § 558 states that an employer who violates § 510 or the

related Wage Order is subject to a civil penalty of fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid plus an amount sufficient to recover underpaid wages and, for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid plus an amount sufficient to recover underpaid wages.

101. IBM's violations of the California Wage and Hour Law, as described in this Class and Collective Action Complaint, have been willful and intentional.

102. Due to IBM's violations of the California Wage and Hour Law, the California Plaintiff and California Class members are entitled to recover from IBM the relief requested herein. As a direct and proximate result of IBM's unlawful conduct, as set forth herein, the California Plaintiff and California Class members have sustained damages, including loss of earnings for hours of overtime worked on behalf of IBM in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

FIFTH CAUSE OF ACTION

**California Wage and Hour Law – Failure to Provide Mandated Meal Periods
(Brought on behalf of the California Plaintiff and the California Class)**

103. The California Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

104. California Labor Code § 512(a) states in a pertinent part: “[A]n employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes . . . An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes”

105. Wage Order No. 4-2001 states in pertinent part, “No employer shall employ any

person for a work period of more than five (5) hours without a meal period of not less than 30 minutes If an employer fails to provide an employee a meal period in accordance with the applicable provision of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Cal. Code Regs. tit. 8, § 11040, subd. 11(A) & (B). California Labor Code § 226.7(b) explains that no employer shall "require an employee to work during a meal or rest . . . period mandated by an applicable . . . order of the Industrial Welfare Commission."

106. Since March 15, 2019, IBM failed to provide the California Plaintiff and California Class members meal periods and failed to properly calculate and/or pay one hour of pay at the employee's regular rate of pay for each violation as required by California Labor Code §§ 226.7 and 512 and Wage Order No. 4-2001.

107. As a result of IBM's willful and unlawful failure to provide the California Plaintiff and California Class members with mandated meal periods, the California Plaintiff and California Class members are entitled to recover one hour of pay at their regular rate of compensation for each workday that a meal period was not provided, pursuant to California Labor Code § 227.7 and Wage Order No. 4-2001, § 11(B). The California Plaintiff and California Class members are also entitled to reasonable attorneys' fees and costs, under California Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

California Wage and Hour Law – Failure to Provide Mandated Rest Periods (Brought on behalf of the California Plaintiff and the California Class)

108. The California Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

109. Wage Order No. 4-2001 states in pertinent part, "Every employer shall authorize

and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . . If any employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." Cal. Code Regs. tit. 8, § 11040, subd. 12(A) & (B). California Labor Code § 226.7(b) explains that no employer shall "require an employee to work during a meal or rest . . . period mandated by an applicable . . . order of the Industrial Welfare Commission"

110. Since March 15, 2019, IBM failed to provide the California Plaintiff and California Class members rest periods as required by California Labor Code §§ 226.7 and Wage Order No. 4-2001 and failed to properly calculate and/or pay one hour of pay at the employee's regular rate of pay for each violation.

111. As a result of IBM's willful and unlawful failure to provide the California Plaintiff and California Class members with mandated rest periods, the California Plaintiff and California Class members are entitled to recover one hour of pay at their regular rate of compensation for each workday that a rest was not provided, pursuant to California Labor Code § 226.7 and Wage Order No. 4-2001, § 12(B). The California Plaintiff and California Class members are also entitled to reasonable attorneys' fees and costs, under California Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

California Wage and Hour Law – Failure to Furnish Accurate Itemized Wage Statements (Brought on behalf of the California Plaintiff and the California Class)

112. The California Plaintiff realleges and incorporates by reference all allegations in

all preceding paragraphs.

113. California Labor Code § 226(a) and Wage Order No. 4-2001, § 7 provides, in relevant part, that every employer must furnish each employee with an itemized wage statement that shows the total number of hours worked each pay period, gross wages, net wages, all deductions, all applicable hourly rates of pay, the name and address of the legal entity that is the employer, and other information. California Labor Code § 1174(d) likewise requires employers to maintain records of hours worked daily and wages paid to employees.

114. Since March 15, 2019, IBM knowingly and intentionally failed to furnish the California Plaintiff and California Class members, upon each payment of compensation, itemized wage statements accurately showing, at minimum: gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each hourly rate by the employee. IBM also willfully failed to maintain records of hours worked by the California Plaintiff and California Class members as required under California Labor Code § 1174(d).

115. During all relevant times, the California Plaintiff and California Class members were injured by these failures because, among other things, they were not provided with compliant wage statements, and they were confused about whether they were paid properly and/or they were misinformed about how many total hours they worked in each pay period.

116. The California Plaintiff and California Class members are entitled to injunctive relief to ensure IBM's compliance with California Labor Code §§ 226(a) and 1174(d).

117. The California Plaintiff and California Class members are also entitled to the amount provided under California Labor Code §§ 226(e) and 1174.5, including the greater of all actual damages suffered or fifty (\$50) dollars for the initial pay period in which a violation

occurred and one-hundred (\$100) dollars for each subsequent pay period.

118. The California Plaintiff and California Class members are also entitled to an award of costs and reasonable attorneys' fees under California Labor Code § 226(h).

EIGHTH CAUSE OF ACTION

**California Wage Payment Provisions – Failure to Timely Pay Wages
(Brought on behalf of the California Plaintiff and the California Class)**

119. The California Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

120. California Labor Code §§ 201 and 202 requires employers to pay their employees all wages due within the time specified by law. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30) days of wages.

121. The California Plaintiff and California Class members who ceased employment with IBM are entitled to unpaid compensation, but to date have not received such compensation.

122. More than thirty days have passed since the California Plaintiff and certain California Class members left IBM's employ.

123. As a consequence of IBM's willful conduct in not paying compensation for all hours worked, the California Plaintiff and California Class members whose employment ended during the California class period are entitled to thirty days' wages under California Labor Code § 203, together with interest thereon and attorneys' fees and costs.

NINTH CAUSE OF ACTION

**California Business and Professions Code – Unfair Competition Law("UCL")
(Brought on behalf of the California Plaintiff and the California Class)**

124. The California Plaintiff realleges and incorporates by reference all allegations in

all preceding paragraphs.

125. The foregoing conduct, as alleged, violates the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.*, which prohibits, *inter alia*, unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices. The California Plaintiff brings this cause of action individually and as a representative of all others subject to IBM’s unlawful acts and practices.

126. Since March 19, 2019, IBM engaged in unfair competition in violation of the UCL by violating, *inter alia*, each of the following laws. Each of these violations constitutes an independent and separate violation of the UCL:

- a. FLSA, 29 U.S.C. §§ 201 *et seq.*;
- b. California Labor Code § 1194;
- c. California Labor Code § 1198;
- d. California Labor Code §§ 201, 202, 203, 204, 218, 218.5, 226, 226.3, and 226.7;
- e. California Labor Code §§ 1174, 1174.5;
- f. California Labor Code § 510;
- g. California Labor Code § 512; and
- h. California Labor Code § 558.

127. As a result of this unlawful and/or fraudulent business practice, IBM reaped unfair benefits and illegal profits at the expense of the California Plaintiff and California Class members. IBM must disgorge these ill-gotten gains and restore to the California Plaintiff and California Class members all wrongfully withheld wages, including, but not limited to, overtime compensation.

128. The California Plaintiff, individually and on behalf of all California Class members, seek recovery of attorneys' fees and costs of this action to be paid by IBM, as provided by the UCL and California Labor Code §§ 218, 218.5, and 1194.

TENTH CAUSE OF ACTION

**Cal. Labor Code §§ 2698, *et seq.* – Private Attorneys General Act (“PAGA”)
(Brought on behalf of the California PAGA Plaintiff and the California Class)**

129. Plaintiff Tsai (the “California PAGA Plaintiff”) realleges and incorporates by reference all allegations in all preceding paragraphs.

130. California's Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* (“PAGA”), provides that an aggrieved employee may bring a civil action on behalf of such employee and other current and former employees to recover for any violation of a provision of the California Labor Code, which provides for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies or employees (collectively, the “LWDA”).

131. Whenever the LWDA has discretion to assess a civil penalty, a court in a civil action is authorized pursuant to PAGA to exercise the same discretion to assess a civil penalty on behalf of aggrieved employees, subject to the same limitations and conditions.

132. The California PAGA Plaintiff is an “aggrieved employee” as that term is described in the California Labor Code section 2699.3.

133. The California PAGA Plaintiff, on behalf of himself and other aggrieved employees, as well as the general public, seeks penalties under the California Labor Code and PAGA for the violations alleged against the Defendant in this complaint under California state law.

134. Specifically, in such capacity, the California PAGA Plaintiff alleges that by the

acts and omissions alleged herein, Defendant failed to comply with the provisions of sections 201, 202, 203, 204, 206.5, 218, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5 1194, and 1198 of the California Labor Code (collectively “PAGA violations”).

135. These failures by Defendant were willful and constitute a violation of PAGA, thereby entitling the California PAGA Plaintiff to recover statutory penalties under the California Labor Code §§ 558 and 2599, *et seq.*

136. Cal. Labor Code § 2699(a), which is part of PAGA, provides in pertinent part:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in § 2699.3.

137. Cal. Labor Code § 2699(f), which is part of PAGA, provides in pertinent part:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

138. Pursuant to the California Labor Code § 2699(a), (f) and (g) and related provisions, the California PAGA Plaintiff, as a private attorney general on behalf of all aggrieved employees, requests and is entitled to recover penalties against Defendant for each aggrieved employee per pay period for the initial violation and for each aggrieved employee per pay period for each subsequent violation, subject to any applicable cap.

139. Pursuant to the California Labor Code § 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: sixty-five percent to the LWDA and thirty-

five percent to the aggrieved employees.

140. Furthermore, the California PAGA Plaintiff, as a private attorney general on behalf of all other aggrieved employees, requests and is entitled to recover from Defendant interest, attorney's fees and costs pursuant to California Labor Code §§ 210, 218.5, 1194(a), and 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, seek the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all FLSA Collective members. Such notice should inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit, among other things;

B. Unpaid overtime pay, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

C. Unpaid overtime pay, liquidated damages, and penalties as permitted by law pursuant to the state-law claims;

D. Damages of \$50 for the New York Plaintiff and the New York Class for each workweek that IBM failed to provide Plaintiffs with a wage notice, or a total of \$5,000, as provided for by N.Y. Lab. Law § 198;

E. Damages of \$250 for the New York Plaintiff and the New York Class for each workweek that IBM failed to provide Plaintiffs with accurate wage statements, or a total of \$5,000, as provided for by N.Y. Lab. Law § 198;

F. Damages in the amount of 30 days' wages, together with interest, for the

California Plaintiff and the members of the California Class whose employment ended during the California class period, pursuant to the California Wage Law;

G. Statutory penalties under the California Wage Law and civil penalties under PAGA;

H. One hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant California Wage Law;

I. One hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant California Wage Law;

J. Certification of the New York and California Classes pursuant to Article 9 of the New York Civil Practice Law and Rules;

K. Designation of each named Plaintiff as Class Representative as to their respective classes, and counsel of record as Class Counsel;

L. Issuance of a declaratory judgment that the practices complained of in this Class and Collective Action Complaint are unlawful under appropriate state law;

M. Pre-judgment interest and post-judgment interest as provided by law;

N. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining IBM from continuing its unlawful practices;

O. Attorneys' fees and costs of the action; and

P. Such other injunctive and equitable relief as this Court shall deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: June 19, 2025

Respectfully submitted,

/s/ Michael Palitz

Michael Palitz (Bar No. 4841771)

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***Attorneys for Plaintiffs and the Putative Classes
and Collective***

EXHIBIT A

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant(s), IBM and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. I hereby designate the Shavitz Law Group, P.A. to represent me in bringing such claim, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable.

3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.



Signature

Mohamed Jimale

Print Name

EXHIBIT B

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant(s), IBM and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

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3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.



Signature

Uchenna Ofodile

Print Name

EXHIBIT C

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant(s), IBM and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

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Signature

Randi Butler

Print Name

EXHIBIT D

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant(s), IBM and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. I hereby designate the Shavitz Law Group, P.A. to represent me in bringing such claim, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable.

3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.



Signature

Chien Tsai

Print Name