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on behalf of herself and all others similarly

7 situated and aggrieved

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11
12 COLLEEN DOVER, an individual, and on
behalf of all others similarly situated,

13
14 Plaintiff,

15 v.

16 BNY INVESTMENT MANAGEMENT
17 SERVICES LLC., a Delaware limited liability
company; THE BANK OF NEW YORK
18 MELLON, a New York corporation; and
DOES 1 through 100, inclusive,

19
20 Defendants.
21

CASE NO.: 24STCV09140

[Assigned for all purposes to the Hon. Carolyn
B. Kuhl in Dept. 12]

[PROPOSED] **ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND CERTIFYING
CLASS FOR SETTLEMENT PURPOSES
ONLY**

1 This Court, having considered the Motion of Plaintiff Colleen Dover (“Plaintiff”) for
2 Preliminary Approval of Class and Representative Action Settlement and Provisional Class
3 Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations
4 of Vedang J. Patel, David D. Bibiyan, Colleen Dover, and Sean Hartranft, the Joint Stipulation of
5 Class and PAGA Representative Action Settlement and Release (“Settlement,” “Agreement” or
6 “Settlement Agreement”), the proposed Notice of Class Action Settlement and Hearing Date for
7 Final Court Approval (“Class Notice”), and other documents submitted in support of the Motion for
8 Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

9 1. The definitions set out in the Settlement Agreement are incorporated by reference
10 into this Order; all terms defined therein shall have the same meaning in this Order.

11 2. The Court certifies the following settlement class (“Settlement Class,” “Settlement
12 Class Members,” “Class Members”) for the purpose of settlement only: any and all current or former
13 non-exempt employees of defendants BNY Investment Management Services, LLC, and The Bank
14 of New York Mellon (collectively, “Defendants”) who worked in California during the period from
15 April 11, 2020 to the date of Preliminary Approval, unless a different end date is selected by
16 Defendants pursuant to the Settlement Agreement (“Class Period”).

17 3. The Court preliminarily appoints the named plaintiff Colleen Dover as Class
18 Representative, and David D. Bibiyan, Vedang J. Patel, and Jason Rothman of Bibiyan Law Group,
19 P.C., as Class Counsel.

20 4. The Court preliminarily approves the proposed class settlement upon the terms and
21 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
22 settlement appears to be within the range of reasonableness of settlement that could ultimately be
23 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
24 amount is fair, adequate, and reasonable as to all potential Class Members when balanced against
25 the probable outcome of further litigation relating to liability and damages issues. It further appears
26 that extensive and costly investigation and research has been conducted such that counsel for the
27 parties at this time are reasonably able to evaluate their respective positions. It further appears to the
28 Court that the settlement at this time will avoid substantial additional costs to all parties, as well as

1 the delay and risks that would be presented by the further prosecution of the Action. It further
2 appears that the settlement has been reached as the result of intensive, non-collusive and arms-length
3 negotiations utilizing an experienced third-party neutral.

4 5. The Court approves, as to form and content, the Class Notice which is attached hereto
5 as **Exhibit A**. The Court further finds that the Class Notice satisfies the requirements of California
6 Rule of Court, rules 3.766 and 3.769, subd. (f), and fairly apprises the Class Members of the terms
7 of the final approval hearing date, the proposed settlement terms and of their options, including: (1)
8 the nature of the action, the definition of the Class, the identity of Class Counsel, and the essential
9 terms of the Settlement; (2) Plaintiff's and Class Counsel's applications for the Class Representative
10 Service Payment, and Class Counsel's request for attorneys' fees and costs; (3) a formula used to
11 determine the Class Member's estimated Individual Class Payment and Individual PAGA Payment;
12 (4) Settlement Class Members' rights to appear through counsel if they desire; (5) how to object to
13 the Settlement or submit an opt-out request if a Class Member wishes to do so; and (6) how to obtain
14 additional information regarding the action and the Settlement. Counsel for the Parties are
15 authorized to correct any typographical errors and make clarifications, to the extent the same are
16 found or needed, so long as such corrections do not materially alter the substance of the documents.

17 6. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to
18 the Class Members in accordance with the procedures set forth in the Settlement Agreement.

19 7. The Court hereby preliminarily approves the definition and disposition of the Gross
20 Settlement Amount of \$1,625,000.00, which is inclusive of: attorneys' fees of up to thirty-five
21 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
22 Agreement, amounts to \$568,750.00, in addition to actual reasonable costs incurred of up to
23 \$60,000.00; service award of up to \$10,000.00 to Plaintiff; costs of settlement administration of no
24 more than \$6,990.00 and Private Attorneys General Act of 2004 ("PAGA") penalties in the amount
25 of \$113,750.00, of which \$85,312.50 (75%) will be paid to the Labor and Workforce Development
26 Agency ("LWDA") and \$28,437.50 (25%) to "PAGA Members" or "Aggrieved Employees,"
27 defined as any and all current or former non-exempt employees of Defendants who worked in
28 California during the period from April 11, 2023, through Preliminary Approval unless a different

1 end date is selected by Defendants pursuant to the Settlement Agreement (“PAGA Period”).

2 8. The Gross Settlement Amount expressly excludes Employer’s Share of Payroll
3 Taxes, which will be paid separately and apart by Defendants on the wages portion of the Gross
4 Settlement Amount.

5 9. Class Member’s “Covered Class Workweek” or “Workweek” shall mean any
6 workweek during the Class Period in which a Class Member worked for Defendants in a non-exempt
7 position in California.

8 10. Defendants represent that there were approximately 38,201 Workweeks worked by
9 Class Members from April 11, 2020 to August 14, 2025. In the event the number of Workweeks
10 worked by Class Members increases by more than 10% as of the date of preliminary settlement
11 approval, (i.e., more than an additional 3,820 Workweeks worked for a total of more than 42,021
12 Workweeks), then Defendants shall make an election that one of the following occur: (1) either the
13 Gross Settlement Amount shall be increased proportionally by the number of Workweeks worked
14 in excess of 42,021 multiplied by the Workweek Value; or (2) the Class Period and PAGA Period
15 (as well as the end date for the release period) will end on the date that the number of Workweeks
16 worked by Class Members beginning April 11, 2020, reaches 42,021, In the event Defendants elect
17 to increase the Gross Settlement Amount proportionally, the Workweek Value shall be calculated
18 by dividing the Gross Settlement Amount by 38,201 and, thus, the Parties agree that the Workweek
19 Value amounts to, and the settlement amounts, to \$42.54 per Workweek. ($\$1,625,000 / 38,201$
20 Workweeks.). Thus, for example, should Defendants elect the former of the two options, and there
21 are 43,931 Workweeks in the Class Period, then the GSA shall be increased by \$81,251.40. ($(43,931$
22 Workweeks – 42,021 Workweeks) x \$42.54 / Workweek).) Defendants must exercise their election
23 pursuant to this Paragraph at least 7 days before the first set motion hearing date for Preliminary
24 Approval or it will be assumed Defendant has elected Option 1 in this Paragraph. Any said election
25 may be reflected by, declaration testimony, a communication from Defendants’ Counsel, an
26 addendum of the settlement, or an amendment thereto, or other method agreed to by the Parties or
27 required by the Court.

28 11. The Court deems Apex Class Action, LLC (“Apex” or “Settlement Administrator”),

1 the settlement administrator, and preliminarily approves payment of administrative costs, not to
2 exceed \$6,990.00 out of the Gross Settlement Amount for services to be rendered by Apex on behalf
3 of the class.

4 12. Within 30 days after the Court grants Preliminary Approval, Defendants shall
5 provide the Class Data to the Settlement Administrator. “Class Data” means Class Member and
6 PAGA Member identifying information in Defendants’ possession including the name, last-known
7 mailing address, Social Security Number, and number of Covered Class Workweeks for Class
8 Members and Covered PAGA Pay Periods for PAGA Members.

9 13. Prior to mailing the Class Notice, the Settlement Administrator will update the
10 addresses for the Class Members using the National Change of Address database and other available
11 resources deemed suitable by the Settlement Administrator.

12 14. Within fourteen (14) days after Preliminary Approval and after it has completed all
13 of the address updates for Class Members, the Settlement Administrator shall mail the Class Notice
14 to Class Members.

15 15. “Response Deadline” means 45 days after the Settlement Administrator mails the
16 Class Notice to Class Members and PAGA Members, and shall be the last date on which Class
17 Members may: (a) mail Requests for Exclusion from the non-PAGA portion of the Settlement, or
18 (b) mail his or her Objection to the non-PAGA portion of the Settlement. Class Members to whom
19 Class Notices are resent after having been returned undeliverable to the Settlement Administrator
20 shall have an additional 14 calendar days beyond the Response Deadline has expired. If the 45th
21 day (or extended Response Deadline following a resent Class Notice) falls on a Sunday or holiday,
22 the Response Deadline shall end on the next business day that is not a Sunday or holiday.

23 16. Class Counsel shall provide the Court prior to the Final Approval Hearing a
24 declaration by the Settlement Administrator of due diligence and proof of mailing of the Class
25 Notice required to be mailed to Class Members by this Settlement Agreement, and of the delivery
26 results of the Settlement Administrator’s mailings including tracing and re-mailing efforts.

27 17. Class Members who wish to “opt-out” of and be excluded from the non-PAGA
28 portions of this settlement must submit a written Request for Exclusion from the Settlement

1 Agreement to the Settlement Administrator bearing a post-mark from a date within the Response
2 Deadline. The Request for Exclusion must include: (a) the Class Member's name, address, and
3 phone number; (b) a statement that the Class Member desires to exclude himself or herself from the
4 case; and (c) the last four digits of the Class Member's social security number.

5 18. Class Members submitting untimely or deficient Requests for Exclusion shall be
6 bound by the Settlement and its releases and will be considered Participating Class Members for
7 settlement distribution purposes.

8 19. PAGA Members cannot opt out of the PAGA Settlement and release and all PAGA
9 Members will receive an Individual PAGA Payment if the Settlement is approved.

10 20. Only Participating Class Members may object to the non-PAGA portions of the
11 Settlement. Class Members who submit a valid Request for Exclusion from the Settlement (Non-
12 Participating Class Members) are not eligible to object. All written objections must be sent no later
13 than forty-five (45) days after the mailing of the Class Notice, which shall be extended by fourteen
14 (14) additional days for any Class Member to whom the Settlement Administrator re-mails a Class
15 Notice that was lost, misplaced, misrouted, or returned as undelivered. In the alternative,
16 Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present
17 objections at the Final Approval Hearing. The written objection should state the Participating Class
18 Member's name and address and describe the reason(s) why the Participating Class Member objects
19 to the Settlement and include or attach any documents upon which the objection is based. The
20 Parties may respond to any written objections submitted by Participating Class Members either at
21 or prior to the Final Approval Hearing.

22 21. If a Class Member submits an Objection and a Request for Exclusion, the Request
23 for Exclusion will control, and the Objection will be disregarded.

24 22. Class Members will have the right to challenge only their number of Covered Class
25 Workweeks and/or Covered PAGA Pay Periods as shown on the Class Notice. Any such challenges
26 by Class Members must be sent directly to the Settlement Administrator at the address indicated on
27 the Class Notice and must be made within the Response Deadline.

28 23. If Participating Class Members (or Class Members who do not submit a valid and

1 timely Request for Exclusion from the non-PAGA portion of the Settlement) and/or PAGA
2 Members do not cash their checks within the 180-day period, those checks will become void and a
3 stop payment will be placed on the uncashed checks. The amounts represented by such checks will
4 be sent to the Controller of the State of California to be held by the Unclaimed Property Fund in the
5 name of the individual to whom the uncashed check was addressed, for the benefit of those
6 individuals who did not cash their checks until such time as they claim their property.

7 24. All papers filed in support of final approval, including supporting documents for
8 attorneys' fees and costs, shall be filed by _____.

9 25. A Final Approval Hearing shall be held with the Court on _____
10 at ____:____.m in Department 12 of the above-entitled Court to determine: (1) whether the proposed
11 settlement is fair, reasonable and adequate, and should be finally approved by the Court; (2) the
12 amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amounts of service
13 award to the Class Representative; (4) the amount to be paid to the Settlement Administrator; and
14 (5) the amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.
15 The Court may continue or adjourn the Final Approval Hearing without further notice to the Class.

16 26. This Settlement is not a concession or admission and shall not be used against
17 Defendants or any of the Released Parties as an admission or indication with respect to any claim
18 of fault or omission by Defendants or any of the Released Parties. Whether or not the Settlement is
19 finally approved, neither the Settlement nor any document, statement, proceeding or conduct related
20 to the Settlement, nor any reports or accounts thereof, shall in any event be may be construed or
21 used as an admission by or against Defendants or any of the Released Parties of any fault,
22 wrongdoing or liability whatsoever. The Court's findings are for purposes of conditionally
23 certifying a Class in the context of this Settlement and will not have any claim or issue or evidentiary
24 preclusion or estoppel effect in any other action against the Released Parties or in this litigation if
25 the Settlement is not finally approved. If for any reason the Court does not execute and file a Final
26 Approval Order, or if the Effective Date, as defined in the Settlement Agreement, does not occur
27 for any reason whatsoever, the Settlement Agreement shall be null and void and any order entered
28 by the Court in furtherance of the Settlement shall be treated as null and void. In such even, the

1 Parties shall be returned to their respective statuses as of the date and time immediately prior to the
2 execution of this Settlement Agreement and the Parties shall proceed in all respects as if this
3 Settlement Agreement had not been executed.

4 27. The Court may, for good cause, extend any of the deadlines set forth in this Order.

5 28. Pending the Final Approval Hearing, all proceedings in this action, other than
6 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this
7 Order, are stayed.

8
9 **IT IS SO ORDERED.**

10
11 Dated: _____

Judge of the Superior Court