

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS ROSENBERG, JAMES R.
BAXTER, SHERRY MATTSON, STEVE
PARK, FNU KENNEDY, and EXALDO
TOPACIO, on behalf of themselves and classes
of those similarly situated,

Plaintiffs,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Case No. 06-0430 PJH

**NOTICE OF PROPOSED
SETTLEMENT OF CLASS
ACTION LAWSUIT AND
FAIRNESS HEARING**

TO: CERTAIN PERSONS WHO HAVE WORKED FOR INTERNATIONAL
BUSINESS MACHINES CORPORATION ("IBM" OR "DEFENDANT") IN
BANDS 6-8 OF POSITION CODES 499A, 498Q, 498R, 498S, 498T, 498U, OR
594J, OR IN POSITION CODES 4325, 5338 OR 5343 ("CLASS MEMBERS").

Based on information in IBM's records, you may be a Class Member who is entitled to participate in the proposed \$65 million settlement of the case captioned *Thomas Rosenberg, et al. v. International Business Machines Corporation* (the "Lawsuit"). **Please read this Notice carefully.** It contains important information about your rights concerning the class action settlement described below.

As described more fully below, *see* Section 6.c., to participate in the settlement, you must submit a properly completed Claim Form and Release in time for the Claims Administrator to receive it by [DATE]. By submitting the Claim Form and Release, you will be opting into the Fair Labor Standards Act claim in this action. If you fail to turn in a timely Claim Form and Release, you will receive no monetary distribution from the settlement.

If you do not want to participate in the settlement, and do not want to be bound by the Release described in Section 6.b., you must exclude yourself by mailing the enclosed Opt Out Statement to the Claims Administrator, postmarked by no later than [DATE]. Unless you "Opt Out" of the Lawsuit and the settlement by submitting an Opt-Out Statement postmarked by [DATE], you will be bound by the Release in Section 6.b., regardless of whether you submit a Claim Form and Release or receive money. *See* Section 9 below, for additional information.

Class Members are encouraged to participate in this settlement. The law prohibits retaliation against current or former employees who participate in settlements.

Participation does not change the settlement amount that IBM will pay, because IBM will pay the same, fixed amount regardless of the number of Class Members who participate.

Important Deadlines:

- Deadline for the Claim Form and Release: must be mailed in time for the Claims Administrator to receive it by [DATE]
- Deadline for the Opt-Out Statement: must be postmarked by [DATE]
- Deadline for objecting to the settlement: must be mailed in time for the Claims Administrator to receive it by [DATE]

For assistance completing the enclosed Claim Form and Release or for assistance with related matters, please contact the Claims Administrator at [CONTACT INFORMATION]

This Notice explains the nature of the Lawsuit and the terms of the settlement and informs you of your rights and obligations. This Notice should not be understood as an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by the parties. This Notice contains information about the following topics:

1. What Is This Lawsuit About
2. What Is A Class Action
3. What Is The Purpose Of This Notice
4. Who Is Included In The Lawsuit
5. Who Is Class Counsel
6. What Are The Benefits And Terms Of The Proposed Settlement (including information about how you can participate in the Settlement)
7. When Is The Fairness Hearing To Approve Settlement
8. How Can You Object To The Proposed Settlement
9. How Can You Opt Out Of The Settlement
10. How Can You Examine Court Records
11. What If You Have Questions

1. What Is This Lawsuit About

Sixteen current and former employees (“Plaintiffs”) of IBM brought this lawsuit, in which they claimed that IBM violated the Fair Labor Standards Act (“FLSA”), the Employee Retirement Income Security Act (“ERISA”), and various state wage laws by unlawfully classifying certain employees as exempt from receiving overtime pay. Plaintiffs also alleged violations of certain state law meal break requirements and other state law wage requirements. Plaintiffs, for themselves and for others whom they claim are similarly situated, sought to recover unpaid overtime wages and sought to receive credit for overtime wages under IBM’s pension and savings

plans. Plaintiffs also sought recovery of statutory damages, interest, attorneys' fees and costs, and other relief.

IBM has denied and continues to deny any wrongdoing and denies any and all liability and damages to anyone with respect to the alleged facts or causes of action asserted in the Lawsuit. To avoid the burden, expense, inconvenience, and uncertainty of continued litigation, however, IBM has concluded that it is in its best interests to resolve and settle the Lawsuit by entering into a settlement agreement (the "Settlement").

The Lawsuit is presently before Judge Phyllis J. Hamilton, United States District Judge for the United States District Court for the Northern District of California. Judge Hamilton has not made any decision on the merits. On [DATE] the Court conditionally certified this matter as a class action and granted preliminary approval of the Settlement, subject to a fairness hearing which will take place on [DATE].

2. What is A Class Action

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One or more representative plaintiffs, also known as "Plaintiffs" or "Class Representatives," file a lawsuit asserting claims on behalf of the entire class.

3. What Is The Purpose Of This Notice

Judge Hamilton has ordered that this Notice be sent to you because you may be a Class Member. The purpose of this Notice is to inform you of the proposed Settlement and of your rights, including:

- To inform you of your right to "opt out" of the settlement class, and thereby preserve your ability to independently bring any claim that you might have;
- To inform you of your right to file objections to the Settlement;
- To inform you of the steps you must take to receive any share of the settlement funds.

4. Who Is Included In The Lawsuit

You are a Class Member if you meet all of the following criteria:

1. Your Position Code was or is: 499A, 498Q, 498R, 498S, 498T, 498U, 594J, 4325, 5338, and/or 5343 (collectively "Class Positions");¹
2. Your Job Band was or is: 6, 7 or 8 (collectively "Class Job Bands"); and

¹ The 499A position code is currently called Technical Services Professional in IBM's job library, and the 594J position code is currently called IT Specialist in IBM's job library. However, these positions may be referred to, or may in the past have been referred to, by different informal titles. The remaining Class Positions are predecessors to the 449A and 594J position codes.

3. You have been employed by IBM in a Class Position and Class Job Band at any time during one or more of the following time periods ("Class Periods"):
- a. From January 24, 2002 until [Preliminary Approval Date] in California, or
 - b. From October 2, 2001 until [Preliminary Approval Date] in Kentucky, or
 - c. From March 13, 2003 until [Preliminary Approval Date] in Illinois and Minnesota, or
 - d. From January 24, 2000 until [Preliminary Approval Date] in New York, or
 - e. From April 19, 2003 until [Preliminary Approval Date] in any other state.

You also are a Class Member if you participated in the United States Department of Labor, Wage Hour Division, Compliance Actions, Case Nos. 1325099 and 1283294 ("DOL Settlements").

5. Who Is Class Counsel

The Court has approved and appointed a number of firms to represent all members of the Class. Class Counsel can be reached at the following phone number: [] - [] - [].
Class Counsel are:

James M. Finberg
Eve H. Cervantez
ALTSHULER BERZON, LLP
177 Post Street, Suite 300
San Francisco, CA 94108

Steven G. Zieff, Esq.
David A. Lowe
Kenneth J. Sugarman
RUDY, EXELROD & ZIEFF, LLP
351 California Street, Suite 700
San Francisco, CA 94104

Adam T. Klein
Justin M. Swartz
Piper Hoffman
OUTTEN & GOLDEN LP
Three Park Avenue, 29th Floor
New York, New York 10016

Todd F. Jackson, Esq.
Claire Kennedy-Wilkins
Lindsay E. Nako
LEWIS, FEINBERG, RENAHER
& JACKSON, P.C.
1330 Broadway, Suite 1800
Oakland, CA 94612

Kelly M. Dermody
Jahan C. Sagafi
LIEFF, CABRASER, HEIMANN
& BERNSTEIN, LLP
275 Battery Street, 30th Floor
San Francisco, CA 9111

Rachel Geman
LIEFF, CABRASER, HEIMANN
& BERNSTEIN, LLP
780 Third Avenue, 48th Floor
New York, New York 10017-2024

Ira Spiro
SPIRO MOSS BARNES HARRISON

J. Derek Braziel
LEE & BRAZIEL, LLP

& BARGE, LLP
11377 W. Olympic Blvd., Fl. 5
Los Angeles, CA 90064-1625

208 N. Market Street
Dallas, Texas 75202

Richard Burch
BRUCKNER BURCH, PLLC
5847 San Felipe, Suite 3900
Houston, Texas 77057

David Borgen
GOLDSTEIN, DEMCHAK, BALLER,
BORGEN & DARDARIAN
300 Lakeside Drive Suite 1000
Oakland, CA 94612

6. What Are The Benefits And Terms Of The Proposed Settlement

Plaintiffs and Defendant have agreed to the Settlement summarized below. The complete terms and conditions of the proposed Settlement are on file with the Clerk of Court at the address listed below in Section 10. The parties' obligations under the settlement agreement will not become effective unless and until it receives final court approval, including the exhaustion of any appeals.

a. What are the benefits of the settlement

Class Members who timely and properly complete and return the Claim Form and Release, as described in Section 6.c. below, will be eligible to receive a specified share of a \$65 million settlement fund (including any interest on the investment of the settlement fund, net of reasonable fees and taxes associated with the investment), less certain deductions described below, based on a formula approved by the Court. Amounts that are not claimed by Class Members and are not necessary to cover expenses and fees associated with the Lawsuit and/or the Settlement will be paid to charity. IBM will pay the entire \$65 million regardless of how many employees submit a Claim Form and Release.

The following adjustments will be made to the \$65 million amount prior to distribution of the settlement funds to the Class Members:

- **Investment Interest:** The settlement fund will be invested from December 1, 2006 until IBM transfers the Settlement Payment to the Claims Administrator. Interest earned on this investment will become part of the settlement fund and, after payment of taxes and reasonable fees for making the investment, will be distributed in proportionate shares to Class Members who take appropriate steps, as described more fully below.
- **Settlement Administration Fees:** A reserve will be set aside for reasonable costs, estimated to be [], associated with administering the Settlement. The reserve will be used to pay a claims administration company for mailings, processing claims, providing information and assistance to Class Members, and preparing information to be reported to the Court.
- **Payments to Class Representatives:** If the Court approves such payments, each of 6 Class Representatives will receive \$5,000 each (for a total of \$30,000). These

payments are made because these Class Representatives provided service to the Class by helping Class Counsel to formulate claims, and providing deposition testimony. In addition, if the Court approves such payments, 10 Class Representatives will receive \$1,500 each (for a total of \$15,000). The additional payments to these Class Representatives are smaller because they did not provide service to the Class to the same extent as did the 6 above-referenced Class Representatives, although the group of 10 Class Representatives nonetheless provided service to the Class. The payments outlined in this paragraph are separate from and in addition to the shares of the settlement fund that these Class Representatives may be eligible to receive as Class Members.

- **Attorneys' Fees:** Class Counsel will apply to the Court for attorneys' fees in the amount of 25% of the settlement fund, which amounts to \$16.25 million. This amount will be requested based on the thousands of hours Class Counsel spent in pursuing this case on behalf of the Class Members, the risks that Class Counsel took that no fees would ever be recovered, and the result achieved for the class. In litigating this matter, Class Counsel reviewed tens of thousands of pages of documents produced by IBM, including documents regarding Class Member job duties, the classification decision, and IBM's organization, procedures and policies; interviewed approximately a thousand current and former employees; assisted dozens of Class Members in preparing sworn declarations; deposed IBM's corporate representatives; defended certain Class Representatives' depositions; drafted and responded to written interrogatories and requests for production of documents; opposed IBM's motion to dismiss parts of the claims in the Lawsuit; reviewed and analyzed IBM's payroll data (including through the use of expert statisticians); and otherwise aggressively pursued the case. Class Counsel will also apply for an amount not to exceed \$250,000 to reimburse Class Counsel for actual out-of-pocket expenses paid by Class Counsel to litigate this case. These expenses include copying charges, deposition transcripts, expert analysis and similar litigation expenses.

The remaining amount in the settlement fund (the "Net Settlement Fund") will be distributed according to the method set forth below in the "How Will My Share Be Calculated If I Participate" section.

b. *What is the legal effect of participating in the settlement*

If the Court grants final approval of the Settlement, in exchange for the \$65 million payment set forth above, this action will be dismissed with prejudice and Class Members who do not opt out will fully release and discharge IBM from any and all claims that are asserted in the Lawsuit or that arise from the facts alleged in the Litigation and that arose during any time that such Class Members worked in a Class Position and Class Job Band up through and including the date that the Court grants final approval of the Settlement. When claims are "released," that means that a person covered by the release cannot sue IBM for any of the claims that are covered by the release.

The exact terms of the Release in the Settlement Agreement read:

“(A) By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement, Plaintiffs and each individual Class Member who does not timely opt out pursuant to Section 2.4 forever and fully release Defendant, its owners, stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under or in concert with any of them, including any party that was or could have been named as a defendant in the Litigation (collectively, the "Releasees") from any and all past and present matters, claims, demands, and causes of action of any kind whatsoever, whether at common law, pursuant to statute, ordinance, or regulation, in equity or otherwise, and whether arising under federal, state, or other applicable law, which any such Class Member has or might have, known or unknown, of any kind whatsoever, that are based upon or arise out of the facts, acts, transactions, occurrences, events or omissions alleged in the Litigation and that arose during any time that such Class Member worked in a Covered Position Code up until the date of the Order granting final approval (“Released Claims”). The Released Claims include without limitation claims asserted in the Litigation and any other claims based on alleged misclassification under state or federal law governing overtime pay, exempt status, denial of meal periods and rest breaks, denial of spread of hours pay, failure to pay wages upon termination, failure to provide itemized wage statements, unfair competition, failure to make payments due to Class Members had they been classified as nonexempt, failure to provide benefit credits, failure to keep records of hours worked or compensation due, and penalties for any of the foregoing, including without limitation claims under the Employee Retirement Income Security Act (“ERISA”), the Fair Labor Standards Act (“FLSA”), the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, the California Labor Code and related regulations, Cal. Labor Code §§ 201, 202, 203, 218, 218.5, 226, 510, 512, 1174, 1174.5, and 1194, Cal. Wage Order No. 4, the Colorado Minimum Wage Act, C.R.S. §§ 8-6-101, 8-6-106, and 8-6-118, the Colorado Minimum Wage Order No. 22, the Connecticut Minimum Wage Act, Conn. Gen. Stats. §§ 31-58 *et seq.*, 31-13a, 31-60, 31-66, 31-68, and 31-76c, the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. § 115/1 *et seq.* and the regulations promulgated thereunder, 820 Ill. Comp. Stat. §§ 105/4a and 105/12a, Ill. Admin. Code §§ 210.100 *et seq.* and 210.770, the Kentucky Wage and Hour Laws, KRS §§ 337.010 *et seq.*, 337.020, 337.055, 337.060, 337.070, 337.285, 337.320, and 337.385(1), Md. Code Ann. Labor & Employment Art. §§ 3-401 *et seq.*, 3-415, 3-420, and 3-424, 21 Mass. Gen. Laws ch.

151 §§ 1A *et seq.*, 1B and 15, Minn. Stat 541.07(5), Minn. Stat. §§ 177.21 *et seq.*, 177.25(1), 177.30, and 181.01 *et seq.*, Minn. Rules 5200 *et seq.*, 26 Minn. Rev. Stat. § 661 *et seq.*, the New Jersey Wage and Hour Law, N.J.S.A. §§ 34:11-2 *et seq.*, 34:11-56a *et seq.*, 34:11-56a4, and 34:11-56a20, the New York Minimum Wage Act, New York Labor Law §§ 650 *et seq.* and 663(1), the New York Wage Payment Act, New York Labor Law § 190 *et seq.*, New York State Department of Labor regulations, 12 N.Y.C.R.R. part 142, N.C. Gen. Stat. §§ 95-25.1 *et seq.*, 95-25.6, 95-25.7, 95-25.7A, 95-25.8, 95-25.13, 95-25.15 and 95-25.22, 13 N.C. Admin. Code §§ 12.0801-12.0807, Ohio Rev. Code Ann. §§ 4111.01 *et seq.*, 4111.08, 4111.03, 4111.10, 4113.15, 43 Pa. Stat. §§ 333.103 *et seq.*, 333.104(c), 333.108 and 333.113, Wis. Stat. §§ 103.001 *et seq.* and 103.13, Wis. Admin. Code §§ DWD 274.01 *et seq.*, DWD 274.06 and DWD 274.07, and Wash. Rev. Code Sec. 49.46.090, 49.46.100, 49.46.130, and 49.46.070, and the statutes and regulations of all other states relating to the foregoing.

(B) Each Class Member who does not timely opt out in accordance with the procedures set forth in Section 2.4 is deemed to have acknowledged that this Agreement is intended to include in its effect all claims arising from or based upon the Litigation or the facts alleged therein that arose during any time that such Class Member worked in a Covered Position Code up until the date of the Order granting final approval, including both asserted and unasserted claims, and including those claims that each or any Class Member does not know or suspect to exist in his or her favor against Defendant. The Plaintiffs and each Class Member who does not timely opt out of this Agreement waive all rights and benefits afforded by section 1542 of the Civil Code of the State of California, understanding the significance of that waiver. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

c. *How can I participate in the settlement*

If you wish to receive a distribution from the settlement fund, you must timely complete and return the enclosed Claim Form and Release according to instructions provided on the form, including: (1) an oath that, at some point during the applicable period, you worked overtime; (2) an acknowledgement that, by signing the Claim Form and Release, you opt in to the case pursuant to 29 U.S.C. § 216(b); and (3) a release of claims consistent with that set forth in Section 6.b of this Notice. The oath must be personally filled out by the current or former employee who seeks to participate in the Settlement or someone with a legal right to act on his or her behalf.

The Claim Form and Release must be properly completed, signed, and mailed to the Claims Administrator via First Class United States Mail, and received by [DATE]. If you do not properly complete and timely submit the Claim Form and Release in order for it to be received by [DATE], you will not be eligible to receive any monetary distribution. Class Counsel recommend that you send your Claim Form and Release in the enclosed postage-prepaid envelope.

You should keep in mind that if you do not opt out, and if you do not properly and timely complete and return the Claim Form and Release in accordance with instructions provided on the form, you will not receive a distribution from the settlement fund, but you will still be bound by the Release described in Section 6.b.

d. *How will my share be calculated if I participate*

Each Class Member who submits a timely and properly completed Claim Form and Release will receive a share of the Net Settlement Fund (that is, the settlement funds that remain after deductions are made for claims administration costs, class representative payments, and attorneys' fees and expenses). Class Members who previously received settlement payments through Department of Labor proceedings and/or the class settlement in *Santangelo, et al. v. IBM Corporation*, Case No. 04CC00078, Orange County, California, Superior Court, and/or another matter involving alleged withholding of overtime, and/or who received from IBM payment(s) in lieu of overtime (hereinafter, "Prior Settlement Amount(s)"), shall have their respective distributions from the Settlement reduced in light of such Prior Settlement Amount(s).

Each Class Member's share of the Net Settlement Fund will depend on a number of factors relating to the Class Member's employment. These factors include salary, position code and job band, dates of employment, and the state(s) of employment. The salary, position code, job band, dates of employment, and states of employment will be conclusively derived from IBM's data and will not be subject to challenge by Class Members.

As explained below, different values or "factors" are assigned to different position codes, job bands, and states of employment. Thus, two Class Members with the same salary and employment dates may recover different amounts because they held different positions or job bands or were employed in different states.

As explained below, these factors might have a significant effect on the percentage of the Net Settlement Fund a given Class Member will receive. Class Members who worked in California, Illinois, Kentucky, Minnesota and New York also have longer recovery periods, or "Class Periods," than other Class Members, as noted above in the section called "Who Is Included In The Lawsuit"?

i. The formula for individual distributions from the Settlement

If you are a Class Member who was employed by IBM in a Class Position and Class Job Band during the Class Period, and if you did not receive Prior Settlement Amount(s), and if you take the appropriate steps, your share of the Net Settlement Fund will be calculated by multiplying your Base Earnings for each bimonthly pay period by two numeric factors: (1) a "Job Factor" based on your position code and band during that pay period, and (2) a "State Factor" based on the law that applies to your claim for that pay period. The sum of the calculations for

each pay period you worked in a Class Position and Class Job Band during the Recovery Period² is called your “Individual Class Member Numerator.” The Individual Class Member Numerator for your claim will be divided by the sum of Individual Class Member Numerators for all approved claims to determine your “Resulting Decimal.” This Resulting Decimal will be multiplied by the Net Settlement Fund (less the \$50 payments distributed to certain Class Members as described in Section 6.d.iii and the \$50 minimum payments made to certain other Class Members as described in 6.d.iv below) to determine the amount of the Settlement to be awarded to your claim. In reaching agreement with Plaintiffs about the factors to be used in this distribution formula, IBM does not admit that any claim has merit, irrespective of position, job band, or the state in which a Class Member worked.

Your **Job Factor** will be determined as follows:

Position Code/Band	Factor
(499A, 498Q, 498R, 498S, 498T, or 498U)/ (Band 6)	20
(499A, 498Q, 498R, 498S, 498T, or 498U)/ (Band 7)	15
(499A, 498Q, 498R, 498S, 498T, or 498U)/ (Band 8)	6
(594J or 5338)/ (Band 6)	6
(594J or 5343)/ (Band 7)	2
(594J or 4325)/Band 8	1

The above factors mean, for example, that if a 499A/band 6 employee and a 594J/band 8 employee worked at the same salary for a pay period in the same state, the 594J/band 8 employee would receive only a fraction of the amount of the Settlement that the 499A/band 6 employee would. This factor is based on Class Counsel’s assessment that the challenges different Class Members would face in establishing their claims varies by position code and job band.

Your **State Factor** will be determined as follows:

State You Worked In	Factor
California	3

² The Recovery Period is similar to the Class Period defined in Section 4. However, the Recovery Period runs through the date the Court grants final approval to the Settlement and is thus longer than the Class Period.

All States Except California

1

The above factors mean, for example, that if a California and a New York employee worked at the same salary and in the same position code and job band for a pay period, the New York employee would receive a lesser amount of the Settlement than the California employee would receive. This factor accounts for the fact that the measure of allowable damages and the liability standard varies with the applicable state law, and, as a result, Class Members in California face fewer challenges in establishing their claims than Class Members in other states.

ii. Example of the calculation formula

For example, if your Base Earnings were \$1600 per bimonthly pay period for 32 pay periods, and you worked in job band 6 of 499A in California, your share of the Net Settlement Fund would be calculated as follows:

1. $1600 \times 32 \times 20 \times 3 = 3,072,000$ points = Your Individual Class Member Numerator
2. Your 3,072,000 Individual Class Member Numerator will be divided by sum of the Individual Class Member Numerators for all other approved claims to determine your Resulting Decimal.
3. Your Resulting Decimal will be multiplied by the Net Settlement Fund (less the amounts distributed to Class Members who were not employed by IBM in a Class Position and Class Job Band during the Class Period, and less the amounts distributed to Class Members described in Section 6.d.iii and 6.d.iv below) to determine your share of the Settlement.

As these examples demonstrate, the amount you recover will change according to the number of Class Members who participate in the Settlement. As well, the factors applied to your claim may have a significant effect on the percentage of the Settlement you receive.

iii. Minimum Payments to Class Members Who Did **Not** Work in a Class Position and Class Band During the Class Period

There is a small percentage of Class Members who did not work for IBM in a Class Position and Class Job Band during the Class period. If you were not employed by IBM in a Class Position and Class Job Band during the Class Period (as defined in Section 4), but if you are a Class Member, and if you take the appropriate steps, your share of the Net Settlement Fund will be \$50.

iv. Payments to Class Members Who Received Prior Settlement Amounts

There is a small percentage of Class Members who received Prior Settlement Amounts from IBM. If you are a Class Member who was employed by IBM in a Class Position and Class Job Band during the Class Period, and if you received Prior Settlement Amount(s), and if you take the appropriate steps, your share of the Net Settlement Fund will be calculated according to the formula set forth in Section 6.d.i, subject to the following adjustment: For all bimonthly pay

periods covered by a Prior Settlement Amount(s), your Base Earnings for that pay period will be reduced to zero. If such reductions cause your settlement share to be zero, your share of the Net Settlement Fund will be \$50.

7. When Is The Fairness Hearing to Approve the Settlement

The Court has granted preliminary approval of the proposed Settlement, concluding preliminarily that the Settlement is fair, adequate, and reasonable and that the proposed distribution of the Settlement amount is fair, adequate, and reasonable.

A hearing will be held to determine whether final approval of the Settlement should be granted. At the hearing, the Court will hear objections, if any, and arguments concerning the fairness of the proposed Settlement. The hearing will take place before Judge Hamilton on [DATE] at [TIME] or as soon thereafter as practicable, in Courtroom 3, 17th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco, California. The Court will also consider Class Counsel's application for fees and costs and the service awards sought by Class Representatives. The time and date of this hearing may be continued or adjourned, so please contact Class Counsel prior to the date of the hearing if you plan to attend.

YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING. YOU MAY ATTEND THE HEARING IF YOU PLAN TO OBJECT TO THE SETTLEMENT. YOU MAY ALSO RETAIN YOUR OWN ATTORNEY TO REPRESENT YOU IN YOUR OBJECTIONS. IF YOU WISH TO ATTEND THE HEARING, YOU MUST SUBMIT A WRITTEN OBJECTION AS DESCRIBED IN THE FOLLOWING SECTION AND MUST STATE IN WRITING YOUR INTENTION TO APPEAR AT THE FAIRNESS HEARING.

8. How Can You Object To The Proposed Settlement

If you want to object to the Settlement, you may submit a written statement of the objection to the Claims Administrator at the address below. Your objection will not be heard unless it is mailed to the Claim Administrator via First Class United State Mail, postage prepaid, and received by the Claims Administrator no later than [DATE]. The objection need not be in any specific form; a short and simple statement of your objection is sufficient. You do not need to be represented by counsel to object. If you wish to present your objection at the fairness hearing, you must state your intention to do so in your written objection.

[Address]

9. How Can You Opt Out Of The Settlement

You have the right to exclude yourself, and yourself only, from this Lawsuit and Settlement. **If you choose to exclude yourself, you will not be barred from seeking relief with respect to any legal claims and will be free to pursue an individual claim, if any, against IBM, but you will not be eligible to receive the benefits of this Settlement.**

If you intend to exclude yourself, you must complete the enclosed Opt-out Statement and mail it to the Claims Administrator at the address below. The Opt-out Statement must be mailed to

the Claims Administrator via First Class United States Mail, postage prepaid, and postmarked no later than [DATE].

[Address]

10. How Can You Examine Court Records

The foregoing description of the case is general and does not cover all of the issues and proceedings thus far. In order to see the complete file, including a copy of the settlement agreement, you should visit the Clerk of Court, [Address]. The Clerk will make all files relating to this lawsuit available to your for inspection and copying at your own expense.

11. What If You Have Questions

If you have questions about this Notice, or want additional information, you can contact the Claims Administrator at [PHONE NUMBER].

Dated:

This Notice is sent to you by Order of the United States District Court for the Northern District of California.