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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 IN RE: IBM SALES COMMISSIONS
15 PRACTICES LITIGATION

16 Case No. 3:19-cv-07261-JD

17 **PLAINTIFFS' NOTICE OF POST-**
18 **DISTRIBUTION ACCOUNTING AND**
19 **REQUEST FOR RELEASE OF**
20 **REMAINING ATTORNEYS' FEES**
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BY: /s/ Matthew E. Lee
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1 **I. INTRODUCTION**

2 Plaintiffs Mark Comin and Mark Briggs (collectively, “Plaintiffs”), individually
3 and on behalf of all others similarly situated, hereby submit this Post-Distribution
4 Accounting in accordance with the Northern District of California’s Procedural
5 Guidance for Class Action Settlements and the Court’s Order on October 20, 2023 (Dkt.
6 No. 146).

7 The Plaintiffs respectfully request the Court to release the remaining 25% of
8 attorney’s fees that the Court awarded in connection with final approval and Class
9 Counsel’s motion for attorneys’ fees plus any interest that accumulated while the
10 remaining fees were held by the settlement administrator.

11 The Post-Distribution Accounting set forth below follows the initial distribution
12 of the Settlement Fund on **December 19, 2023**, by the settlement administrator KCC,
13 LLC (which has since rebranded and is now known as Verita). The settlement
14 distribution and post-distribution accounting is further detailed in the accompanying
15 Declaration of Janeth Antonio.

16 **II. BACKGROUND AND POST-DISTRIBUTION ACCOUNTING**

17 On October 20, 2023, this Court issued an Order granting final approval of the
18 Plaintiffs’ settlements with IBM and approving the plan of allocation. *See* Dkt. No. 146
19 (“Final Approval of Class and PAGA Settlement and Attorneys’ Fees and Costs”). The
20 Court awarded 33% of the Settlement Fund as attorneys’ fees. *Id.* at p.7. The Court
21 awarded \$34,396.38 in attorneys’ costs. *Id.* The Court withheld 25% of the awarded
22 attorneys’ fees pending submission of this Post-Distribution Accounting. *Id.*

23 The settlement administrator has completed the initial distribution of the
24 Settlement Fund to eligible class members. Settlement checks were voided on June 16,
25 2024 (the “stale date”). Accordingly, the time for this Post-Distribution Accounting is
26 now ripe.

27 The Northern District of California’s *Procedural Guidance for Class Action*
28 *Settlements*, directs that information regarding the claims administration process be
provided in an easily readable chart. The chart with the information required is

1 attached to the Antonio Declaration as Exhibit A. The chart is also provided below for
 2 the Court’s convenience. This chart has also been posted on the settlement website in
 3 accordance with the District’s requirements.

4 To summarize, approximately **89 %** of the Settlement Fund was deposited by
 5 both Class and Subclass Members. Ultimately, only **11 %** or **\$206,954.14** of the
 6 Settlement Fund remains. The class member payout was \$300 and the average
 7 subclass member payout during the initial round of distributions was **\$37,768.49**.
 8 Under Section IV.F. of the Settlement Agreement, in the event there were uncashed
 9 checks in an aggregate amount greater than \$50,000, the remaining funds were to be
 10 redistributed pro-rata among the members of the subclass that timely cashed their
 11 checks during the first distribution. As the check stale date has now passed, and over
 12 \$50,000 remains in the Settlement Fund, re-distribution of the remaining funds in the
 13 Settlement Fund, is appropriate.

14 The redistribution process requires Verita to request refunds from the IRS for
 15 taxes that were paid related to the uncashed checks before a re-distribution can occur.
 16 Verita is unable to state with certainty when it will receive those refunds from the IRS,
 17 but commits to issuing checks for the re-distribution within 30 days of receipt of those
 18 funds from the IRS. The re-distribution will be made in the same manner (check or
 19 ACH direct deposit) for each sub-class member as that sub-class member originally
 20 received. The amount available for redistribution will be \$206,957.14, plus the amount
 21 refunded by the IRS. The subclass members receiving additional pro-rata payments
 22 will receive before tax an average of at least \$3,762.86 during this redistribution of the
 23 remaining settlement funds. This will bring the average subclass member payout to a
 24 total of \$41,531.35. In reality, these averages will be even higher once the tax refunds
 25 are included.

NOTICE TO SETTLEMENT CLASS AND SUBCLASS	
Total Number of Settlement Class and Subclass Members	1,966
Methods of Notice	Website/Mail/Media

1	Total Number of Settlement Class and Subclass Members to Whom Notice Was Sent via U.S. Mail and Not Returned as Undeliverable	1,961
2		
3	Total Number of Settlement Class and Subclass Members Eligible to Obtain Settlement Proceeds to Whom Notice Was Sent	1,966
4		
5	Number of Opt-Out Requests Received from the Settlement Class and Subclass	8
6	Percentage of Class and Subclass Members Opting Out of Settlements	<.05%
7	Number of Objections Received	0
8	Percentage of Class or Subclass Members Objecting to Settlements	0%
9	PAYMENTS TO THE CLASS AND SUBCLASS	
10	Total Settlement Fund	\$4,750,000.00
11	Class Member Payment	\$300
12	Method of Payment to Class and Subclass Members	Check & Wire
13	Total Number of Class Member Payments Sent	1,965
14	Total Number of Class Member Payments Sent by Check	1,151
15	Total Number of Class Member Payments Sent by Wire	814
16	Number of Class Payments Cashed (by Check or Wire)	1,767
17	Value of Class Payments Cashed (by Check or Wire)	\$1,699,251.79
18	Number of Checks Not Yet Cashed by Class Members	193
19	Value of Checks Not Yet Cashed by Class Members	\$38,692.47
20	Total Number of Subclass Member Payments Sent	60
21	Total Number of Subclass Member Payments Sent by Check	49
22	Total Number of Subclass Member Payments Sent by Wire	11
23	Number of Subclass Payments Cashed (by Check or Wire)	55
24	Value of Subclass Payments Cashed (by Check or Wire)	\$1,331,249.80
25	Number of Checks Not Yet Cashed by Subclass Members	5
26	Value of Checks Not Yet Cashed by Subclass Members	\$168,264.10
27	Average Subclass Member Payment During Initial Distribution	\$37,768.49
28	Median Subclass Member Payment Cashed	\$16,211.18
	Largest Amount Paid to a Subclass Member	\$363,909.66
	Smallest Amount Paid to a Subclass Member	\$244.71
	Value of Checks Being Re-Distributed to Subclass Members ¹	\$206,957.14
	ADMINISTRATIVE COSTS AND ATTORNEYS' FEES AND COSTS	

¹ As noted above, this amount reflects the amount of the Settlement Fund that Verita has on hand to redistribute based on the amount of checks that were uncashed. Once Verita receives refunds for the taxes that were paid for the uncashed checks, the amount for redistribution will increase to account for those refunded taxes as well.

1	Total Notice and Administration Costs	\$67,143
2	Total Class Representatives Service Awards	\$5,000
3	Approved Attorneys' Fees	\$1,583,333.33
4	Attorneys' Fees as a Percentage of Settlement Fund	33%
5	Attorneys' Fee Multiplier	0.79
6	Plaintiffs' Counsel's Updated Lodestar Total	\$2,089,322.60
7	Updated Lodestar Multiplier	0.76
8	Attorneys' Fees Paid	\$1,187,500.00
9	Attorneys' Fees Not Yet Paid	\$395,833.33
10	Approved Attorneys' Costs	\$34,396.38
11	Attorneys' Costs Paid	\$34,396.38

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the release of the remaining attorneys' fees in accordance with this Court's Order along with any interest earned on those funds.

Respectfully submitted, this the 8th day of July 2024.

BY: /s/ Matthew E. Lee

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Counsel for Plaintiffs

**Admitted pro hac vice*

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, I electronically filed the foregoing, **NOTICE OF POST-DISTRIBUTION ACCOUNTING** with the Clerk of Court, and upon the counsel of record using the CM/ECF system.

/s/ Matthew E. Lee
Matthew E. Lee

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

MARK COMIN, and MARK BRIGGS, on
behalf of themselves and all others
similarly situated

Plaintiffs,

vs.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant.

Case No. 3:19-cv-07261-JD

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
JANETH ANTONIO RE: POST
DISTRIBUTION**

1 I, Janeth Antonio, declare and state as follows:

2
3 1. I am a Director with Verita formerly known as KCC Class Action Services, LLC
4 (“KCC”), located at 1 McInnis Parkway, Suite 250, San Rafael, CA 94903. Pursuant to the Order
5 Re Preliminary Approval Of Class Action Settlement (the “Preliminary Approval Order”) dated
6 March 2, 2023, the Court appointed KCC as the Claims Administrator in connection with the
7 proposed Settlement of the above-captioned Action.¹ I have personal knowledge of the matters
8 stated herein and, if called upon, could and would testify thereto.

9 2. This declaration supplements my previous declaration for the purpose of updating
10 the parties and the Court with the balance of unclaimed Settlement class funds.

11 3. On December 19, 2023, KCC issued 1,965 payments to class members who did not
12 opt out of the settlement or who opted-out but were part of the PAGA group. The total distribution
13 amount was \$1,906,208.36.

14 4. Since the issuance of checks, there have been 62 checks that were returned by the
15 USPS with forwarding addresses. These checks were automatically forwarded to the new addresses.

16 5. KCC has also received 27 checks returned by USPS with undeliverable addresses.
17 KCC performed a skip-trace search and was able to locate 20 new addresses. KCC has since
18 reissued and remailed the 20 checks to the new addresses.

19 6. As of the date of this declaration, 1,767 class members have cashed their payment.
20 The sum of those cashed checks is \$1,699,251.79. The remaining 193 class members did not cash
21 their check. 55 of the 60 subclass members cashed their checks in an amount totaling
22 \$1,331,249.80. The remaining five subclass members did not cash their checks. The sum of all
23 uncashed checks is \$206,956.57. The stale period of these checks ended June 16, 2024.

24 7. Due to rounding, there was a remaining balance of \$0.57 in the settlement fund. The
25 total amount currently available for pro-rata re-distribution among the 55 subclass members that
26 cashed their checks is \$206,957.14. Verita expects this amount to increase depending on the amount

27
28 ¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the
Settlement Agreement dated August 22, 2022 (the “Stipulation”) and/or the Preliminary Approval
Order.

1 received from the IRS refund but is unable to calculate the precise amount of the tax refund at this
2 time as it is all subject to IRS approval.

3 8. Verita had initially made tax payments to the IRS when the initial round of payments
4 was made. Verita is now in the process of requesting refunds from the IRS for the taxes paid on
5 checks that were not cashed, and will make the re-distribution payments within 30 days of receipt
6 of all refunds from the IRS.

7 9. As of July 2, 2024, Verita estimates the costs related to a second distribution will be
8 \$26,742. This includes, but is not limited to, the costs of issuing 55 payments via check or ACH,
9 monthly maintenance fees for telephone support and website, and time spent related to tax
10 amendments, quarterly IRS reports, etc. Verita's estimated fees and charges are based on certain
11 information provided to Verita by the parties as well as significant assumptions. Accordingly, the
12 estimate is not intended to limit Verita's actual fees and charges, which may be less or more than
13 estimated due to the scope of actual services or changes to the underlying facts or assumptions.

14 10. In accordance with the Northern District of California's *Procedural Guidance for*
15 *Class Action Settlements* Verita has posted a copy of the chart from Plaintiffs' Notice of Post-
16 Distribution Accounting on the settlement website for this matter, www.cominibmsettlement.com

17 I declare under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct.

19
20 Executed on July 3, 2024 at San Rafael, CA.

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22 /s/ Janeth Antonio
23 Janeth Antonio
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