

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MICHAEL DANIELI, et al., on behalf of themselves and those similarly situated,)	No. 08 CV 3688 (SHS)
)	
Plaintiff,)	ECF CASE
)	
-against-)	NOTICE OF PROPOSED
)	SETTLEMENT OF CLASS ACTION
INTERNATIONAL BUSINESS MACHINES CORPORATION,)	LAWSUIT AND FAIRNESS HEARING
)	
Defendant.)	
-----	X	

TO: CERTAIN PERSONS WHO HAVE WORKED FOR INTERNATIONAL BUSINESS MACHINES CORPORATION (“IBM” OR “DEFENDANT”) IN BANDS 6, 7, AND/OR 8 OF POSITION CODES 499A, 499K, 594J, 595K, AND/OR 999A-E AT ANY TIME ON OR AFTER JANUARY 12, 2007, UP THROUGH AND INCLUDING DECEMBER 31, 2008, AND WERE SUBSEQUENTLY RECLASSIFIED TO BAND 6, 7, OR 8 OF POSITION CODE 995K OR 999K DURING THE SAME TIME FRAME (“CLASS MEMBERS”).

Based on information in IBM’s records, you may be a Class Member who is entitled to a monetary share of the proposed \$7.5 million settlement of the case captioned *Michael Danieli, et al. v. International Business Machines Corporation* (the “Lawsuit”). **Please read this Notice carefully, as you may be entitled to a monetary recovery.** It contains important information about your rights concerning the class action settlement described below.

Important Information and Deadlines

As described more fully below, to participate in the settlement and receive a share of the settlement fund, you must properly complete the enclosed Claim Form and Release and timely return it to the Claims Administrator. In doing so, you can use the postage-prepaid, self-addressed envelope included with this Notice.

To be considered timely, the Claim Form and Release must be (1) mailed to the Claims Administrator via First-Class United States Mail and postmarked by February 9, 2010, or (2) received by the Claims Administrator by that date. However, if you return your Claim Form and Release by mail pursuant to option (1), your claim will not be timely if the Claims Administrator receives the Claim Form and Release after February 24, 2010, even if your Claim Form and Release is postmarked by February 9, 2010. Therefore, you are encouraged to return your Claim Form and Release as soon as possible.

If you fail to return a completed Claim Form and Release on time, you will receive no monetary distribution from the settlement.

You have the right to exclude yourself from the settlement by “opting out.” If you opt out, you will not receive a monetary distribution from the settlement fund. To opt out, you must timely complete and return to the Claims Administrator the enclosed Opt-Out Statement as described below. You can use

the enclosed postage-prepaid, self-addressed envelope for this purpose. Unless you opt out of the Lawsuit and the settlement by timely completing and returning the enclosed Opt-Out Statement, you will be bound by the terms of this settlement, including the Release of claims described in Section 6.b of this Notice, regardless of whether you submit a Claim Form and Release or receive money.

To be considered timely, the Opt-Out Statement must be (1) mailed to the Claims Administrator via First-Class United States Mail and postmarked by January 25, 2010, or (2) received by the Claims Administrator by that date. However, if you return your Opt-Out Statement by mail pursuant to option (1), your Opt-Out Statement will not be timely if the Claims Administrator receives your Opt-Out Statement after February 4, 2010, even if your Opt-Out Statement is postmarked by January 25, 2010.

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.

For assistance completing the enclosed Claim Form and Release or for assistance with related matters, please contact the Claims Administrator at 1-866-591-7231 or Class Counsel at 1-866-397-1008.

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. Can I Participate In The Settlement If I Have Signed A Separation Agreement In Connection With A Resource Action Or An Individual Separation Allowance Plan (ISAP)?
8. When Is The Fairness Hearing To Approve Settlement?
9. If I Want To Object To The Settlement, How Can I Do So?
10. How Can I Opt Out Of The Settlement?
11. How Can I Examine Court Records Or Enter An Appearance In This Case?
12. What If I Have Questions?

1. What Is This Lawsuit About?

Seventeen 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 classifying certain employees as exempt from receiving overtime pay. More specifically, Plaintiffs claim that certain employees who had been reclassified into nonexempt position codes should have been paid overtime compensation prior to the date

they were reclassified. 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 denies that it violated the law or that it owes any employee additional compensation. IBM contends that its pay practices are fair and lawful. Specifically, IBM asserts that it properly classified the employees in question, complied with all applicable wage laws, and properly credited these employees under its pension and savings plans. 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, without admitting any wrongdoing or liability, by entering into a settlement agreement (the "settlement").

The Lawsuit is presently before Judge Sidney H. Stein, United States District Judge for the United States District Court for the Southern District of New York. Judge Stein has not made any decision on the merits. On November 16, 2009, 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 March 12, 2010.

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 Stein 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:

- Your right to "opt out" of the settlement Class and thereby preserve your ability to independently bring any claim that you might have;
- Your right to file objections to the settlement; and
- Your right to seek a monetary 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. You held Job Bands 6, 7, and/or 8 of Position Codes 499A, 499K, 594J, 595K, and/or 999A-E (collectively, "Covered Positions") at any time on or after January 12, 2007, up through and including December 31, 2008 ("Class Period"); and
2. You were subsequently reclassified to a nonexempt position in Job Band 6, 7, or 8 of Position Code 995K or 999K during the Class Period (and you were not thereafter re-reclassified to an exempt position).

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: 1-866-397-1008. Class Counsel are:

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

Steven G. Zieff
David A. Lowe
Patrice L. Goldman
John T. Mullan
Kenneth J. Sugarman
RUDY EXELROD ZIEFF & LOWE, LLP
351 California Street, Suite 700
San Francisco, CA 94104

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

Todd F. Jackson
LEWIS, FEINBERG, LEE, RENAKER
& JACKSON, P.C.
1330 Broadway, Suite 1800
Oakland, CA 94612

Kelly M. Dermody
Jahan C. Sagafi
LIEFF, CABRASER, HEIMANN
& BERNSTEIN, LLP
275 Battery Street, Suite 3000
San Francisco, CA 94111

Rachel J. Geman
LIEFF, CABRASER, HEIMANN
& BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013

Ira Spiro
SPIRO MOSS LLP
11377 West Olympic Boulevard, 5th Floor
Los Angeles, CA 90064-1683

J. Derek Braziel
LEE & BRAZIEL, LLP
208 North Market Street, Suite 400
Dallas, TX 75202

Richard Burch
BRUCKNER BURCH, PLLC
1415 Louisiana, Suite 2125
Houston, TX 77002

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

Michael Singer
COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

Daniel Palay
PALAY LAW FIRM
1484 East Main Street
Ventura, CA 93001

Douglas Werman
WERMAN LAW OFFICE, P.C.
77 West Washington, Suite 1402
Chicago, IL 60602

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

Plaintiffs and IBM 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 11. 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 enclosed Claim Form and Release, as described in Section 6.c. below, will be eligible to receive a share of a \$7.5 million settlement fund, less certain deductions described below, based on a formula approved by the Court. IBM will pay the entire \$7.5 million, regardless of how many employees submit a Claim Form and Release.

The following adjustments will be made to the \$7.5 million settlement fund prior to distribution of the settlement funds to the Class Members:

- **Investment Interest:** The settlement fund will earn interest during the settlement approval process. Interest earned on the fund will become part of the fund and, after payment of taxes and reasonable fees associated with earning the interest, 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 no more than \$80,000, associated with administering the settlement. The reserve will be used to pay a claims administration company for, among other things, 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 the 17 Class Representatives will receive \$5,000 each (for a total of \$85,000). These payments are made because these Class Representatives provided service to the Class by helping Class Counsel to formulate claims and/or providing deposition testimony. 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 \$2,250,000 (which is 30% of \$7,500,000). 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 and IBM's organization, procedures and policies; interviewed hundreds of current and former employees; assisted certain Class Members in preparing sworn declarations; defended certain depositions; drafted and responded to written interrogatories and requests for production of documents; opposed IBM's motions to dismiss the claims of certain Class Members; 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 to the Court for reimbursement of out-of-pocket expenses, in amount not to exceed \$150,000, 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 in Section 6.d. below. After the distribution, there may be funds remaining in the settlement fund because, for example, Class Members fail to cash their checks or because the Settlement Administration Fees are less than expected. In that case, the remaining funds will be paid to charity.

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

If the Court grants final approval of the settlement, in exchange for the \$7.5 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 Lawsuit and that arose during any time that such Class Members worked in a Covered Position up through and including December 31, 2008. When claims are “released,” that means that a person covered by the release gives up the right to pursue compensation or other relief based on 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, asserted or unasserted, 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 up until and including December 31, 2008 (“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 waiting time, on-call, standby time, or reporting time payments, 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 benefits or 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, the Michigan Minimum Wage Law, Mich. Comp. Laws § 408.371, *et seq.*, Mich. Comp. Laws § 408.471, *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, and 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 asserted in or based upon the facts alleged in the Litigation that arose during any time up until and including December 31, 2008, 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. With respect to the Released Claims, the Plaintiffs and any Class Members who worked in a Covered Position in California at any time during the Recovery Period and who do 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 the instructions provided on the form, including: (1) a statement 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 Claim Form and Release must be signed 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 completed Claim Form and Release must be returned to the Claims Administrator according to the deadlines and instructions on page 1 of this Notice.

After you have returned the Claim Form and Release to the Claims Administrator, Class Counsel strongly suggest that you contact the Claims Administrator at 1-866-591-7231 to confirm receipt of the Claim Form and Release. Class Counsel also suggest that you contact the Claims Administrator with sufficient time to allow you to re-submit or re-mail the Claim Form and Release in accordance with the deadlines described above in the event of a problem with the delivery of your Claim Form and Release.

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, 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.

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, dates of employment, and the state(s) of employment. The salary, 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 states of employment. Thus, two Class Members with the same salary and employment dates may recover different amounts because they 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.

i. The formula for individual distributions from the Settlement

If you are a Class Member who was employed by IBM in a Covered Position during the Class Period, and if you take the appropriate steps, your share of the Net Settlement Fund will be calculated by multiplying your Base Earnings for each semi-monthly pay period by 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 Covered Position between (1) January 12, 2007 (or, for Class Members who were also members of the settlement class in *Thomas Rosenburg v. International Business Machines Corporation*, Case No. CV 06-0043 PJH (N.D. Cal.), July 13, 2007) and (2) the time of your reclassification into Position Code 995K or 999K¹ is called your "Individual Class Member Numerator." The Individual Class Member Numerator for your claim will be divided by the sum of the Individual Class Member Numerators for all approved claims to determine your "Resulting Decimal." This Resulting Decimal will be multiplied by the Net Settlement Fund to determine the amount of the settlement to be awarded to your claim.

¹ This period of time is called the Recovery Period.

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

State You Worked In	Factor
California	3
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 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. As a result, Class Members in California face fewer challenges in establishing their claims and have a greater likelihood of being awarded substantially higher damages than Class Members in other states.

ii. Example of the calculation formula

For example, if your Base Earnings were \$1,600 per semi-monthly pay period for 32 pay periods, and you worked in California, your share of the Net Settlement Fund would be calculated as follows:

1. $1,600 \times 32 \times 3 = 153,600$ points = Your Individual Class Member Numerator
2. Your 153,600 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 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. The State Factor applied to your claim may have a significant effect on the percentage of the settlement you receive as well.

7. Can I Participate In The Settlement If I Have Signed A Separation Agreement In Connection With A Resource Action Or An Individual Separation Allowance Plan (ISAP)?

Yes. If you take the necessary steps to participate in the settlement as outlined in this Notice, you can obtain your monetary share of the fund even if you signed a Separation Agreement in connection with a resource action or an Individual Separation Allowance Plan (ISAP).

8. 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 fund 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 Stein on March 12, 2010 at 10:00 a.m. or as soon thereafter as practicable, in Courtroom 23A, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York. 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 RETAIN YOUR OWN ATTORNEY TO REPRESENT YOU IN YOUR OBJECTIONS IF YOU WISH TO OBJECT. IF YOU WISH TO OBJECT TO THE SETTLEMENT AND TO ATTEND THE HEARING TO DISCUSS YOUR OBJECTION, YOU MUST SUBMIT A WRITTEN OBJECTION AS DESCRIBED IN THE FOLLOWING SECTION AND MUST STATE IN THE OBJECTION YOUR INTENTION TO APPEAR AT THE FAIRNESS HEARING.

9. If I Want To Object To The Settlement, How Can I Do So?

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 sent to the Claims Administrator.

Danieli v. IBM Claims Administrator
c/o Rust Consulting, Inc.
PO Box 461
Minneapolis, MN 55440-0461

To be considered timely, your objection must be (1) mailed to the Claims Administrator via First-Class United States Mail and postmarked by January 25, 2010 or (2) received by the Claims Administrator by that date. However, if you mail your objection pursuant to option (1), your objection will not be timely if the Claims Administrator receives the objection after February 4, 2010 even if your objection is postmarked by January 25, 2010.

You can object even if you do not want to appear at the fairness hearing. If you do wish to appear at the fairness hearing, either in person or through a lawyer, to discuss your objection, you must state your intention to do so in your written objection. A submitted objection may be withdrawn only with Court approval.

10. How Can I Opt Out Of The Settlement?

As described above, 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 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 return it to the Claims Administrator according to the deadlines and instructions on page 2 of this Notice.

11. How Can I Examine Court Records Or Enter An Appearance In This Case?

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, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York. The Clerk will make all files relating to this Lawsuit available to you for inspection and copying at your own expense. You may enter an appearance in this case through an attorney if you so desire.

12. What If I Have Questions?

If you have questions about this Notice, or want additional information, you can contact the Claims Administrator at 1-866-591-7231 or Class Counsel at 1-866-397-1008.

Dated: December 11, 2009

This Notice is sent to you by Order of the United States District Court for the Southern District of New York.