

1 Jeffrey Neil Young (Maine SBN 3874)  
Patrick McTeague (Maine SBN 621)  
2 MCTEAGUE, HIGBEE, CASE, COHEN,  
WHITNEY & TOKER, PA  
3 P.O. Box 5000  
Topsham, ME 04086  
4 Telephone: 207.725.5581  
Facsimile: 207.725.1090  
5 E-mail: jyoung@me-legal.com  
E-mail: pmcteague@me-legal.com  
6 *Attorneys for Plaintiffs*

7 Teresa Demchak (SBN 123989)  
Morris J. Baller (SBN 048928)  
8 GOLDSTEIN, DEMCHAK, BALLER,  
BORGEN & DARDARIAN  
9 300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
10 Telephone: 510.763.9800  
Facsimile: 510.835.1417  
11 E-mail: tdemchak@gdblegal.com  
E-mail: mballer@gdblegal.com  
12

13 Christopher Platten (SBN 111971)  
WYLIE, MCBRIDE, PLATEN & RENNER  
2125 Canoas Garden Avenue, Suite 120  
14 San Jose, CA 95125  
Telephone: 408.979.2920  
15 Facsimile: 408.979.2934  
E-mail: cplatten@wmp.com  
16

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

19 WILLIAM SYVERSON, PATRICK BOONE,  
LEE DESHLER, ROBERT FLOWERS, BARRY  
20 GERARD, TINA GLEISNER, THOMAS  
GOMEZ, EDWIN "DANA" GOODLOE, ROLF  
21 MARSH, DANIEL MOCZAN, JAMES PAYNE,  
and ANTONIO RIVERA, individually and on  
22 behalf of others similarly situated,

23 Plaintiffs,

24 v.

25 INTERNATIONAL BUSINESS MACHINES  
CORPORATION,  
26

27 Defendant.  
28

Case No. C 03 04529 RMW

**THIRD AMENDED COMPLAINT AND  
DEMAND FOR JURY TRIAL**

1 Plaintiffs William Syverson, Patrick Boone, Lee Deshler, Robert Flowers, Barry Gerard, Tina  
 2 Gleisner, Thomas Gomez, Edwin “Dana” Goodloe, Rolf Marsh, Daniel Moczan, James Payne, and  
 3 Antonio Rivera, by and through the undersigned counsel, complain of Defendant International  
 4 Business Machines Corporation (“IBM” or “Defendant”) as follows:

### 5 INTRODUCTION

6 1. This is an employment discrimination action brought by William Syverson, Patrick  
 7 Boone, Lee Deshler, Robert Flowers, Barry Gerard, Tina Gleisner, Thomas Gomez, Edwin “Dana”  
 8 Goodloe, Rolf Marsh, Daniel Moczan, James Payne, and Antonio Rivera, individually and on behalf of  
 9 all similarly situated individuals including, but not limited to, those individuals listed in Exhibit A,  
 10 pursuant to the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (“the ADEA”).  
 11 Plaintiffs allege that Defendant IBM has engaged in a company-wide and/or division-wide policy,  
 12 pattern or practice of employment discrimination, both intentional and systemic, on the basis of age in  
 13 targeting employees who are 40 years of age and older for termination as part of IBM’s corporate  
 14 restructuring and image redefining. Plaintiffs seek declaratory and injunctive relief, back pay  
 15 (including fringe benefits), double damages for willful violation of 29 U.S.C. § 623, front pay if  
 16 reinstatement is not possible, and lost future wages and benefits; and an award of costs, expenses, and  
 17 attorneys’ fees; all for themselves individually and on behalf of all similarly situated individuals.

### 18 JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

19 2. Jurisdiction. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331,  
 20 in that it arises under the laws of the United States, specifically, the ADEA, 29 U.S.C. § 621, *et seq.*

21 3. Venue. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). IBM is  
 22 subject to personal jurisdiction in this District in that it maintains facilities and business operations in  
 23 this District, employed plaintiffs Thomas Gomez and James Payne and other similarly situated persons  
 24 in this District, and committed some of the discriminatory acts alleged herein in this District against  
 25 these plaintiffs and named plaintiff Tina Gleisner.

26 4. Intradistrict Assignment. Venue is proper in the San Jose Division of this Court  
 27 pursuant to Local Rule 3-2(c)-(d) because a substantial part of the events which give rise to the claims  
 28

1 asserted in this Complaint occurred in San Jose. In particular, IBM employed Thomas Gomez and  
2 James Payne and other similarly situated persons in Santa Clara County, California, and there  
3 committed acts of age discrimination in employment as alleged in this complaint against these  
4 plaintiffs and named plaintiff Tina Gleisner.

## 5 **PARTIES**

### 6 **Plaintiffs**

7 5. At all times relevant to this complaint, Plaintiffs were aggrieved persons as defined by  
8 the ADEA, 29 U.S.C. § 630.

9 6. At all times relevant to this complaint, Plaintiffs were and are members of a class of  
10 persons protected by the ADEA, 29 U.S.C. § 626(b), in that at the time he or she was terminated by  
11 IBM, each Plaintiff was 40 years of age or older in accordance with 29 U.S.C. § 631(a), was a citizen  
12 or lawful resident of the United States, and had been employed by IBM until he or she was  
13 discriminatorily terminated from such employment on account of his or her age.

### 14 **William Syverson**

15 7. Plaintiff William Syverson was born on March 15, 1950. He currently is, and at the  
16 time of his termination from IBM was, a resident of Colchester, Vermont. He worked for IBM for 22  
17 years. He began his career with IBM in February 1980, and ultimately attained the position of Senior  
18 Engineer for IBM in Essex Junction, Vermont. He received consistently good performance  
19 evaluations throughout his career with IBM. On June 4, 2002, IBM notified Mr. Syverson that  
20 effective August 5, 2002, he would be terminated from his employment as part of the Microelectronics  
21 Division Resource Action (MDRA). IBM's termination of Mr. Syverson was discriminatorily based  
22 on his age.

23 8. IBM offered severance packages to employees terminated as part of the MDRA,  
24 including Mr. Syverson, contingent upon signing a General Release and Covenant Not To Sue ("IBM's  
25 Release"). Mr. Syverson accepted IBM's severance package and signed IBM's Release. IBM's  
26 Release subsequently was found invalid and not a bar to actions under the ADEA by the Ninth Circuit  
27  
28

1 Court of Appeals in *Syverson v. International Business Machines Corp.*, 461 F.3d 1147 (9th Cir.  
2 2006), *petition for rehearing denied*, 472 F.3d 1072 (9th Cir. 2007).

3 9. On October 23, 2002, Mr. Syverson filed a Charge of Discrimination alleging age  
4 discrimination with the Vermont Attorney General's office and the EEOC. On or about July 9, 2003,  
5 the EEOC issued him a Notice of Right to Sue on his Charge. Copies of that Charge and Notice are  
6 attached to this Third Amended Complaint as Exhibits 1 and 2, respectively.

7 **Patrick Boone**

8 10. Plaintiff Patrick Boone was born on August 1, 1957. He currently is, and at the time of  
9 his termination from IBM was, a resident of Milton, Vermont. He worked for IBM for 24 years. He  
10 began his career with IBM on May 30, 1979, and ultimately attained the position of Advanced  
11 Technology Specialist for IBM in Essex Junction, Vermont. He received consistently good  
12 performance evaluations throughout his career with IBM. On August 17, 2003, IBM notified Mr.  
13 Boone that effective October 17, 2003, he would be terminated from his employment as part of the  
14 Technology Group Resource Action (TGRA). IBM's termination of Mr. Boone was discriminatorily  
15 based on his age.

16 11. Mr. Boone accepted IBM's severance package and signed IBM's Release.

17 12. On February 26, 2004, Mr. Boone filed a Charge of Discrimination alleging age  
18 discrimination with the Vermont Attorney General's office and the EEOC. The EEOC has not yet  
19 acted on Mr. Boone's Charge. A copy of the Charge is attached to this Third Amended Complaint as  
20 Exhibit 3.

21 **Lee Deshler**

22 13. Plaintiff Lee Deshler was born on September 16, 1948. He currently is, and at the time  
23 of his termination from IBM was, a resident of Williston, Vermont. He worked for IBM for 25 years.  
24 He began his career with IBM in January 1977, and ultimately attained the position of Technical  
25 Support Representative for IBM in Essex Junction, Vermont. He received consistently good  
26 performance evaluations throughout his career with IBM. On November 28, 2001, IBM notified Mr.  
27 Deshler that effective January 31, 2002, he would be terminated from his employment as part of the  
28

1 IBM Microelectronics Resource Action (MERA). IBM's termination of Mr. Deshler was  
2 discriminatorily based on his age.

3 14. Mr. Deshler accepted IBM's severance package and signed IBM's Release.

4 15. On September 20, 2002, Mr. Deshler completed a questionnaire which he provided to  
5 the Vermont Attorney General's Office detailing his charge of age discrimination. On December 2,  
6 2002, Mr. Deshler filed a Charge of Discrimination alleging age discrimination with the Vermont  
7 Attorney General's Office and the EEOC. On or about July 24, 2003, the EEOC issued him a Notice  
8 of Right to Sue on his Charge. Copies of that questionnaire, Charge and Notice are attached to this  
9 Third Amended Complaint as Exhibits 4, 5, and 6, respectively.

### 10 **Robert Flowers**

11 16. Plaintiff Robert Flowers was born on February 14, 1944. He currently is, and at the  
12 time of his termination from IBM was, a resident of New Alexandria, Pennsylvania. He worked for  
13 IBM for almost 35 years. He began his career with IBM in January 1967, and ultimately attained the  
14 position of Support Systems Service Representative for IBM based out of Greensburg, Pennsylvania.  
15 He received consistently good performance evaluations throughout his career with IBM. On April 2,  
16 2002, IBM notified Mr. Flowers that effective May 3, 2002, he would be terminated from his  
17 employment as part of the IBM IGS Integrated Technology Services Resource Action (IITS). IBM's  
18 termination of Mr. Flowers was discriminatorily based on his age.

19 17. Mr. Flowers accepted IBM's severance package and signed IBM's Release.

20 18. On January 22, 2003, Mr. Flowers contacted the EEOC and complained that he had  
21 been discriminatorily discharged by IBM because of his age. The EEOC sent him a questionnaire the  
22 same day, which Mr. Flowers promptly completed and returned on January 28, 2003. The Pittsburgh  
23 office of the EEOC subsequently scheduled an appointment with Mr. Flowers on February 28, 2003, at  
24 which time he filed a Charge of Discrimination alleging age discrimination with his state fair  
25 employment practice agency and the EEOC. On or about July 29, 2003, the EEOC issued him a  
26 Notice of Right to Sue on his Charge. Copies of the letter showing Mr. Flowers' initial contact with  
27 the EEOC on January 22, 2003, the questionnaire which he prepared on January 28, 2003, and the  
28

1 Charge and Notice are attached to this Third Amended Complaint as Exhibits 7, 8, 9, and 10,  
2 respectively.

3 **Barry Gerard**

4 19. Plaintiff Barry Gerard was born on May 14, 1952. He currently is, and at the time of  
5 his termination from IBM was, a resident of Jericho, Vermont. He worked for IBM for over 25 years.  
6 He began his career with IBM on June 27, 1978, and ultimately attained the position of IT Specialist  
7 for IBM in Essex Junction, Vermont. He received consistently good performance evaluations  
8 throughout his career with IBM. On October 1, 2003, IBM notified Mr. Gerard that effective  
9 December 31, 2003, he would be terminated from his employment as part of the IBM Application  
10 Management Services Resource Action (AMSA). IBM's termination of Mr. Gerard was  
11 discriminatorily based on his age.

12 20. Mr. Gerard accepted IBM's severance package and signed IBM's Release.

13 21. On January 7, 2004, Mr. Gerard filed a Charge of Discrimination alleging age  
14 discrimination with the Vermont Attorney General's office and the EEOC. On or about June 13, 2005,  
15 the EEOC issued him a Notice of Right to Sue on his Charge. Copies of that Charge and Notice are  
16 attached to this Third Amended Complaint as Exhibits 11 and 12, respectively.

17 **Tina Gleisner**

18 22. Plaintiff Tina Gleisner was born on January 20, 1951. She currently is, and at the time  
19 of her termination from IBM was, a resident of Portsmouth, New Hampshire. She worked for IBM for  
20 nearly 29 years. She began her career with IBM in 1973, and ultimately attained the position of  
21 Product Marketing Manager, working out of her home in New Hampshire under the direction and  
22 control of, and reporting to, IBM's Software Group Division in San Jose, California. She received  
23 consistently good performance evaluations throughout her career with IBM. On May 22, 2002, IBM  
24 notified Ms. Gleisner that effective June 21, 2002, she would be terminated from her employment as  
25 part of the IBM Software Group Resource Action (ISWG). IBM's termination of Ms. Gleisner was  
26 discriminatorily based on her age.

27 23. Ms. Gleisner did not accept IBM's severance package nor did she sign IBM's Release.  
28

1           24.     On December 2, 2002, Ms. Gleisner filed a Charge of Discrimination alleging age  
2 discrimination with the New Hampshire Human Rights Commission and the EEOC. On or about  
3 January 3, 2005, the EEOC issued her a Notice of Right to Sue on her Charge. Copies of that Charge  
4 and Notice are attached to this Third Amended Complaint as Exhibits 13 and 14, respectively.

5     **Thomas Gomez**

6           25.     Plaintiff Thomas Gomez was born on October 18, 1950. He currently is, and at the time  
7 of his termination from IBM was, a resident of San Jose, California. He worked for IBM for over 28  
8 years. He began his career with IBM in 1974, and ultimately attained the position of Senior  
9 Mechanical Designer for IBM in San Jose, California. He received consistently good performance  
10 evaluations throughout his career with IBM. On January 27, 2004, IBM notified Mr. Gomez that  
11 effective March 29, 2004, he would be terminated from his employment as part of the IBM Systems  
12 Group Resource Action (ISGA). IBM's termination of Mr. Gomez was discriminatorily based on his  
13 age.

14           26.     Mr. Gomez accepted IBM's severance package and signed IBM's Release.

15           27.     On November 8, 2004, Mr. Gomez filed a Charge of Discrimination alleging age  
16 discrimination with the California Department of Fair Employment and Housing and the EEOC. On or  
17 about January 10, 2005, the EEOC issued him a Notice of Right to Sue on his Charge. Copies of that  
18 Charge and Notice are attached to this Third Amended Complaint as Exhibits 15 and 16, respectively.

19     **Edwin "Dana" Goodloe**

20           28.     Plaintiff Edwin "Dana" Goodloe was born on December 6, 1952. He currently is, and  
21 at the time of his termination from IBM was, a resident of Carrollton, Texas. He worked for IBM for  
22 over 18 years. He began his career with IBM on June 3, 1985, and ultimately attained the position of  
23 Technical Sales Specialist for IBM in Dallas, Texas. He received consistently good performance  
24 evaluations throughout his career with IBM. On or about August 31, 2003, IBM notified Mr. Goodloe  
25 that effective October 31, 2003, he would be terminated from his employment as part of the IBM IGS  
26 Integrated Technology Services Resource Action (GSTS). IBM's termination of Mr. Goodloe was  
27 discriminatorily based on his age.  
28

1           29.     Mr. Goodloe accepted IBM's severance package and signed IBM's Release.

2           30.     On April 9, 2004, Mr. Goodloe filed a Charge of Discrimination alleging age  
3 discrimination with the Texas Commission on Human Rights and the EEOC. On or about May 28,  
4 2004, the EEOC issued him a Notice of Right to Sue on his Charge. Copies of that Charge and Notice  
5 are attached to this Third Amended Complaint as Exhibits 17 and 18, respectively.

6     **Rolf Marsh**

7           31.     Plaintiff Rolf Marsh was born on September 19, 1942. He currently is, and at the time  
8 of his termination from IBM was, a resident of Nine Mile Falls, Washington. He worked for IBM for  
9 approximately 16 years. He began his career with IBM in June 1987, and ultimately attained the  
10 position of Senior IT Specialist for the Business Consulting Services Unit of IBM's Global Services  
11 Division in Spokane, Washington. He received consistently good performance evaluations throughout  
12 his career with IBM. On March 4, 2003, IBM notified Mr. Marsh that effective April 4, 2003, he  
13 would be terminated from his employment. IBM's termination of Mr. Marsh was discriminatorily  
14 based on his age.

15           32.     Although Mr. Marsh's termination was not a part of a group resource action, Mr. Marsh  
16 was given and accepted the same severance package and signed the same Release that IBM provided to  
17 employees it terminated as part of the group resource actions.

18           33.     On July 8, 2003, Mr. Marsh filed a Charge of Discrimination alleging age  
19 discrimination with the New York Division of Human Rights and the EEOC. On or about August 22,  
20 2003, the EEOC issued him a Notice of Right to Sue on his Charge. Copies of that Charge and Notice  
21 are attached to this Third Amended Complaint as Exhibits 19 and 20, respectively.

22     **Daniel Moczan**

23           34.     Plaintiff Daniel Moczan was born on January 21, 1949. He currently is, and at the time  
24 of his termination from IBM was, a resident of Brooklyn, New York. He worked for IBM for  
25 approximately 24 years. He began his career with IBM in 1978, and ultimately attained the position of  
26 Account Customer Engineer for IBM's Global Services Division at JPMorgan Chase in Brooklyn,  
27 New York. He received consistently good performance evaluations throughout his career with IBM.  
28



1 On April 2, 2002, IBM notified Mr. Moczan that effective May 2, 2002, he would be terminated from  
2 his employment with IBM. Upon information and belief, the termination was part of the IBM IGS  
3 Integrated Technology Service Resource Action (IITS). IBM's termination of Mr. Moczan was  
4 discriminatorily based on his age.

5 35. Mr. Moczan accepted IBM's severance package and signed IBM's Release.

6 36. On May 2, 2002, Mr. Moczan filed a Charge of Discrimination alleging age  
7 discrimination with the EEOC. On or about August 21, 2003, the EEOC issued him a Notice of Right  
8 to Sue on his Charge. Copies of that Charge and Notice are attached to this Third Amended Complaint  
9 as Exhibits 21 and 22, respectively.

10 **James Payne**

11 37. Plaintiff James Payne was born on May 18, 1946. He currently is a resident of Bend,  
12 Oregon. At the time of his termination from IBM he was a resident of Morgan Hill, California. He  
13 worked for IBM for 23 years. He began his career with IBM in 1979, and ultimately attained the  
14 position of Senior Mechanical Design Specialist for IBM in San Jose, California. He received  
15 consistently good performance evaluations throughout his career with IBM. On July 15, 2002, IBM  
16 notified Mr. Payne that effective August 15, 2002, he would be terminated from his employment as  
17 part of the Storage Systems Group Resource Action (STSG). IBM's termination of Mr. Payne was  
18 discriminatorily based on his age.

19 38. Mr. Payne accepted IBM's severance package and signed IBM's Release.

20 39. On October 17, 2002, Mr. Payne filed a Charge of Discrimination alleging age  
21 discrimination with the California Department of Fair Housing and Employment and the EEOC. On or  
22 about July 9, 2003, the EEOC issued him a Notice of Right to Sue on his Charge. Copies of that  
23 Charge and Notice are attached to this Third Amended Complaint as Exhibits 23 and 24, respectively.

24 **Antonio Rivera**

25 40. Plaintiff Antonio Rivera was born on May 9, 1952. He currently is, and at the time of  
26 his termination from IBM was, a resident of Poughquag, New York. He worked for IBM for 22 years.  
27 He began his career with IBM in 1980, and ultimately attained the position of Program Manager for  
28

1 the Business Innovations Services Group in IBM's Global Services Division in Somers, New York.  
2 He received consistently good performance evaluations throughout his career with IBM. On May 29,  
3 2002, IBM notified Mr. Rivera that effective June 28, 2002, he would be terminated from his  
4 employment as part of the IGS Headquarters and Staff Resource Action (GHQS). IBM's termination  
5 of Mr. Rivera was discriminatorily based on his age.

6 41. Mr. Rivera accepted IBM's severance package and signed IBM's Release.

7 42. On February 22, 2003, Mr. Rivera wrote Cari Dominguez at the EEOC and provided  
8 detailed information showing what he alleged was blatant age discrimination. On March 14, 2003, Mr.  
9 Rivera filed a Charge of Discrimination alleging age discrimination with the EEOC and again provided  
10 similar data. On or about July 31, 2003, the EEOC issued him a Notice of Right to Sue on his Charge.  
11 Copies of the February 22, 2003 letter and that Charge and Notice are attached to this Third Amended  
12 Complaint as Exhibits 25, 26, and 27, respectively.

13 **Defendant**

14 43. Defendant IBM is a corporation organized under the laws of the State of New York,  
15 with corporate headquarters in Armonk, N.Y.

16 44. IBM is the second largest information technology company in annual revenues in the  
17 world. It manufactures and sells computer hardware, software, infrastructure services and consulting  
18 services. It employs over 320,000 people worldwide, including approximately 130,000 in the United  
19 States. For fiscal year 2006, IBM reported revenues of \$91.4 billion.

20 45. At all times relevant to this complaint, IBM has been engaged in an industry affecting  
21 commerce as defined by 29 U.S.C. §§ 630(a) and (b). At all times relevant to the complaint, IBM has  
22 operated at various locations throughout the United States, including, but not limited to, in San Jose,  
23 California; Tucson, Arizona; Boulder, Colorado; Atlanta, Georgia; East Fishkill, Endicott,  
24 Poughkeepsie, Somers, and Yorktown Heights, New York; Charlotte and Research Triangle Park,  
25 North Carolina; Beaverton and Portland, Oregon; Austin, Texas; and Essex Junction, Vermont.

1                   **FACTS RELATING TO THE PATTERN OF INTENTIONAL AND**  
2                   **SYSTEMIC AGE DISCRIMINATION IN GROUP AND INDIVIDUAL**  
3                   **TERMINATIONS BY IBM**

4           46.     Upon information and belief, in 1992, IBM recorded a nearly \$5 billion loss, which was  
5           at that time the largest single-year corporate loss in United States' history.

6           47.     Subsequently, in February 1993, IBM announced its first ever involuntary termination  
7           of employees.

8           **Group Terminations/Resource Actions**

9           48.     Since February 1993, and pertinent to the time period covered by this Third Amended  
10           Complaint, from July 1, 2001 through May 4, 2005, IBM conducted involuntary group terminations of  
11           its workforce, called Resource Actions, purportedly intended to eliminate job functions and to reduce  
12           costs.

13           49.     Upon information and belief, since July 1, 2001 through May 4, 2005, IBM  
14           implemented at least 50, and perhaps more, Resource Actions throughout the United States. These  
15           Resource Actions have resulted in tens of thousands of IBM workers being terminated from their  
16           employment.

17           50.     IBM carried out the Resource Actions pursuant to standardized practices, procedures  
18           and forms developed by its corporate office and implemented uniformly throughout the company.  
19           Specifically, in determining which employees to terminate in the Resource Actions, IBM developed  
20           and utilized uniform procedures for "work elimination" and "staff reductions" that allowed managers  
21           directly responsible for making termination decisions to use highly subjective criteria and to substitute  
22           ageist stereotypes for objective, job-related and age-neutral criteria.

23           51.     In implementing the Resource Actions, IBM engaged in a pattern or practice of age  
24           discrimination by treating younger employees more favorably than older employees including, but not  
25           limited to, in the following specific ways:

26                   a.     Generally refusing to consider older individuals selected for termination,  
27           including Plaintiffs, for placement elsewhere in the company ;

1           b.       Retaining employees under the age of 40 and/or substantially younger than  
2 individuals selected for termination to perform work formerly performed by individuals 40 years of  
3 age or older who were selected for termination, including Plaintiffs;

4           c.       Hiring individuals under the age of 40 to perform work formerly performed by  
5 individuals 40 years of age or older who were selected for termination, including Plaintiffs;

6           d.       Recruiting extensively for new employees at colleges and universities, where  
7 IBM could expect largely to find job candidates under the age of 40, and exempting IBM employees  
8 who were recent college/university graduates for consideration for termination;

9           e.       Terminating employees over the age of 40 in order to no longer have to  
10 contribute funds to their Future Health Accounts;

11           f.       Making age-related statements and/or stereotypical comments based on age; and

12           g.       Relying upon highly subjective criteria and ageist stereotypes in determining  
13 which employees to target for Resource Action terminations resulting in adverse impact upon older  
14 workers.

15           52.     Under the Older Workers Benefit Protection Act (“the OWBPA”), 29 U.S.C. §  
16 626(f)(1) , an employer implementing a group termination must provide information relating to the job  
17 titles and ages of those selected for termination and the corresponding information relating to  
18 employees in the same job titles who were not selected for termination. Review of such information  
19 for 33 Resource Actions implemented by IBM from July 1, 2001 through May 4, 2005, reveals that  
20 employees 40 years of age or older were significantly more likely to be terminated than employees  
21 under the age of 40, and the likelihood of being terminated increased substantially with each  
22 incremental increase above the age of 40.

23           53.     In addition to the foregoing facts, Plaintiffs William Syverson, Patrick Boone, Lee  
24 Deshler, Robert Flowers, Barry Gerard, Tina Gleisner, Thomas Gomez, Edwin “Dana” Goodloe,  
25 Daniel Moczan, James Payne, and Antonio Rivera are “similarly situated” in that:

26           a.       All were 40 years of age or older when IBM terminated them;

27           b.       All were terminated by IBM as part of Resource Actions that span the relevant  
28 time frame of July 1, 2001 through May 4, 2005;

- 1 c. All were subjected to Resource Actions tainted by IBM's culture of age bias;
- 2 d. All were subjected to the same uniform and subjective procedures for "work  
3 eliminations" and "staff reductions;"
- 4 e. All had the same performance evaluation system in place at the particular time  
5 they were terminated;
- 6 f. All were satisfactory (or better) performers just before they were terminated and  
7 during their IBM careers;
- 8 g. All were provided OWBPA "Age and Title Information Reports" stating they  
9 were being selected for termination "on the basis of one or more of the following criteria[:] ... work  
10 elimination ... [and/or] staff reduction and restructuring;"
- 11 h. All were offered the same severance package formula;
- 12 i. All were eligible for the same or substantially similar benefits;
- 13 j. All were presented with the same Release; and
- 14 k. Upon termination, IBM followed the same corporate-developed and uniform  
15 separation checklist and procedures with each of them.

16 **Individual Terminations**

17 54. In addition to conducting group terminations or Resource Actions, during the period  
18 July 1, 2001 through May 4, 2005, IBM also terminated, through terminations independent of  
19 Resource Actions, hundreds if not thousands of other employees in the United States.

20 55. These individual terminations were part of IBM's nationwide plan and/or practice of  
21 intentionally or, in effect, periodically purging its workforce of older workers.

22 56. IBM carried out the individual terminations due to work elimination and/or staff  
23 reductions pursuant to standardized practices, procedures and forms developed by its corporate office  
24 and implemented uniformly throughout the company. Under these procedures managers directly  
25 responsible for making such termination decisions are delegated authority to make such termination  
26 decisions based on their own subjective preferences and/or engage in conscious or unconscious ageist  
27 stereotypes and biases, rather than relying on neutral, objective and job-related criteria and individual  
28

1 qualifications. As a result of these practices, older workers are discriminated against in selection for  
2 terminations due to work elimination and/or staff reductions.

3 57. In addition, IBM failed to provide sufficient oversight of these managers' decisions to  
4 insure that they were not being carried out with age-discriminatory intent and/or did not have an  
5 adverse impact on older workers.

6 58. In implementing the individual terminations due to work elimination and/or staff  
7 reductions, IBM engaged in a pattern or practice of age discrimination by treating younger employees  
8 more favorably than older employees including, but not limited to, in the following specific ways:

9 a. Generally refusing to consider older individuals selected for termination,  
10 including Plaintiffs, for placement elsewhere in the company;

11 b. Retaining employees under the age of 40 and/or substantially younger  
12 than individuals selected for termination to perform work formerly performed by individuals 40 years  
13 of age or older who were selected for termination, including Plaintiffs;

14 c. Hiring individuals under the age of 40 to perform work formerly  
15 performed by individuals 40 years of age or older who were selected for termination, including  
16 Plaintiffs;

17 d. Recruiting extensively for new employees at colleges, where IBM could  
18 expect largely to find job candidates under the age of 40, and exempting IBM employees who were  
19 recent college/university graduates for termination;

20 e. Terminating employees over the age of 40 in order to no longer have to  
21 contribute funds to their Future Health Accounts; and

22 f. Making age-related statements and/or stereotypical comments based on  
23 age.

24 59. On information and belief, the impact of IBM's individual terminations was similar to  
25 that of its group terminations. Employees 40 years of age or older were significantly more likely to be  
26 terminated than employees under the age of 40, and the likelihood of being terminated increased  
27 substantially with each incremental increase above the age of 40.

28







1 award Plaintiff and other similarly situated persons such other and further relief as the Court deems  
2 just and proper.

3 An Order awarding Plaintiffs and other similarly situated persons their reasonable costs,  
4 including litigation related expenses and attorneys' fees.

5  
6 Dated: November 6, 2007 McTEAGUE, HIGBEE, CASE, COHEN, WHITNEY & TOKER, PA

7  
8 By \_\_\_\_\_  
9 JEFFREY NEIL YOUNG  
10 PATRICK McTEAGUE  
11 Attorneys for Plaintiffs

12  
13 GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN

14 By /s/ Teresa Demchak  
15 TERESA DEMCHAK  
16 MORRIS BALLER  
17 Attorneys for Plaintiffs

18  
19 WYLIE, McBRIDE, PLATTEN & RENNER

20 By \_\_\_\_\_  
21 CHRISTOPHER PLATTEN  
22 Attorney for Plaintiffs

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24 **JURY DEMAND**

25 Plaintiffs demand trial by jury of all claims to the extent allowed by law, including but not  
26 limited to the provisions of the ADEA and 29 U.S.C. § 626(b).

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28 By \_\_\_\_\_  
JEFFREY NEIL YOUNG  
PATRICK McTEAGUE  
Attorneys for Plaintiffs



