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International Business Machines Corporation
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 WILLIAM SYVERSON, RUTH ALICE
BOYD, DALE CAHILL, JACK
12 FRIEDMAN, PAUL GRAMKOWSKI,
SYLVIA JONES, ROLF MARSH,
13 WALTER MASLAK, JAMES PAYNE,
and ANTONIO RIVERA, individually and
14 on behalf of others similarly situated,

15 Plaintiffs,

16 vs.

17 INTERNATIONAL BUSINESS
MACHINES CORPORATION,
18

19 Defendant.

20 INTERNATIONAL BUSINESS
MACHINES CORPORATION,
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22 Counterclaimant,

23 vs.

24 WILLIAM SYVERSON, RUTH ALICE
BOYD, DALE CAHILL, JACK
25 FRIEDMAN, PAUL GRAMKOWSKI,
SYLVIA JONES, ROLF MARSH,
26 WALTER MASLAK, JAMES PAYNE,
and ANTONIO RIVERA,

27 Counter-Defendants.
28

No. C-03-04529-RMW

COUNTERCLAIM

JURY DEMANDED

1 Assuming the position of counterclaimant, defendant International Business Machines
2 Corporation (“IBM”) asserts the following counterclaim against plaintiffs William Syverson, Ruth Alice
3 Boyd, Dale Cahill, Jack Friedman, Paul Gramkowski, Sylvia Jones, Rolf Marsh, Walter Maslak, James
4 Payne, and Antonia Rivera (“Counter-Defendants”) and alleges as follows.

5 **JURISDICTION AND VENUE**

6 1. The Court has jurisdiction over this counterclaim pursuant to 28 U.S.C. section 1367(a)
7 as a counterclaim ancillary to the main action brought by Counter-Defendants.

8 2. Venue in this Court is proper in that the counterclaim is ancillary to the main action
9 brought by Counter-Defendants before this Court.

10 **PARTIES**

11 3. IBM is a corporation incorporated under the laws of the State of New York with its
12 principal place of business in the State of New York.

13 4. Counter-Defendants are individuals who are former IBM employees.

14 **GENERAL ALLEGATIONS**

15 5. Between January 2001 and June 2002, Counter-Defendants were terminated from
16 employment with IBM.

17 6. Upon notice of his or her termination, IBM offered each Counter-Defendant severance
18 pay and benefits in exchange for a release (the “Release”).

19 7. Each Counter-Defendant accepted the Release and accepted severance pay and benefits
20 provided under it.

21 8. Under the Release, each Counter-Defendant waived all claims against IBM, including but
22 not limited to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq*
23 (“ERISA”).

24 9. Under the Release, each Counter-Defendant covenanted that he or she would not sue
25 IBM under ERISA for claims arising from his her termination and that, if he or she did, he or she would
26 be liable for all of IBM’s costs and expenses in defending against the suit, including reasonable
27 attorneys’ fees.

28 10. In their First Amended Complaint, Counter-Defendants assert a claim against IBM under

1 ERISA arising from the termination of their employment, *i.e.*, the very claim that they waived under the
2 Release. *See* First Amended Complaint, Count V.

3 11. Service of the First Amended Complaint upon IBM has caused IBM to incur, and will
4 continue to cause IBM to incur until the conclusion of this action and subsequent related proceedings,
5 costs and expenses, including reasonable attorneys' fees, in a total amount not yet known but which will
6 be ascertained by the time that judgment is entered in IBM's favor and against Counter-Defendants.

7 **CLAIM FOR RELIEF**
8 **(Breach of Written Contract)**

9 12. IBM incorporates by reference and re-alleges paragraphs 1 through 11.

10 13. The Release constitutes a written contract with IBM.

11 14. By suing IBM under ERISA in this action, Counter-Defendants breached the Release.

12 15. IBM has performed all obligations under the Release and/or any obligations it has under
13 the Release have been waived by Counter-Defendants.

14 16. Counter-Defendants are therefore liable to IBM for IBM's costs and expenses, including
15 reasonable attorneys' fees, based on their breach of the Release, in an amount to be ascertained at the
16 time judgment is entered in this action.

17 17. The Court should also enter a declaratory judgment that Counter-Defendants will remain
18 liable to IBM for its costs and expenses, including reasonable attorneys' fees, incurred in any subsequent
19 proceedings related to this action.

20 **RELIEF REQUESTED**

21 IBM asks the Court to enter judgment on this counterclaim in its favor and against Counter-
22 Defendants, jointly and severally, awarding to IBM:

23 1. IBM's costs and expenses, including reasonable attorneys' fees, incurred in this action, in
24 an amount to be ascertained at the time judgment is entered;

25 2. a declaration that Counter-Defendants remain liable to IBM for its costs and expenses,
26 including reasonable attorneys' fees, incurred in any subsequent proceedings related to this action; and

27 3. such further or other relief as the Court deems proper.

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Dated: February 12, 2004.

JEFFREY D. WOHL
KERRI N. HARPER
PAUL, HASTINGS, JANOFISKY & WALKER LLP

By: _____
Jeffrey D. Wohl
Attorneys for Defendant and Counterclaimant
International Business Machines Corporation

JURY DEMAND

IBM demands a jury trial on all issues properly triable to a jury on its counterclaim.

Dated: February 12, 2004.

JEFFREY D. WOHL
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By: /s/ Jeffrey D. Wohl
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