

## **STIPULATION OF SETTLEMENT AND RELEASE**

Plaintiff Dennis Callahan (“Plaintiff”) and Defendant Progress Software Corporation (“Progress” or “Defendant”) hereby enter into this Stipulation of Settlement and Release to resolve the wage and hour claims of Plaintiff, Class Members, and Participating Collective Members (as defined below).

### **RECITALS**

- A.** WHEREAS, on January 19, 2022, Plaintiff sent Defendant a letter in which he asserted that Defendant misclassified him and similarly situated Sales Representatives as exempt from overtime under federal and Massachusetts state wage laws, and asserted related claims under Massachusetts wage laws, and invited Defendant to engage in settlement negotiations;
- B.** WHEREAS, Plaintiff and Defendant agreed to engage in dialogue regarding the possibility of a resolution of the threatened wage and hour claims and, on February 10, 2022, agreed to toll the limitations period on those claims and to an exchange of information and payroll data to facilitate that dialogue;
- C.** WHEREAS, on August 31, 2022, Plaintiff and Progress (collectively, the “Parties”) participated in a full-day mediation session with the assistance of experienced wage and hour class and collective action mediator D. Charles Stohler, Esq., and were unable to reach an agreement at that session;
- D.** WHEREAS, the mediator continued working with both sides and on October 17, 2022, both sides agreed to a settlement in principle, subject to the Parties’ agreement to additional non-monetary terms;
- E.** WHEREAS, the Parties engaged in extensive additional settlement discussions, resulting in a Settlement Term Sheet fully executed on December 11, 2022;
- F.** WHEREAS, based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that litigation, if not settled now, might result in a recovery that is less favorable, and the possibility that recovery might not occur for several years, if at all, Plaintiff’s Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that the Agreement is in the best interests of the Plaintiff, Class Members, and Putative Non-Massachusetts Collective Members;
- G.** WHEREAS, Defendant has denied and continues to deny all allegations made by Plaintiff. Nonetheless, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settlement of the Litigation on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Litigation;
- H.** NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the Litigation on the following terms and conditions:

## 1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1. **Agreement.** “Agreement” means this Stipulation of Settlement and Release.
- 1.2. **Application for Final Approval.** “Application for Final Approval” means documents and materials to be filed with the Court pursuant to Section 8, seeking final approval of the settlement, Service Award, and Plaintiff’s attorneys’ fees and costs.
- 1.3. **Class Counsel.** “Class Counsel” or “Plaintiff’s Counsel” means Outten & Golden LLP and Fair Work P.C.
- 1.4. **Class List.** “Class List” means a list of all Class Members and Putative Non-Massachusetts Collective Members including their names; last known address, personal telephone number, and personal e-mail address pursuant to Progress’s business records; social security numbers to issue payments; work location(s), Eligible Workweeks, and the data necessary to calculate Eligible Workweeks and shares of the Net Fund.
- 1.5. **Class Members.** “Class Members” means Sales Representatives employed in Massachusetts during the period February 10, 2019, through March 19, 2023.
- 1.6. **Consent.** “Consent” means a consent to join form submitted pursuant to Section 5(E) below.
- 1.7. **Court.** “Court” means the Massachusetts Superior Court, Middlesex County.
- 1.8. **Cy Pres Recipient.** “Cy Pres Recipient” means Massachusetts IOLTA.
- 1.9. **Days.** “Days” means calendar days, unless otherwise noted.
- 1.10. **Defendant’s Counsel.** “Defendant’s Counsel” means Pierce Atwood LLP.
- 1.11. **Effective Date.** “Effective Date” means the later of (1) thirty-one (31) days following the Court’s issuance of the Final Approval Order (or, if the 31<sup>st</sup> day falls on a weekend or holiday, the next business day), if no appeal is taken of such Order, or; (2) the Court’s entry of a final order and judgment after any and all appeals are resolved.
- 1.12. **Eligible Workweeks.** “Eligible Workweeks” means the total number of weeks (Monday through Sunday) worked by an individual Putative Non-Massachusetts Collective Member or Class Member in a Sales Representative role while the role was classified as an exempt position between February 10, 2019 through March 19, 2023. Eligible Workweeks excludes periods of long-term leaves and any other vacation or paid time off which resulted in a workweek in which the employee took paid time off from work for an entire week.
- 1.13. **Employer Payroll Taxes.** “Employer Payroll Taxes” means all taxes and withholdings an employer is required to make pursuant to federal, state, and/or local law arising out of or based upon the payment of employment compensation in this Litigation, including but not limited to FICA, FUTA, and SUTA obligations.

Defendant shall pay Employer Payroll Taxes in addition to the Total Settlement Amount in accordance with the terms of this Agreement.

- 1.14. **Fairness Hearing.** “Fairness Hearing” means the hearing before the Court relating to the Application for Final Approval.
- 1.15. **Final Approval Order.** “Final Approval Order” means the Order entered by the Court after the Fairness Hearing, finally approving the terms and conditions of this Agreement, authorizing distribution of Settlement Checks, Service Award, and Plaintiff’s attorneys’ fees and costs, and dismissing the Litigation with prejudice.
- 1.16. **FLSA Collective.** “FLSA Collective” means a collective consisting of Participating Collective Members.
- 1.17. **Litigation.** “Litigation” refers to the proceedings before the Massachusetts Superior Court, Middlesex County Case No. 2381CV00604.
- 1.18. **Total Settlement Amount.** “Total Settlement Amount” refers to Two Million Two Hundred Twenty-Three Thousand Eight Hundred Fifty-Seven Dollars and Thirty-Six Cents (\$2,223,857.36), which is the maximum amount Defendant will be obligated to pay in connection with the settlement, subject to the Escalator Clause set forth in Section 6 herein, and inclusive of all Plaintiff’s attorneys’ fees, costs and expenses associated in any way with the Litigation and/or settlement; Service Award to Plaintiff; the costs and expenses of the Settlement Administrator; and the settlement payments to Participating Collective Members and Class Members based on the formulas set forth in Section 10.4 below, provided, however, that Defendant will be responsible for paying Employer Payroll Taxes in addition to the Total Settlement Amount.
- 1.19. **Net Fund.** “Net Fund” means the remainder of the Total Settlement Amount after deductions for: (1) the Settlement Administrator’s costs and expenses; (2) Court-approved attorneys’ fees and costs for Class Counsel; and (3) a Court-approved Service Award to Plaintiff.
- 1.20. **Notice.** “Notice” or “Notices” means the Court-approved Notice of Proposed Class Action Settlement (for Class Members) and Notice of Proposed Collective Action Settlement (for Putative Non-Massachusetts Collective Members who are not also Class Members), as authorized in the Preliminary Approval Order.
- 1.21. **Objection Statement.** “Objection Statement” means a statement expressing an objection to the Settlement, submitted to the Settlement Administrator by a Class Member and filed with the Court on or before the Objection Deadline.
- 1.22. **Objection Deadline.** “Objection Deadline” means the deadline for Class Member Objection Statements, if any.
- 1.23. **Objector.** “Objector” means an individual who properly submits an Objection Statement to the settlement.
- 1.24. **Participating Collective Members.** Participating Collective Members means Putative Non-Massachusetts Collective Members who submit Consents in

accordance with the terms of the Agreement and the provisions of Section 216(b) of the Fair Labor Standards Collection Act (the “FLSA”), and Class Members who submit a Consent and/or negotiate settlement checks containing language that includes a release of FLSA claims.

- 1.25. **Parties.** “Parties” means Plaintiff and Defendant Progress. Each is a “Party.”
- 1.26. **Plaintiff.** “Plaintiff” means Plaintiff Dennis Callahan.
- 1.27. **Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court: (1) conditionally certifying the Massachusetts Class solely for the purpose of settlement (2) preliminarily approving the terms and conditions of this Agreement; (3) appointing Class Counsel as defined above; (4) directing the manner and timing of providing Notice to Class Members and Putative Non-Massachusetts Collective Members; and (5) setting dates to effectuate the terms of this Agreement, including the Objection Deadline and the date of the Fairness Hearing.
- 1.28. **Progress or Defendant.** “Progress” or “Defendant” means Defendant Progress Software Corporation.
- 1.29. **Putative Non-Massachusetts Collective Members.** “Putative Non-Massachusetts Collective Members” means Sales Representatives employed by Progress outside Massachusetts during the period of February 10, 2019, through March 19, 2023.
- 1.30. **Qualified Settlement Fund.** “Qualified Settlement Fund” or “QSF” means the account established by the Settlement Administrator for the Total Settlement Amount paid by Defendant. The QSF will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s Orders for Preliminary Approval and Final Approval. Interest, if any, earned on the QSF, shall become part of the Net Fund.
- 1.31. **Released Parties.** “Released Parties” means Progress and its parents, subsidiaries and affiliated corporations, predecessors, and successors, and all current and former directors, officers, employees, agents, insurers, investors, and attorneys.
- 1.32. **Sales Representatives.** “Sales Representatives” means the following exempt-classified positions: Business Generation Representative, Associate; Business Generation Representative, Senior; Inside Account Executive; Inside Account Manager; Inside Account Manager, Senior; Inside Partner Account Manager; Inside Partner Account Manager, Senior; Inside Sales Representative; Inside Sales Representative, Associate; and Inside Sales Representative, Senior.
- 1.33. **Settlement Administrator.** “Settlement Administrator” means ILYM Group, Inc.
- 1.34. **Settlement Checks.** “Settlement Checks” means checks issued to Participating Collective Members and Class Members for their share of the Net Fund in accordance with this Agreement.

## 2. PROCEDURAL ISSUES

- A. **Complaint.** Plaintiff filed the Complaint asserting the following claims on behalf of the Class Members and on behalf of the Putative Non-Massachusetts Collective Members on March 2, 2023: (1) failure to pay overtime in violation of the FLSA; and (2) failure to pay overtime in violation of Massachusetts General Law c. 149, §§ 148, 150, *et seq.* and c. 151, §§ 1, *et seq.*
- B. **Jurisdiction and Venue.** The Parties mutually consent to jurisdiction in the Massachusetts Superior Court, Middlesex County.

3. **SETTLEMENT ADMINISTRATOR**

- A. **Retention.** The Settlement Administrator was selected by Class Counsel through a competitive bidding process and was approved by Defendant.
- B. **Funding Settlement Administrator.** The Settlement Administrator's costs and expenses, shall be paid from the Total Settlement Amount.
- C. **Responsibilities of Settlement Administrator.** The Settlement Administrator shall be responsible for: preparing, printing, and disseminating to Class Members and Putative Non-Massachusetts Collective Members the Notices, as provided herein; performing a skip trace up to two (2) times and resending promptly any Notices returned without a forwarding address or resending to those with a new forwarding address; responding to requests or communications made by the Parties; preparing, monitoring, and maintaining a website where Class Members and Putative Non-Massachusetts Collective Members can review information regarding the settlement, submit Consents, and update contact information; keeping track of Objections, or otherwise, including maintaining the original mailing envelope in which the Objection was mailed; providing counsel for the Parties with copies of all Objection Statements submitted by Class Members; providing Plaintiff's Counsel and Defendant's Counsel with a list of the names, addresses, contact information, and estimated/final awards for Putative Non-Massachusetts Collective Members and Class Members; distributing the Settlement Checks to Class Members and Participating Collective Members; preparing, sending, and/or wire-transferring Class Counsel's Court-approved attorneys' fees and costs; mailing the Service Award in accordance with this Agreement and the Final Approval Order; monitoring and maintaining a dedicated email address for inquiries and address updates from Class Members and Putative Non-Massachusetts Collective Members, and referring to Class Counsel all inquiries regarding matters not within the Settlement Administrator's duties specified herein; timely responding to all inquiries of Class Counsel and Defendant's Counsel consistent with the Settlement Administrator's duties specified herein; promptly apprising counsel for the Parties of the activities of the Settlement Administrator; maintaining adequate records of its activities, including the dates of the mailing of Notices, returned mail and other communications and attempted written or electronic communications with Class Members and Putative Non-Massachusetts Collective Members; confirming in writing to Class Counsel and Defendant's Counsel its completion of the administration of the Agreement; calculating the settlement amounts; reporting on the status of the settlement administration to the parties on a weekly basis; notifying

counsel for all Parties of all timely and untimely submissions; providing a compliance affidavit in connection with the Application for Final Approval within ten (10) days of the Parties' deadline to file the Application for Final Approval; locating Class Members and Putative Non-Massachusetts Collective Members; establishing and administering the QSF; calculating and paying, as provided in Section 10.5 and elsewhere herein, all appropriate taxes and complying with all tax reporting obligations, including preparing and filing all applicable tax forms; calculating redistribution and redistributing, on a pro rata basis, any amounts from checks not cashed or otherwise negotiated after the expiration of the check cashing period to Participating Collective Members and Class Members who cashed or otherwise negotiated a check, if feasible; if redistribution to the Participating Collective Members and Class Members who cashed or otherwise negotiated a check is not feasible, distributing funds from checks not cashed or otherwise negotiated after the expiration of the check cashing period to the Cy Pres Recipient; posting notice of the Final Approval Order on the website; providing Class Counsel with information regarding the number of Eligible Workweeks associated with the Class List; and such other tasks as set forth herein, or as the Parties and the Settlement Administrator mutually agree.

**D. Access to the Settlement Administrator.** The Parties will have equal access to the Settlement Administrator and all information related to the administration of the settlement. Defendant shall provide the Settlement Administrator with the Class List and shall reasonably assist the Settlement Administrator in locating Class Members and Putative Non-Massachusetts Collective Members.

**4. PRELIMINARY APPROVAL MOTION.** Within seven (7) days after the execution of this Agreement, Class Counsel shall file a Motion for Preliminary Settlement Approval ("Preliminary Approval Motion") which shall include: (1) the proposed Notices attached hereto as Exhibits A and B; (2) a proposed Preliminary Approval Order in a form agreed to by both Parties; (3) an executed version of this Agreement; and (4) necessary documents, memorandum, affidavits, and exhibits for purposes of certifying the Massachusetts Class and FLSA Collective for settlement purposes only, and preliminarily approving the Agreement. The Preliminary Approval Motion will also seek the setting of the Objection Deadline for Class Members to object, in accordance with Section 5(E) herein, and the setting of the Fairness Hearing for final approval of the settlement before the Court at the earliest practicable date.

**5. NOTICE TO CLASS MEMBERS**

**A. Class List.** Within seven (7) days of the date of the Preliminary Approval Order and contingent on the Settlement Administrator executing a confidentiality agreement as referenced below, Defendant's Counsel shall provide the Settlement Administrator with the Class List. The Settlement Administrator shall execute and be bound by a confidentiality agreement under which it shall keep the Class List and its contents confidential and use it only for purposes of performing its administration duties in accordance with this Agreement.

- B. Notice Content.** The Notices will include information regarding: the nature of the Litigation, a summary of the Agreement, notice of Eligible Workweeks for each recipient and the corresponding estimated individual Net Amount (subject to Section 10.4, below), a summary of the formula used for calculating the individual Net Amount, the Eligible Workweek dispute procedure and time period for submission of a dispute regarding Eligible Workweeks, how to submit a Consent, how to object (for the Class Member Notice only), the Objection Deadline, the date for the Fairness Hearing, information regarding the requested Service Award and Plaintiff's application for attorneys' fees and costs, and a website where they can review additional information regarding the settlement, update their contact information, and submit Consents. The Parties have agreed to the Notices substantially in the forms set forth as Exhibits A and B hereto.
- C. Notice Issuance.** After the Court approves issuance of Notice in the Preliminary Approval Order, the Settlement Administrator shall send the Court-approved Notices to all Class Members and Putative Non-Massachusetts Collective Members in accordance with the requirements of the FLSA and Rule 23 of the Massachusetts Rules of Civil Procedure as indicated in the Court's order. Notice to Class Members and Putative Non-Massachusetts Collective Members will be made by First Class United States Mail, e-mail, and text message within twenty-one (21) days of the Court's Preliminary Approval Order
- D. Skip Trace and Re-mailing.** The Settlement Administrator will use all commercially reasonable means to confirm Class Members' and Putative Non-Massachusetts Collective Members' contact information and obtain new contact information as necessary. Any Notices returned as undeliverable shall be traced up to two times to obtain a new address, email address and/or cell phone number and be re-sent by First Class United States Mail and/or other means. The Settlement Administrator shall also mail and/or email a Notice to any Class Members and Putative Non-Massachusetts Collective Members who contact the Settlement Administrator or Class Counsel during the time period between the initial mailing of the Notice and the Objection Deadline and requests a Notice. The Settlement Administrator will notify Class Counsel and Defendant's Counsel of the number of Notices that are returned as undeliverable, including after any subsequent re-mailing(s) as set forth in this Agreement.
- E. Opt-in/Objection Deadline.** Unless otherwise specified by the Court in its Preliminary Approval Order, the following timeframes will apply. Class Members and Putative Non-Massachusetts Collective Members shall have sixty (60) days from the date of the initial mailing to submit to the Settlement Administrator via mail, email, or online portal a signed, written Consent to participate in the lawsuit. In addition, Class Members shall have sixty (60) days from the date of the mailing to object to the settlement. To the extent any mailed Notice is returned as undeliverable, the intended recipient shall be permitted forty-five (45) days from any re-mailing of the Notice ("Re-mailing Notice Period") or the original Notice Period, whichever is longer, to submit a Consent or to object, provided that no re-mailings will take place after the 60<sup>th</sup> day of the original period absent good cause

as determined by the Settlement Administrator. Thirty (30) days after the initial mailing of the Notice, the Settlement Administrator will also send reminder postcards by First Class U.S. Mail and reminder notices via e-mail and text messages to all Class Members and Putative Non-Massachusetts Collective Members who have not yet submitted a Consent to participate in the action and for whom the Settlement Administrator has valid address, email, and cell phone information.

6. **ESCALATOR CLAUSE.** Should the total number of Eligible Workweeks (which the Parties understand to be 13,670) increase due to any data omission or error, the Total Settlement Amount will increase by \$162.68 for each additional full workweek above 13,670 workweeks.

7. **OBJECTIONS TO SETTLEMENT**

- A. Class Members who wish to present objections to the settlement or the Agreement at the Fairness Hearing must first do so in writing (“Objection”). To be considered, such Objection must be mailed to the Settlement Administrator via First Class United States Mail and post-marked or otherwise received by the Objection Deadline. The Objection must include all reasons for objecting to the settlement or the Agreement, and any supporting documentation. The Objection must also include the name, address, telephone number, and signature for the Objector. The Settlement Administrator will stamp the date received on the original and send copies of each Objection and supporting documents, as well as a copy of the Notices mailed to the Objector, to Class Counsel and Defendant’s Counsel by email no later than three (3) days after receipt of the Objection. The Settlement Administrator shall also maintain copies of all Objections it receives, whether timely or validly submitted or not.
- B. Class Counsel shall file with the Court all timely submitted and valid Objections received from the Settlement Administrator no later than the date the Court sets for filing such Objections.
- C. An Objector who submits a timely and valid Objection has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing on his or her written Objection at the time he or she submits his or her written Objection. An Objector may withdraw his or her Objection at any time. The Court will determine in its discretion whether to hear from the Objector or the Objector’s counsel at the Fairness Hearing.
- D. The Parties may file with the Court written responses to any filed Objections no later than three (3) days before the Fairness Hearing.

8. **FAIRNESS HEARING AND APPLICATION FOR FINAL APPROVAL**

- A. After the Objection Deadline, in accordance with the schedule set by the Court in the Preliminary Approval Order and in advance of the Fairness Hearing, Class Counsel shall file supporting documents and materials for Final Approval of the settlement (“Application for Final Approval”). The Application for Final Approval



will include a compliance affidavit from the Settlement Administrator, an application for attorneys' fees, costs, and Service Award, and supporting affidavits and documents from Class Counsel regarding the fairness, adequacy, and reasonableness of the settlement or any aspect related to this Agreement, and a proposed Final Approval Order in a form agreed to by the Parties.

- B. At the Fairness Hearing and through the Application for Final Approval, the Parties shall request that the Court, among other things: (1) finally certify the Massachusetts Class for settlement purposes only; (2) approve the settlement and this Agreement as fair, reasonable, adequate, and binding on all Massachusetts Class Members; (3) approve the settlement and this Agreement as fair, reasonable, and adequate pursuant to the FLSA and binding on all Participating Collective Members and all Class Members who return a Consent and/or negotiate their Settlement Checks; (4) order the Settlement Administrator to distribute Settlement Checks to Class Members and Participating Collective Members and a Service Award, if any, to Plaintiff; (5) order the Settlement Administrator costs and expenses and Class Counsel's attorneys' fees and costs to be paid from the QSF; (6) order entry of the Final Approval Order in accordance with this Agreement; and (7) retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated hereby.
- C. The Parties waive all appeals from the Court's approval of the settlement unless the Court materially modifies the settlement without the agreement of both Parties. Plaintiff and Class Counsel do not waive the right to an appeal regarding the application for attorneys' fees and costs or Service Award.

## 9. TERMINATION OF AGREEMENT

- A. **Grounds for Settlement Termination.** In the event that the Court declines to enter the Preliminary Approval Order or the Final Approval Order, except if the Court declines to enter the Preliminary Approval Order or the Final Approval Order due solely to the amount of attorneys' fees and costs and/or the Service Award sought by Plaintiff, the Parties agree to work together in an effort to resolve any issues identified by the Court in an attempt to reach a modified agreement to resubmit to the Court for approval. If the Parties are unable to reach an agreement, then either Party has the right to terminate the Agreement. This Agreement is not contingent upon approval by the Court of Plaintiff's application for attorneys' fees and costs or Plaintiff's application for a Service Award, and if the Court approves the settlement payment amount allocated to Class Members and Participating Collective Members as set forth in this Agreement, but not the application for attorneys' fees and costs and/or the application for the Service Award, (a) the Agreement may not be terminated, and (b) any Court-required reduction of the attorneys' fees and costs and/or Service Award will be reallocated to Class Members and Participating Collective Members as part of the Net Fund.
- B. **Procedures for Termination.** To terminate this Agreement, the terminating Party shall give written notice to the other Party via email and overnight mail.

- C. Effect of Termination.** Termination shall have the following effects:
- i.** This Agreement shall be terminated as to the affected Parties and shall have no force or effect.
  - ii.** Defendant shall have no obligation to make any payments to any Party, Class Member, Participating Collective Member, or Class Counsel, except that the Parties shall be equally responsible for (a) the reasonable costs and expenses incurred by the Settlement Administrator subsequent to the signing of this Agreement; and (b) the reasonable costs and expenses incurred by the Settlement Administrator associated with the mailing of termination notice to Class Members, Putative Non-Massachusetts Collective Members, and Participating Collective Members informing them of the settlement termination, if any.
  - iii.** The Parties may jointly or individually seek reconsideration of a ruling by the Court declining to enter the Preliminary Approval Order or Final Approval Order in the form submitted by the Parties or seek Court approval of a renegotiated settlement.
  - iv.** The Litigation will resume as if no settlement had been attempted and the Agreement and all negotiations, statements, and proceedings relating thereto shall be inadmissible in any further proceedings, except in a fee petition as evidence of time spent negotiating settlement, and without prejudice to the right of any of the Parties, all of whom shall be restored to their respective positions as if no settlement had been reached, with all rights, arguments, and defenses preserved.

## **10. SETTLEMENT TERMS**

### **10.1. Settlement Amount**

- A. Total Settlement Amount.** Defendant agrees to pay a Total Settlement Amount of Two Million Two Hundred Twenty-Three Thousand Eight Hundred Fifty-Seven Dollars and Thirty-Six Cents (\$2,223,857.36), subject to the Escalator Clause in Section 6.
- B. Funding.** Within seven (7) days of the Effective Date, Progress will fund the settlement by paying the Total Settlement Amount into a Qualified Settlement Fund established by the Settlement Administrator. All attorneys' fees, expenses, and costs, as well as the Service Award, approved by the Court as set forth below shall be paid by the Settlement Administrator from the Qualified Settlement Fund.

### **10.2. Attorneys' Fees, Expenses and Costs**

- A.** At the Fairness Hearing and through the Application for Final Approval, Plaintiff will petition the Court for an award of attorneys' fees of no more than one-third of the Total Settlement Amount, plus reimbursement of actual litigation expenses and costs to be paid from the QSF ("Fees and Costs"). Defendant will not oppose this

application, including any appeal or request for reconsideration if the application is denied or modified by the Court.

- B.** The substance of Plaintiff's application for attorneys' fees and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Plaintiff's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval. Any amount not approved by the Court will become part of the Net Fund to be distributed to Class Members and Participating Collective Members.

### **10.3. Service Award**

- A.** In recognition of services rendered to the Class Members and Putative Non-Massachusetts Collective Members, Plaintiff will apply to the Court to receive up to Fifteen Thousand Dollars (\$15,000.00) as a Service Award from the Total Settlement Amount. Defendant will not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court.
- B.** The application for a Service Award is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the application for the Service Award will not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval, Final Approval Order, or the fairness and reasonableness of this Agreement. Any amount not approved by the Court will become part of the Net Fund to be distributed to Class Members and Participating Collective Members.
- C.** Plaintiff will execute the Mutual General Release set forth in Section 11.3 in exchange for receiving the requested Service Award.

### **10.4. Allocation to Class Members and Putative Non-Massachusetts Collective Members**

- A.** Class Members' and Putative Non-Massachusetts Collective Members' estimated proportionate share of the Net Fund shall be determined by the Settlement Administrator pursuant to the following formula:
  - i.** Participating Collective Members will receive one (1) point for each Eligible Workweek.
  - ii.** Class Members will receive one and one half (1.5) points for each Eligible Workweek.
  - iii.** Each Eligible Workweek shall only be counted once pursuant to Section 10.4(A)(i) or Section 10.4(A)(ii).
  - iv.** Class Members who submit a Consent will receive an additional \$50.00 in consideration for submitting the Consent.

- v. To calculate each Class Member's and Participating Collective Member's proportionate share:
  - a. Add all estimated/actual \$50 payments due under Section 10.4(A)(iv), above, and subtract from the Net Fund;
  - b. Add all points for all Class Members and Participating Collective Members together to obtain the "Denominator";
  - c. Divide the number of points for each Class Member and Participating Collective Member by the Denominator to obtain each Class Member's and/or Participating Collective Member's "Portion of the Net Fund";
  - d. Multiply each Class Member's and/or Participating Collective Member's Portion of the Net Fund by the Net Fund (minus the amount in Section 10.4(A)(v)(a));
  - e. For Class Members who submitted Consents, add \$50.00 to the number calculated in Section 10.4(A)(v)(d);
  - f. Each Class Member's or Participating Collective Member's "Net Amount" is the number calculated in Section 10.4(A)(v)(d), or Section 10.4(A)(v)(e) for Class Members who submitted a Consent;
  - g. For each Class Member and/or Participating Collective Member, their Net Amount will be the amount of their Settlement Check, subject to deductions for applicable taxes and withholdings.
- B. For purposes of the estimated calculation in Section 10.4(A), the Settlement Administrator will assume that all Putative Non-Massachusetts Collective Members will submit consents and include in the Notice the Net Amount a Class Member would receive if they returned a Consent and the Net Amount they would receive if they did not return a Consent. At the Notice stage, the calculation in Section 10.4(A)(v) will assume that every eligible Class Member will return a Consent. At the time of issuing Settlement Checks, the calculation in Section 10.4(A)(v) will be based on actual Consents returned.
- C. The Eligible Workweeks per Class Member or Putative Non-Massachusetts Collective Member shall be based on the Class List, which shall be presumed to be correct. If a Class Member or Putative Non-Massachusetts Collective Member disputes his or her Eligible Workweeks and/or the calculation of his or her Net Amount, he or she may rebut that presumption of correctness, but must provide written documentation supporting his or her contention by the Objection Deadline in any attempt to do so. The Settlement Administrator will resolve all such disputes, and the Settlement Administrator's resolution will be binding on all Parties, Class Members, and Participating Collective Members.
- D. Defendant and the Settlement Administrator shall exchange such information as is necessary for the Settlement Administrator to make proper tax withholdings and comply with tax reporting obligations as set forth in this Agreement.

**10.5. Tax Characterization**

- A. For tax purposes, fifty percent (50%) of the payments to Class Members and Participating Collective Members pursuant to Section 10.4(A) shall be treated as W-2 wage payments and fifty percent (50%) of such payments shall be treated as 1099 non-wage income as liquidated damages, statutory penalties, and interest.
- B. Payments treated as W-2 wages shall be made net of all applicable employment taxes, including, without limitation, federal, state, and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service (“IRS”) and the payee under the payee’s name and social security number on an IRS Form W-2. Payments treated as liquidated damages, statutory penalties, and interest shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee’s name and social security number on an IRS Form 1099. Payments of attorneys’ fees and costs pursuant to Section 10.2 shall be made without withholding. Class Counsel will receive a Form 1099 for this payment. Payment of the Service Award pursuant to Section 10.3 will be reported as deemed appropriate by the Settlement Administrator.
- C. The employee portion of all applicable income and payroll taxes for the individual wage payments and any tax responsibility for the individual non-wage payments shall be the sole responsibility of the Class Member or Participating Collective Member who receives such payment(s).

**10.6. Timing of Payments.** Within seven (7) days after the QSF is funded, the Settlement Administrator will mail the Service Award to Plaintiff and wire Court-approved fees and costs to Class Counsel. Within twenty-one (21) days after the Effective Date, the Settlement Administrator will mail Settlement Checks to Class Members and Participating Collective Members.

**10.7. Check Cashing Reminders.** The Settlement Administrator will send reminders via e-mail and First Class United States Mail within sixty (60) days after the initial distribution of Settlement Checks to Class Members and Participating Collective Members who have not yet cashed their Settlement Check(s) reminding them to negotiate their check(s) prior to the Void Date (as defined below). Simultaneously with the issuance of the check cashing reminders, the Settlement Administrator shall apprise Class Counsel of the names of Class Members and Participating Collective Members who have not yet cashed or otherwise negotiated their Settlement Check(s).

**10.8. Unclaimed Funds.** Any amounts initially estimated and allocated for Putative Non-Massachusetts Collective Members who do not submit Consents, plus any Class Member’s or Participating Collective Member’s Settlement Check not cashed or otherwise negotiated after the expiration of One Hundred and Twenty (120) days following the issuance of such Settlement Check (“Void Date”) shall be redistributed pro rata to Class Members and Participating Collective Members who cashed or otherwise negotiated a settlement check, or, if redistribution is

impractical on the basis that the amount remaining in the QSF is similar to or less than the cost of a second distribution, it shall be donated to the Cy Pres Recipient.

**10.9 Press Releases and Public Statements.** In order to ensure that all information provided to Class Members and Collective Members regarding the terms and conditions of this Agreement is content-neutral and has been approved by the Court in substance, the Parties agree that they will not release any press release or statement about the Agreement to the press or public, including written statements posted on Class Counsel's website. Nothing in this Section restricts any Party's ability to make statements concerning the terms and conditions of this Agreement to any federal, state, or other regulatory agency, body, or governmental authority, when such disclosure is specifically requested or required. Plaintiff and Progress agree that they will not make any public statements, whether written or oral, disparaging any other Party, including any statements tending to harm a Party's reputation, business interests, or goodwill.

## **11. RELEASE**

**11.1. Released Class Claims.** By operation of the Final Approval Order, Class Members will release and discharge the Released Parties from any and all state and local claims pled in the Complaint or that could have been pled based on the facts alleged in the Complaint and that accrued during their employment in an exempt-classified Sales Representative position, and including but not limited to all claims under M.G.L. c. 149, §§ 148, 150, *et seq.* and c. 151, §§ 1, *et seq.*, relating back to the full extent of the statutes of limitations, and continuing through March 19, 2023, including without limitation, all state and local claims for unpaid overtime wages, and related claims for liquidated damages, interest, attorneys' fees, costs, and expenses.

**11.2. Released Collective Claims.** By operation of the Final Approval Order, each Participating Collective Member and each Class Member who submits a Consent and/or negotiates a Settlement Check will release and discharge the Released Parties from all FLSA claims pled in the operative Complaint or that could have been pled based on the facts alleged in the Complaint and that accrued during their employment in an exempt-classified Sales Representative position, including but not limited to all claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, relating back to the full extent of the statutes of limitations, and continuing through March 19, 2023, including without limitation, all federal and state claims for unpaid overtime wages, and related claims for liquidated damages, interest, attorneys' fees, costs, and expenses.

The memorandum line of each settlement check shall state: **SIGNATURE REQUIRED – RELEASE AND CONSENT TO JOIN.** By signing and cashing, depositing, or otherwise negotiating this Settlement Check, (i) I consent to opt in to and release any and all overtime claims under the FLSA in the matter

in Case No. 2381CV00604 in the Massachusetts Superior Court, County of Middlesex, captioned as Dennis Callahan v. Progress Software Corporation, (ii) designate Outten & Golden LLP to represent me for all purposes in the Litigation, and (iii) agree to be bound by the Settlement approved in the Litigation.

- 11.3. Mutual General Release.** In addition to the Released Class and Collective Claims set forth above, and in consideration for the Service Award, if approved and paid according to Section 10.3 above, Plaintiff agrees to completely, irrevocably, unconditionally and generally release the Released Parties from any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages, and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected related to the Plaintiff's employment with Defendant and/or the Litigation, including but not limited to any rights or claims arising under the Massachusetts Constitution; the Massachusetts General Law; the Fair Labor Standards Act; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; federal and state family leave statutes; and any and all other federal, state and local laws, statutes, executive orders, regulations and common law, including contract, employment, and tort law, arising from the beginning of time through the date this Agreement is fully executed. Plaintiff may discover facts in addition to or different from those he now knows or believes to be true with respect to the subject matter of the Complete and General Release, but upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and all of the claims covered by the Complete and General Release. Provided, however, that Plaintiff does not release claims under the Employee Retirement Income Security Act of 1974.

In consideration of Plaintiff's execution of this Agreement, which Progress acknowledges is adequate consideration, Progress and the Released Parties hereby irrevocably and unconditionally waive, release, and forever discharge and covenant not to sue Plaintiff, from any and all claims, liabilities and causes of action of any kind which Progress and the Released Parties ever had, now have or hereafter may have against Plaintiff by reason of any matter, cause or thing whatsoever occurring on or at any time prior to the date hereof, including, but not limited to, all claims arising out of or from or regarding or pertaining to any transaction, dealing, conduct, act or omission, or any other matters or things relating to the employment relationship and/or the termination of the employment relationship, based upon any contract, whether express or implied, oral or written, tort or public policy, and claims for costs, fees or expenses.

- 11.4. Denial of Liability.** Defendant has agreed to the terms of this Agreement without in any way acknowledging any fault or liability, and with the understanding that the terms have been reached because this settlement will avoid further expense and disruption of Defendant's business due to the pendency and expense of litigation. Nothing in this Agreement shall be deemed or used as an admission of liability by

Defendant, nor as an admission that a class or collective should be certified for any purposes in this case other than settlement purposes.

## 12. INTERPRETATION AND ENFORCEMENT

- 12.1. Cooperation between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 12.2. No Assignment.** Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action.
- 12.3. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement, except that the Parties' separate Tolling Agreement dated October 26, 2022 remains in full force and effect and is not merged with this Agreement. The Tolling Agreement will be deemed terminated ten (10) business days after the Court enters a Final Approval Order. The Stipulation of Settlement and Release previously executed by the Parties on February 24, 2023, is superseded by this Agreement.
- 12.4. Binding Effect.** This Agreement shall be binding upon the Parties and their successors and/or assigns.
- 12.5. Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless expressly stated.
- 12.6. Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 12.7. Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the Commonwealth of Massachusetts, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- 12.8. Continuing Jurisdiction.** The Parties shall request the Court to retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated hereby.



- 12.9. Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties or their attorneys and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all provisions of this Agreement.
- 12.10. When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 12.11. Signatures.** This Agreement is valid and binding if signed by the Parties.
- 12.12. Facsimile, Electronic, and Email Signatures.** Any Party may execute this Agreement by signing or causing his or its counsel to sign on the designated signature block below and transmitting that signature page via facsimile, email, or other electronic means to counsel for the other Party. Any signature made and transmitted by facsimile, email, or other electronic means for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.
- 12.12. Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party has been represented by counsel throughout the Parties' negotiations and participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.
- 12.13 Notices.** Any notices or other communications issued to Class Counsel or Defendant's Counsel pursuant to the terms of this Agreement shall be sent to the following addresses:

For Plaintiff:  
Melissa L. Stewart  
Outten & Golden LLP  
685 Third Avenue, 25th Floor  
New York, NY 10017  
[mstewart@outtengolden.com](mailto:mstewart@outtengolden.com)

Kaelyn Mahar  
One California Street, 12th Floor

San Francisco, CA 94111  
[kmahar@outtengolden.com](mailto:kmahar@outtengolden.com)

For Defendant:  
Katherine Kayatta  
Pierce Atwood LLP  
Merrill's Wharf  
254 Commercial Street  
Portland, Maine 04101  
[kkayatta@pierceatwood.com](mailto:kkayatta@pierceatwood.com)

**12.14 Time periods.** In the event that any time period described in this Agreement expires or falls on a Saturday, Sunday, or legal holiday, such time period shall be extended through the following business day.

**WE AGREE TO THESE TERMS.**

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK, SIGNATURES TO THIS AGREEMENT COMMENCE ON THE NEXT PAGE]**

Dated: April 18, 2023

PROGRESS SOFTWARE CORPORATION

YuFan Stephanie Wang

By: \_\_\_\_\_

Signature:  \_\_\_\_\_  
EC047A466AF2478

Chief Legal Officer

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2023

DENNIS CALLAHAN

\_\_\_\_\_  
Dennis Callahan

Dated: \_\_\_\_\_, 2023

PROGRESS SOFTWARE CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: 4/16/3023, 2023

DENNIS CALLAHAN

Handwritten signature of Dennis Callahan, consisting of a stylized 'D' and 'C' followed by a flourish.

\_\_\_\_\_  
Dennis Callahan

# **Exhibit A**

**EXHIBIT A-1 (CLASS NOTICE)**

**OFFICIAL COURT NOTICE OF CLASS ACTION SETTLEMENT**

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

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**If you worked for Progress Software Corporation (“Progress”) in Massachusetts as a salesperson you may be entitled to a payment from a class action lawsuit settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- You have received this Notice because Progress’s records indicate that you were employed in a sales or sales-related position (see Basic Information below) covered by the settlement in Massachusetts between February 10, 2019 and March 19, 2023.
- A former Progress employee (the “Plaintiff”) has filed a lawsuit against Progress alleging that Progress misclassified certain salespeople as overtime-exempt employees and failed to pay overtime wages for all hours worked over 40 each week. Progress denies these allegations and the Court has not made any ruling about who is right. The Plaintiff and Progress have entered into a settlement to avoid further disputes and the expense and inconvenience of litigation.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT INCLUDING PAYMENT WITH CONSENT FORM], subject to Sections 7 and 8 below and deductions for applicable taxes.

**Your legal rights may be affected by this settlement, and you have some choices to make:**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>DO NOTHING NOW, CASH A SETTLEMENT CHECK</b>	If you do nothing you will release the Released Class Claims discussed in Section 10 below, and you will be sent a settlement check for approximately \$[AMOUNT], subject to applicable taxes and withholdings. If you sign and deposit the settlement check, you will also release the Released Collective Claims discussed in Section 10 below. If you do not sign and deposit your settlement check, you will still release the Released Class Claims, but not the Released Collective Claims.
<b>SUBMIT A CONSENT FORM AND OBTAIN AN</b>	If you return or submit a properly completed Consent form, you will release both the Released Class Claims and the Released Collective Claims, and you will receive an additional \$50.00 payment for submitting the Consent form. If you submit a timely and valid Consent form, your total estimated settlement payment, including the additional

<b>ADDITIONAL PAYMENT</b>	\$50.00, is approximately <b>\$[AMOUNT]</b> , subject to applicable taxes and withholdings. To be timely, the Consent form must be postmarked by or otherwise received on or before <b>[INSERT LATER OF: DATE 60 DAYS FROM NOTICE MAILING OR 45 DAYS FROM REMAILING]</b> .
<b>OBJECT</b>	If you are unhappy with the Settlement and wish to object to it, you may write to the Court and provide the reason(s) for your objection. More information about objecting is set forth in Section 13 below.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- The Court has ordered preliminary approval of the settlement, but still has to decide whether to give it final approval. Settlement payments will be made if the Court orders final approval and after any appeals from the Court’s decision are resolved. Please be patient.

**BASIC INFORMATION**

**1. Why did I get this notice?**

The Court ordered that you be sent this Notice because you have a right to know about a proposed class and collective action settlement, and about all of your options, before the Court decides whether to grant final approval to the settlement. This Notice explains the lawsuit, your legal rights, and what benefits are available.

The Court overseeing this settlement is the Massachusetts Superior Court, Middlesex County. The litigation is *Callahan v. Progress Software Corp.*, **[case number]**.

This Notice uses the terms “Class Claims” and “Collective Claims.” Class Claims are claims under Massachusetts law that are or could have been included in this lawsuit. Collective Claims are claims under the Fair Labor Standards Act that are or could have been included in this lawsuit.

**2. Am I covered by this settlement?**

Progress’s records indicate that you were employed by Progress in one or more of the following positions, in Massachusetts, between February 10, 2019 and March 19, 2023: Business Generation Representative, Associate; Business Generation Representative, Senior; Inside Account Executive; Inside Account Manager; Inside Account Manager, Senior; Inside Partner Account Manager; Inside Partner Account Manager, Senior; Inside Sales Representative; Inside Sales Representative, Associate; and/or Inside Sales Representative, Senior (collectively, “Sales Representatives”).

### **3. What is the litigation about?**

The litigation is about whether Progress misclassified Sales Representatives as overtime-exempt employees and failed to pay overtime wages for all hours worked over 40 each week. Progress denies these allegations and believes that its Sales Representatives received all wages and payments to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in this action.

### **4. Why is this a class/collective action?**

In a class action, one or more people called “class representatives” sue not only for themselves, but on behalf of other people who have similar claims. The people are called “class members” and together are the “class.” Similarly, in a collective action, one or more people can seek to represent a “collective” of similarly situated people. The individual who initiated this class/collective action is called the “Plaintiff.” In a class/collective action, the Plaintiff asks the court to resolve the issues for every member of the class and the collective.

### **5. Why is there a settlement?**

The Court did not decide in favor of Plaintiff or Progress. Both sides believe they will prevail in the litigation, but there has been no decision in favor of either party. Instead, the Plaintiff and Progress have agreed to resolve this matter to avoid the burden, expense and risks associated with continued litigation. Plaintiff and Class Counsel believe the settlement is in the best interests of all Class and Collective Members.

## **THE SETTLEMENT BENEFITS – WHAT YOU GET**

### **6. What does the settlement provide?**

Progress has agreed to pay a total of \$2,223,857.36 (the “Total Settlement Amount”). The Total Settlement Amount will be used to pay two groups of people: all Class Members and Participating Collective Members. The Total Settlement Amount will also be used to pay: Class Counsel’s attorneys’ fees of up to \$741,285.78 (one-third of the Total Settlement Amount), actual litigation expenses and costs of up to \$XXX, a Service Award of \$15,000.00 to the Plaintiff, and the Settlement Administrator’s fees and costs of up to \$XXX.

### **7. How much will my settlement payment be and how was it calculated?**

Based on the formula that has been preliminarily approved by the Court, your settlement payment, if you submit a Consent form, is estimated to be \$[AMOUNT]. If you **do not** submit a Consent form, your settlement payment is estimated to be \$[AMOUNT].

One half of your settlement payment is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and one half of it is not subject to deductions and will be reported on a Form 1099. Neither Class Counsel nor



Progress's counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked and the relative value of the recovery available under federal law as compared with the value of the recovery available under Massachusetts state law. The Settlement Agreement details the allocation formula. You may obtain a copy of the Settlement Agreement at [www.XXXX.com](http://www.XXXX.com).

The Settlement Administrator used information from Progress's records to calculate your payment. If you have questions about your calculation, you may contact the Settlement Administrator using the contact information below. If you dispute Progress's records and/or the calculation of your settlement payment, you must notify the Settlement Administrator and provide written documentation supporting your contention. Progress's records are presumed to be correct unless you prove otherwise with documentary evidence. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

**Settlement checks that are not cashed within 120 days of issuance will be null and void.**

## HOW YOU GET A PAYMENT

### 8. How can I get my payment?

To participate fully in the Settlement, you must submit the enclosed Consent form. Submitting the Consent form ensures that you will receive the total amount to which you are entitled under the Settlement. If you submit the Consent form, you will receive an estimated settlement payment of \$[AMOUNT]. If you do not submit a Consent form, you will still be included in the Settlement, but you will receive an estimated settlement payment of \$[AMOUNT].

To receive the higher settlement payment, your signed, valid Consent form must be postmarked by, or otherwise received on or before, [INSERT LATER OF: DATE 60 DAYS FROM NOTICE MAILING OR 45 DAYS FROM REMAILING].

You may return the Consent form in the pre-stamped return envelope or by mailing, emailing, faxing, or submitting it electronically to the Settlement Administrator:

[INSERT SETTLEMENT ADMINISTRATOR CONTACT]

To be effective, the Consent form must be completed in full and signed.

Payments will be sent by mail. If your mailing address has changed, please contact the Settlement Administrator or update your address at [www.XXXX.com](http://www.XXXX.com).

### 9. When will I get my settlement payment?

The Court is scheduled to hold a hearing on \_\_\_\_\_, at \_\_\_\_\_ to determine whether to give final approval to the settlement. If the Court grants final approval, Progress will fund the settlement

within seven days after the settlement's Effective Date and the Settlement Administrator will mail your payment twenty-one days after the Effective Date. Please be patient and let the Settlement Administrator know if your mailing address changes.

#### **10. What am I giving up by releasing my claims?**

If you submit a Consent form or cash your settlement check, you will release the Released Collective Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Progress asserting the claims pled in the Complaint or that could have been pled based on the facts alleged in the Complaint and that accrued during your employment as an exempt-classified Sales Representative, relating back to the full extent of the statutes of limitations, and continuing through March 19, 2023, including, without limitation, all federal claims for unpaid overtime wages, and related claims for penalties, interest, liquidated damages, interest, attorneys' fees, costs, and expenses.

Regardless of whether you submit a Consent form or cash your settlement check, you will release the Released Class Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Progress asserting the state or local law claims pled in the Complaint or that could have been pled based on the facts alleged in the Complaint and that accrued during your employment as an exempt-classified Sales Representatives, relating back to the full extent of the statutes of limitations, and continuing through March 19, 2023, including, without limitation, all state and local claims for unpaid overtime wages, premium pay of any kind, and related claims for liquidated damages, interest, attorneys' fees, costs, and expenses.

### **THE LAWYERS REPRESENTING YOU**

#### **11. Do I have a lawyer in this case?**

The Court has decided that the lawyers at the law firms of Outten & Golden LLP and Fair Work P.C. are qualified and has appointed them to represent you, all Class Members, and all Participating Collective Members. These lawyers are called "Class Counsel." You will not be charged separately for these lawyers; their fees are being covered by the settlement fund. You do not need to retain your own attorney in order to participate as a Class Member.

#### **12. How will the lawyers be paid?**

Class Counsel will ask the Court to approve payment of up to one-third of the Total Settlement Amount for their attorneys' fees. If approved, these fees will compensate Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also ask the Court to approve payment for the out-of-pocket costs they incurred litigating the case.

### **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the settlement or some part of it.

**13. How do I tell the Court that I disapprove of the settlement?**

You can object to any portion of the settlement which you disapprove. If you do so, you must give reasons why you think the Court should not approve it. If your objection is timely and properly submitted, the Court will consider it. To object to the settlement, send a letter by First Class Mail to the Settlement Administrator saying that you object to the settlement. To be considered, the letter must include all of the following: (i) all reasons for objecting to the settlement, and any supporting documentation; and (ii) your name, address, and telephone number.

As an Objector, you also have the right to appear at the Fairness Hearing before the Court (explained in Sections 14 and 15 below) either in person or through your own counsel at your own expense. If you wish to appear at the Fairness Hearing, you should state your intention to do so in your letter to the Settlement Administrator.

Objections should be mailed to the Settlement Administrator at:

**[SETTLEMENT ADMINISTRATOR CONTACT]**

Your objection must be postmarked by or otherwise received on or before **[INSERT LATER OF: DATE 60 DAYS FROM NOTICE MAILING OR 45 DAYS FROM REMAILING]**.

## **THE COURT’S FAIRNESS HEARING**

**14. When and where will the Court decide whether to approve the settlement?**

The Court will hold the Fairness Hearing on \_\_\_\_\_ in \_\_\_\_\_.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable and will consider any properly and timely submitted objections. Please contact Class Counsel using the contact information provided in Section 17 below if you have any questions about the date and time of the Fairness Hearing.

**15. Do I have to come to the fairness hearing?**

No. Class Counsel will attend to answer questions the Court may have. But, you are welcome to attend at your own expense. If you send an objection, you do not have to attend for your objection to be considered.

## **GETTING MORE INFORMATION**

**16. Are there more details about the settlement?**

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement at [www.XXX.com](http://www.XXX.com).

**17. How do I get more information?**

If you have other questions about the settlement or want more information, you can contact Class Counsel at:

Melissa L. Stewart  
OUTTEN & GOLDEN LLP  
685 Third Avenue, 25th Floor  
New York, NY 10017  
Telephone: (212) 245-1000  
ProgressOvertimeSettlement@outtengolden.com

Kaelyn R. Mahar  
OUTTEN & GOLDEN LLP  
One California Street, 12th Floor  
San Francisco, CA 94111  
Telephone: (415) 638-8800  
ProgressOvertimeSettlement@outtengolden.com

DATED: \_\_\_\_\_, 20

**EXHIBIT A-2 (COLLECTIVE NOTICE)**

**OFFICIAL COURT NOTICE OF SETTLEMENT AND OPPORTUNITY TO JOIN**

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

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**If you worked for Progress Software Corporation (“Progress”) as a salesperson, you may be entitled to a payment from a collective action lawsuit settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- You have received this Notice because Progress’s records indicate that you were employed outside of Massachusetts in a sales or sales-related position (see Basic Information below) covered by the settlement between February 10, 2019 and March 19, 2023.
- A former Progress employee (the “Plaintiff”) filed a lawsuit against Progress alleging that Progress misclassified certain salespeople as overtime-exempt employees and failed to pay overtime wages for all hours worked over 40 each week. Progress denies these allegations and the Court has not made any ruling about who is right. The Plaintiff and Progress have entered into a settlement to avoid further disputes and the expense and inconvenience of litigation.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT], subject to deductions for applicable taxes.
- As described more fully below, to receive a settlement payment, you must submit a properly completed Consent to Join Form to the Settlement Administrator so that it is post-marked or received by **[INSERT LATER OF: 60 DAYS FROM DATE OF MAILING OR 45 DAYS FROM REMAILING]**. If you fail to timely return a Consent Form post-marked or otherwise received by **[INSERT LATER OF: 60 DAYS FROM DATE OF MAILING OR 45 DAYS FROM REMAILING]**, you will not receive any money from the settlement.

**Your legal rights may be affected by this settlement, and you have a choice to make:**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CONSENT FORM AND OBTAIN A PAYMENT</b>	By returning or otherwise submitting a properly completed Consent form, you agree to participate in the settlement and receive an estimated settlement payment of approximately \$[AMOUNT], subject to applicable taxes and withholdings. The Consent form must be postmarked by or otherwise received

	<p>on or before <b>[INSERT LATER OF: DATE 60 DAYS FROM NOTICE MAILING OR 45 DAYS FROM REMAILING]</b>.</p> <p>If you choose to participate in the settlement, you will release the Released Collective Claims discussed in Section 10 below.</p>
<b>DO NOTHING</b>	<p>If you do nothing, you will not be eligible to receive a settlement payment. You will retain your right to file your own legal action against Progress, should you choose.</p>

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- The Court has ordered preliminary approval of the settlement, but still has to decide whether to give it final approval. Settlement payments will be made if the Court orders final approval and after any appeals from the Court’s decision are resolved. Please be patient.

**BASIC INFORMATION**

**1. Why did I get this notice?**

The Court ordered that you be sent this Notice because you have a right to know about the proposed settlement of a collective action lawsuit in which you are eligible to participate, and about all of your options, before the Court decides whether to grant final approval to the settlement. This Notice explains the lawsuit, your legal rights, and what benefits are available.

The Court overseeing this settlement is the Massachusetts Superior Court, Middlesex County. The litigation is *Callahan v. Progress Software Corp.*, **[case number]**.

This Notice uses the term “Collective Claims.” Collective Claims are claims under the Fair Labor Standards Act that are or could have been included in this lawsuit.

**2. Am I covered by this settlement?**

Progress’s records indicate that you were employed by Progress outside of Massachusetts in one or more of the following positions between February 10, 2019 and March 19, 2023: Business Generation Representative, Associate; Business Generation Representative, Senior; Inside Account Executive; Inside Account Manager; Inside Account Manager, Senior; Inside Partner Account Manager; Inside Partner Account Manager, Senior; Inside Sales Representative; Inside Sales Representative, Associate; and/or Inside Sales Representative, Senior (collectively, “Sales Representatives”).

**3. What is the litigation about?**

The litigation is about whether Progress misclassified Sales Representatives as overtime-exempt employees and failed to pay overtime wages for all hours worked over 40 each week. Progress denies these allegations and believes that its Sales Representatives received all wages and payments to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in this action.

#### **4. Why is this a collective action?**

In a collective action, one or more people can seek to represent a “collective” of similarly situated people. The individual who initiated this collective action is called a “Plaintiff.” In a collective action, the Plaintiff asks the court to resolve the issues for every member of the collective.

#### **5. Why is there a settlement?**

The Court did not decide in favor of Plaintiffs or Progress. Both sides believe they will prevail in the litigation, but there has been no decision in favor of either party. Instead, the Plaintiff and Progress have agreed to resolve this matter to avoid the burden, expense and risks associated with continued litigation.

## **THE SETTLEMENT BENEFITS – WHAT YOU GET**

#### **6. What does the settlement provide?**

Progress has agreed to pay a total of \$2,223,857.36 (the “Total Settlement Amount”). The Total Settlement Amount will be used to pay two groups of people: all Class Members and Participating Collective Members. In addition, the Total Settlement Amount will be used to pay: Class Counsel for attorneys’ fees of up to \$741,285.78 (one-third of the Total Settlement Amount); actual litigation expenses and costs of up to \$XXX, a Service Award of \$15,000.00 to the Plaintiff, and the Settlement Administrator’s fees and costs of up to \$XXX.

#### **7. How much will my settlement payment be and how was it calculated?**

Based on the formula that has been preliminarily approved by the Court, your settlement payment is estimated to be \$[AMOUNT], half of which is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and half of which is not subject to deductions and will be reported on a Form 1099. Neither Class Counsel nor Progress’s counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked and the relative value of the recovery available under the federal laws as compared with the value of the recovery available under Massachusetts state laws. Settlement Agreement details the allocation formula. You may obtain a copy of the Settlement Agreement at [www.XXXX.com](http://www.XXXX.com).

The Settlement Administrator used information from Progress’s records to calculate your payment. If you have questions about your calculation, you may contact the Settlement Administrator using

the information below. If you dispute Progress's records and/or the calculation of your settlement payment, you must note your dispute on the Consent form and provide written documentation supporting your contention in connection with submitting your Consent form. Progress's records are presumed to be correct unless you prove otherwise with documentary evidence. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

**Settlement checks that are not cashed within 120 days of issuance will be null and void.**

## **HOW YOU GET A PAYMENT**

### **8. How can I get my payment?**

You must sign and return the enclosed Consent form by the deadline to be eligible to receive a settlement payment. Your Consent form must be postmarked by, or otherwise received on or before, **[INSERT LATER OF: DATE 60 DAYS FROM NOTICE MAILING OR 45 DAYS FROM REMAILING]**.

You may return the Consent form in the pre-stamped return envelope or by mailing, emailing, faxing, or submitting it electronically to the Settlement Administrator:

**[INSERT SETTLEMENT ADMINISTRATOR CONTACT]**

To be effective, the Consent form must be completed in full and signed.

If you do not submit a Consent form or submit an incomplete or invalid Consent form, you will not receive a settlement payment.

### **9. When will I get my settlement payment?**

The Court is scheduled to hold a hearing on \_\_\_\_\_, at \_\_\_\_\_ to determine whether to give final approval to the settlement. If the Court grants final approval, Progress will fund the settlement within seven days of the settlement's Effective Date, and the Settlement Administrator will mail your payment within twenty-one days after the Effective Date. Please be patient and let the Settlement Administrator know if your mailing address changes.

### **10. What am I giving up by releasing my claims?**

If you sign and return a Consent form and the Court approves the settlement, you will release the Released Collective Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Progress asserting the claims pled in the Complaint or that could have been pled based on the facts alleged in the Complaint and that accrued during your employment as an exempt-classified Sales Representative, relating back to the full extent of the statutes of limitations and continuing through March 19, 2023, including, without limitations, all federal and state claims for unpaid overtime wages, and related claims for liquidated damages, interest, attorneys' fees, costs, and expenses.



## THE LAWYERS REPRESENTING YOU

### 11. Do I have a lawyer in this case?

The Court has decided that the lawyers at the law firms of Outten & Golden LLP and Fair Work P.C. are qualified and has appointed them to represent you, all Class Members, and all Participating Collective Members. These lawyers are called “Class Counsel.” You will not be charged separately for these lawyers; their fees are being covered by the settlement fund. You do not need to retain your own attorney in order to participate as a Collective Member.

### 12. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to one-third of the Total Settlement Amount for their attorneys’ fees. If approved, these fees will compensate Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also ask the Court to approve payment for the out-of-pocket costs they incurred litigating the case.

## THE COURT’S FAIRNESS HEARING

### 13. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing on \_\_\_\_\_ in \_\_\_\_\_.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable and will consider any properly submitted objections. Please contact Class Counsel using the contact information provided in Section 16 below if you have any questions about the date and time of the Fairness Hearing.

### 14. Do I have to come to the fairness hearing?

No. Class Counsel will attend to answer questions the Court may have. But, you are welcome to come at your own expense.

## GETTING MORE INFORMATION

### 15. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement at [www.XXXXX.com](http://www.XXXXX.com) or contact Class Counsel using the information below.

### 16. How do I get more information?

If you have other questions about the settlement or want more information, you can contact Class Counsel at:

Melissa L. Stewart  
OUTTEN & GOLDEN LLP  
685 Third Avenue, 25th Floor  
New York, NY 10017  
Telephone: (212) 245-1000  
ProgressOvertimeSettlement@outtengolden.com

Kaelyn R. Mahar  
OUTTEN & GOLDEN LLP  
One California Street, 12th Floor  
San Francisco, CA 94111  
Telephone: (415) 638-8800  
ProgressOvertimeSettlement@outtengolden.com

DATED: \_\_\_\_\_, 20\_\_

**Do not contact the Court directly for any reason.**

**EXHIBIT A-3 (CONSENT FORM)**

**CONSENT FORM AND RELEASE**

**The form must be returned to the Settlement Administrator so that it is postmarked or received by online submission or email by [INSERT LATER OF: 60 DAYS FROM DATE OF MAILING OR 45 DAYS FROM REMAILING].**

I hereby consent to join and opt-in as a plaintiff for settlement purposes in the above-captioned lawsuit against Progress Software Corporation and to be bound by any adjudication of this action by the Court. I further agree to be bound by the collective action settlement. I hereby designate the law firms of Outten & Golden LLP and Fair Work P.C. to represent me in this action. I understand that if I return this Consent form and the Court approves the settlement, I will fully and completely release Progress Software Corporate and their respective affiliates, subsidiaries, predecessors, successors, and all other related entities, including but not limited to all of its incumbent and former officers, directors, owners, members, managers, shareholders, investors, agents, attorneys, employees, fiduciaries, successors, assigns, and representatives, in their individual and/or representative capacities from: all claims pled in the Complaint or that could have been pled based on the facts alleged in the Complaint, and that accrued during my employment as a Business Generation Representative, Associate; Business Generation Representative, Senior; Inside Account Executive; Inside Account Manager; Inside Account Manager, Senior; Inside Partner Account Manager; Inside Partner Account Manager, Senior; Inside Sales Representative; Inside Sales Representative, Associate; and/or Inside Sales Representative, Senior, relating back to the full extent of the statutes of limitations continuing through March 19, 2023, including, without limitation, all federal and state claims for unpaid overtime wages, including but not limited to claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and related claims for liquidated damages, interest, attorneys' fees, costs, and expenses.

\_\_\_\_\_  
Full Legal Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Maiden or other names worked under

\_\_\_\_\_  
Street Address\*

\_\_\_\_\_  
City, State and Zip Code\*

\_\_\_\_\_  
Cell phone\*

\_\_\_\_\_  
Home Telephone Number\*

\_\_\_\_\_  
E-mail Address\*

\*This information will not be filed in the public record.

**EXHIBIT A-4 (TEXT NOTICE)**

Recently you should have received a settlement notice for the Progress Software Corp. overtime settlement. Consent forms are due [INSERT]. If you did not receive or no longer have the mail or email Notice, contact the Settlement Administrator at [administrator email]. You can submit a consent form online at [website]. For questions about your legal rights, contact Outten & Golden LLP at (212) 245-1000 or ProgressOvertimeSettlement@outtengolden.com and mention the Progress Settlement. Reply \*STOP\* to prevent further notifications.

# **Exhibit B**

**EXHIBIT B-1 (CLASS REMINDER POSTCARD)**

**IMPORTANT REMINDER REGARDING  
PROGRESS SETTLEMENT**

Recently you should have received a Court-authorized Notice advising that you are eligible to receive a settlement payment from a class and collective action lawsuit against Progress Software Corp.

**IMPORTANT: Our records indicate that you have not yet submitted a Consent form. To receive your total available settlement payment, you must complete a Consent form and submit it to:**

PROGRESS SETTLEMENT ADMINISTRATOR

<ADDRESS>

<E-MAIL>

An online portal is available to submit consent forms electronically at: <WEBSITE>

Your Consent Form must be postmarked or otherwise received by **INSERT LATER OF:  
DATE 60 DAYS FROM INITIAL MAILING OR 45 DAYS FROM NOTICE  
REMAILING**.

If you have questions, you may contact the Settlement Administrator or Class Counsel, Melissa L. Stewart at Outten & Golden LLP at (212) 245-1000 or ProgressOvertimeSettlement@outtengolden.com.

**EXHIBIT B-2 (COLLECTIVE REMINDER POSTCARD)**

**IMPORTANT REMINDER REGARDING  
PROGRESS SETTLEMENT**

Recently you should have received a Court-authorized Notice advising that you are eligible to receive a settlement payment from a class and collective action lawsuit against Progress Software Corp.

**IMPORTANT: Our records indicate that you have not yet submitted a Consent form. To receive a settlement payment, you must complete a Consent form and submit it to:**

PROGRESS SETTLEMENT ADMINISTRATOR  
<ADDRESS>  
<E-MAIL>

An online portal is available to submit consent forms electronically at: <WEBSITE>

Your claim form must be postmarked or otherwise received by **INSERT LATER OF: DATE  
60 DAYS FROM INITIAL MAILING OR 45 DAYS FROM NOTICE REMAILING**.

If you have any questions, you may contact the Settlement Administrator or Class Counsel, Melissa L. Stewart at Outten & Golden LLP at (212) 245-1000 or ProgressOvertimeSettlement@outtengolden.com.

**EXHIBIT B-3 (CLASS TEXT REMINDER)**

Recently you should have received a notice for the Progress Software Corp. overtime settlement. Our records indicate that you have not returned a consent form. Consent forms are due [INSERT]. If you did not receive or no longer have the mail or email Notice, contact the Settlement Administrator to request a reissue at [administrator email]. You can submit a consent form online at [website]. For questions about your legal rights, contact Outten & Golden LLP at (212) 245-1000 or ProgressOvertimeSettlement@outtengolden.com and mention the Progress Settlement. Reply \*STOP\* to prevent further notifications.



**EXHIBIT B-4 (COLLECTIVE TEXT REMINDER)**

Recently you should have received a notice for the Progress Software Corp. overtime settlement. Our records indicate that you have not returned a consent form. To receive a settlement payment, you must return a consent form by [INSERT DATE]. If you did not receive or no longer have the mail or email Notice, contact the Settlement Administrator to request a reissue at [administrator email]. You can submit a consent form online at [website]. For questions about your legal rights, contact Outten & Golden LLP at (212) 245-1000 or ProgressOvertimeSettlement@outtengolden.com and mention the Progress Settlement. Reply \*STOP\* to prevent further notifications.