

1 Kelly M. Dermody (State Bar No. 171716)  
 Heather H. Wong (State Bar No. 238546)  
 2 LIEFF, CABRASER, HEIMANN &  
 BERNSTEIN, LLP  
 3 275 Battery Street, 30th Floor  
 San Francisco, CA 94111-3339  
 4 Telephone: (415) 956-1000  
 Facsimile: (415) 956-1008  
 5 email: kdermody@lchb.com  
 email: hwong@lchb.com

6 *(Additional counsel listed on signature page)*

7 UNITED STATES DISTRICT COURT  
 8  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 RENEE FASSBENDER AMOCHAEV,  
 DEBORAH ORLANDO, KATHRYN N.  
 11 VARNER and IVY SO, on behalf of  
 themselves and all others similarly  
 12 situated,

13 Plaintiffs,

14 v.

15 CITIGROUP GLOBAL MARKETS,  
 INC., d/b/a SMITH BARNEY,

16 Defendant.

Case No. C- 05-1298 PJH

**CLASS ACTION**

**PLAINTIFFS' MEMORANDUM OF POINTS  
 AND AUTHORITIES IN SUPPORT OF  
 MOTION FOR: (1) PRELIMINARY  
 APPROVAL OF CLASS ACTION  
 SETTLEMENT; (2) PROVISIONAL  
 CERTIFICATION OF SETTLEMENT CLASS;  
 (3) APPROVAL AND DISTRIBUTION OF  
 NOTICE OF SETTLEMENT; AND (4)  
 APPROVAL OF A SCHEDULE FOR THE  
FINAL SETTLEMENT APPROVAL PROCESS**

Date: April 30, 2007  
 Time: 9:00 a.m.  
 Courtroom: 3, 17th Floor

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<b>Page</b>
INTRODUCTION .....	1
FACTUAL AND PROCEDURAL BACKGROUND.....	1
I.    Litigation History .....	1
II.   Settlement Negotiations .....	3
SUMMARY OF SETTLEMENT TERMS.....	4
I.    Injunctive Relief.....	4
A.    Communications .....	4
B.    Branch Management/Mobility .....	4
C.    Account Distribution.....	6
1.    Power Rankings .....	6
2.    Account Distribution Policies .....	7
3.    Disputes Concerning Account Distributions.....	9
4.    Financial Life Services And Bank-Based Advisors.....	10
5.    Up-front Bonuses .....	10
6.    Retiring Financial Advisors .....	11
7.    Partnerships.....	11
8.    Leads, Call-Ins, And Walk-Ins.....	12
D.    Development Opportunities .....	14
E.    Complaint Process And Training.....	14
F.    Appointments .....	15
2.    Industrial Psychologist.....	18
G.    General Non-Discrimination Provisions .....	21
I.    Duration Of The Settlement.....	22
J.    Enforcement .....	22
K.    Monitoring .....	22
1.    Data Collection .....	22
2.    Monitoring System.....	23
3.    Reports .....	23
4.    Meetings.....	23
II.   Monetary Relief .....	23
CLASS ACTION SETTLEMENT PROCEDURE.....	24
ARGUMENT .....	25
I.    Preliminary Approval Of The Settlement Is Appropriate .....	25
A.    The Terms Of The Proposed Settlement Are Fair And Within The Range Of Reasonableness .....	26

**TABLE OF CONTENTS**  
**(continued)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<b>Page</b>
1. The Settlement Is The Product of Experienced Counsels’ Serious, Arms’ Length, Informed Negotiations.....	27
2. The Payments To The Named Plaintiffs Are Reasonable.....	28
3. The Proposed Settlement Amount And The Allocation Process Are Fair And Reasonable.....	29
4. The Settlement’s Terms Provide Meaningful Injunctive Relief.....	29
5. Plaintiffs’ Counsel Were Fully Informed When The Settlement Was Reached.....	31
6. Liability Is Contested, And The Settlement Provides Reasonable Compensation For Class Members’ Damages In Light Of Risks Of Proceeding Through Trial And Appeal.....	31
7. Trial And Appeal Of This Action Would Be Complex, Expensive And Time Consuming, And Would Delay Recovery .....	32
8. The Proposed Settlement Fund Amount Is Within The Range Of Reasonableness .....	33
II. Provisional Certification Of The Class Is Appropriate .....	33
1. Numerosity Is Satisfied .....	33
2. Commonality Is Satisfied.....	34
3. Typicality Is Satisfied .....	35
4. Adequacy Is Satisfied.....	36
5. Certification Of The Class Is Proper Under Rule 23(b).....	36
a. Final Certification Under 23(b)(2) Is Appropriate.....	36
b. Certification Under 23(b)(3) Is Appropriate .....	37
III. Plaintiffs’ Counsel Should Be Appointed As Class Counsel.....	38
IV. The Proposed Class Notice Is Appropriate .....	39
A. The Proposed Class Notice Satisfies Due Process.....	39
B. The Notice Plan And Claims Process Are Appropriate.....	39
V. The Proposed Scheduling Order; A Final Approval Hearing Should Be Scheduled.....	40
CONCLUSION .....	41

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**CASES**

*Alaniz v. California Processors, Inc.*,  
73 F.R.D. 269 (N.D. Cal. 1976)..... 26

*Amchem Products, Inc. v. Windsor*  
521 U.S. 591 (1997)..... 36, 37

*Arnold v. United Artists Theatre Circuit, Inc.*,  
158 F.R.D. 439 (N.D. Cal. 1994)..... 33

*Barefield v. Chevron U.S.A., Inc.*,  
No. C 86-2427 THE, 1987 WL 65054 (N.D. Cal. 1987)..... 35, 36

*Boyd v. Bechtel Corp.*,  
485 F. Supp. 610 (N.D. Cal. 1979) ..... 25, 26

*Brown v. Title Ticor Ins. Co.*,  
982 F.2d 386 (9th Cir. 1992)..... 37

*Churchill Village, L.L.C. v. General Elec.*,  
361 F.3d 566 (9th Cir. 2004)..... 25

*Class Plaintiffs v. City of Seattle*,  
955 F.2d 1268 (9th Cir. 1992)..... 25

*Cook v. Niedert*,  
142 F.2d 1004 (7th Cir. 1998)..... 28

*Cotton v. Hinton*,  
559 F.2d 1326 (5th Cir. 1977)..... 27

*Dukes v. Wal-Mart, Inc.*,  
474 F.3d 1214 (9th Cir. 2007)..... 33, 34, 35, 36

*Ellis v. Costco Wholesale Corp.*,  
240 F.R.D. 627 (N.D. Cal. 2007)..... 34, 36

*Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*,  
137 F.R.D. 240 (S.D. Ohio 1991) ..... 28

*General Tele. Co. of Southwest v. Falcon*,  
457 U.S. 147 (1982)..... 35

*Glass v. UBS Fin. Serv., Inc.*,  
No. C-06-4068 MMC, 2007 WL 221862 (N.D.Cal. January 26, 2007) ..... 32

*Hanlon v. Chrysler Corp.*,  
150 F.3d 1011 (9th Cir. 1988)..... passim

*In re DJ Orthopedics, Inc. Sec. Litig.*,  
No. 01-CV-2238KRBB, 2004 W.L. 1445101, at \*3 (S.D. Cal. June 21, 2004)..... 26

*In re Gen. Motors Corp. Pick-up Truck Fuel*,  
55 F.3d 768 (3d Cir. 1995)..... 24

*In re Michael Milken & Assocs. Sec. Litig.*,  
150 F.R.D. 57 (S.D.N.Y. 1993) ..... 39

*In re PaineWebber Ltd. P’ships Litig.*,  
171 F.R.D. 104 (S.D.N.Y. 1997) ..... 27

**TABLE OF AUTHORITIES**  
(continued)

		<b>Page</b>
1		
2		
3	<i>In re Tableware Antitrust Litigation</i> ,	
4	484 F.Supp.2d 1078 (N.D.Cal. 2007) .....	29
5	<i>In re Traffic Exec. Ass'n</i> ,	
6	627 F.2d 631 (2d Cir. 1980).....	26
7	<i>In re United Energy Corp. Solar Power Modules Tax Shelter Invest.</i> ,	
8	Nos. CV 87-3962KN(GX), CV 86-3538KN(GX), 1989 WL 7311, at *3 (C.D.Cal. March 9,	
9	1989) .....	27
10	<i>In re Vitamins Antitrust Litig.</i> ,	
11	Nos. MISC. 99-197(TFH), MDL 1285, 2001 WL 856292, at *4-5 (D.D.C. July 25, 2001) ....	26
12	<i>L.H. v. Schwarzenegger</i> ,	
13	No. CIV. S-06-2042 LKK/GGH, 2007 WL 662463 (E.D.Cal. Feb. 28, 2007) .....	33
14	<i>Linney v. Cellular Alaska P'ship</i> ,	
15	Nos. C-96-3008 DLJ, C-97-0203 DLJ, C-97-0425 DLJ, C-97-0457 DLJ, 1997 W.L. 450064	
16	(N.D. Cal. July 18, 1997).....	26
17	<i>Linney v. Cellular Alaska P'ship</i> ,	
18	151 F.3d 1234 (9th Cir. 1998).....	27
19	<i>Marshall v. Holiday Magic, Inc.</i> ,	
20	550 F.2d 1173 (9th Cir. 1977).....	32
21	<i>Molski v. Gleich</i> ,	
22	318 F.3d 937 (9th Cir. 2003).....	36, 37
23	<i>Murray v. Local 2620, Dist. Counsel 57, American Federation of State, County and Municipal</i>	
24	<i>Empl., AFL-CIO</i> ,	
25	192 F.R.D. 629 (N.D.Cal. 2000).....	35
26	<i>National Rural Telecom. Coop. v. DIRECTV, Inc.</i> ,	
27	221 F.R.D. 523 (C.D.Cal. 2004) .....	27
28	<i>Officers for Justice v. Civil Service Comm'n</i> ,	
29	688 F.2d 615 (9th Cir. 1982), <i>cert. denied</i> ,	
30	<i>Byrd v. Civil Service Comm'n</i> , 459 U.S. 1217 (1983).....	25
31	<i>Oppenlander v. Standard Oil Co.</i> ,	
32	64 F.R.D. 597 (D.Colo. 1974).....	27
33	<i>Ortiz v. Fibreboard Corp.</i> ,	
34	527 U.S. 815 (1999).....	37
35	<i>Robinson v. Metro-North Commuter R.R.</i> ,	
36	267 F.3d 147 (2d Cir. 2001).....	36
37	<i>Rosenburg v. Int'l Business Mach. Corp.</i> ,	
38	No. CV 06-00430 PJH, 2007 WL 2043855 (N.D.Cal. July 12, 2007) .....	32
39	<i>Safeco Corp. v. Van Bronkhorst</i> ,	
40	529 F.2d 943 (9th Cir. 1976).....	25
41	<i>Savino v. Computer Credit, Inc.</i> ,	
42	172 F.R.D. 346 (E.D.N.Y. 1997).....	33
43	<i>Staton v. Boeing</i> ,	
44	327 F.3d 938 (9th Cir. 2003).....	28, 35

**TABLE OF AUTHORITIES**  
(continued)

		<b>Page</b>
1		
2		
3	<i>Ste. Marie v. Eastern Railroad Assoc.</i> ,	
4	72 F.R.D. 443 (S.D. N.Y. 1976) .....	37
5	<i>Stender v. Lucky Stores, Inc.</i> ,	
6	No. C 88-1467 MHP, 1990 WL 192734 (N.D. Cal. June 8, 1990).....	35
7	<i>Torrisi v. Tucson Elec. Power Co.</i> ,	
8	8 F.3d 1370 (9th Cir. 1993).....	40
9	<i>Van Vranken v. Atlantic Richfield Co.</i> ,	
10	901 F. Supp. 294 (N.D. Cal. 1995) .....	28
11	<i>Weinberger v. Kendrick</i> ,	
12	698 F.2d 61 (2d Cir. 1982).....	26
13	<i>Weinberger v. Kendrick</i> ,	
14	698 F.2d 61 (2nd Cir. 1982).....	27
15	<i>Young v. Polo Retail, LLC</i> ,	
16	No. C-02-4546 VRW, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006) .....	26
17	<i>Zerkle v. Cleveland-Cliffs Iron Co.</i> ,	
18	52 F.R.D. 151 (S.D.N.Y. 1971) .....	27
19	<b>STATUTES</b>	
20	28 U.S.C. § 1404(a) .....	2
21	42 U.S.C. § 1981 .....	2
22	42 U.S.C. § 2000e .....	2
23	California’s Fair Employment and Housing Act, Govt. Code § 12940 <i>et seq.</i> .....	2
24	<b>OTHER AUTHORITIES</b>	
25	Richard Greenfield, “Rewarding the Class Representative: An Idea Whose Time Has Come,”	
26	9 <i>Class Action Reports</i> 4 (1986) .....	28
27	<b>RULES</b>	
28	Federal Rules of Civil Procedure	
	Rule 23 .....	24, 34, 36, 38
	Rule 23(a).....	33, 36
	Rule 23(a)(1) .....	33
	Rule 23(a)(2) .....	33
	Rule 23(a)(4) .....	35
	Rule 23(b) .....	33, 36
	Rule 23(b)(2).....	1, 36, 37
	Rule 23(b)(3).....	1, 37
	Rule 23(c)(2)(B).....	38, 39
	Rule 23(c)(3) .....	39
	Rule 23(e).....	24
	Rule 23(g) .....	38
	Rule 23(g)(1)(C)(i).....	38
	Rule 23(g)(1)(C)(ii).....	38

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**  
(continued)

**Page**

**TREATISES**

*4 Newberg on Class Actions*

§ 3.5.....	33
§ 11:24.....	25
§ 11.25.....	26
§ 11.26.....	29
§ 11.27.....	24
§ 11.41.....	25
§ 11.22.....	24
<i>Manual for Complex Litigation, Fourth</i> (Fed. Judicial Center 2004)	
§ 21.62.....	26
§ 21.632.....	26

## INTRODUCTION

Plaintiffs respectfully seek certification of a settlement class and request that the Court grant preliminary approval of the Settlement Agreement, attached as Exhibit 1 to the Proposed Order (“Settlement”), and as Exhibit A to the Declaration of Kelly M. Dermody In Support of Plaintiffs’ Motion for Order Granting Preliminary Approval of the Proposed Settlement Agreement (“Dermody Decl.). Subject to Court approval, the parties have settled plaintiffs’ and class members’ claims for comprehensive injunctive relief and significant monetary relief of approximately \$33,000,000 plus interest. The proposed settlement resolves all of plaintiffs’ and class members’ claims. *See* First Amend. Compl. ¶¶ 104-24.

The parties’ proposed settlement satisfies all of the criteria for preliminary approval under federal law. The settlement was negotiated at arms’ length and falls well within the range of possible approval. Not only is the monetary relief provided to class members substantial, but the extensive injunctive relief provided for in the settlement will materially advance the goal of equal employment opportunity for female Financial Advisors at Smith Barney. Accordingly, the plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement (attached as Exhibit 1 to the Proposed Order), direct distribution of class notice and a claim form (attached as Exhibits 2 and 3 to the Proposed Order), and approve the proposed schedule for final approval. Plaintiffs also respectfully request that in connection with the settlement process, the Court certify settlement classes of female Financial Advisors under Rule 23(b)(3) for monetary relief and under Rule 23(b)(2) for injunctive relief.

## FACTUAL AND PROCEDURAL BACKGROUND

### I. Litigation History

Several of the named plaintiffs first contacted plaintiffs’ counsel in 2004. Dermody Decl., at ¶ 28. Plaintiffs’ counsel commenced an extensive investigation at that time. *Id.* Plaintiffs filed a Class Action Complaint on March 31, 2005. The Complaint, filed by four named plaintiffs,<sup>1</sup> asserted claims on behalf of a class of all female Financial Advisors employed

---

<sup>1</sup> The named plaintiffs at that time were Renee Fassbender Amochaev, Deborah Orlando, Kathryn Varner, and Judy Weil. Pursuant to Stipulation, Judy Weil voluntarily withdrew as a representative plaintiff on September 15, 2006. Subsequently, Ivy So was added as a named



1 by Smith Barney in the United States and a subclass of all female Financial Advisors employed  
2 by Smith Barney in California. The Complaint asserted claims for gender discrimination under  
3 Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, and, with respect to  
4 California Class Members, the California Fair Employment and Housing Act, Cal. Gov't Code  
5 § 12940 . ("FEHA"). On November 29, 2006, pursuant to Stipulation, plaintiffs filed a First  
6 Amended Complaint ("FAC") which alleged substantially the same facts and legal claims.<sup>2</sup> *Id.* at  
7 ¶ 28.

8           Plaintiffs' counsel have actively prosecuted this case. Dermody Decl. at ¶¶ 30-39.  
9 They conducted extensive discovery, including the review of a large volume of electronic and  
10 hard-copy documents, as well as completing the depositions of the named plaintiffs and a number  
11 of senior executives at Smith Barney who were responsible for the policies and practices at issue  
12 in this litigation. Plaintiffs' counsel also obtained computerized client account data, personnel  
13 and payroll data for the class period that was provided to a statistical consulting firm for extensive  
14 analysis. *Id.* at ¶ 30. By the time the Settlement Agreement was finally negotiated, all class  
15 certification discovery had concluded, and the Court had ruled on numerous issues. *Id.* at ¶ 31.  
16 Specifically, the parties litigated a motion to transfer pursuant to 28 U.S.C. § 1404(a), a motion to  
17 enjoin discovery, multiple motions to compel, a cross-motion for a protective order, and a motion  
18 to dismiss. *Id.* In addition to their extensive review of documents and deposition testimony,  
19 plaintiffs' counsel's views were informed by expert reports analyzing numerous statistical and  
20 social-science issues. *See Id.* at ¶¶ 33 and 37.

21           The parties conducted broad, extensive, and thorough discovery related to class  
22 certification throughout 2006 and 2007. *See* Dermody Decl. ¶ 32. Altogether, the written class  
23 certification discovery conducted in this case included six (6) sets of document requests and three  
24 (3) sets of interrogatories propounded by plaintiffs, and two (2) sets of document requests and  
25  
26 plaintiff on November 29, 2006.

27 <sup>2</sup> The FAC, however, added named plaintiffs Ivy So and Lisa Strange Weatherby. The FAC also  
28 asserted a non-class claim of race discrimination on behalf of Ms. So under Title VII, FEHA, and  
Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981. On February 12, 2007, the Court  
entered an Order dismissing Lisa Strange Weatherby as a representative plaintiff.

1 interrogatories propounded by Smith Barney. *Id.* Smith Barney has produced, and plaintiffs'  
2 counsel has reviewed over 160,000 pages of documents. *Id.* at ¶ 33. Plaintiffs' counsel reviewed,  
3 and, with expert assistance, analyzed vast amounts of computerized data, including Smith  
4 Barney's client account data as well as personnel, compensation and payroll data for all Financial  
5 Advisors from 2001 through 2006. *Id.* The discovery process has been involved and thorough,  
6 and required the parties to engage in numerous and extensive meet and confer conferences  
7 concerning the scope of discovery and the analysis of the various produced electronic data files.  
8 *Id.* ¶ 34.

9 Deposition discovery was also extensive. Plaintiffs deposed eleven (11)  
10 individuals, including 30(b)(6) deponents who testified on a variety of topics, including Smith  
11 Barney's compensation, account distribution, and partnership policies; organizational structure;  
12 EEO compliance; human resources functions; training; electronic data storage; retention of  
13 documents; and internal complaint and investigation procedures. *See* Dermody Decl. at ¶ 35.  
14 Plaintiffs also defended the depositions of Ms. Amochaev, Ms. Orlando, Ms. Varner and Ms. So,  
15 each of which occurred over three (3) days. *See id.* ¶ 36.

16 Informal discovery has been extensive. Plaintiffs' experts conducted numerous  
17 sophisticated, multi-variant regression analyses related to disparities in compensation and client-  
18 account transfers. In July 2007, plaintiffs' experts completed reports, including reports prepared  
19 by a statistician and industrial and organizational psychologist, in preparation for the filing of  
20 plaintiffs' motion for class certification.<sup>3</sup> *Id.* Plaintiffs' counsel has also been in contact with  
21 more than 135 putative class members, and prepared a substantial number of class member  
22 declarations. *Id.* at ¶ 38.

## 23 **II. Settlement Negotiations**

24 The settlement was reached under the supervision of experienced mediator, Hunter  
25 Hughes, Esq. Dermody Decl. at ¶ 40. Counsel for the parties retained Mr. Hughes for his  
26 expertise in mediating many complex actions, including those involving class-based gender and  
27

28 <sup>3</sup> Although completed, plaintiffs have not submitted these reports to the Court because the parties reached a settlement prior to submission of plaintiffs' Motion in Support of Class Certification.

1 race discrimination in cases in the retail financial services sector. *Id.* Mr. Hughes conducted  
 2 multiple, lengthy mediation sessions between the parties here, both in San Francisco and New  
 3 York at various times in the calendar years 2005, 2007 and 2008. *Id.* at ¶ 41. At least one of the  
 4 named plaintiffs attended each of the mediation sessions, and all were actively involved in  
 5 shaping the relief negotiated. *Id.* Under the supervision of the mediator at all times during this  
 6 process, counsel bargained vigorously and at arms' length on behalf of their clients. *Id.* The  
 7 terms of the parties' agreement following negotiations are contained in the Settlement Agreement,  
 8 attached as Exhibit 1 to the proposed preliminary approval order.

### 9 **SUMMARY OF SETTLEMENT TERMS**

10 The proposed settlement provides comprehensive injunctive relief and substantial  
 11 monetary relief.

#### 12 **I. Injunctive Relief**

##### 13 **A. Communications**

14 Smith Barney has agreed to distribute its Non-Discrimination, Anti-Harassment  
 15 and Anti-Retaliation Policy to all employees upon hire (in hard copy or by electronic mail) and  
 16 then on an annual basis via email from Smith Barney's CEO. Employees shall be required to  
 17 submit an acknowledgment of receipt. Settlement Agreement, § VII.A.

18 In addition, the CEO of Global Wealth Management shall issue a statement  
 19 annually in support of the Policy and its underlying tenets. The Policy will be available on Smith  
 20 Barney's intranet site and will be incorporated into various other policies including Smith  
 21 Barney's Code of Conduct and its Internet and Electronic Communications Usage Policy. *Id.*

22 The Non-Discrimination, Anti-Harassment and Anti-Retaliation Policies and the  
 23 behaviors they seek to promote and prevent shall be the subject of mandatory training that all  
 24 employees will be required to complete upon hire. *Id.*

##### 25 **B. Branch Management/Mobility**

26 All available branch management positions (including minimum requirements for  
 27 qualification) will be posted to Financial Advisors who either: (i) have successfully completed  
 28 the branch management assessment program, or (ii) are already in branch management and

1 request to be informed of new management job postings. Settlement Agreement, § VII.B. These  
2 positions currently are titled: National Development Officer; Divisional Development Officers;  
3 Regional Development Officers; Sales Manager; Branch Manager; and Assistant Branch  
4 Manager. All positions will be posted for a minimum of five (5) business days. *Id.* Either the  
5 hiring manager or Human Resources will follow up with each applicant/candidate in a timely  
6 manner. In addition, Smith Barney shall develop and implement a computerized system to  
7 generate an electronic mail notification of new management job postings to Financial Advisors  
8 who either: (i) have successfully completed the branch management assessment program, or (ii)  
9 are already in branch management and request to be informed of new management job postings.  
10 *Id.*

11 Smith Barney shall post a written description of the branch management  
12 assessment program and the criteria for admission on the Firm's intranet site. *Id.*

13 An Industrial Psychologist appointed pursuant to the Settlement Agreement shall  
14 review Smith Barney's branch management assessment program and, if appropriate, make  
15 recommendations for increasing the participation of females in the branch manager assessment  
16 program (including review of the criteria for admission) and in branch management. *Id.*

17 Smith Barney shall provide all management personnel with diversity training no  
18 less than every other year. Settlement Agreement, § VII.B. The format of such training may vary  
19 from jurisdiction to jurisdiction depending on the relevant legal requirements. However, all  
20 managers shall, at a minimum, be required to complete an interactive, customized, e-learning  
21 training program. *Id.* The positions to be trained are: Divisional Directors; Regional Directors;  
22 Regional Administrative Officers; Branch Managers; Assistant Branch Managers; Sales  
23 Managers; and Operations Managers.

24 Branch Manager compensation shall have a diversity component designed to  
25 measure and reward efforts at diversifying representation rates in the Financial Advisor position,  
26 including the following areas as appropriate: recruiting, mentoring, training, retaining and  
27 promoting female Financial Advisors. Settlement Agreement, § VII.B. Smith Barney has agreed  
28 to develop and implement a standardized annual process whereby Branch Managers shall be

1 required to report on their efforts and results in promoting a diverse workforce (including, for  
2 example, their efforts to retain female Financial Advisors and their efforts to assist female  
3 Financial Advisors in, among other things, increasing their production, participating in  
4 partnerships in the branch, participating in the Franchise Protection Program, being added to the  
5 branch management bench, and obtaining promotions to branch management), and whereby  
6 senior Smith Barney management will review these efforts and take them into account when  
7 determining the diversity component of each Branch Manager's compensation. These reports on  
8 diversity efforts by Branch Managers, as well as the recommendations regarding each Branch  
9 Manager's diversity component of compensation, shall be provided to the Diversity Monitor  
10 appointed pursuant to the Settlement Agreement annually. *Id.*

11 **C. Account Distribution**

12 Under the Settlement, Smith Barney has agreed to make significant changes to its  
13 procedures for distributing accounts of departing Financial Advisors, including reducing reliance  
14 on historical factors, such as assets under management and length of service with Smith Barney,  
15 and more heavily weighting criteria that reflect recent performance. *See* Settlement Agreement,  
16 § VII.C. Smith Barney has also agreed to automate the account distribution process based on a  
17 "Power Rankings" system and to limit the exceptions that can be made to the Power Rankings.  
18 The revised Power Ranking factors are set forth in **Appendix 1** filed under seal along with the  
19 Settlement Agreement. *Id.*

20 **1. Power Rankings**

21 a. Under the Settlement Agreement, all Power Ranking factors that  
22 measure performance from the previous twelve-month period will be adjusted to encompass a  
23 twelve-month period exclusive of absence for parental leave or short-term disability leave.  
24 Settlement Agreement, § VII.C.1.a. For example, if a Financial Advisor or Financial Advisor  
25 Associate ("FAA") was on a leave of absence for four of the preceding twelve months, the  
26 previous twelve (12) months measure will instead count the last twelve (12) months that the  
27 employee was active. *Id.*

1                   b.       Smith Barney will provide the methodology for calculating the  
2 Power Rankings to each Financial Advisor, including the name of each factor, an explanation of  
3 each factor, and how each factor is weighted. Settlement Agreement, § VII.C.1.b. Upon hire,  
4 each Financial Advisor and FAA will be individually provided with the methodology of the  
5 objective measures utilized in the Power Ranking calculation and the manner in which  
6 calculations are completed and this will be available to all Financial Advisors and FAAs  
7 electronically. Smith Barney has agreed to provide notice to Financial Advisors and FAAs  
8 regarding any modification to the Power Ranking methodology. *Id.*

9                   c.       Smith Barney has agreed to inform each Financial Advisor and  
10 FAA of her or his individual ranking at the time any distribution is made. Settlement Agreement,  
11 VII.C.1.c. Smith Barney will make the actual distribution of a departing Financial Advisor's  
12 book available to a Financial Advisor and FAA in the Branch and such communication shall  
13 include the rankings and (without identification of any particular Financial Advisor or FAA by  
14 name) the number of accounts and the assets distributed to each ranked Financial Advisor and  
15 FAA. *Id.*

16                   **2.       Account Distribution Policies**

17                   a.       Smith Barney senior management will issue a comprehensive  
18 account distribution policy statement, which shall include policies covering the distribution of the  
19 accounts of departing Financial Advisors, retiring Financial Advisors (other than accounts  
20 distributed through the Franchise Protection Program), departing partners, and leads, call-ins, and  
21 walk-ins. Settlement Agreement, § VII.C.2.a. The statement shall be issued via email to all field  
22 employees and shall be posted on Smith Barney's intranet site and shall include a prohibition on  
23 discrimination. In addition, Smith Barney will train all current Branch Managers on account  
24 distribution policies and procedures at the time the settlement becomes effective, and will  
25 similarly train all new managers that are subsequently hired. *Id.*

26                   b.       The Settlement Agreement gives Branch Managers discretion to  
27 disqualify a Financial Advisor from an account distribution for improper conduct, such as, for  
28 example, if a Financial Advisor is: (1) currently on heightened supervision consistent with

1 industry standards; (2) subject to any regulatory action reportable as a “yes” answer on Form U-4  
2 questions 14C-G; (3) subject to discipline reported on Form RE-3 in the last twelve (12) months;  
3 or (4) subject to any written performance or workplace conduct warning in the last ninety (90)  
4 days and to disqualify any FAA who is not meeting minimum performance standards; provided,  
5 however, that where such an exception to the Power Ranking process is made, it shall be  
6 documented by the Branch Manager or his/her designee in writing and included in the quarterly  
7 reports on exceptions provided to the Diversity Monitor. Settlement Agreement, § VII.C.2.b.  
8 Financial Advisors and FAAs are not eligible for an account distribution if they: (1) have  
9 voluntarily opted-out of the distribution; (2) are not in the product specialty group to which the  
10 distributed accounts belong (e.g. IIG/IFG); or (3) are on parental or short-term disability leave at  
11 the time the account distribution is made. *Id.*

12 c. Where an exception is made to the Power Ranking process because  
13 of, for example, a client relationship or client service needs, each individual exception shall be  
14 documented by the Branch Manager or his/her designee in writing, including the legitimate  
15 business reasons for the exception. Settlement Agreement, § VII.C.2.c. Customer preference  
16 based on a bias against women cannot be used as a legitimate business reason for an exception,  
17 provided, however, that Smith Barney shall have no obligation to inquire as to or otherwise  
18 attempt to discover the reason for a customer preference for or against a Financial Advisor or  
19 FAA. Records of all exceptions shall be kept for purposes of monitoring policy compliance and  
20 regularly reviewed by the Regional Director and the Diversity Monitor. *Id.* The Company shall  
21 provide the Diversity Monitor quarterly reports on exceptions being made in the branches  
22 including information on the identity of the branches, the branch managers who approved the  
23 exceptions and an explanation of the exceptions. *Id.* If a Financial Advisor or FAA receives an  
24 account through an exception, that Financial Advisor or FAA will not receive another account in  
25 the same distribution until every eligible Financial Advisor and FAA has first received an account  
26 from those accounts that come next in the ranking of accounts in that distribution; provided,  
27 however, that if that Financial Advisor or FAA is the only one qualified in the branch to service a  
28 later account in the distribution, that Financial Advisor or FAA shall receive that account even if

1 not every eligible Financial Advisor and FAA has already received an account in the distribution,  
2 and such exception shall be documented in accordance with § VII.C.2.b. of the Settlement  
3 Agreement. An individual Financial Advisor or FAA who does not receive a specific account as  
4 a result of an exception shall receive the next available account in the same distribution for which  
5 he/she is qualified to service. Branch Managers who are determined to have distributed an  
6 account pursuant to any improper exception shall receive an appropriate discipline, which can  
7 include a material reduction in their annual bonus, and which discipline shall be reviewed by the  
8 Diversity Monitor in accordance with Section VII.F.1.b of the Settlement Agreement. *Id.*

9 d. The Settlement Agreement requires that Smith Barney enhance its  
10 technology to allow its account distribution process to be computer automated, subject to branch  
11 manager review to ensure compliance with regulatory requirements and consideration of the best  
12 interests of the firm's clients. Settlement Agreement, § VII.C.2.d. Account distributions will be  
13 made through this automated process, subject to exceptions described in Section VII.C.2.b. and c.  
14 of the Settlement Agreement. The results of all account distributions shall be stored and readily  
15 retrievable for monitoring to ensure compliance with account distribution policies.

### 16 **3. Disputes Concerning Account Distributions**

17 The Settlement Agreement provides that if at any time during the term of the  
18 Settlement Agreement a dispute shall arise between Smith Barney and a Financial Advisor  
19 concerning any account distribution, such dispute shall—at the written request of the Financial  
20 Advisor—go through Smith Barney's internal complaint process, which includes access to  
21 mediation. However, nothing in the Settlement Agreement prevents any Class Member or Named  
22 Plaintiff from individually pursuing any legal claim not released under this Settlement through  
23 any applicable governmental agency, arbitration forum or court of law if she is otherwise entitled  
24 to do so. If a Financial Advisor submits a gender-related complaint through Smith Barney's  
25 alternative dispute resolution system, that person shall receive a written description of the ADR  
26 process—and a written notice indicating that the statutes of limitations on her/his legal claims  
27 will be tolled for 120 days from the date of his/her submission of the ADR complaint. Settlement  
28 Agreement, § VII.C.3.



1                   **4.     Financial Life Services And Bank-Based Advisors**

2                   The Settlement Agreement provides that the changes to Smith Barney's  
3 procedures for distributing accounts of departing Financial Advisors described in the Settlement  
4 Agreement shall in no way apply to or affect: (i) Smith Barney's Financial Life Services (FLS)  
5 program or any accounts transferred or identified for transfer to FLS; or (ii) accounts serviced by  
6 Smith Barney's bank-based advisors. *See* Settlement Agreement, § VII, C.4.

7                   **5.     Up-front Bonuses**

8                   a.        The Settlement Agreement provides that the Industrial Psychologist  
9 shall review and, if appropriate, make recommendations for developing a standard and  
10 nationwide process for determining up-front bonuses, forgivable loans, and other transitional  
11 compensation packages given to lateral recruits. Settlement Agreement, § VII.C.5.a. These  
12 recommendations shall be designed to promote gender equity in the receipt and amount of  
13 transitional compensation packages—after taking into consideration factors such as the lateral  
14 recruit's production start date, production, assets under management, return on assets, product  
15 mix and any non-discriminatory factors—and shall be made in accordance with Section VII.F.2.  
16 of the Settlement Agreement. *Id.*

17                   b.        To the extent that Smith Barney does not already have such a  
18 system, with input from the Industrial Psychologist, the Settlement Agreement requires Smith  
19 Barney to develop and implement a system to keep records of all up-front bonuses, forgivable  
20 loans, and other transitional compensation packages given to lateral recruits, including the name,  
21 gender, production start date, production, assets under management, return on assets and product  
22 mix of those recruits. Settlement Agreement, § VII.C.5.6. It also requires Smith Barney to  
23 provide a summary of this information to the Diversity Monitor and Class Counsel. *Id.* The  
24 summary information will include comparative data on gender, and information on geographic  
25 location, amount of up-front bonuses, methodology used to determine the up front bonus amounts  
26 and any other factors taken into consideration in offering up-front bonuses, forgivable loans, and  
27 other transitional compensation to lateral recruits. *Id.* The Diversity Monitor will review and  
28 report on these records to the Industrial Psychologist. *Id.*

1                   **6.     Retiring Financial Advisors**

2                   a.       The Settlement Agreement requires that a book of business  
3 formerly serviced by a retiring Financial Advisor who is not participating in the Franchise  
4 Protection Program will be distributed through the Power Ranking system set forth in Sections  
5 VII.C.1. and VII.C.2. of the Settlement Agreement. Settlement Agreement, § VII.C.6.a.

6                   b.       Smith Barney will consider the efforts made by branch management  
7 to increase participation by female Financial Advisors in the Franchise Protection Program in  
8 determining the diversity component of Branch Manager compensation. Settlement Agreement,  
9 § VII.C.6.b.

10                  c.       The Industrial Psychologist shall review and, if appropriate, make  
11 recommendations to promote equitable participation of female Financial Advisors in the firm's  
12 Franchise Protection Program, including female Financial Advisors' participation as retiring  
13 brokers and receiving brokers in the Franchise Protection Program. These recommendations shall  
14 be made in accordance with Section VII.F.2. of the Settlement Agreement. Settlement  
15 Agreement, § VII.C.6.c.

16                  d.       The Diversity Monitor will review female FA participation in  
17 Franchise Protection Programs, both as retiring brokers and as receiving brokers, and will receive  
18 information from Smith Barney about the gender of persons receiving assets and the value of  
19 assets transferred. Settlement Agreement, § VII.C.6.d.

20                   **7.     Partnerships**

21                  a.       The Settlement Agreement states that in the event that a Financial  
22 Advisor or FAA who is part of a team leaves Smith Barney, the team member(s) who remain at  
23 Smith Barney will presumptively retain the book of business formerly serviced by the departing  
24 Financial Advisor, provided that the remaining team member(s) is/are qualified to service those  
25 accounts. Settlement Agreement, § VII.C.7.a. The Diversity Monitor shall receive separate semi-  
26 annual reports from Smith Barney relating to redistributed accounts from partnerships, including  
27 number of accounts, FA revenue, asset value, and gender of receiving Financial Advisor. *Id.*  
28

1                   b.       Smith Barney will consider the efforts made and results achieved  
2 by branch management to increase participation by female Financial Advisors in partnerships in  
3 the branch in determining the diversity component of Branch Manager compensation. Settlement  
4 Agreement, § VII.C.7.b.

5                   c.       The Industrial Psychologist shall review and, if appropriate, make  
6 recommendations to promote equitable participation of female Financial Advisors in partnerships  
7 and teams. These recommendations shall be made in accordance with Section VII.F.2. of the  
8 Settlement Agreement. Settlement Agreement, § VII.C.7.c.

9                   d.       For purposes of a Financial Advisor's or FAA's Power Rankings,  
10 Smith Barney will count partnership assets under management based on the percentage of the  
11 commission split specified in the Joint Production Agreement. Settlement Agreement, §  
12 VII.C.7.d.

13                   e.       All Joint Production Agreements will include a plan for the  
14 distribution of partnership assets in the event of the partnership's or team's dissolution.  
15 Settlement Agreement, § VII.C.7.e.

16                   f.       Pursuant to the Settlement Agreement, the Diversity Monitor will  
17 review female FA participation in partnerships and will receive information from Smith Barney  
18 about partnership splits based on gender and the value of assets under each partnership based on  
19 gender. The Diversity Monitor will receive copies of any complaints made to Smith Barney  
20 management or its legal counsel by female Financial Advisors regarding any aspect of  
21 partnerships. The Diversity Monitor will be advised of any partnership dissolution involving a  
22 female Financial Advisor. Settlement Agreement, § VII.C.7.f.

23                   **8.       Leads, Call-Ins, And Walk-Ins**

24                   a.       The Settlement Agreement provides that each Branch Office shall  
25 implement a "Financial Advisor of the Day" program. Settlement Agreement, § VII.C.8.a.  
26 Pursuant to this program, all client prospects who either walk in or telephone the branch and who  
27 are seeking a Financial Advisor shall be directed to the Financial Advisor serving as the Financial  
28 Advisor of the Day. The daily assignments shall be made alphabetically and announced on a

1 monthly basis on or before the last day of the preceding month. *Id.* The monthly roster shall be  
2 posted in a conspicuous location within the branch where all other Firm policies are posted.

3 Participation among eligible Financial Advisors shall be voluntary each month. *Id.*

4 b. Each Financial Advisor of the Day shall complete a “Financial  
5 Advisor of the Day Activity Log,” which will detail all telephone calls and walk-in prospects  
6 fielded by the Financial Advisor and the disposition of each. Settlement Agreement, § VII.C.8.b.  
7 The logs shall be maintained within the branch in a Financial Advisor of the Day file for the  
8 duration of the Decree. *Id.*

9 c. If a prospect insists on speaking to the Branch Manager, the Branch  
10 Manager will direct the individual to the Financial Advisor of the Day. Settlement Agreement,  
11 § VII.C.8.c. If the Branch Manager determines that the Financial Advisor of the Day is not  
12 qualified to handle the prospect’s account based on legitimate business reasons, the Branch  
13 Manager shall direct the prospect to a diverse slate of qualified Financial Advisor(s), which shall  
14 be documented by the Branch Manager and available to the Diversity Monitor in accordance with  
15 the procedure described in § VII.C.8.d. of the Settlement Agreement. Customer preference based  
16 on bias against women shall not be a legitimate reason for a prospect to be directed away from the  
17 Financial Advisor of the Day, provided, however, that Smith Barney shall have no obligation to  
18 inquire as to or otherwise attempt to discover the reason why a prospective client elects not to  
19 work with a particular Financial Advisor. *Id.*

20 d. If the Branch Manager determines that the Financial Advisor of the  
21 Day is not qualified to handle a walk-in or a call-in prospect, the Branch Manager shall complete  
22 an exception report specifying the reason why the Financial Advisor of the Day was not selected.  
23 Settlement Agreement, § VII.C.8.d. The Diversity Monitor shall receive this exception report.  
24 *Id.*

25 e. All Financial Advisors who are in good standing shall be eligible to  
26 be Financial Advisor of the Day. Settlement Agreement, § VII.C.8.e. Producing Branch  
27 Managers may participate in the Financial Advisor of the Day program to the same extent as  
28 Financial Advisors, except they too must comply with the process described in this Section 8,

1 including use of exception reports described in § VII.C.8.d. of the Settlement Agreement, and  
2 may receive leads, call-ins, and walk-ins only when they are the designated Financial Advisor of  
3 the Day. *Id.*

4 f. Unauthorized failure to perform Financial Advisor of the Day  
5 obligations as designated shall render a Financial Advisor ineligible to participate in the Program  
6 for a period of six (6) months. Settlement Agreement, § VII.C.8.f. The branch shall maintain a  
7 list of those Financial Advisors who elect not to participate or who otherwise were ineligible. *Id.*

8 **D. Development Opportunities**

9 Smith Barney has agreed to work with the Industrial Psychologist to develop  
10 workplace initiatives designed to retain women at Smith Barney as Financial Advisors, and to  
11 enhance their success, including targeted mentoring and training. *See* Settlement Agreement, §  
12 VII.D. Training and mentoring may include, but is not limited to, training, conference calls,  
13 online courses, and in-person seminars. *Id.* The Industrial Psychologist, if appropriate, shall  
14 make recommendations to promote equitable participation of female Financial Advisors in  
15 development opportunities. These recommendations will be made in accordance with Section  
16 VII.F.2. of the Settlement Agreement. *Id.*

17 Smith Barney additionally agreed to provide exit questionnaires to Financial  
18 Advisors who terminate voluntarily in order to gain a better understanding as to the reason for the  
19 departures. The exit questionnaires submitted by female Financial Advisors shall be available to  
20 the Industrial Psychologist and the Diversity Monitor, who shall report his or her findings to  
21 Human Resources. Settlement Agreement, § VII.D.

22 Smith Barney has also agreed to maintain its commitment to its female broker  
23 networking meetings. Settlement Agreement, § VII.D.

24 **E. Complaint Process And Training**

25 a. The Settlement Agreement provides that the complaint process,  
26 including Smith Barney's prohibition against retaliation, as provided in the Non-Discrimination  
27 and Anti-Harassment Policy, shall be communicated in writing to all Financial Advisors upon  
28

1 hire, and annually to all Financial Advisors. Settlement Agreement, § VII.E. New hires shall be  
2 required to submit an acknowledgment of receipt of this communication. *Id.*

3 Smith Barney will provide its Human Resources staff with appropriate training  
4 regarding compliance with state, federal, and local EEO laws; Smith Barney's anti-discrimination  
5 and harassment policies; and the Settlement Agreement. Settlement Agreement, § VII.E.

6 Smith Barney will provide its Human Resources staff with appropriate training  
7 regarding best practices for complaint investigation and resolution. Settlement Agreement, §  
8 VII.E. Human Resources will be trained to treat all complaints or inquiries as confidentially as  
9 possible and to carry out their duties in a manner consistent with the law. In addition, Human  
10 Resources will implement controls designed to ensure that only employees or managers with a  
11 need-to-know will be advised of a complaint or investigation. If Human Resources decides that it  
12 must inform any employees or managers of the identity of the complainant, Human Resources  
13 will notify the complainant in advance that her/his identity will be released and to whom it will be  
14 released. *Id.* In all instances, upon being informed of a complaint or investigation, the employees  
15 and managers so informed will be reminded of Smith Barney's policy against retaliation. *Id.*

16 Smith Barney will retain documents sufficient to show complaints of sex  
17 discrimination, sex bias, and/or retaliation related to such complaints for the term of the  
18 Settlement Agreement. Settlement Agreement, § VII.E. This includes, but is not limited to,  
19 complaints made directly to in-house or outside counsel. *Id.* Smith Barney will provide copies of  
20 all sex discrimination, sex bias, and retaliation complaints, as well as copies of the Complaint Log  
21 and Legal Complaint Log to the Diversity Monitor on a quarterly basis. *Id.*

22 **F. Appointments**

23 1. Diversity Monitor. The Settlement Agreement provides that the parties  
24 shall jointly appoint a Diversity Monitor. Settlement Agreement, § VII.F. The Diversity Monitor  
25 shall be external to and independent of Smith Barney, but will report directly to the CEO of  
26 Global Wealth Management. *Id.* The Diversity Monitor shall monitor Smith Barney's efforts to  
27 carry out the terms of the Settlement Agreement. This shall include the following:  
28

1 a. The Diversity Monitor will receive quarterly reports regarding  
2 complaints of female Financial Advisors alleging sex discrimination, sex bias, or retaliation and  
3 the resolution of investigations of such complaints through any Smith Barney ADR program. *Id.*

4 b. The Diversity Monitor will review reports by the Company on the  
5 diversity-related annual assessment process for Branch Managers, including the self-assessments  
6 completed by Branch Managers, and annual data and information provided by the Company  
7 related to the diversity component of each Branch Managers' compensation. *Id.*

8 c. The Diversity Monitor shall review reports on exceptions to the  
9 account distribution system being made in the branches, including information on the identity of  
10 the branches, the branch managers who approved the exceptions and an explanation of the  
11 exceptions.

12 d. On an annual basis, the Diversity Monitor will review up-front  
13 bonuses, forgivable loans and other transitional compensation packages that Smith Barney  
14 provided to lateral recruits, and will report on these records to the Industrial Psychologist. In  
15 addition, the Diversity Monitor will receive a copies of the summaries set forth in § VII.C.5.b. of  
16 the Settlement Agreement, and in connection with management approval of any forgivable loan  
17 provided to a lateral recruit and may interview the appropriate branch manager about the rationale  
18 for any upfront bonuses, forgivable loans, or transitional compensation packages. *Id.*

19 e. On an annual basis, the Diversity Monitor will review female FA  
20 participation in the Franchise Protection Program, both as retiring and receiving brokers, and will  
21 receive information from Smith Barney semi-annually about the gender of persons receiving  
22 assets and the value of assets transferred.

23 f. On a semi-annual basis, the Diversity Monitor will review reports  
24 relating to redistributed accounts from partnerships including number of accounts, FA revenue,  
25 asset value and gender of receiving Financial Advisor as well as female FA participation in  
26 partnerships and will receive information from Smith Barney about partnership splits based on  
27 gender and the value of assets under each partnership based on gender.

28

1 g. The Diversity Monitor will monitor bi-annual training of  
2 management on EEO policies, and policies against discrimination and retaliation, and ensure that  
3 the training agreed to was implemented.

4 h. The Diversity Monitor will review exception reports regarding the  
5 Financial Advisor of the Day program.

6 i. The Diversity Monitor will review how Human Resources handles  
7 investigations and the resolution process for inquiries and complaints.

8 j. The Diversity Monitor will review the exit questionnaires  
9 completed by departing female Financial Advisors, as well as information regarding the retention  
10 of female Financial Advisors annually, and report his/her findings to Human Resources.

11 k. If the Diversity Monitor identifies issues of potential non-  
12 compliance, the Diversity Monitor will inform Smith Barney and Lead Class Counsel. In  
13 consultation with Lead Class Counsel, Smith Barney will take appropriate corrective action to  
14 address all instances of non-compliance with the provisions of the Settlement Agreement unless  
15 Smith Barney can show that corrective action would be inconsistent with legitimate business and  
16 client needs and objectives. Smith Barney shall inform the Diversity Monitor and Lead Class  
17 Counsel of any such corrective action taken. Where potential non-compliance has been  
18 identified, the Diversity Monitor shall have the right to audit the activities in a branch, by  
19 reviewing documents, asking branch management to provide explanations and, if necessary,  
20 speaking to Financial Advisors in the branch, and the right to receive relevant information from  
21 Smith Barney headquarters upon reasonable request. Nothing herein shall alter or restrict Lead  
22 Class Counsel's right to enforce the Settlement Agreement under the Dispute Resolution  
23 provisions found in Section VII.J. of the Settlement Agreement.

24 l. The Diversity Monitor will provide reports to Lead Class Counsel  
25 and Smith Barney at least semi-annually regarding the items described in the Settlement  
26 Agreement to be monitored, including in Section F.1.a-k, and including the analysis of the  
27 account distribution system. The Diversity Monitor may report incidents of potential material  
28



1 non-compliance with the Settlement Agreement to Lead Class Counsel and Smith Barney on a  
2 more frequent basis.

3 m. The Diversity Monitor will maintain records for the term of the  
4 Settlement Agreement.

5 **2. Industrial Psychologist**

6 a. Pursuant to the Settlement Agreement, the parties shall jointly  
7 appoint an Industrial Psychologist who shall work with Smith Barney and Class Counsel to  
8 develop innovative, meaningful, novel, state-of-the-art programs and, if appropriate, to make  
9 recommendations concerning:

10 i. The production and earnings of female Financial Advisors,  
11 including policies and practices with respect to training, development, mentoring, and business-  
12 related allocations; Settlement Agreement, § VII.F.2.

13 ii. Participation of female Financial Advisors in the Franchise  
14 Protection Program, both as retiring Financial Advisors and as receiving Financial Advisors; *Id.*

15 iii. Participation of female Financial Advisors in partnerships  
16 and teams, including commission splits between male and female partners, and dissolution of  
17 partnerships and teams; *Id.*

18 iv. Up-front bonuses, forgivable loans, and other transitional  
19 compensation packages offered to lateral recruits; *Id.*

20 v. Policies and practices with respect to training, development,  
21 and mentoring for female Financial Advisors. Training and development may include, but is not  
22 limited to, training, conference calls, online courses, and in-person seminars; *Id.*

23 vi. Participation of females in Smith Barney's branch  
24 management assessment program and in branch management; and

25 vii. A mentoring program for all Financial Advisors. *Id.*

26 b. The Industrial Psychologist shall review the actual implementation  
27 of the programs, policies, and initiatives that Smith Barney is obligated to undertake by virtue of  
28 this Agreement and shall, on an annual basis, report the results of this review to the Diversity

1 Monitor. The Industrial Psychologist shall review on an annual basis the retention rates of  
2 women in the Financial Advisor position and shall report the results of this review to the  
3 Diversity Monitor. Settlement Agreement, § VII.F.2.b.

4 c. The Industrial Psychologist shall present any recommendations to  
5 the members of Senior Management at Smith Barney who are most appropriate to address each  
6 issue. A copy of the recommendations will also be provided to Lead Class Counsel. All  
7 recommendations of the Industrial Psychologist will be designed to advance the purposes of this  
8 Settlement Agreement consistent with Smith Barney's legitimate business needs and objectives.  
9 If Smith Barney does not agree with any such recommendations, but Lead Class Counsel still  
10 thinks they should be implemented notwithstanding Smith Barney's objections, the Industrial  
11 Psychologist, along with Lead Class Counsel, will have the opportunity to present the  
12 recommendations to Smith Barney's highest ranking officer overseeing FA compensation,  
13 currently the Director of Field Management. Smith Barney shall decide in good faith consistent  
14 the purposes of the Settlement Agreement whether to implement such recommendations.

15 d. The Industrial Psychologist shall provide to the parties statistical  
16 analyses on the Power Ranking criteria. These analyses shall report on data at the 12, 20, 36 and  
17 44 month intervals from the Effective Date. With the analysis, the Industrial Psychologist shall  
18 determine whether female brokers have received less than their pro rata share of distributed  
19 accounts, and if so, whether the difference is statistically significant. This determination shall be  
20 based on an aggregate comparison of (i) the value of the accounts distributed, based on their  
21 account value at the end of the month prior to their distribution; and (ii) the representation of men  
22 and women in the population of Financial Advisors in the retail brokerage division of Smith  
23 Barney, including only those brokers who were active within the time period being measured.

24 e. The Power Rankings may be changed at any time upon agreement  
25 between Smith Barney and Lead Class Counsel following a meet and confer process. If,  
26 following the meet and confer process, Lead Class Counsel do not agree to a change proposed by  
27 Smith Barney, Smith Barney may seek authority from Hunter R. Hughes, Esq. or another  
28 mutually selected mediator (the "Mediator") to implement the proposed change(s) to the Power

1 Ranking systems, which authority will not be unreasonably withheld. To bring about such  
2 changes, Smith Barney must show to the satisfaction of the Mediator through the binding  
3 mediation outlined in paragraph c below that (a) the changes are necessary to comply with  
4 applicable law; or (b) each of the criteria they seek to change is having a significant adverse  
5 impact on Smith Barney's business and that the change(s) sought would not disadvantage female  
6 Financial Advisors or FAAs relative to the criteria being displaced.

7 f. If, following either the 20 or 44 month reports, the Industrial  
8 Psychologist determines that female brokers have received less than their pro rata share of  
9 distributed accounts, and that the difference is statistically significant, then Lead Class Counsel  
10 may initiate a meet and confer session with Smith Barney's counsel. If, in the judgment of Lead  
11 Class Counsel, the meet and confer does not result in a satisfactory resolution, Lead Class  
12 Counsel may request a hearing before the Mediator solely for the purpose of resolving whether  
13 there should be any change to the Power Ranking factors or any adjustment to their weight. Such  
14 a process shall be completed within 4 months under a schedule and with written submissions in a  
15 form determined by the mediator, but allowing at least twenty-one days for a response by the  
16 responding party (unless the responding party seeks shortened time for its own submission).  
17 Smith Barney shall pay the cost of such binding mediation. The Mediator shall review each  
18 party's submissions and make a final, non-appealable determination regarding whether there  
19 should be any change to the Power Ranking factors or any adjustment to their weight.

20 g. Subject to signing an appropriate confidentiality agreement, and  
21 upon reasonable advance notice, the Diversity Monitor and the Industrial Psychologist described  
22 in Sections F.1. and F.2. in the Settlement Agreement will have reasonable access to relevant  
23 documents, data, and Smith Barney employees. The Diversity Monitor and the Industrial  
24 Psychologist will be compensated by Smith Barney.

25 h. If it becomes necessary to replace the Diversity Monitor or the  
26 Industrial Psychologist, the parties shall select a replacement by mutual agreement.

27 i. After a full calendar year has passed following implementation of  
28 the Power Ranking criteria, the Industrial Psychologist will review how the process has been

1 operating, including all exceptions and complaints. In addition, the Industrial Psychologist will  
2 annually assess the actual account distributions and related compensation data and the rankings of  
3 Financial Advisors by gender on each of the individual factors and use such information in  
4 considering recommendations, if any, for changes to the Power Ranking formula. On an annual  
5 basis, the Industrial Psychologist shall report his/her findings and recommendations, if any, to the  
6 Diversity Monitor and the Parties. The Industrial Psychologist shall provide the Diversity  
7 Monitor with his/her findings of deviations from the account distribution system.

8 j. Subject to signing an appropriate confidentiality agreement, and  
9 upon reasonable advance notice, the Diversity Monitor and the Industrial Psychologist described  
10 in Sections VII.F.1. and F.2. of the Settlement Agreement will have reasonable access to relevant  
11 documents, data, and Smith Barney employees. The Diversity Monitor and the Industrial  
12 Psychologist will be compensated by Smith Barney.

13 If it becomes necessary to replace the Diversity Monitor or the Industrial  
14 Psychologist, the parties shall select a replacement by mutual agreement.

15 **G. General Non-Discrimination Provisions**

16 The Settlement Agreement provides that pursuant to Smith Barney's Non-  
17 Discrimination and Anti-Harassment Policy, female Financial Advisors will enjoy terms and  
18 conditions of employment comparable to their male counterparts. Settlement Agreement,  
19 § VII.G.

20 Smith Barney shall reaffirm its commitment to the following general policies using  
21 a method agreed to by the parties:

22 1. Prohibition against discrimination on the basis of sex in compensation and  
23 business opportunity allocations.

24 2. Prohibition against retaliation for reporting sex discrimination,  
25 participating in any Smith Barney ADR program, participating in this or any discrimination  
26 settlement, filing a lawsuit or complaint with any outside agency or entity alleging sex  
27 discrimination, or for refusing to participate in sex discrimination.

1 Smith Barney will reaffirm that its policy is, and has been, to prohibit  
2 reimbursement of business expenses that are directly or indirectly related to male-only  
3 entertainment establishments. Settlement Agreement, § VII.G.3.

4 The parties have also agreed that it shall be a violation of the Settlement  
5 Agreement for a Smith Barney supervisor to retaliate against any Class Member for her  
6 participation in the prosecution of the allegations contained in the charges underlying the  
7 Settlement or in the Settlement itself. Nothing in the Settlement will prevent a Class Member  
8 from pursuing whatever legal rights or remedies she otherwise may have with respect to any  
9 individual claim not covered by the claims released through this Settlement. Settlement  
10 Agreement, § VII.G.4.

11 **H. Duration Of The Settlement**

12 The programmatic relief embodied in the Settlement Agreement and the  
13 agreements incorporated therein are binding on the parties and their agents and successors for a  
14 four-year period following the Effective Date as defined in the Settlement Agreement. *See*  
15 Settlement Agreement, § VII.H.

16 **I. Enforcement**

17 1. Under the Settlement Agreement, Lead Class Counsel shall meet and  
18 confer with counsel for Smith Barney prior to commencement of any enforcement proceedings.  
19 Settlement Agreement, § VII.J.1.

20 2. The parties have agreed to work diligently and in good faith to resolve all  
21 disputes that may arise during the term of this Settlement Agreement concerning the rights,  
22 obligations and duties of the parties to the Settlement Agreement. In the event the parties cannot  
23 agree, the parties will attempt to resolve the dispute with the facilitation of Hunter Hughes, Esq.  
24 or another mutually selected mediator whose services shall be paid for by Smith Barney.

25 **J. Monitoring**

26 **1. Data Collection**

27 Smith Barney has agreed to collect data which will include, but not be limited to:  
28 (1) compensation of Financial Advisors; (2) partnerships between active Financial Advisors or

1 partnerships between active and retiring Financial Advisors; (3) account distributions, defined to  
2 include all transfers of accounts from one Financial Advisor to another within Smith Barney such  
3 as those of retiring and deceased Financial Advisors, not just the distribution of the accounts of  
4 departing Financial Advisor; (4) gender discrimination and retaliation complaints made by female  
5 Financial Advisors; (5) retention of Financial Advisors; and (6) any other areas agreed upon by  
6 Smith Barney and Lead Class Counsel. Settlement Agreement, §VIII.A.

7 **2. Monitoring System**

8 With input from the Industrial Psychologists and consent from Lead Class  
9 Counsel, Smith Barney has agreed to create and implement a system of monitoring compliance  
10 with each policy described herein, including, without limitation, the account distribution policy  
11 using the Power Ranking methodology. Settlement Agreement, §VIII.B.

12 **3. Reports**

13 Lead Class Counsel will receive semi-annual reports from the Diversity Monitor  
14 regarding the data and information collected through the monitoring system including the analysis  
15 of the account distribution system and the other areas reviewed by the Diversity Monitor as  
16 specified under Section VII.G.1. of the Settlement Agreement. *See* Settlement Agreement,  
17 §VIII.C.

18 **4. Meetings**

19 Smith Barney and Lead Class Counsel have agreed to meet at least once every six  
20 (6) months beginning six months after the Effective Date, regarding compliance, and may confer  
21 more frequently beginning six months after the Effective Date, regarding compliance, and may  
22 confer more frequently at their discretion or as dictated by information either side gathers.  
23 Settlement Agreement §VIII.D.

24 **II. Monetary Relief**

25 In addition to the significant, comprehensive injunctive relief described above,  
26 Smith Barney will establish a settlement fund of approximately \$33 million plus interest.  
27 Settlement Agreement, § IX.A. This fund will compensate members of the settlement class who  
28 do not opt out and who timely submit claims, provide service payments to class representatives

1 for service they provided on behalf of the class, and pay attorneys' fees, notice costs, and  
2 administrative expenses. *Id.*

3 **CLASS ACTION SETTLEMENT PROCEDURE**

4 Judicial proceedings under Federal Rule of Civil Procedure 23 have led to a  
5 defined procedure and specific criteria for settlement approval in class action settlements. The  
6 Rule 23(e) settlement approval procedure describes three distinct steps:

7 (1) Certification of a settlement class and preliminary approval of  
8 the proposed settlement after submission to the Court of a written  
9 motion for preliminary approval;

10 (2) Dissemination of mailed and/or published notice of settlement  
11 to all affected Class members; and

12 (3) A formal fairness hearing, or final settlement approval hearing,  
13 at which Class members may be heard regarding the settlement, and  
14 at which evidence and argument concerning the fairness, adequacy,  
15 and reasonableness of the settlement is presented.

16 These procedures safeguard class members' procedural due process rights and  
17 enable the court to fulfill its role as the guardian of class interests. *See* Herbert B. Newberg &  
18 Alba Conte, *Newberg on Class Actions*, § 11.22, *et seq.* (4th ed. 2002).

19 With this Motion, the parties request that the Court take the first step in the  
20 settlement approval process, and grant certification of the settlement classes and preliminary  
21 approval of the proposed Settlement and Settlement Agreement.

22 Settlement class certification is appropriate at the preliminary approval state  
23 where, as here, the proposed settlement class - as defined in the parties' Settlement Agreement-  
24 have not previously been certified by the Court, and where, as here, the plaintiffs assert the  
25 requirements for certification are met and defendant, for settlement purposes only, consents to  
26 Settlement Certification. 4 *Newberg* § 11.27. The practical purpose of the settlement class  
27 certification is to avoid the costs of litigating class status while facilitating a global settlement, to  
28 ensure distribution to all settlement class members of the notice of the terms of the proposed  
Settlement Agreement, and to set the date and time of the final approval hearing. *In re Gen.  
Motors Corp. Pick-up Truck Fuel*, 55 F.3d 768, 784 (3d Cir. 1995).





1 C-97-0425 DLJ, C-97-0457 DLJ, 1997 WL 450064, at \*5 (N.D. Cal. July 18, 1997); *Weinberger*  
 2 *v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982).

3 To grant preliminary approval of this class action settlement, the court need only  
 4 find that the settlement falls within the range of possible approval, or “the range of  
 5 reasonableness.” *See, e.g., Young v. Polo Retail, LLC*, No. C-02-4546 VRW, 2006 WL 3050861,  
 6 at \*5 (N.D. Cal. Oct. 25, 2006); *In re Vitamins Antitrust Litig.*, Nos. MISC. 99-197(TFH), MDL  
 7 1285, 2001 WL 856292, at \*4-5 (D.D.C. July 25, 2001); *In re Traffic Exec. Ass’n*, 627 F.2d 631,  
 8 633-34 (2d Cir. 1980); *In re DJ Orthopedics, Inc. Sec. Litig.*, No. 01-CV-2238KRBB, 2004 W.L.  
 9 1445101, at \*3 (S.D. Cal. June 21, 2004); *Boyd*, 485 F. Supp. at 615; *Alaniz v. California*  
 10 *Processors, Inc.*, 73 F.R.D. 269, 273 (N.D. Cal. 1976); *see also* 4 *Newberg* § 11.25. The *Manual*  
 11 *for Complex Litigation, Fourth* (Fed. Judicial Center 2004) (“*Manual*”) characterizes the  
 12 preliminary approval stage as an “initial evaluation” of the fairness of the proposed settlement  
 13 made by the court on the basis of written submissions and informal presentation from the settling  
 14 parties. *Manual*, § 21.632. The *Manual* summarizes the preliminary approval criteria as follows:

15 Fairness calls for a comparative analysis of the treatment of the  
 16 class members vis-à-vis each other and vis-a-via similar individuals  
 17 with similar claims who are not in the class. Reasonableness  
 18 depends on an analysis of the class allegations and claims and the  
 19 responsiveness of the settlement to those claims. Adequacy of the  
 20 settlement involves a comparison of the relief granted to what class  
 21 members might have obtained without using the class action  
 22 process.

23 *Id.* at § 21.62.

24 Here, as shown below, the proposed Settlement falls well within the range of  
 25 reasonableness, is non-collusive and fair. The Settlement will provide a significant benefit to  
 26 settlement class members while eliminating the substantial risks and long delays of litigation.

27 **A. The Terms Of The Proposed Settlement Are Fair And Within The Range Of**  
 28 **Reasonableness**

In determining whether a settlement is fair and reasonable, the court should  
 consider several factors, including the experience and views of counsel; whether the settlement is  
 the product of good faith negotiations conducted at arms’ length; the amount offered in settlement;

1 and the risks, complexity and duration of further litigation. *National Rural Telecom. Coop. v.*  
 2 *DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D.Cal. 2004)(citing *Linney v. Cellular Alaska P'ship*,  
 3 151 F.3d 1234, 1242 (9th Cir. 1998); *Hanlon*, 150 F.3d at 1026. For the reasons set forth below,  
 4 the Court should find that these factors weigh in favor of preliminary approval of the Settlement  
 5 Agreement.

6 **1. The Settlement Is The Product of Experienced Counsels' Serious,**  
 7 **Arms' Length, Informed Negotiations**

8 As described in the accompanying declarations, each lawyer representing plaintiffs  
 9 has had substantial experience in employment discrimination class actions. *See* Dermody Decl.,  
 10 Ex. B; Klein Decl., Ex. A; Mehri Decl., Ex. A; Finberg Decl., Ex. A. Their assessment that the  
 11 settlement is reasonable and fair should be given "great weight," as they are most closely  
 12 acquainted with the facts of the underlying litigation. *National Rural Telecom.*, 221 F.R.D. at 528  
 13 (citing *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997); *see also In*  
 14 *re United Energy Corp. Solar Power Modules Tax Shelter Invest.*, Nos. CV 87-3962KN(GX), CV  
 15 86-3538KN(GX), 1989 WL 7311, at \*3 (C.D.Cal. March 9, 1989)). If the settlement was  
 16 achieved through experienced counsels' arms' length negotiations, in the absence of fraud,  
 17 collusion or the like, the court should be hesitant to substitute its own judgment for that of  
 18 counsel. *National Rural Telecom.*, 221 F.R.D. at 528 (citing *Cotton v. Hinton*, 559 F.2d 1326,  
 19 1330 (5th Cir. 1977)); *see also Weinberger v. Kendrick*, 698 F.2d 61, 74 (2nd Cir. 1982).  
 20 Summarizing the holdings in a series of cases, the court in *Oppenlander v. Standard Oil Co.*,  
 21 64 F.R.D. 597 (D. Colo. 1974), held: "Courts have consistently refused to substitute their  
 22 business judgment for that of counsel, absent evidence of fraud or overreaching . . ." *Id.* at 624;  
 23 *accord Zerkle v. Cleveland-Cliffs Iron Co.*, 52 F.R.D. 151, 169 (S.D.N.Y. 1971).

24 Moreover, as described above and in the Dermody Declaration ¶¶ 30-39, using  
 25 computerized client account data, personnel and payroll data for the class period, plaintiffs'  
 26 statistical expert performed numerous sophisticated, multi-variant regression analyses related to  
 27 disparities in compensation and client-account transfers, as well as a damages analysis. *Id.* at  
 28 ¶ 37. Experts for Smith Barney conducted similar analyses. *Id.* As a result of the substantial

1 investigation of the claims and the discovery that was conducted, the parties negotiated the  
2 proposed settlement with complete knowledge regarding the strengths and weaknesses of the case  
3 and the amounts necessary to compensate class members for the harm suffered. *Id.* at ¶ 39.  
4 Moreover, at the time of settlement, plaintiffs had fully briefed, but not yet filed, their motion for  
5 class certification. *Id.* at ¶ 42.

6 Further, the settlement in this case resulted only after extensive, arms' length  
7 settlement negotiations that were conducted after rigorous discovery, and under the supervision of  
8 experienced mediator Hunter Hughes. *See* Dermody Decl. at ¶¶ 40–41. The negotiations were  
9 protracted, and the mediation itself required multiple lengthy sessions. *See id.* at ¶ 41. In sum, the  
10 proposed settlement is the non-collusive product of hard-fought litigation. All of these factors  
11 weigh in favor of finding the settlement reasonable and in favor of its approval.

## 12 **2. The Payments To The Named Plaintiffs Are Reasonable**

13 The Settlement provides for service payments of \$50,000.00 to Named Plaintiffs  
14 Renee Fassbender Amochaev, Deborah Orlando and Kathryn N. Varner, and \$35,000.00 to  
15 Named Plaintiff, Ivy So. *See* Settlement Agreement, § XII. Named plaintiffs are entitled to  
16 reasonable service awards. *See Staton v. Boeing Co.*, 327 F.2d 928, 977 (9th Cir. 2006). These  
17 service payments recognize the time and effort the class representatives expended on behalf of the  
18 plaintiff classes. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal.  
19 1995) (Spencer, J.) (approving \$50,000 participation award) (citing Richard Greenfield,  
20 “Rewarding the Class Representative: An Idea Whose Time Has Come,” 9 *Class Action Reports*  
21 4 (1986); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250  
22 (S.D. Ohio 1991)). Such payments must be evaluated individually, considering “relevant factors  
23 includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to  
24 which the class has benefited from those actions, ... the amount of time and effort the plaintiff  
25 expended in pursuing the litigation ... and reasonabl[e] fear[s of] workplace retaliation.” *Staton*,  
26 327 F.2d at 977 (quoting *Cook v. Niedert*, 142 F.2d 1004, 1016 (7th Cir. 1998) (approving service  
27 awards of \$25,000 in a monetary settlement of \$13 million). In this case, all of the class  
28 representatives performed important services for the benefit of the plaintiff classes. Dermody

1 Decl. at ¶ 53. They provided information regarding the structure of the company and their job  
2 duties during lengthy interviews; they produced relevant documents; they were deposed for three  
3 (3) days each; they worked with plaintiffs' counsel throughout the case, including during the  
4 mediation process. *Id.* Plaintiffs Amochaev, Orlando and Varner, each of whom joined the case  
5 at its inception, participated in the initial press conference. Each named plaintiff attended one or  
6 more mediation sessions, and all reviewed the drafts of the Settlement Agreement and provided  
7 substantial input. *Id.* The valuable efforts of the class representatives, their willingness to litigate  
8 and pursue their representative claims, and the strength of their claims have resulted in a  
9 settlement that will benefit all settlement class members. *Id.* The payment of less than  
10 one percent of the \$33 million plus interest total to the named plaintiffs is appropriate. *Id.*

11 **3. The Proposed Settlement Amount And The Allocation Process Are**  
12 **Fair And Reasonable**

13 The determination of a "reasonable" settlement is not susceptible to a  
14 mathematical equation yielding a particular sum. Rather, settlements may fall within a range of  
15 reasonableness. *In re Tableware Antitrust Litigation*, 484 F. Supp.2d 1078, 1078 (N.D. Cal.  
16 2007) (Walker, J.); 4 *Newberg* § 11.26.

17 Given that the proposed Settlement Agreement creates a Settlement Fund of  
18 approximately \$33 million plus interest for approximately 2500 unnamed class members, the  
19 proposed Agreement provides a significant recovery to the class and easily falls within the range  
20 of reasonableness.

21 Likewise, class members who submit a Claim Form will be eligible to receive  
22 monies based on their length of tenure at Smith Barney as a Financial Advisor, as well as upon  
23 information (if supplied by the class member) regarding termination or constructive discharge.  
24 The parties agree that the division of settlement proceeds that will be made with this allocation  
25 plan will be fair and reasonable.

26 **4. The Settlement's Terms Provide Meaningful Injunctive Relief**

27 As set forth above in detail, this Settlement implements comprehensive, valuable  
28 injunctive relief to the entire class and addresses the compensation claims at issue in this action.

1 In particular, Smith Barney has agreed to revise its Power Ranking system (used to determine  
2 account distributions) to ensure fairness by reducing reliance on historical factors and weighing  
3 more heavily on criteria that reflect recent performance. *See* Settlement Agreement, § VII.C.1.  
4 The Settlement provides for a fair and transparent account distribution system. *Id.* at § VII.C.2.  
5 This Power Ranking System will be reviewed and monitored by a jointly selected Industrial  
6 Psychologist, with all findings and recommendations provided to an external, independent, and  
7 jointly selected Diversity Monitor and the parties. *Id.* at § VII.C.1. The Settlement also addresses  
8 major factors of broker compensation, including up-front bonuses, forgivable loans, other  
9 transitional compensation packages given to lateral recruits, partnerships, teams, the Franchise  
10 Protection Program, and books of business formerly serviced by retiring Financial Advisors who  
11 do not participating in the Franchise Protection Program. *Id.* at § VII.C.5-8.

12 The Settlement provides for affirmative measures to retain and promote women.  
13 For example, the Settlement provides for initiatives designed to enhance the success of women at  
14 Smith Barney, including mentoring, training, and exit interviews to determine why female  
15 brokers leave the company. *See* Settlement Agreement, § VII.D. In addition to the Settlement's  
16 monitoring components, the Settlement provides incentives for Branch Managers to diversify the  
17 Financial Advisor position by instituting a diversity component to their compensation that takes  
18 into account recruiting, mentoring, training, retaining, and promotion of female Financial  
19 Advisors. *Id.* at § VII.B. Other systematic relief includes posting of branch manager positions;  
20 diversity training for all branch managers; safeguards for complaints or inquiries of sex  
21 discrimination against Financial Advisors, sex bias, and/or retaliation; and communication of  
22 Smith Barney's Non-Discrimination, Anti-Harassment, and Anti-Retaliation Policies. *Id.* at  
23 § VII.A; E; B.

24 Thus, the Settlement Agreement provides significant and valuable injunctive relief  
25 to the entire class.  
26  
27  
28

1                   5.     **Plaintiffs' Counsel Were Fully Informed When The Settlement Was**  
2                                    **Reached**

3                   As noted above, and as extensively described in the accompanying declarations,  
4 plaintiffs' counsel vigorously prosecuted this case and investigating the claims asserted against  
5 Smith Barney. *See* Dermody Decl., ¶¶ 30-39. Plaintiffs' counsel spoke with approximately 135  
6 putative class members; took eleven depositions of Smith Barney managers, including corporate  
7 managers; defended three-day depositions of Renee Amochaev, Kathryn Varner, Deborah  
8 Orlando and Ivy So; reviewed over 160,000 pages of documents; propounded six sets of  
9 document requests and three sets of interrogatories; and responded to multiple sets of discovery  
10 requests propounded by Smith Barney. *See* Dermody Decl., ¶¶ 32-36. In addition, the parties  
11 litigated a motion to transfer pursuant to 28 U.S.C. § 1404(a), a motion to enjoin discovery,  
12 multiple motions to compel, a cross-motion for a protective order, and a motion to dismiss. *Id.* ¶  
13 31. At the time of Settlement, plaintiffs' counsel had prepared a motion for class certification and  
14 all supporting papers and expert reports. *Id.* at ¶ 37.

15                   During discovery, plaintiffs' counsel also received substantial payroll, partnership,  
16 compensation documents and vast amounts of computerized data, including client account data,  
17 personnel, and payroll data for all Financial Advisors from 2001-2006. *See* Dermody Decl., ¶  
18 33. From this data, plaintiffs' statistical expert performed compensation analyses. Plaintiffs'  
19 expert's calculations formed the basis for negotiations regarding the monetary terms of the  
20 settlement. *Id.* at ¶ 37.

21                   In sum, plaintiffs' counsel completed substantial investigation and discovery and  
22 negotiated the proposed settlement with complete knowledge regarding the strengths and  
23 weaknesses of the case and the amounts necessary to compensate class members for the harm  
24 suffered.

25                   6.     **Liability Is Contested, And The Settlement Provides Reasonable**  
26                                    **Compensation For Class Members' Damages In Light Of Risks Of**  
27                                    **Proceeding Through Trial And Appeal**

28                   Although the plaintiffs believe their claims have merit, they also recognize that  
they would face significant legal, factual, and procedural obstacles to recovering damages on their

1 claims. Smith Barney has available legal and factual grounds for defending this action. It denies  
2 that its treatment of its female Financial Advisors is unlawful or discriminatory, and contests the  
3 propriety of class certification here. Smith Barney would challenge plaintiffs' claims at every  
4 stage of the litigation, including at summary judgment and trial. Notwithstanding these  
5 arguments, the overall settlement commits Smith Barney to pay \$33 million (plus interest) to  
6 compensate the class — a substantial amount ensuring that the recoveries by potentially  
7 thousands of individual class members will be meaningful. In light of the strengths and  
8 weaknesses of the case, plaintiffs' counsel believe the settlement fits easily within the range of  
9 reasonableness because it achieves significant benefits for the class in a case where failure at trial  
10 is certainly possible. See Dermody Decl., ¶ 51. Class members will also receive settlement  
11 benefits faster than they would receive awards obtained after trial and likely appeal.

12 **7. Trial And Appeal Of This Action Would Be Complex, Expensive And**  
13 **Time Consuming, And Would Delay Recovery**

14 Other factors considered by courts in approving a settlement are the complexity,  
15 expense, and likely duration of the litigation. *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173,  
16 1178 (9th Cir. 1977); *Hanlon*, 150 F.3d at 1026; *Rosenburg v. Int'l Business Mach. Corp.*,  
17 No. CV 06-00430 PJH, 2007 WL 2043855, at \*2 (N.D. Cal. July 12, 2007); *Roberts*, 1991 WL  
18 427888, at \*2; *Glass v. UBS Fin. Serv., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at \*3  
19 (N.D. Cal. January 26, 2007).

20 The factual and legal issues in this action are complex. The trial of plaintiffs'  
21 claims under Title VII and the FEHA would require substantial preparation and ultimately  
22 involve the presentation, at minimum, of dozens of witnesses and numerous experts. In contrast  
23 to the delay that would result from trial and likely appeal if liability were found, the proposed  
24 Settlement Agreement will yield a certain, substantial, and prompt recovery for the class both in  
25 monetary relief and injunctive relief. Such a result will benefit the parties and the court system.  
26  
27  
28

1                   **8.     The Proposed Settlement Fund Amount Is Within The Range Of**  
2                   **Reasonableness**

3                   Given that the proposed Settlement Agreement creates significant injunctive relief  
4 and a Settlement Fund of \$33 million plus interest for thousands of unnamed class members, the  
5 proposed settlement provides a significant recovery to the class and easily falls within the range  
6 of reasonableness.

7                   **II.    Provisional Certification Of The Class Is Appropriate**

8                   To grant preliminary approval of this class action settlement, this Court should  
9 also make a determination that the proposed settlement class satisfies Rule 23(a)'s requirements  
10 of numerosity, commonality, typicality and adequacy of representation, and at least one of the  
11 subsections of Rule 23(b). *See 4 Newberg* § 11:27 (citing *In re General Motors Corp. Pick-up*  
12 *Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768 (3rd Cir 1995)). As discussed below, all the  
13 requirements of certification for settlement purposes are met for this proposed settlement class.

14                   **1.     Numerosity Is Satisfied**

15                   The proposed class is so numerous that “joinder of all members is impracticable.”  
16 Fed. R. Civ. P. 23(a)(1). Courts do not require evidence of the exact size of the class nor the  
17 identity of class members to satisfy the numerosity requirement. Instead, “A reasonable estimate  
18 of the class size, based on common sense assumptions of numerosity, is sufficient.” *L. H. v.*  
19 *Schwarzenegger*, No. CIV. S-06-2042 LKK/GGH, 2007 WL 662463, at \*10 n.2 (E.D. Cal.  
20 Feb. 28, 2007) (citing *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D.  
21 Cal. 1994)). The proposed class of approximately 2500 women in Financial Advisor (formerly  
22 called Financial Consultant) positions during the Class Period plainly satisfies the numerosity  
23 requirement. *1 Newberg* § 3.5 (“In light of prevailing precedent, the difficulty inherent in joining  
24 as few as 40 class members should raise a presumption that joinder is impracticable, and the  
25 plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact  
26 alone.”).



1                   **2.     Commonality Is Satisfied**

2                   Rule 23(a)(2) requires that there be questions of law or fact common to the class.  
3                   The commonality requirement of Rule 23(a) examines the group characteristics of the class as a  
4                   whole and seeks to determine whether the class shares common questions of fact or law. It does  
5                   not require that all questions of law or fact be common to every single member of the class;  
6                   rather, at least one issue must be common to the claims of all the class members. *Hanlon*,  
7                   150 F.3d at 1019; *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1117 (9th Cir. 2007) (citing *Savino v.*  
8                   *Computer Credit, Inc.*, 172 F.R.D. 346, 352 (E.D.N.Y. 1997), *aff'd*, 164 F.3d 81 (2d Cir. 1998)).  
9                   Courts do not treat commonality as a difficult hurdle, but construe the requirement “permissively”  
10                  and require a “minimal” showing. *Hanlon*, 150 F.3d at 1019-1020.

11                  This case involves numerous common issues of fact: (1) uniform personnel and  
12                  management structures across branch offices; (2) Smith Barney’s extensive corporate oversight of  
13                  branch operations, (3) company-wide policies governing pay decisions; (4) a strong, centralized  
14                  corporate culture; (5) consistent gender-related compensation disparities in every domestic region  
15                  of the company; and (6) gender stereotyping. *Cf. Dukes*, 509 F.3d at 1117 (approving class  
16                  certification where these same common issues were present). Here, all class members were  
17                  subjected to the same company-wide compensation processes, crafted and imposed by the  
18                  highest-level management at Smith Barney. These policies and practices are uniform — all  
19                  Smith Barney Financial Advisors are subject to the same compensation system. Common  
20                  evidence — including allegations of senior management’s knowledge of barriers to equal  
21                  compensation for women, anecdotal evidence from plaintiffs and class members, and statistical  
22                  and social science expert analysis — all establish common questions of fact. *See Dukes*, 509 F.3d  
23                  at 1180 (“It is well established that commonality may be established by raising an inference of  
24                  class-wide discrimination through the use of statistical evidence.”) Plaintiffs have collected  
25                  enough evidence to raise at least one common issue of triable fact. *See Ellis v. Costco Wholesale*  
26                  *Corp.*, 240 F.R.D. 627, 638 (N.D. Cal. 2007). Common legal theories and relief also establish

1 commonality.<sup>4</sup> In the absence of class certification and settlement, each individual settlement  
2 class member would be forced to litigate core common issues of law and fact.

3 **3. Typicality Is Satisfied**

4 Rule 23 requires that the named plaintiffs' claims be typical of those of the class.  
5 "[T]he named plaintiff need not have suffered an identical wrong. It is sufficient if his allegations  
6 are derived from the same remedial and legal theories." *Murray v. Local 2620, Dist. Counsel 57,*  
7 *American Fed'n of State, County and Mun. Empl., AFL-CIO*, 192 F.R.D. 629, 635 (N.D. Cal.  
8 2000)(Patel, J.). Under the Rule's "permissive standards," representative claims are typical "if  
9 they are reasonably co-extensive with those of absent class members; they need not be  
10 substantially identical." *Hanlon*, 150 F.3d at 1020; *Staton*, 327 F.3d at 957; *Dukes*, 474 F.3d at  
11 1232 ("Some degree of individuality is to be expected in all cases, but that does not necessarily  
12 defeat typicality."). The "commonality and typicality requirements of Rule 23(a) tend to merge."  
13 *General Tele. Co. of Southwest v. Falcon*, 457 U.S. 147, 157, n.13 (1982). A finding of  
14 commonality will ordinarily satisfy the requirement of typicality as well. *Barefield v. Chevron*  
15 *U.S.A., Inc.*, No. C 86-2427 THE, 1987 WL 65054, at \*5 (N.D. Cal. 1987).

16 Here, the named plaintiffs are members of the classes they seek to represent. They  
17 each worked for Smith Barney as Financial Advisors. The claims of all class members flow from  
18 the same factual, legal and remedial theories. *See Staton v. Boeing*, 327 F.3d 938, 957 (9th Cir.  
19 2003) (no requirement that plaintiffs work in each job category for each type of discrimination  
20 claimed); *Stender v. Lucky Stores, Inc.*, No. C 88-1467 MHP, 1990 WL 192734, at \*3-5 (N.D.  
21 Cal. June 8, 1990). They were each subjected to Smith Barney's compensation system. They  
22 allege that they, and the class members, suffered adverse treatment with respect to compensation  
23 and business opportunities. Accordingly, the typicality requirement is satisfied.

24  
25  
26 <sup>4</sup> Common legal issues include: (1) whether Smith Barney intentionally discriminated against  
27 female Financial Advisors in compensation, business opportunities, and terms and conditions of  
28 employment in violation of Title VII or FEHA; or (2) whether Smith Barney's compensation  
policies caused an adverse impact against female Financial Advisors in violation of Title VII and  
FEHA.

1                   **4.     Adequacy Is Satisfied**

2                   Finally, Rule 23(a)(4) requires that the named representatives “will fairly and  
3 adequately protect the interests of the class.” This requirement is satisfied where, as here, the  
4 class representatives’ claims are sufficiently interrelated to and not antagonistic to the claims of  
5 the class. *Hanlon*, 150 F.3d at 1020. Here, the interests of the class members and the interests of  
6 the named plaintiffs are the same—the elimination of sex discrimination against female Financial  
7 Advisors at Smith Barney. There is no antagonism between the named plaintiffs’ claims and  
8 those of the classes they seek to represent. The named plaintiffs have each affirmed their  
9 willingness to undertake the responsibilities of serving as class representatives. Both the class  
10 members and the named plaintiffs share an interest in eradicating discrimination in Smith  
11 Barney’s offices against its female brokers. For these reasons, the adequacy requirement is  
12 satisfied.

13                   **5.     Certification Of The Class Is Proper Under Rule 23(b)**

14                   Rule 23 requires that, in addition to the Rule 23(a) prerequisites, a proposed class  
15 must also meet the definition of one of the Rule 23(b) categories.

16                   **a.     Final Certification Under 23(b)(2) Is Appropriate**

17                   Rule 23(b)(2) is an appropriate basis for certification when the defendant “has  
18 acted or refused to act on grounds generally applicable to the class,” thereby making appropriate  
19 final injunctive relief or corresponding declaratory relief with respect to the class as a whole.  
20 Fed. R. Civ. P. 23(b)(2). “Civil rights cases against parties charged with unlawful, class-based  
21 discrimination are prime examples” of Rule ) 23(b)(2) classes. *Amchem Prods., Inc. v. Windsor*,  
22 521 U.S. 591, 614 (1997); *Barefield*, 1988 WL 188433, at \* 2. Certification under Rule 23(b)(2)  
23 is appropriate where, as here, meaningful declaratory and injunctive relief is sought. Fed. R. Civ.  
24 P. 23(b)(2); *Molski v. Gleich*, 318 F.3d 937, 949-50 (9th Cir. 2003); *Robinson v. Metro-North*  
25 *Commuter R.R.*, 267 F.3d 147, 163-64 (2d Cir. 2001).

26                   Certification under Rule 23(b)(2) is appropriate in this case because plaintiffs have  
27 alleged that Smith Barney has acted and refused to act on grounds generally applicable to the  
28 class. Plaintiffs seek declaratory and injunctive relief with respect to the class as a whole. Logic

1 fully supports the class representatives' contentions that their requests for injunctive and  
2 declaratory relief predominate. *Dukes*, 509 F.3d at 1185 ("we examine the specific facts and  
3 circumstances of each case, focusing predominantly on the plaintiffs' intent in bringing the suit;  
4 *see also Ellis*, 240 F.R.D. at 643 (holding that declarations satisfied the court that reasonable  
5 plaintiffs would bring a lawsuit alleging sex discrimination to obtain injunctive relief even in the  
6 absence of monetary recovery). As Judge Patel noted in *Ellis*, "Awarding damages to employees  
7 who have experienced sex discrimination would be futile if the [discriminatory policies] were not  
8 changed." *Id.*

9 Accordingly, a settlement class for declaratory, injunctive and equitable relief  
10 should be certified under Rule 23(b)(2).

11 **b. Certification Under 23(b)(3) Is Appropriate**

12 Certification under Rule 23(b)(3) will allow class members to opt out of the  
13 monetary-relief aspect of the settlement and preserve their right to seek damages independently.  
14 *See Brown v. Title Tigor Ins. Co.*, 982 F.2d 386, 392 (9th Cir. 1992). This approach protects  
15 putative class members' due process rights, and is consistent with the Supreme Court's decision  
16 in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), and the Ninth Circuit's decision in *Brown*,  
17 which explain that due process requires an opportunity to opt out of significant monetary relief  
18 but not equitable relief. *Ortiz*, 527 U.S. at 846–48; *Brown*, 982 F.2d at 392. Indeed, in *Molski v.*  
19 *Gleich*, 318 F.3d 937 (9th Cir. 2003), the Ninth Circuit recognized that certification under both  
20 Rule 23(b)(2) and Rule 23(b)(3) is appropriate in cases like this one that involve substantial  
21 injunctive *and* monetary relief. *See Molski*, 318 F.3d at 951 n.16 (certification under both  
22 Rule 23(b)(2) and Rule 23(b)(3) is one way to address due process concerns raised by the release  
23 of substantial damages claims).

24 Accordingly, the class action device proposed here "is superior to other available  
25 methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).  
26 Employing the class device here will not only achieve economies of scale for putative class  
27 members, but will also conserve the resources of the judicial system and preserve public  
28 confidence in the integrity of the system by avoiding the waste and delay of repetitive

1 proceedings and prevent the inconsistent adjudications of similar issues and claims. *See Hanlon*,  
2 150 F.3d at 1023. There is no other mechanism by which all of the putative settlement class  
3 members' claims will be as fairly, adequately, and efficiently resolved as through a class action.  
4 Indeed, in employment cases like this, the alternative to a class case is often no case at all due to  
5 employees' understandable fear of retaliation. *Ste. Marie v. Eastern R.R. Assoc.*, 72 F.R.D. 443,  
6 449 (S.D. N.Y. 1976), *rev'd on other grounds*, 650 F.2d 395 (2d Cir. 1982) (“[t]he risks entailed  
7 in suing one's employer are such that the few hardy souls who come forward should be permitted  
8 to speak for others when the vocal ones are otherwise fully qualified.”). In addition, issues of  
9 manageability relating to the trial of the action are no longer of consequence as a result of the  
10 settlement. *See Amchem*, 521 U.S. at 620 (“[c]onfronted with a request for settlement-only class  
11 certification, a [trial] court need not inquire whether the case, if tried, would present intractable  
12 management problems, for the proposal is that there be no trial.”).

### 13 **III. Plaintiffs' Counsel Should Be Appointed As Class Counsel**

14 Rule 23(g), governing the standards and framework for appointing class counsel  
15 for a certified class, sets forth four criteria the district court must consider in evaluating the  
16 adequacy of proposed counsel: (1) the work counsel has done in identifying or investigating  
17 potential claims in the action; (2) counsel's experience in handling class actions, other complex  
18 litigation, and claims of the type asserted in the action; (3) counsel's knowledge of the applicable  
19 law; and (4) the resources counsel will commit to representing the class. Fed. R. Civ. P.  
20 23(g)(1)(C)(i). The court may also consider any other matter pertinent to counsel's ability to  
21 fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(g)(1)(C)(ii). The  
22 Advisory Committee noted that “[n]o single factor should necessarily be determinative in a given  
23 case.” Fed. R. Civ. P. 23(g) advisory committee's note.

24 Information relevant to each of these criteria is set forth in the accompanying  
25 declarations of the named plaintiffs' counsel. *See Dermody Decl., Ex. B; Klein Decl., Ex. A;*  
26 *Mehri Decl., Ex. A; Finberg Decl., Ex. A.* As their declarations evidence, each lawyer has had  
27 substantial experience in employment discrimination class actions and each is well-qualified to  
28 represent the interests of the class. This Court should appoint the following named plaintiffs'

1 counsel to represent the class: Lief, Cabraser, Heimann & Bernstein, LLP; Outten & Golden  
2 LLP; Mehri & Skalet PLLC; and Altshuler Berzon, LLP

3 **IV. The Proposed Class Notice Is Appropriate**

4 **A. The Proposed Class Notice Satisfies Due Process**

5 The content of the proposed Notice of Class Action Settlement, which is attached  
6 to the proposed preliminary approval order as Exhibit 2, fully complies with due process and Fed.  
7 R. Civ. P. 23. Pursuant to Rule 23(c)(2)(B), the notice must provide:

8 the best notice practicable under the circumstances, including  
9 individual notice to all members who can be identified through  
10 reasonable effort. The notice must concisely and clearly state in  
11 plain, easily understood language: the nature of the action; the  
12 definition of the class certified; the class claims, issues, or defenses;  
13 that a class member may enter an appearance through counsel if the  
14 member so desires; that the court will exclude from the class any  
15 member who requests exclusion, stating when and how members  
16 may elect to be excluded; and the binding effect of a class judgment  
17 on class members under Rule 23(c)(3).

18 The Notice proposed here satisfies each of these requirements. The Notice also  
19 describes the terms of the settlement, informs the class about the attorneys' fees terms of the  
20 agreement, and provides specific information regarding the date, time, and place of the final  
21 approval hearing. Accordingly, the detailed information in the proposed Notice is more than  
22 adequate to put class members on notice of the proposed settlement and is well within the  
23 requirements of Rule 23(c)(2)(B).

24 The detailed information in the proposed Notice is more than adequate to put class  
25 members on notice of the proposed settlement. Courts have approved class notices even when  
26 they provided only general information about a settlement. *See, e.g., In re Michael Milken &*  
27 *Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (class notice "need only describe the terms  
28 of the settlement generally"). The proposed Notice exceeds this bare minimum and fully  
complies with the requirements of Rule 23(c)(2)(B).

**B. The Notice Plan And Claims Process Are Appropriate**

The settlement agreement provides that notice will be mailed individually by the  
claims administrator to the last known address of each class member within twenty (20) days of

1 preliminary approval. To ensure a complete and accurate mailing, Smith Barney will provide the  
 2 claims administrator with names and contact information of potential settlement class members  
 3 within ten (10) days of preliminary approval, and that list will be combined with a similar list  
 4 submitted by class counsel and addresses will be updated with any information available through  
 5 the National Change of Address system. The claims administrator will trace all returned  
 6 undeliverable notices and re-send to the most recent addresses available. *See Settlement*  
 7 *Agreement.*

8 As discussed above, the notice to the class will contain information about how to  
 9 exclude oneself, object to the settlement, and/or file a claim. Class members will have at least  
 10 forty-five (45) days from the date of mailing to submit opt-out requests or to comment on or  
 11 object to the settlement. This is sufficient time to give settlement class member a fair opportunity  
 12 to respond. *Cf. Torrasi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993) (approving  
 13 notice sent 31 days before the deadline for objections and 45 days before the hearing). Class  
 14 members will have an amount of time specified by order of the Court from the mailing of Notice  
 15 to submit a claim form. In doing so, they will be permitted to correct any of the pre-printed  
 16 information of the claim form. Once claims are received, the claims administrator will send  
 17 payments as soon as practicable via First Class Mail.

18 **V. The Proposed Scheduling Order; A Final Approval Hearing Should Be Scheduled**

19 The last step in the settlement approval process is the formal hearing, at which the  
 20 Court may hear all evidence and argument necessary to evaluate the settlement. Plaintiffs'  
 21 counsel proposes the following schedule for final approval:

23 May 20, 2008	Last day for the Claims Administrator to mail Notice and Claim Form to Class Members.
24 July 7, 2008	Last day for objections and comments in favor of the Settlement.
25 July 7, 2008	Last day to opt out of the Settlement.

1 2	July 22 2008	Deadline to Rescind opt-out.
3 4	July 24, 2008	Deadline for Motion for Approval of Attorneys' Fees and Service Award
5	July 24, 2008	Deadline for Motion for Final Settlement Approval
6 7	July 31, 2008	Deadline for Opposition to Motion for Final Approval or for Attorneys' Fees and Service Award
8 9	August 6, 2008	Deadline for Reply in Support of Motion for Final Approval or for Attorneys' Fees and Service Award
10 11	August 13, 2008 9:00 a.m.	Final Approval Hearing.
12 13	September 17, 2008	Last day for Class Members to submit Claim Form.

### CONCLUSION

For all of the foregoing reasons, plaintiffs respectfully request that the Court issue an order: (1) preliminarily approving the parties' class action settlement, (2) certifying the settlement classes, (3) appointing plaintiffs' counsel to represent the classes, (4) approving and directing distribution to the class of the Notice of Settlement and a Claim Form, and (5) setting a schedule for the final approval process.



