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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO/OAKLAND DIVISION

16 RENEE FASSBENDER AMOCHAEV,)
DEBORAH ORLANDO, KATHRYN N.)
17 VARNER and IVY SO, on behalf of)
themselves and all others similarly situated,)

18 Plaintiffs,)

19 v.)

20 CITIGROUP GLOBAL MARKETS INC.,)
21 d/b/a SMITH BARNEY,)

22 Defendant.)
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Case No. C-05-1298 PJH

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

The Honorable Phyllis J. Hamilton

1 Defendant Citigroup Global Markets Inc., d/b/a Smith Barney (“Smith Barney”),
2 for its answer and affirmative defenses to Plaintiffs’ First Amended Complaint (“Complaint”),
3 states as follows:

4 **ANSWER**

5 1. Denies the allegations in Paragraph 1 of the Complaint, except admits that Smith
6 Barney is an investment brokerage retail firm and a subsidiary of Citigroup Inc. (“Citigroup”).

7 2. Denies the allegations in Paragraph 2 of the Complaint.

8 3. Denies the allegations in Paragraph 3 of the Complaint.

9 4. Denies the allegations in Paragraph 4 of the Complaint.

10 5. Denies the allegations in Paragraph 5 of the Complaint.

11 6. Denies the allegations in Paragraph 6 of the Complaint, except admits that Smith
12 Barney assesses some aspects of the performance of its Financial Advisors by production and
13 assets under management, among other ways.

14 7. Denies the allegations in Paragraph 7 of the Complaint.

15 8. Denies the allegations in Paragraph 8 of the Complaint.

16 9. Denies the allegations in Paragraph 9 of the Complaint.

17 10. Denies the allegations in Paragraph 10 of the Complaint, except admits that: (a)
18 Smith Barney branch management has some discretion to allocate or distribute leads, referrals,
19 walk-ins, call-ins and the accounts of departing Financial Advisors to the Financial Advisors in
20 that branch pursuant to legitimate business objectives and in accordance with client needs; (b)
21 voluntary partnership and retirement opportunities are available to Financial Advisors, in part, on
22 the basis of commissions; and (c) Smith Barney compensates its Financial Advisors based on a
23 gender-neutral grid that considers, among other factors, the revenue the Financial Advisor has
24 generated for the firm; and (d) Smith Barney assigns sales assistance and titles on the basis of
25 revenue production, among other things.

26 11. Denies the allegations in Paragraph 11 of the Complaint.

27 12. Denies the allegations in Paragraph 12 of the Complaint.

28 13. Denies the allegations in Paragraph 13 of the Complaint.

1 14. Denies the allegations in Paragraph 14 of the Complaint, except admits that Smith
2 Barney compensates its Financial Advisors based on a gender-neutral grid that considers, among
3 other factors, the revenue the Financial Advisor has generated for the firm, and that its branch
4 management has some discretion to allocate or distribute leads, referrals, walk-ins, call-ins and
5 the accounts of departing Financial Advisors to those Financial Advisors who remain at the firm
6 pursuant to legitimate business objectives and in accordance with client needs.

7 15. Denies the allegations in Paragraph 15 of the Complaint, except admits that Smith
8 Barney permits its Financial Advisors to enter into voluntary partnerships, including, but not
9 limited to the Franchise Protection Program, a program pursuant to which a retiring Financial
10 Advisor transitions his or her accounts to another Financial Advisor who remains at the firm.

11 16. Denies the allegations in Paragraph 16 of the Complaint, except admits that Smith
12 Barney compensates its Financial Advisors based on a gender-neutral grid that considers, among
13 other factors, the revenue the Financial Advisor has generated for the firm, pursuant to its
14 compensation plan applicable to Financial Advisors, which Smith Barney updates annually.

15 17. Denies the allegations in Paragraph 17 of the Complaint.

16 18. Denies the allegations in Paragraph 18 of the Complaint.

17 19. Denies the allegations in Paragraph 19 of the Complaint.

18 20. Denies the allegations in Paragraph 20 of the Complaint, except respectfully
19 refers the Court to the complete text of the document referenced in Paragraph 20 of the
20 Complaint for its contents, and admits that Smith Barney settled *Martens, et al. v. Smith Barney,*
21 *et al.*, 96 Civ. 3779 (S.D.N.Y.), a putative gender discrimination class action lawsuit, on
22 November 18, 1997. In that suit and settlement, Smith Barney did not admit, but expressly
23 denied, all allegations of wrongdoing and liability. Smith Barney further specifically states that,
24 contrary to Paragraph 20 of the Complaint, Citigroup is not a defendant in this action.

25 21. Denies the allegations in Paragraph 21 of the Complaint, except admits that Smith
26 Barney settled *Martens, et al. v. Smith Barney, et al.*, 96 Civ. 3779 (S.D.N.Y.), a putative gender
27 discrimination class action lawsuit, on November 18, 1997. In that suit and settlement, Smith
28 Barney did not admit, but expressly denied, all allegations of wrongdoing and liability. Smith

1 Barney also respectfully refers the Court to the complete text of the *Martens* Consolidated
2 Stipulation of Settlement, dated November 18, 1997, for its contents.

3 22. Denies the allegations in Paragraph 22 of the Complaint.

4 23. Denies the allegations in Paragraph 23 of the Complaint.

5 24. Denies the allegations in Paragraph 24 of the Complaint, except admits that Smith
6 Barney created and implemented a written gender-neutral account distribution policy after the
7 settlement of the *Martens* litigation, which was approved by the *Martens* District Court.

8 25. Denies the allegations in Paragraph 25 of the Complaint.

9 26. Denies the allegations in Paragraph 26 of the Complaint and denies that Plaintiffs
10 are entitled to any of the relief sought herein, except admits that Plaintiffs purport to represent a
11 class of similarly situated women.

12 27. Denies the allegations in Paragraph 27 of the Complaint to the extent that they
13 purport to state a legal conclusion which does not require an answer, and to the extent an answer
14 is required, denies the allegations in Paragraph 27 of the Complaint, except admits that Plaintiffs
15 purport to premise subject matter jurisdiction on 28 U.S.C. § 1331.

16 28. Denies the allegations contained in Paragraph 28 of the Complaint, except admits
17 that (a) Plaintiffs purport to premise venue on 28 U.S.C. § 1391 rather than the controlling venue
18 provision of Title VII, 42 U.S.C. § 2000e-5(f)(3); (b) named Plaintiffs Amochaev, Orlando,
19 Varner and So purport to reside in California; (c) Smith Barney is licensed to do business in
20 California, and (d) Smith Barney has retail branches in California, including in the Northern
21 District of California.

22 29. Denies the allegations in Paragraph 29 of the Complaint, except denies knowledge
23 or information sufficient to form a belief as to the allegation concerning where the plaintiffs
24 reside.

25 30. Denies knowledge and information sufficient to form a belief as to the allegations
26 contained in Paragraph 30 of the Complaint, except denies that Smith Barney denied Ms.
27 Amochaev business opportunities on the basis of her gender, retaliated against her, or
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1 constructively discharged her, and admits that Renee Fassbender Amochaev is a woman and
2 formerly worked as a Financial Advisor at Smith Barney.

3 31. Denies knowledge and information sufficient to form a belief as to the allegations
4 contained in Paragraph 31 of the Complaint, except denies that Smith Barney denied Ms.
5 Orlando business opportunities on the basis of her gender, retaliated against her, or
6 constructively discharged her, and admits that Deborah Orlando is a woman and formerly
7 worked as a Financial Advisor at Smith Barney.

8 32. Denies knowledge and information sufficient to form a belief as to the allegations
9 contained in Paragraph 32 of the Complaint, except denies that Smith Barney denied Ms. Varner
10 business opportunities on the basis of her gender, retaliated against her, or constructively
11 discharged her, and admits that Kathryn Varner is a woman and formerly worked as a Financial
12 Advisor at Smith Barney.

13 33. Denies knowledge and information sufficient to form a belief as to the allegations
14 contained in Paragraph 33 of the Complaint, except denies that Smith Barney denied Ms. So
15 business opportunities on the basis of her gender, race or national origin and admits that Ivy So is
16 a woman, is of Filipino origin and formerly worked as a Financial Advisor at Smith Barney.

17 34. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
18 as a named plaintiff and therefore no response is required to the allegations in Paragraph 34 of
19 the Complaint.

20 35. Admits the allegation in Paragraph 35 of the Complaint.

21 36. Admits the allegation in Paragraph 36 of the Complaint.

22 37. Denies knowledge and information sufficient to form a belief as to the allegations
23 contained in Paragraph 37 of the Complaint, except admits that Smith Barney is a major retail
24 brokerage and global equity research firm employing approximately 12,000 Financial Advisors
25 in approximately 500 branch offices.

26 38. Admits the allegations in Paragraph 38 of the Complaint.

27 39. Denies the allegations in Paragraph 39 of the Complaint, except admits that
28 Plaintiffs purport to represent (a) a class of all female Financial Advisors employed by Smith

1 Barney in the United States at any time from August 30, 2003 and continuing to the present, and
2 (b) a Subclass of all female Financial Advisors employed by Smith Barney in California at any
3 time from June 25, 2003 and continuing to the present. Further, Smith Barney affirmatively
4 states that Plaintiffs cannot properly maintain this case as a class action under Federal Rule of
5 Civil Procedure 23.

6 40. Admits the allegations in Paragraph 40 of the Complaint only to the extent that
7 the Plaintiffs were employed by Smith Barney at some point between August 30, 2003 and the
8 present.

9 41. Denies the allegations in Paragraph 41 of the Complaint to the extent that they
10 purport to state a legal conclusion which does not require an answer, and to the extent an answer
11 is required, denies the allegations in Paragraph 41 of the Complaint, except admits that Smith
12 Barney presently employs approximately 12,000 Financial Advisors.

13 42. Denies the allegations in Paragraph 42 of the Complaint to the extent that they
14 purport to state a legal conclusion which does not require an answer, and to the extent an answer
15 is required, denies the allegations in Paragraph 42 of the Complaint.

16 43. Denies the allegations in Paragraph 43 of the Complaint to the extent that they
17 purport to state a legal conclusion which does not require an answer, and to the extent an answer
18 is required, denies the allegations in Paragraph 43 of the Complaint.

19 44. Denies the allegations in Paragraph 44 of the Complaint to the extent that they
20 purport to state a legal conclusion which does not require an answer, and to the extent an answer
21 is required, denies the allegations in Paragraph 44 of the Complaint.

22 45. Denies the allegations in Paragraph 45 of the Complaint to the extent that they
23 purport to state a legal conclusion which does not require an answer, and to the extent an answer
24 is required, denies the allegations in Paragraph 45 of the Complaint and denies that Plaintiffs are
25 entitled to any of the relief sought herein.

26 46. Denies the allegations in Paragraph 46 of the Complaint to the extent that they
27 purport to state a legal conclusion which does not require an answer, and to the extent an answer
28 is required, denies the allegations in Paragraph 46 of the Complaint and denies that Plaintiffs are

1 entitled to any of the relief sought herein.

2 47. Denies the allegations in Paragraph 47 of the Complaint.

3 48. Denies the allegations in Paragraph 48 of the Complaint, except admits that some
4 titles and recognition programs at Smith Barney consider a Financial Advisor's gross production
5 and/or assets under management.

6 49. Denies the allegations in Paragraph 49 of the Complaint, except admits that each
7 Smith Barney branch office has a Branch Manager and that management in each Smith Barney
8 branch has some discretion to allocate or distribute call-ins, walk-ins, leads and referrals to the
9 Financial Advisors in that branch.

10 50. Denies the allegations in Paragraph 50 of the Complaint.

11 51. Denies the allegations in Paragraph 51 of the Complaint, except admits that Ms.
12 Amochaev worked as a Financial Advisor in the Santa Rosa, California branch of Smith Barney
13 from March 2000 to July 23, 2004.

14 52. Denies the allegations in Paragraph 52 of the Complaint.

15 53. Denies the allegations in Paragraph 53 of the Complaint.

16 54. Denies the allegations in Paragraph 54 of the Complaint.

17 55. Denies the allegations in Paragraph 55 of the Complaint.

18 56. Denies the allegations in Paragraph 56 of the Complaint, except admits that Ms.
19 Amochaev complained that the allocation of accounts in connection with the dissolution of her
20 partnership in 2003 had been "unfair."

21 57. Denies the allegations in Paragraph 57 of the Complaint.

22 58. Denies the allegations in Paragraph 58 of the Complaint.

23 59. Denies knowledge or information sufficient to form a belief as to the allegations
24 in Paragraph 59 of the Complaint, except admits that a charge of discrimination, amended
25 charges of discrimination and a Notice of Right to Sue for Ms. Amochaev purport to be attached
26 as Exhibit A to the Complaint.

27 60. Denies the allegations of Paragraph 60 of the Complaint, except admits that
28 Deborah Orlando was employed as a Financial Advisor in the Santa Rosa, California branch of

1 Smith Barney from February 14, 1997 until July 23, 2004.

2 61. Denies the allegations in Paragraph 61 of the Complaint.

3 62. Denies the allegations in Paragraph 62 of the Complaint.

4 63. Denies the allegations in Paragraph 63 of the Complaint, except admits that Ms.
5 Orlando complained that her branch manager provided her with a less desirable parking space
6 and office than a male colleague.

7 64. Denies the allegations in Paragraph 64 of the Complaint.

8 65. Denies knowledge or information sufficient to form a belief as to the allegations
9 in Paragraph 65 of the Complaint, except admits that a charge of discrimination, amended charge
10 of discrimination and Notice of Right to Sue for Ms. Orlando purport to be attached as Exhibit B
11 to the Complaint.

12 66. Denies the allegations in Paragraph 66 of the Complaint, except admits that
13 Kathryn Varner was employed as a Financial Advisor in the Modesto, California branch of
14 Smith Barney from 1988 through 1991, and in the Santa Rosa, California branch of Smith
15 Barney from 1991 through July 16, 2004.

16 67. Denies the allegations in Paragraph 67 of the Complaint.

17 68. Denies the allegations in Paragraph 68 of the Complaint, except admits that Ms.
18 Varner complained that her branch manager's distribution of accounts in 2003 had been unfair to
19 her.

20 69. Denies the allegations in Paragraph 69 of the Complaint.

21 70. Denies knowledge or information sufficient to form a belief as to the allegations
22 in Paragraph 70 of the Complaint, except admits that a charge of discrimination and Notice of
23 Right to Sue for Ms. Varner purport to be attached as Exhibit D to the Complaint.

24 71. Denies the allegations in Paragraph 71 of the Complaint, except admits that Ivy
25 So was employed as a Financial Advisor in the Glendale, California branch of Smith Barney
26 from February 23, 2001 until August 4, 2006.

27 72. Denies the allegations in Paragraph 72 of the Complaint, except admits that Ms.
28 So is a woman and is of Filipino origin.

1 73. Denies the allegations in Paragraph 73 of the Complaint.
2 74. Denies the allegations in Paragraph 74 of the Complaint.
3 75. Denies the allegations in Paragraph 75 of the Complaint.
4 76. Denies the allegations in Paragraph 76 of the Complaint.
5 77. Denies the allegations in Paragraph 77 of the Complaint, except denies knowledge
6 or information sufficient to form a belief as to the allegations concerning Ms. So's office.

7 78. Denies the allegations in Paragraph 78 of the Complaint.
8 79. Denies the allegations in Paragraph 79 of the Complaint.
9 80. Denies the allegations in Paragraph 80 of the Complaint, except admits that Ms.
10 So complained that her syndicate allocation and office relocation had been unfair to her.

11 81. Denies the allegations in Paragraph 81 of the Complaint to the extent that they
12 purport to state a legal conclusion which does not require an answer, and to the extent an answer
13 is required, denies the allegations in Paragraph 81 of the Complaint, except admits that charges
14 of discrimination and Notices of Right to Sue for Ms. So purport to be attached as Exhibit C to
15 the Complaint.

16 82. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
17 as a named plaintiff and therefore no response is required to the allegations in Paragraph 82 of
18 the Complaint.

19 83. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
20 as a named plaintiff and therefore no response is required to the allegations in Paragraph 83 of
21 the Complaint.

22 84. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
23 as a named plaintiff and therefore no response is required to the allegations in Paragraph 84 of
24 the Complaint.

25 85. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
26 as a named plaintiff and therefore no response is required to the allegations in Paragraph 85 of
27 the Complaint.

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1 86. For its response to Paragraph 86 of the Complaint, Smith Barney repeats and
2 realleges its responses to the paragraphs referred to in Paragraph 86 of the Complaint.

3 87. Denies the allegations in Paragraph 87 of the Complaint to the extent that they
4 purport to state a legal conclusion which does not require an answer, and to the extent an answer
5 is required, denies the allegations in Paragraph 87 of the Complaint, except admits that Plaintiffs
6 purport to represent a class and that Notices of Right to Sue purport to be attached as exhibits to
7 the Complaint and denies knowledge and information sufficient to form a belief as to Plaintiffs'
8 claim that they have exhausted their administrative remedies. Further, Smith Barney
9 affirmatively states that Plaintiffs cannot properly maintain this case as a class action under
10 Federal Rule of Civil Procedure 23.

11 88. Denies the allegations in Paragraph 88 of the Complaint.

12 89. Denies the allegations in Paragraph 89 of the Complaint.

13 90. Denies the allegations in Paragraph 90 of the Complaint.

14 91. Denies the allegations in Paragraph 91 to the extent that they purport to state a
15 legal conclusion which does not require an answer, and to the extent an answer is required,
16 denies the allegations in Paragraph 91 of the Complaint.

17 92. Denies the allegations in Paragraph 92 of the Complaint.

18 93. Denies the allegations in Paragraph 93 of the Complaint and denies that Plaintiffs
19 are entitled to any relief.

20 94. For its response to Paragraph 94 of the Complaint, Smith Barney repeats and
21 realleges its responses to the paragraphs referred to in Paragraph 94 of the Complaint.

22 95. Denies the allegations in Paragraph 95 to the extent that they purport to state a
23 legal conclusion which does not require an answer, and to the extent an answer is required,
24 denies the allegations in Paragraph 95 of the Complaint, except admits that Plaintiffs purport to
25 represent a class and that Notices of Right to Sue purport to be attached as exhibits to the
26 Complaint and denies knowledge and information sufficient to form a belief as to Plaintiffs'
27 claims that they have exhausted their administrative remedies. Further, Smith Barney
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1 affirmatively states that Plaintiffs cannot properly maintain this case as a class action under
2 Federal Rule of Civil Procedure 23.

3 96. Denies the allegations in Paragraph 96 of the Complaint.

4 97. Denies the allegations in Paragraph 97 of the Complaint and denies that Plaintiffs
5 are entitled to any relief.

6 98. For its response to Paragraph 98 of the Complaint, Smith Barney repeats and
7 realleges its responses to the paragraphs referred to in Paragraph 98 of the Complaint.

8 99. Denies the allegations in Paragraph 99 of the Complaint, except admits that
9 Plaintiffs Amochaev, Orlando, Varner and So purport to bring a claim under the California Fair
10 Employment and Housing Act on behalf of themselves and a Subclass of female Financial
11 Advisors employed in Smith Barney's California branch offices.

12 100. Denies the allegations in Paragraph 100 to the extent that they purport to state a
13 legal conclusion which does not require an answer, and to the extent an answer is required,
14 denies the allegations in Paragraph 100 of the Complaint, except admits that Notices of Right to
15 Sue purport to be attached as exhibits to the Complaint.

16 101. Denies the allegations in Paragraph 101 of the Complaint to the extent that they
17 purport to state a legal conclusion which does not require an answer, and to the extent an answer
18 is required, denies the allegations in Paragraph 101 of the Complaint.

19 102. Denies the allegations in Paragraph 102 of the Complaint.

20 103. Denies the allegations in Paragraph 103 of the Complaint and denies that
21 Plaintiffs are entitled to any relief.

22 104. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
23 as a named plaintiff and therefore plaintiffs' "Fourth Claim for Relief" is dismissed and no
24 response is required to the allegations in Paragraph 104 of the Complaint.

25 105. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
26 as a named plaintiff and therefore plaintiffs' "Fourth Claim for Relief" is dismissed and no
27 response is required to the allegations in Paragraph 105 of the Complaint.

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1 106. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
2 as a named plaintiff and therefore plaintiffs' "Fourth Claim for Relief" is dismissed and no
3 response is required to the allegations in Paragraph 106 of the Complaint.

4 107. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
5 as a named plaintiff and therefore plaintiffs' "Fourth Claim for Relief" is dismissed and no
6 response is required to the allegations in Paragraph 107 of the Complaint.

7 108. By Order dated February 12, 2007, the Court dismissed Lisa Strange Weatherby
8 as a named plaintiff and therefore plaintiffs' "Fourth Claim for Relief" is dismissed and no
9 response is required to the allegations in Paragraph 108 of the Complaint.

10 109. For its response to Paragraph 109 of the Complaint, Smith Barney repeats and
11 realleges its responses to the paragraphs referred to in Paragraph 109 of the Complaint.

12 110. Denies the allegations in Paragraph 110 of the Complaint, except admits that Ms.
13 So purports to bring a claim for race and national origin discrimination under Title VII of the
14 Civil Rights Act on her own behalf.

15 111. Denies the allegations in Paragraph 111 of the Complaint to the extent that they
16 purport to state a legal conclusion which does not require an answer, and to the extent an answer
17 is required, denies the allegations in Paragraph 111 of the Complaint, except admits that charges
18 of discrimination for Ms. So purport to be attached as an exhibit to the Complaint and denies
19 knowledge and information sufficient to form a belief as to Plaintiffs' claim that Ms. So
20 exhausted her administrative remedies.

21 112. Denies the allegations in Paragraph 112 of the Complaint.

22 113. Denies the allegations in Paragraph 113 of the Complaint.

23 114. Denies the allegations in Paragraph 114 of the Complaint.

24 115. Denies the allegations in Paragraph 115 of the Complaint and denies that Ms. So
25 is entitled to any relief.

26 116. For its response to Paragraph 116 of the Complaint, Smith Barney repeats and
27 realleges its responses to the paragraphs referred to in Paragraph 116 of the Complaint.
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1 117. Denies the allegations in Paragraph 117 of the Complaint, except admits that Ms.
2 So purports to bring a claim for race and national origin discrimination under the California Fair
3 Employment and Housing Act on behalf of herself individually.

4 118. Denies the allegations in Paragraph 118 of the Complaint to the extent that they
5 purport to state a legal conclusion which does not require an answer, and to the extent an answer
6 is required, denies the allegations in Paragraph 118 of the Complaint, except admits that charges
7 of discrimination and Notices of Right to Sue for Ms. So purport to be attached as an exhibit to
8 the Complaint.

9 119. Denies the allegations in Paragraph 119 of the Complaint and denies that Ms. So
10 is entitled to any relief.

11 120. For its response to Paragraph 120 of the Complaint, Smith Barney repeats and
12 realleges its responses to the paragraphs referred to in Paragraph 120 of the Complaint.

13 121. Denies the allegations in Paragraph 121 of the Complaint, except admits that Ms.
14 So purports to bring a claim for race discrimination under 42 U.S.C § 1981 on behalf of herself
15 individually.

16 122. Denies the allegations in Paragraph 122 of the Complaint.

17 123. Denies the allegations in Paragraph 123 of the Complaint to the extent that they
18 purport to state a legal conclusion which does not require an answer, and to the extent an answer
19 is required, denies the allegations in Paragraph 123 of the Complaint.

20 124. Denies the allegations in Paragraph 124 of the Complaint and denies that Ms. So
21 is entitled to any relief.

22 125. Denies the allegations in Paragraph 125 of the Complaint and denies that
23 Plaintiffs are entitled to any relief.

24 126. Denies the allegations in Paragraph 126 of the Complaint.

25 127. Denies the allegations in Paragraph 127 of the Complaint.

26 128. Denies the allegations in Paragraph 128 of the Complaint.

27 129. Denies that Plaintiffs are entitled to any of the relief sought in Paragraphs 129 to
28 141.

1 Smith Barney denies all allegations not specifically admitted herein, and it further
2 pleads the following affirmative defenses:

3 **FIRST AFFIRMATIVE DEFENSE**

4 Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

5 **SECOND AFFIRMATIVE DEFENSE**

6 Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

7 **THIRD AFFIRMATIVE DEFENSE**

8 Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands and/or
9 estoppel by reason of conduct and actions of Plaintiffs and/or each of them.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 Plaintiffs' claims are barred in whole or in part by their failure to mitigate, or reasonably
12 attempt to mitigate, their damages.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 To the extent Plaintiffs seek relief under Title VII of the Civil Rights Act of 1964, as
15 amended, 42 U.S.C. § 2000e *et seq.*, and/or 42 U.S.C. § 1981, and/or the California Fair
16 Employment and Housing Act, Government Code § 12940 *et seq.*, from or for employment
17 decisions or actions that were not included in a charge timely filed with the appropriate
18 administrative agency, such claims are barred because of the failure to exhaust administrative
19 remedies and/or the failure to satisfy the statutory prerequisites and the Court therefore lacks
20 subject matter jurisdiction over such claims.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 To the extent Plaintiffs seek relief under Title VII of the Civil Rights Act of 1964, as
23 amended, 42 U.S.C. § 2000e *et seq.*, and/or 42 U.S.C. § 1981, and/or the California Fair
24 Employment and Housing Act, Government Code § 12940 *et seq.*, from or for employment
25 decisions or actions that were not made the subject of a timely charge with the appropriate
26 agency, such claims are barred.

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SEVENTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs seek relief under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and/or 42 U.S.C. § 1981, and/or the California Fair Employment and Housing Act, Government Code § 12940 *et seq.*, such claims are barred by the applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for exemplary or punitive damages are barred in whole or in part by the provisions of the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for punitive damages are barred on the grounds that Smith Barney's actions were not undertaken with malice or reckless indifference to the Plaintiffs' federally protected rights.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to recover any punitive or exemplary damages and any allegations with respect thereto should be stricken because:

- a. Plaintiffs have failed to plead facts sufficient to support allegations of oppression, fraud and/or malice. Cal. Civ. Code § 3294(a);
- b. Plaintiffs have failed to plead facts sufficient to support allegations of gross or reckless disregard for the rights of Plaintiffs or that Smith Barney was motivated by evil motive or intent;
- c. Neither Smith Barney nor any of its officers, directors or managing agents committed any alleged oppressive, fraudulent or malicious act, authorized or ratified such act, or had advance knowledge of the unfitness, if any, of any employee or employees who allegedly committed such an act or employed any such employee or employees with a conscious disregard of the rights or safety of others. Cal. Civ. Code § 3294(b); and
- d. California's laws regarding the alleged conduct in this action are too vague to permit the imposition of punitive damages, and California's laws,

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rules and procedures regarding punitive damages, as applied to the facts in this case, would violate Defendant's constitutional rights under provisions of the United States and California Constitutions, including but not limited to, the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the Excessive Fines and Cruel and Unusual Punishment Clauses of the Eighth Amendment to the United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

All of Smith Barney's employment decisions with respect to Plaintiffs were based on legitimate, non-discriminatory business reasons and were not pretexts for discrimination.

TWELFTH AFFIRMATIVE DEFENSE

All of Smith Barney's employment decisions with respect to Plaintiffs were job-related and consistent with business necessity.

THIRTEENTH AFFIRMATIVE DEFENSE

All of Smith Barney's employment decisions with respect to Plaintiffs were based on *bona fide* factors other than gender.

FOURTEENTH AFFIRMATIVE DEFENSE

Some or all of the forms of relief sought in the Complaint are barred because Smith Barney has at all times acted in good faith and with the honest belief that its conduct was in compliance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and/or 42 U.S.C. § 1981, and/or the California Fair Employment and Housing Act, Government Code § 12940 *et seq.*

FIFTHTEENTH AFFIRMATIVE DEFENSE

Smith Barney exercised reasonable care to prevent and correct any alleged sexual harassing behavior and Plaintiffs unreasonably failed to take advantage of any preventive or corrective opportunities provided by Smith Barney.

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SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and allegations on behalf of the putative class are factually and legally inappropriate for resolution as a class action under Federal Rule of Civil Procedure 23.

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent that certification of the purported class is denied, Plaintiffs' claims must be arbitrated pursuant to the terms of their employment contract.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to challenge any employment practices that did not affect them.

NINETEENTH AFFIRMATIVE DEFENSE

Any alleged harassment that Plaintiffs may have experienced was not sufficiently pervasive to affect the terms or conditions of their employment, and thus is not actionable.

Smith Barney states that it currently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Smith Barney reserves the right to assert additional affirmative defenses in the event that discovery indicates they would be appropriate.

1 WHEREFORE, defendant Smith Barney respectfully requests that the Court dismiss this
2 action with prejudice and award Smith Barney its costs of action, reasonable attorneys' fees and
3 such other and further relief as may be just and proper.

4 DATED: February 16, 2007

Respectfully submitted,

5 PAUL, WEISS, RIFKIND,
6 WHARTON & GARRISON LLP

7
8 By: /s/ Jay Cohen

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