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26 UNITED STATES DISTRICT COURT
27 NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendant.

Case No. C-05-1298 PJH

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR: (1) FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; (2) CERTIFICATION OF
SETTLEMENT CLASS; (3) APPROVAL
OF DISTRIBUTION OF SETTLEMENT
FUNDS**

Date: August 13, 2008
Time: 9:00 a.m.
Place: Courtroom 3
Hon. Phyllis J. Hamilton

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INTRODUCTION

The parties have agreed to a settlement that provides comprehensive injunctive relief and monetary relief totaling \$33,000,000 plus interest accruing since December 14, 2007.¹ The parties’ settlement, embodied in the Settlement Agreement, easily satisfies the “fair, reasonable, and adequate” standard for final approval. *See* Federal Rule of Civil Procedure 23(e).

The Settlement Agreement provides exceptional relief to female Financial Advisors at Citigroup Global Markets, Inc., d/b/a Smith Barney (“Smith Barney”). The Settlement Agreement’s extensive injunctive relief provisions address Class members’ claims and will materially enhance equal employment opportunity for Smith Barney’s female Financial Advisors (“FAs”). The monetary relief provided to Class members is also substantial and fairly allocated. Taken together, the injunctive and monetary provisions of the Settlement Agreement will provide Class members with prompt, certain, and comprehensive relief — in contrast to the complexity, delay, expense, and risk of continuing litigation.

Class members have responded very favorably to the settlement. Class notice was mailed to 2,411 Class members on May 20, 2008 and June 20, 2008. The deadline for submitting claim forms is not until September 17, 2008. As of July 23, 2008, the Claims Administrator had received 1,219 claim forms. Accordingly, approximately fifty percent of the Class members have submitted claim forms well in advance of the deadline. Thirteen Class members have opted out, and no Class members have submitted objections. Class Counsel, who are experienced in litigating employment discrimination and class action cases, firmly believe that this proposed settlement is in the best interest of the class.

SUMMARY OF SETTLEMENT TERMS

The proposed Settlement Agreement provides comprehensive injunctive relief and substantial monetary relief.

¹ The fund will have earned approximately \$720,000 by the time the funds are disbursed.

1 **I. INJUNCTIVE RELIEF**

2 **A. Communications**

3 Smith Barney has agreed to distribute its Non-Discrimination, Anti-Harassment and Anti-
4 Retaliation Policy to all employees upon hire (in hard copy or by electronic mail) and then on an
5 annual basis via email from Smith Barney's CEO. (See Docket No. 172, Exhibit 1, (herein
6 "Settlement Agreement"), § VII.A.) Employees shall be required to submit an acknowledgment
7 of receipt. (*Id.*)

8 In addition, the CEO of Global Wealth Management shall issue a statement annually in
9 support of the Policy and its underlying tenets. (Settlement Agreement, § VII.A.) The Policy
10 will be available on Smith Barney's intranet site and will be incorporated into various other
11 policies including Smith Barney's Code of Conduct and its Internet and Electronic
12 Communications Usage Policy. (*Id.*)

13 The Non-Discrimination, Anti-Harassment and Anti-Retaliation Policies and the
14 behaviors they seek to promote and prevent shall be the subject of mandatory training that all
15 employees will be required to complete upon hire. (Settlement Agreement, § VII.A.)

16 **B. Branch Management/Mobility**

17 All available branch management positions (including minimum requirements for
18 qualification) will be posted to FAs who either: (i) have successfully completed the branch
19 management assessment program, or (ii) are already in branch management and request to be
20 informed of new management job postings. (Settlement Agreement, § VII.B.) These positions
21 currently are titled: National Development Officer; Divisional Development Officers; Regional
22 Development Officers; Sales Manager; Branch Manager; and Assistant Branch Manager. All
23 positions will be posted for a minimum of five (5) business days. (*Id.*) Either the hiring manager
24 or Human Resources will follow up with each applicant/candidate in a timely manner. In
25 addition, Smith Barney shall develop and implement a computerized system to generate an
26 electronic mail notification of new management job postings to FAs who either: (i) have
27 successfully completed the branch management assessment program, or (ii) are already in branch
28 management and request to be informed of new management job postings. (*Id.*)

1 Smith Barney shall post a written description of the branch management assessment
2 program and the criteria for admission on the Firm's intranet site. (Settlement Agreement, §
3 VII.B.)

4 An Industrial Psychologist appointed pursuant to the Settlement Agreement shall review
5 Smith Barney's branch management assessment program and, if appropriate, make
6 recommendations for increasing the participation of females in the branch manager assessment
7 program and in branch management. (Settlement Agreement, § VII.B.)

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

15 Branch Manager compensation shall have a diversity component designed to measure and
16 reward efforts at diversifying representation rates in the FA position, including the following
17 areas as appropriate: recruiting, mentoring, training, retaining and promoting female FAs.
18 (Settlement Agreement, § VII.B.) Smith Barney has agreed to develop and implement a
19 standardized annual process whereby Branch Managers shall be required to report on their efforts
20 and results in promoting a diverse workforce (including, for example, their efforts to retain
21 female FAs and their efforts to assist female FAs in, among other things, increasing their
22 production, participating in partnerships in the branch, participating in the Franchise Protection
23 Program, being added to the branch management bench, and obtaining promotions to branch
24 management), and whereby senior Smith Barney management will review these efforts and take
25 them into account when determining the diversity component of each Branch Manager's
26 compensation. (*Id.*) These reports on diversity efforts by Branch Managers, as well as the
27 recommendations regarding each Branch Manager's diversity component of compensation, shall
28 be provided to the Diversity Monitor annually. (*Id.*)

1 **C. Account Distribution**

2 Under the Settlement, Smith Barney has agreed to make significant changes to its
3 procedures for distributing accounts of departing FAs, including reducing reliance on historical
4 factors, such as assets under management and length of service with Smith Barney, and more
5 heavily weighting criteria that reflect recent performance. (*See* Settlement Agreement, § VII.C.)
6 Smith Barney has also agreed to automate the account distribution process based on a “Power
7 Rankings” system and to limit the exceptions that can be made to the Power Rankings. (*Id.*)

8 **1. Power Rankings**

9 a. Under the Settlement Agreement, all Power Ranking factors that measure
10 performance from the previous twelve-month period will be adjusted to encompass a twelve-
11 month period exclusive of absence for parental leave or short-term disability leave. (Settlement
12 Agreement, § VII.C.1.a.) For example, if an FA or Financial Advisor Associate (“FAA”) was on
13 a leave of absence for four of the preceding 12 months, the previous 12 months measure will
14 instead count the last 12 months that the employee was active. (*Id.*)

15 b. Smith Barney will provide the methodology for calculating the Power
16 Rankings to each FA, including the name of each factor, an explanation of each factor, and how
17 each factor is weighted. (Settlement Agreement, § VII.C.1.b.) Upon hire, each FA and FAA will
18 be individually provided with the methodology of the objective measures utilized in the Power
19 Ranking calculation and the manner in which calculations are completed and this will be
20 available to all FAs and FAAs electronically. Smith Barney has agreed to provide notice to FAs
21 and FAAs regarding any modification to the Power Ranking methodology. (*Id.*)

22 c. Smith Barney has agreed to inform each FA and FAA of her or his
23 individual ranking at the time any distribution is made. (Settlement Agreement, §VII.C.1.c.)
24 Smith Barney will make the actual distribution of a departing FA’s book available to an FA and
25 FAA in the Branch and such communication shall include the rankings and (without identification
26 of any particular FA or FAA by name) the number of accounts and the assets distributed to each
27 ranked FA and FAA. (*Id.*)

1 **2. Account Distribution Policies**

2 a. Smith Barney senior management will issue a comprehensive account
3 distribution policy statement, which shall include policies covering the distribution of the
4 accounts of departing FAs, retiring FAs (other than accounts distributed through the Franchise
5 Protection Program), departing partners, and leads, call-ins, and walk-ins. (Settlement
6 Agreement, § VII.C.2.a.) The statement shall be issued via email to all field employees and shall
7 be posted on Smith Barney’s intranet site and shall include a prohibition on discrimination. In
8 addition, Smith Barney will train all current Branch Managers on account distribution policies
9 and procedures at the time the settlement becomes effective, and will similarly train all new
10 managers that are subsequently hired. (*Id.*)

11 b. The Settlement Agreement gives Branch Managers discretion to disqualify
12 an FA from an account distribution for improper conduct, such as, for example, if an FA is: (1)
13 currently on heightened supervision consistent with industry standards; (2) subject to any
14 regulatory action reportable as a “yes” answer on Form U-4 questions 14C-G; (3) subject to
15 discipline reported on Form RE-3 in the last 12 months; or (4) subject to any written performance
16 or workplace conduct warning in the last 90 days and to disqualify any FAA who is not meeting
17 minimum performance standards; provided, however, that where such an exception to the Power
18 Ranking process is made, it shall be documented by the Branch Manager or his/her designee in
19 writing and included in the quarterly reports on exceptions provided to the Diversity Monitor.
20 (Settlement Agreement, § VII.C.2.b.) FAs and FAAs are not eligible for an account distribution
21 if they: (1) have voluntarily opted-out of the distribution; (2) are not in the product specialty
22 group to which the distributed accounts belong; or (3) are on parental or short-term disability
23 leave at the time the account distribution is made. (*Id.*)

24 c. Where an exception is made to the Power Ranking process because of, for
25 example, a client relationship or client service needs, each individual exception shall be
26 documented by the Branch Manager or his/her designee in writing, including the legitimate
27 business reasons for the exception. (Settlement Agreement, § VII.C.2.c.) Customer preference
28 based on a bias against women cannot be used as a legitimate business reason for an exception,

1 provided, however, that Smith Barney shall have no obligation to inquire as to or otherwise
2 attempt to discover the reason for a customer preference for or against an FA or FAA. (*Id.*)
3 Records of all exceptions shall be kept for purposes of monitoring policy compliance and
4 regularly reviewed by the Regional Director and the Diversity Monitor. (*Id.*) The Company shall
5 provide the Diversity Monitor quarterly reports on exceptions being made in the branches
6 including information on the identity of the branches, the branch managers who approved the
7 exceptions and an explanation of the exceptions. (*Id.*) If an FA or FAA receives an account
8 through an exception, that FA or FAA will not receive another account in the same distribution
9 until every eligible FA and FAA has first received an account from those accounts that come next
10 in the ranking of accounts in that distribution; provided, however, that if that FA or FAA is the
11 only one qualified in the branch to service a later account in the distribution, that FA or FAA shall
12 receive that account even if not every eligible FA and FAA has already received an account in the
13 distribution, and such exception shall be documented in accordance with § VII.C.2.b. of the
14 Settlement Agreement. (*Id.*) An individual FA or FAA who does not receive a specific account
15 as a result of an exception shall receive the next available account in the same distribution for
16 which he/she is qualified to service. (*Id.*) Branch Managers who are determined to have
17 distributed an account pursuant to any improper exception shall receive an appropriate discipline,
18 which can include a material reduction in their annual bonus, and which discipline shall be
19 reviewed by the Diversity Monitor in accordance with § VII.F.1.b of the Settlement Agreement.
20 (*Id.*)

21 d. The Settlement Agreement requires that Smith Barney enhance its
22 technology to allow its account distribution process to be computer automated, subject to branch
23 manager review to ensure compliance with regulatory requirements and consideration of the best
24 interests of the firm's clients. (Settlement Agreement, § VII.C.2.d.) Account distributions will be
25 made through this automated process, subject to exceptions described in Section VII.C.2.b. and c.
26 of the Settlement Agreement. (*Id.*) The results of all account distributions shall be stored and
27 readily retrievable for monitoring to ensure compliance with account distribution policies. (*Id.*)
28

1 **3. Disputes Concerning Account Distributions**

2 The Settlement Agreement provides that if at any time during the term of the Settlement
3 Agreement a dispute shall arise between Smith Barney and an FA concerning any account
4 distribution, such dispute shall—at the written request of the FA—go through Smith Barney’s
5 internal complaint process, which includes access to mediation. However, nothing in the
6 Settlement Agreement prevents any Class Member or Named Plaintiff from individually pursuing
7 any legal claim not released under this Settlement through any applicable governmental agency,
8 arbitration forum or court of law if she is otherwise entitled to do so. (Settlement Agreement, §
9 VII.C.3.) If an FA submits a gender-related complaint through Smith Barney’s alternative
10 dispute resolution system, that person shall receive a written description of the ADR process—
11 and a written notice indicating that the statutes of limitations on her/his legal claims will be tolled
12 for 120 days from the date of his/her submission of the ADR complaint. (*Id.*)

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

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

19 **5. Up-front Bonuses**

20 a. The Settlement Agreement provides that the Industrial Psychologist shall
21 review and, if appropriate, make recommendations for developing a standard and nationwide
22 process for determining up-front bonuses, forgivable loans, and other transitional compensation
23 packages given to lateral recruits. (Settlement Agreement, § VII.C.5.a.) These recommendations
24 shall be designed to promote gender equity in the receipt and amount of transitional compensation
25 packages—after taking into consideration factors such as the lateral recruit’s production start
26 date, production, assets under management, return on assets, product mix and any non-
27 discriminatory factors—and shall be made in accordance with § VII.F.2. of the Settlement
28 Agreement. (*Id.*)

1 b. The Settlement Agreement requires Smith Barney to develop, with input
2 from the Industrial Psychologist, and implement a system to keep records of all up-front bonuses,
3 forgivable loans, and other transitional compensation packages given to lateral recruits, including
4 the name, gender, production start date, production, assets under management, return on assets
5 and product mix of those recruits. (Settlement Agreement, § VII.C.5.b.) It also requires Smith
6 Barney to provide a summary of this information to the Diversity Monitor and Class Counsel.
7 (*Id.*) The summary information will include comparative data on gender, and information on
8 geographic location, amount of up-front bonuses, methodology used to determine the up front
9 bonus amounts and any other factors taken into consideration in offering up-front bonuses,
10 forgivable loans, and other transitional compensation to lateral recruits. (*Id.*) The Diversity
11 Monitor will review and report on these records to the Industrial Psychologist. (*Id.*)

12 **6. Retiring Financial Advisors**

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

17 a. Smith Barney will consider the efforts made by branch management to
18 increase participation by female FAs in the Franchise Protection Program in determining the
19 diversity component of Branch Manager compensation. (Settlement Agreement, § VII.C.6.b.)

20 b. The Industrial Psychologist shall review and, if appropriate, make
21 recommendations to promote equitable participation of female FAs in the firm's Franchise
22 Protection Program, including female FAs' participation as retiring brokers and receiving brokers
23 in the Franchise Protection Program.

24 c. The Diversity Monitor will review female FA participation in Franchise
25 Protection Programs, both as retiring brokers and as receiving brokers, and will receive
26 information from Smith Barney about the gender of persons receiving assets and the value of
27 assets transferred. (Settlement Agreement, § VII.C.6.d.)

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7. Partnerships

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

b. Smith Barney will consider the efforts made and results achieved by branch management to increase participation by female FAs in partnerships in the branch in determining the diversity component of Branch Manager compensation. (Settlement Agreement, § VII.C.7.b.)

c. The Industrial Psychologist shall review and, if appropriate, make recommendations to promote equitable participation of female FAs in partnerships and teams. (Settlement Agreement, § VII.C.7.c.)

d. For purposes of an FA's or FAA's Power Rankings, Smith Barney will count partnership assets under management based on the percentage of the commission split specified in the Joint Production Agreement. (Settlement Agreement, § VII.C.7.d.)

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

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

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

2 The Settlement Agreement provides that each Branch Office shall implement a “Financial
3 Advisor of the Day” program. (Settlement Agreement, § VII.C.8.a.) Pursuant to this program, all
4 client prospects who either walk in or telephone the branch and who are seeking a Financial
5 Advisor shall be directed to the FA serving as the Financial Advisor of the Day. The daily
6 assignments shall be made alphabetically and announced on a monthly basis on or before the last
7 day of the preceding month. (*Id.*) The monthly roster shall be posted in a conspicuous location
8 within the branch where all other Firm policies are posted. Participation among eligible FAs shall
9 be voluntary each month. (*Id.*)

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

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

26 c. If the Branch Manager determines that the Financial Advisor of the Day is
27 not qualified to handle a walk-in or a call-in prospect, the Branch Manager shall complete an
28 exception report specifying the reason why the Financial Advisor of the Day was not selected.

1 (Settlement Agreement, § VII.C.8.d.) The Diversity Monitor will receive this exception report.

2 (*Id.*)

3 d. All FAs who are in good standing shall be eligible to be Financial Advisor
4 of the Day. (Settlement Agreement, § VII.C.8.e.) Producing Branch Managers may participate in
5 the Financial Advisor of the Day program to the same extent as FAs, except they too must
6 comply with the process described in § VII.C.8.e of the Settlement Agreement, including use of
7 exception reports and may receive leads, call-ins, and walk-ins only when they are the designated
8 Financial Advisor of the Day. (*Id.*)

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

13 **9. Development Opportunities**

14 Smith Barney has agreed to work with the Industrial Psychologist to develop workplace
15 initiatives designed to retain women at Smith Barney as FAs, and to enhance their success,
16 including targeted mentoring and training. (*See* Settlement Agreement, § VII.D.) Training and
17 mentoring may include, but is not limited to, training, conference calls, online courses, and in-
18 person seminars. (*Id.*) The Industrial Psychologist, if appropriate, shall make recommendations
19 to promote equitable participation of female FAs in development opportunities.

20 Smith Barney additionally agreed to provide exit questionnaires to FAs who terminate
21 voluntarily in order to gain a better understanding as to the reason for the departures. (Settlement
22 Agreement, § VII.D.) The exit questionnaires submitted by female FAs shall be available to the
23 Industrial Psychologist and the Diversity Monitor, who shall report his or her findings to Human
24 Resources. (*Id.*)

25 Smith Barney has also agreed to maintain its commitment to its female broker networking
26 meetings. (Settlement Agreement, § VII.D.)

27 **D. Complaint Process And Training**

28 The Settlement Agreement provides that the complaint process, including Smith Barney's

1 prohibition against retaliation, as provided in the Non-Discrimination and Anti-Harassment
2 Policy, shall be communicated in writing to all FAs upon hire, and annually to all FAs.
3 (Settlement Agreement, § VII.E.) New hires shall be required to submit an acknowledgment of
4 receipt of this communication. (*Id.*)

5 Smith Barney has agreed to provide its Human Resources staff with appropriate training
6 regarding compliance with state, federal, and local EEO laws; Smith Barney's anti-discrimination
7 and harassment policies; and the Settlement Agreement. (Settlement Agreement, § VII.E.)

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

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

25 **E. Appointments**

26 **1. Diversity Monitor** The Settlement Agreement provides that the parties
27 shall jointly appoint a Diversity Monitor. (Settlement Agreement, § VII.F.) The Diversity
28 Monitor shall be external to and independent of Smith Barney, but will report directly to the CEO

1 of Global Wealth Management. (*Id.*) The Diversity Monitor shall monitor Smith Barney's
2 efforts to carry out the terms of the Settlement Agreement. This shall include the following:

3 a. The Diversity Monitor will receive quarterly reports regarding complaints
4 of female Financial Advisors alleging sex discrimination, sex bias, or retaliation and the
5 resolution of investigations of such complaints through any Smith Barney ADR program.
6 (Settlement Agreement, § VII.F.1.a.)

7 b. The Diversity Monitor will review reports by the Company on the
8 diversity-related annual assessment process for Branch Managers, including the self-assessments
9 completed by Branch Managers, and annual data and information provided by the Company
10 related to the diversity component of each Branch Managers' compensation. (Settlement
11 Agreement, § VII.F.1.b.)

12 c. The Diversity Monitor will also review reports on exceptions to the
13 account distribution system being made in the branches, including information on the identity of
14 the branches, the branch managers who approved the exceptions and an explanation of the
15 exceptions. (Settlement Agreement, § VII.F.1.c.)

16 d. On an annual basis, the Diversity Monitor will review up-front bonuses,
17 forgivable loans and other transitional compensation packages that Smith Barney provided to
18 lateral recruits, and will report on these records to the Industrial Psychologist. In addition, the
19 Diversity Monitor will receive a copies of the summaries set forth in § VII.C.5.b. of the
20 Settlement Agreement, and in connection with management approval of any forgivable loan
21 provided to a lateral recruit and may interview the appropriate branch manager about the rationale
22 for any upfront bonuses, forgivable loans, or transitional compensation packages. (Settlement
23 Agreement, § VII.F.1.d.)

24 e. On an annual basis, the Diversity Monitor will also review female FA
25 participation in the Franchise Protection Program, both as retiring and receiving brokers, and will
26 receive information from Smith Barney semi-annually about the gender of persons receiving
27 assets and the value of assets transferred. (Settlement Agreement, § VII.F.1.e.)
28

1 f. On a semi-annual basis, the Diversity Monitor will review reports relating
2 to redistributed accounts from partnerships including number of accounts, FA revenue, asset
3 value and gender of receiving Financial Advisor as well as female FA participation in
4 partnerships and will receive information from Smith Barney about partnership splits based on
5 gender and the value of assets under each partnership based on gender. (Settlement Agreement, §
6 VII.F.1.f.)

7 g. The Diversity Monitor will also monitor bi-annual training of management
8 on EEO policies, and policies against discrimination and retaliation, and ensure that the training
9 agreed to was implemented. (Settlement Agreement, § VII.F.1.g.)

10 h. The Diversity Monitor will review exception reports regarding the
11 Financial Advisor of the Day program. (Settlement Agreement, § VII.F.1.h.)

12 i. The Diversity Monitor will review how Human Resources handles
13 investigations and the resolution process for inquiries and complaints. (Settlement Agreement, §
14 VII.F.1.i.)

15 j. The Diversity Monitor will review the exit questionnaires completed by
16 departing female Financial Advisors, as well as information regarding the retention of female FAs
17 annually, and report his/her findings to Human Resources. (Settlement Agreement, § VII.F.1.j.)

18 k. If the Diversity Monitor identifies issues of potential non-compliance, the
19 Diversity Monitor will inform Smith Barney and Lead Class Counsel. (Settlement Agreement, §
20 VII.F.1.k.) In consultation with Lead Class Counsel, the Settlement Agreement requires Smith
21 Barney to take appropriate corrective action to address all instances of non-compliance with the
22 provisions of the Settlement Agreement unless Smith Barney can show that corrective action
23 would be inconsistent with legitimate business and client needs and objectives. (*Id.*) Smith
24 Barney is required to inform the Diversity Monitor and Lead Class Counsel of any such
25 corrective action taken. Where potential non-compliance has been identified, the Diversity
26 Monitor will have the right to audit the activities in a branch, by reviewing documents, asking
27 branch management to provide explanations and, if necessary, speaking to FAs in the branch, and
28 the right to receive relevant information from Smith Barney headquarters upon reasonable

1 request. (*Id.*) Lead Class Counsel has the right to enforce the Settlement Agreement under the
2 Dispute Resolution provisions found in Section VII.J. of the Settlement Agreement. (*Id.*)

3 l. The Diversity Monitor will provide reports to Lead Class Counsel and
4 Smith Barney at least semi-annually regarding the items described in the Settlement Agreement to
5 be monitored, including in Section F.1.a-k, and including the analysis of the account distribution
6 system. (Settlement Agreement, § VII.F.1.1.) The Diversity Monitor may report incidents of
7 potential material non-compliance with the Settlement Agreement to Lead Class Counsel and
8 Smith Barney on a more frequent basis. (*Id.*)

9 m. The Diversity Monitor will maintain records for the term of the Settlement
10 Agreement. (Settlement Agreement, § VII.F.1.m.)

11 **1. Industrial Psychologist**

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

16 b. Production and earnings of female FAs, including policies and practices
17 with respect to training, development, mentoring, and business-related allocations; (Settlement
18 Agreement, § VII.F.2.a.)

19 c. Participation of female FAs in the Franchise Protection Program, both as
20 retiring FAs and as receiving FAs; (*Id.*)

21 d. Participation of female FAs in partnerships and teams, including
22 commission splits between male and female partners, and dissolution of partnerships and teams;
23 (*Id.*)

24 e. Up-front bonuses, forgivable loans, and other transitional compensation
25 packages offered to lateral recruits; (*Id.*)

26 f. Policies and practices with respect to training, development, and mentoring
27 for female FAs. Training and development may include, but is not limited to, training, conference
28 calls, online courses, and in-person seminars; (*Id.*)

1 g. Participation of females in Smith Barney's branch management assessment
2 program and in branch management; and

3 h. A mentoring program for all FAs. (*Id.*)

4 i. The Industrial Psychologist will review the actual implementation of the
5 programs, policies, and initiatives that Smith Barney is obligated to undertake by virtue of the
6 Settlement Agreement and will annually report the results of this review to the Diversity Monitor.
7 The Industrial Psychologist will annually review the retention rates of women in the FA position
8 and report the results of this review to the Diversity Monitor. (Settlement Agreement, §
9 VII.F.2.b.)

10 j. The Industrial Psychologist will present any recommendations to the
11 members of Senior Management at Smith Barney who are most appropriate to address each issue.
12 (Settlement Agreement, § VII..F.2.c.) A copy of the recommendations will also be provided to
13 Lead Class Counsel. (*Id.*) All recommendations of the Industrial Psychologist will be designed
14 to advance the purposes of the Settlement Agreement consistent with Smith Barney's legitimate
15 business needs and objectives. (*Id.*) If Smith Barney does not agree with any such
16 recommendations, but Lead Class Counsel still thinks they should be implemented
17 notwithstanding Smith Barney's objections, the Industrial Psychologist, along with Lead Class
18 Counsel, will have the opportunity to present the recommendations to Smith Barney's highest
19 ranking officer overseeing FA compensation, currently the Director of Field Management. The
20 Settlement Agreement requires Smith Barney to decide in good faith, consistent with the purposes
21 of the Settlement Agreement whether to implement such recommendations. (*Id.*)

22 k. The Industrial Psychologist will provide to the parties statistical analyses
23 on the Power Ranking criteria. (Settlement Agreement, § VII.F.2.d.) These analyses will report
24 on data at the 12, 20, 36 and 44 month intervals from the Effective Date. With the analysis, the
25 Industrial Psychologist will determine whether female brokers have received less than their pro
26 rata share of distributed accounts, and if so, whether the difference is statistically significant.
27 (*Id.*) This determination shall be based on an aggregate comparison of (i) the value of the
28 accounts distributed, based on their account value at the end of the month prior to their

1 distribution; and (ii) the representation of men and women in the population of Financial
2 Advisors in the retail brokerage division of Smith Barney, including only those brokers who were
3 active within the time period being measured. (*Id.*)

4 1. The Power Rankings may be changed at any time upon agreement between
5 Smith Barney and Lead Class Counsel following a meet and confer process. (Settlement
6 Agreement, § VII.F.2.e.) If, following the meet and confer process, Lead Class Counsel do not
7 agree to a change proposed by Smith Barney, Smith Barney may seek authority from Hunter R.
8 Hughes, Esq. or another mutually selected mediator (the “Mediator”) to implement the proposed
9 change(s) to the Power Ranking systems. (*Id.*) To bring about such changes, the Settlement
10 Agreement requires Smith Barney to show to the satisfaction of the Mediator that (a) the changes
11 are necessary to comply with applicable law; or (b) each of the criteria they seek to change is
12 having a significant adverse impact on Smith Barney's business and that the change(s) sought
13 would not disadvantage female FA or FAAs relative to the criteria being displaced. (*Id.*)

14 m. If, following either the 20 or 44 month reports, the Industrial Psychologist
15 determines that female brokers have received less than their pro rata share of distributed accounts,
16 and that the difference is statistically significant, then Lead Class Counsel may initiate a meet and
17 confer session with Smith Barney's counsel. (Settlement Agreement, § VII.F.2.f.) If, in the
18 judgment of Lead Class Counsel, the meet and confer does not result in a satisfactory resolution,
19 Lead Class Counsel may request a hearing before the Mediator solely for the purpose of resolving
20 whether there should be any change to the Power Ranking factors or any adjustment to their
21 weight. The Settlement Agreement requires Smith Barney to pay the cost of such binding
22 mediation. (*Id.*) The Mediator will review each party's submissions and make a final, non-
23 appealable determination regarding whether there should be any change to the Power Ranking
24 factors or any adjustment to their weight. (*Id.*)

25 n. The Settlement Agreement provides that, subject to signing an appropriate
26 confidentiality agreement and upon reasonable advance notice, the Diversity Monitor and the
27 Industrial Psychologist will have reasonable access to relevant documents, data, and Smith
28

1 Barney employees. (Settlement Agreement, § VII.F.2.g.) The Diversity Monitor and the
2 Industrial Psychologist will be compensated by Smith Barney. (*Id.*)

3 o. If it becomes necessary to replace the Diversity Monitor or the Industrial
4 Psychologist, the Settlement Agreement provides that the parties will select a replacement by
5 mutual agreement. (Settlement Agreement, § VII.F.2.h.)

6 **F. General Non-Discrimination Provisions**

7 The Settlement Agreement provides that pursuant to Smith Barney's Non-Discrimination
8 and Anti-Harassment Policy, female FAs will enjoy terms and conditions of employment
9 comparable to their male counterparts. (Settlement Agreement, § VII.G.)

10 Smith Barney has agreed to reaffirm its commitment to the following general policies
11 using a method agreed to by the parties: (i) Prohibition against discrimination on the basis of sex
12 in compensation and business opportunity allocations. (ii) Prohibition against retaliation for
13 reporting sex discrimination, participating in any Smith Barney ADR program, participating in
14 this or any discrimination settlement, filing a lawsuit or complaint with any outside agency or
15 entity alleging sex discrimination, or for refusing to participate in sex discrimination. (Settlement
16 Agreement, § VII.G.)

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

20 The parties have also agreed that it will be a violation of the Settlement Agreement for a
21 Smith Barney supervisor to retaliate against any Class Member for her participation in the
22 prosecution of the allegations contained in the charges underlying the Settlement or in the
23 Settlement itself. (Settlement Agreement, § VII.G.4.) Nothing in the Settlement will prevent a
24 Class Member from pursuing whatever legal rights or remedies she otherwise may have with
25 respect to any individual claim not covered by the claims released through this Settlement. (*Id.*)

26 **G. Duration Of The Settlement**

27 The programmatic relief embodied in the Settlement Agreement and the agreements
28 incorporated therein are binding on the parties and their agents and successors for a four-year

1 period following the Effective Date, which is defined in the Settlement Agreement as the date on
2 which this Court has entered an order and judgment finally approving the Settlement and
3 dismissing the action with prejudice, and the time for appeal has either run without an appeal
4 being filed or any appeal has been finally resolved. (*See* Settlement Agreement, § VII.H.)

5 **H. Enforcement**

6 Under the Settlement Agreement, Lead Class Counsel will meet and confer with counsel
7 for Smith Barney prior to commencement of any enforcement proceedings. (Settlement
8 Agreement, § XIV.L.1.)

9 The parties have agreed to work diligently and in good faith to resolve all disputes that
10 may arise during the term of this Settlement Agreement concerning the rights, obligations and
11 duties of the parties to the Settlement Agreement. (Settlement Agreement, § XIV.L.2.) In the
12 event the parties cannot agree, the parties will attempt to resolve the dispute with the facilitation
13 of Hunter Hughes, Esq. or another mutually selected mediator whose services shall be paid for by
14 Smith Barney. (*Id.*)

15 **I. Monitoring**

16 **1. Data Collection**

17 Smith Barney has agreed to collect data which will include, but not be limited to: (1)
18 compensation of Financial Advisors; (2) partnerships between active FAs or partnerships between
19 active and retiring FAs; (3) account distributions, defined to include all transfers of accounts from
20 one FA to another within Smith Barney such as those of retiring and deceased FAs, not just the
21 distribution of the accounts of departing FAs; (4) gender discrimination and retaliation complaints
22 made by female FAs; (5) retention of FAs; and (6) any other areas agreed upon by Smith Barney
23 and Lead Class Counsel. (Settlement Agreement, §VIII.A.)

24 **2. Monitoring System**

25 With input from the Industrial Psychologist and consent from Lead Class Counsel, Smith
26 Barney has agreed to create and implement a system of monitoring compliance with each policy
27 described herein, including, without limitation, the account distribution policy using the Power
28 Ranking methodology. (Settlement Agreement, §VIII.B.)

1 **2. Reports**

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

6 **3. Meetings**

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

11 **II. MONETARY RELIEF**

12 In addition to the significant, comprehensive injunctive relief described above, Smith
13 Barney will establish a settlement fund of approximately \$33 million plus interest. (Settlement
14 Agreement, § IX.A.) The fund will have earned approximately \$ 720,000 in interest by the time
15 that it is disbursed. This fund will compensate members of the settlement class, including the
16 Named Plaintiffs, who do not opt out and who timely submit claims. (*Id.*)

17 The Settlement Fund is allocated for payment directly to Class members, reduced only by:
18 (1) the service payment in the amount of \$50,000 each to Renee Amochaev, Kathryn Varner and
19 Deborah Orlando, and \$35,000 to Ivy So (or less than 1 percent of the Settlement Fund); (2)
20 payment to the Named Plaintiffs for release of their non-class claims in an amount not to exceed
21 \$550,000 in total; (3) attorneys' fees in a total amount not to exceed \$6.5 million (plus accrued
22 interest as of October 1, 2008); (4) reimbursement to Class Counsel of out of pocket costs not to
23 exceed \$900,000 (plus accrued interest as of October 1, 2008); (5) \$500,000 (plus accrued interest
24 as of October 1, 2008) for Class Counsel's future work implementing and monitoring the
25 Settlement during the four-year term of the Agreement according to the following schedule:
26 \$200,000 one year from the date of the Court's order for final approval, and \$100,000 for each of
27 the three years thereafter; (6) all costs in connection with the Settlement Fund, including, but not
28 limited to, those related to notice, claims processing, independent legal advice obtained by the

1 Fund Administrator relating to the establishment of the Qualified Settlement Fund and tax
2 treatment and tax reporting of awards to claimants, and the preparation of the Fund's tax returns
3 (and the taxes associated with such tax returns); and (7) applicable federal, state and local income
4 taxes, and all federal and state unemployment taxes required by law to be withheld and/or paid by
5 Smith Barney. (*See* Settlement Agreement, § IX.A.; X.A.; X.E.) The Settlement Sum does not
6 include Smith Barney's share of taxes or contributions (*i.e.*, FICA, FUTA, SUTA and Medicare)
7 which will be paid separately by Smith Barney to the Claims Administrator in addition to the
8 \$33 million fund. (*Id.* at § IX.A.)² It is expected that the service payments to the named
9 Plaintiffs will readily be covered by the interest earned on the fund, and that more than \$25
10 million will be paid out to Class members after reduction for fees, costs, and claims
11 administration.

12 Each class member, including each Named Plaintiff, who files a timely claim form will be
13 eligible to receive monies based on length of tenure (e.g. weeks worked) at Smith Barney as a
14 Financial Advisor. (Settlement Agreement § IX.D.) Class members may also receive additional
15 credit if they provide information in their Claim Form regarding termination or constructive
16 discharge resulting from gender-based discrimination, though Class members are not required to
17 provide such information and may participate in the settlement based solely on length of service.
18 (*Id.*)

19 The Claims Administrator will allocate points to each Class member submitting a Claim
20 Form. (Settlement Agreement, Ex. A (Notice) at 18.) Each claimant will receive 1 point for each
21 week worked as a Financial Advisor, either between August 30, 2003 and March 1, 2008, or
22 between June 25, 2003 and March 1, 2008 if they worked as a Financial Advisor in California.
23 (*Id.*) Claimants will also be eligible to receive up to 50 additional points if they provide
24 information on the Claim Form about their termination or constructive discharge from Smith
25 Barney as the result of alleged gender-based discrimination. (*Id.*) The Claims Administrator will

26 _____
27 ² The number of Class Members who have duly requested exclusion from the Settlement Class
28 does not exceed the number filed with the Court under seal concurrently with the Settlement
Agreement.

1 make all determinations regarding Claim Form points. (Settlement Agreement, IX.D.) The total
2 amount of such awards shall not exceed the net amount of the Settlement Fund after all costs and
3 Class Counsel's attorney's fees. (*Id.*) The Claims Administrator's determination shall be final
4 and not subject to review by, or appeal to, any court, mediator, arbitrator or other judicial body,
5 including without limitation this Court. (*Id.*)

6 Following his or her determination as to the monetary award, if any, that should be paid to
7 each Claimant from the Settlement Fund, the Claims Administrator shall send a Notice of Award
8 to each eligible Claimant, along with a Named Plaintiff Release or a Class Member Release,
9 whichever is applicable. (Settlement Agreement, § IX.D.) Within a reasonable time period after
10 receipt of an executed Named Plaintiff Release from a Named Plaintiff or an executed Class
11 Member Release from a Class Member, the Claims Administrator shall send the Named Plaintiff
12 or Class Member her award payment. (*Id.*) Any Named Plaintiff who does not execute and
13 timely deliver an executed Named Plaintiff Release, and any Class Member who does not execute
14 and timely deliver an executed Class Member Release to the Claims Administrator within six (6)
15 months of the date the Notice of Award was mailed to her shall be ineligible for, and forever
16 barred from receiving, monetary relief under this Settlement Agreement, even if said Named
17 Plaintiff or Class Member has not opted out. Any undistributed funds that remain after six (6)
18 months from the mailing of the Notice of Award due to uncashed checks shall be distributed to
19 501(c)(3) organizations advancing career opportunities for women, including career opportunities
20 in the financial services industry, as jointly selected by Lead Class Counsel and Smith Barney.
21 (*Id.*)

22 The Claims Administrator shall maintain the distribution plan and allocation list for a
23 period of five (5) years. (Settlement Agreement, § IX.D.) Smith Barney shall have access to
24 individual allocation amounts only upon written notice to Class Counsel and a showing of good
25 cause (*e.g.*, actual or threatened litigation by a Claimant). (*Id.*) Any dispute as to whether good
26 cause exists for such a requested disclosure shall be resolved through the dispute resolution
27 process set forth in Section XIV.L.2. of the Settlement Agreement. (*Id.*)
28

1 **III. RELEASE OF CLAIMS**

2 If the Court grants final approval to the parties' settlement and the proposed Settlement
3 Agreement, the Settlement Class members who do not timely opt out will release all gender
4 discrimination claims against Smith Barney under federal and state laws that are certified by the
5 Court on the date of final approval, for the period of August 30, 2003, through May 1, 2008 and
6 for the period of June 25, 2003 through May 1, 2008 for female FAs employed in California.³
7 (*See* Settlement Agreement, § V.A.; Ex. B.) The Class Member Release will release all claims,
8 known and unknown, existing through the date of preliminary approval, under any federal, state
9 or local legal theory, for gender discrimination against Smith Barney, with the exception of
10 claims for non-economic damages (such as emotional pain, distress, suffering, inconvenience,
11 mental anguish, loss of enjoyment of life, and other non-economic losses) that arise from sexual
12 harassment. (*Id.*) This settlement would bar a claim for loss of compensation of any type or
13 description (including but not limited to commissions, salary, bonuses, deferred compensation
14 and incentive awards) arising from or relating to any type of sex or gender discrimination
15 (including but not limited to sexual harassment), but would not bar a claim of emotional distress,
16 costs of medical treatment, or other such non-economic compensatory damages arising from or
17 related to sexual harassment. (*Id.*) The Class Member Release does not include other claims of
18 discrimination such as claims of race, age or national origin discrimination or claims arising out
19 of the Fair Labor Standards Act or the Employment Retirement Income Securities Act. (*Id.*)

20 Each Class Representative will receive an additional payment for the release of her non-
21 class claims, including race and age discrimination and non-economic losses that arise from
22 sexual harassment, to be determined by the neutral Claims Administrator. (Settlement
23

24 ³ The Settlement Class which was preliminarily approved by the Court in its May 1, 2008 Order
25 under Federal Rules of Civil Procedure 23(a), 23(b)(2) and 23(b)(3) consists of: "All women
26 employed as Financial Advisors in (i) the United States branches of Smith Barney's retail
27 brokerage division at any time from August 30, 2003 through March 1, 2008; or (ii) the
28 California branches of Smith Barney's retail brokerage division at any time from June 25, 2003
through March 1, 2008." (Doc. No. 172 at 2.) The Settlement Class does not include, for
example, (i) brokers in Smith Barney's Financial Life Services (FLS) program, (ii) Smith
Barney's bank-based advisors; or (iii) Financial Advisor Associates or Financial Consultant
Associates.

1 Agreement, § V.B.) These decisions shall be based upon a review of the factual record and shall
2 be non-appealable. (*Id.*) In no event will the total of all such awards exceed \$550,000. (*Id.*)
3 Each Class Representative will be required to execute and deliver to the Claims Administrator a
4 Named Plaintiff Release in the form agreed to by counsel for the parties and attached to the
5 Settlement Agreement as Exhibit C, which shall entitle them to receive payments for the release
6 of both their class and non-class claims. (*Id.*) A copy of each executed Named Plaintiff Release
7 shall be provided to counsel for Smith Barney. (*Id.*) The Named Plaintiff Release is not a limited
8 release of claims of gender discrimination but instead releases all claims of any nature against
9 Smith Barney under federal, state or local laws for any period up through the date of preliminary
10 approval. (*Id.*)

11 **LEGAL STANDARD**

12 The Ninth Circuit has recognized a strong policy favoring voluntary settlement of
13 complex class actions. “[V]oluntary conciliation and settlement are the preferred means of dispute
14 resolution.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). “This
15 is especially true in complex class action litigation,” which lend themselves to compromise
16 because of the difficulties of proof, uncertainty of outcome, and length and complexity of
17 litigation. *Id.*; see also *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)
18 (“strong judicial policy ... favors settlements, particularly where complex class action litigation is
19 concerned”).

20 Public policy also favors the settlement of Title VII cases. In *Carson v. American Brands,*
21 *Inc.*, 450 U.S. 79 (1981), the Supreme Court explained that “[i]n enacting Title VII, Congress
22 expressed a strong preference for encouraging voluntary settlement of employment discrimination
23 claims.” *Id.* at 88, n.14; see also *Officers for Justice*, 688 F.2d at 625. This Court has reached the
24 same conclusion. See *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980)
25 (“settlement is favored in resolving Title VII litigation”).

26 Federal Rule of Civil Procedure 23(e) requires that a class action settlement be “fair,
27 adequate and reasonable” in order to merit approval. The Ninth Circuit has identified a non-
28 exhaustive list of factors to guide the final approval inquiry, including: (1) the amount offered in

1 settlement, (2) the reaction of the class to the proposed settlement, (3) the strength of the
 2 plaintiff's case balanced against the "risk, expense, complexity, and likely duration of further
 3 litigation" and the "risk of maintaining class action status throughout the trial," (4) the "extent of
 4 discovery completed" and the "stage of the proceedings," and (5) the informed views of
 5 experienced counsel. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also*
 6 *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). With respect to the last factor, the
 7 "recommendations of plaintiffs' counsel should be given a presumption of reasonableness,"
 8 particularly when counsel has significant experience litigating similar cases. *Boyd v. Bechtel*
 9 *Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979); *Ellis*, 87 F.R.D. at 18 ("the fact that experienced
 10 counsel involved in the case approved the settlement after hard-fought negotiations is entitled to
 11 considerable weight").

12 When determining whether to grant final approval, "the court's intrusion upon what is
 13 otherwise a private consensual agreement negotiated between the parties to a lawsuit must be
 14 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product
 15 of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,
 16 taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d
 17 at 625; *see also Hanlon*, 150 F.3d at 1026 ("It is the settlement taken as a whole, rather than the
 18 individual component parts, that must be examined for overall fairness.").

19 ARGUMENT

20 IV. THE COURT SHOULD GRANT FINAL APPROVAL TO THE SETTLEMENT 21 AND SETTLEMENT AGREEMENT

22 A. The Settlement Agreement Provides Exceptional Injunctive And Monetary Relief To The Class

23 1. The Settlement Agreement Provides Exceptional Injunctive Relief

24 As set forth above in detail, this Settlement implements comprehensive, valuable
 25 injunctive relief to the entire class and addresses the compensation claims at issue in this action.
 26 In particular, Smith Barney has agreed to revise its account distribution system to reduce reliance
 27 on historical factors and weight more heavily criteria that reflect recent performance. The
 28 Settlement provides for a fair and transparent account distribution system. This system will be

1 reviewed and monitored by a jointly-selected Industrial Psychologist, with all findings and
2 recommendations provided to an external, independent, and jointly selected Diversity Monitor
3 and the parties. The Settlement also provides for a process by which counsel for the parties shall
4 monitor the impact of this system on female FAs and modify the system if they agree that
5 modifications are necessary. In the event the parties do not agree to proposed modifications and
6 certain specified conditions are met, the Agreement provides for resolution through binding
7 mediation before a neutral mediator.

8 The Settlement also addresses other factors of broker compensation, including up-front
9 bonuses, forgivable loans, other transitional compensation packages given to lateral recruits,
10 partnerships, teams, the Franchise Protection Program, and books of business formerly serviced
11 by retiring FAs who are not participating in the Franchise Protection Program.

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

23 Thus, the Settlement Agreement provides significant and valuable injunctive relief.

24 **2. The Monetary Relief Provided by the Settlement Agreement Is**
25 **Substantial and Fairly Allocated**

26 The Settlement Agreement provides substantial monetary relief. The total fund created by
27 the Settlement will be \$33 million plus interest. In order to claim monetary benefits, the Class
28 members must complete a 2 page form which asks for (1) contact information; (2) gender; and

1 (3) an optional description of termination or constructive discharge resulting from gender
2 discrimination. (*See* Settlement Agreement, Ex. A.)

3 Each Class member's monetary recovery will be determined based on length of tenure
4 (e.g. weeks worked) at Smith Barney as an FA. (Settlement Agreement, § IX.D.) The Claims
5 Administrator will allocate 1 point to each claimant for each week worked as a Financial Advisor,
6 either between August 30, 2003 and March 1, 2008 or between June 25, 2003 and March 1, 2008
7 if they worked as a Financial Advisor in California. (*Id.*, Ex. A, at 18.) Class members may also
8 receive up to 50 additional points if they provide information on the Claim Form regarding
9 termination or constructive discharge allegedly resulting from gender-based discrimination.
10 (Settlement Agreement, Ex. A, at 18.) Class members are not required to provide such
11 information and may participate in the settlement based solely on length of service. (*Id.*)

12 **B. The Reaction Of The Class Supports Approval Of The Settlement**

13 Class notice and claim forms were sent to 2,411 Class members on May 20, 2008 and
14 June 30, 2008. (Declaration of Trae Smith ("Smith Decl.") at ¶¶ 2-4.) The list of notice
15 recipients was determined using data provided by Smith Barney and data gathered by Class
16 Counsel during the course of litigation. (*Id.* at ¶ 2.) The settlement also generated substantial
17 news coverage. (Declaration of Kelly M. Dermody in Support of Final Settlement Approval
18 ("Dermody Decl. in Support of Final Settlement Approval"), ¶ 8.)

19 Class member claims must be postmarked by September 17, 2008. (*See* Smith Decl. at
20 ¶ 7.) As of July 23, 2008, the claims administrator had already received approximately
21 1,219 claims. (*Id.* at ¶ 7.) Thirteen Class members have opted out, and no Class members have
22 submitted a objections. (*Id.* at ¶ 8; *see also* Dermody Decl. in Support of Final Settlement
23 Approval at ¶ 9.) Class Counsel, who are experienced in litigating employment discrimination
24 and class action cases, submit that this proposed settlement is in the best interest of the Class.

25 **C. The Litigation Involved Substantial Potential Risks**

26 The "risk, expense, complexity, and likely duration of further litigation" are factors to be
27 considered in assessing a proposed settlement. *Hanlon*, 150 F.3d at 1026.

28 The factual and legal issues in this case are complex, as demonstrated by the parties' years

1 of hard-fought litigation and the terms of the Settlement Agreement itself. Any liability phase
2 trial of plaintiffs' claims - which involve thousands of Class members employed throughout
3 Smith Barney would also be complex and might require substantial additional preparation. (*See*
4 Declaration of Kelly M. Dermody in Support of Preliminary Settlement Approval (Docket No.
5 155) ("Dermody Decl. in Support of Preliminary Settlement Approval") at ¶ 50.) All of these
6 complex proceedings would be expensive and would result in significant delay before any
7 potential recovery. (*Id.* at ¶ 51.)

8 Litigating the case to trial also presents substantial risks. Although Plaintiffs and Class
9 Counsel believe Class members' claims are strong, it is clear that Smith Barney would put on a
10 vigorous defense, and it would ultimately be up to the fact-finder to determine, for example,
11 whether Smith Barney acted with a prohibited discriminatory intent or whether its policies
12 otherwise violated Title VII or state law.

13 In contrast to the complexity, delay, risk and expense of continuing litigation, the
14 proposed settlement will yield a prompt, certain, and substantial recovery for Class members.

15 **D. The Parties Conducted Extensive Investigation And Analysis And The**
16 **Settlement Was Reached through Arms' Length Negotiations.**

17 As noted above, and as extensively described in the declarations accompanying Plaintiffs'
18 Motion for Preliminary Settlement Approval, plaintiffs' counsel spent thousands of hours
19 litigating this case and vigorously investigating the claims asserted against Smith Barney on
20 behalf of the proposed settlement class. (*See* Dermody Decl. in Support of Preliminary
21 Settlement Approval at ¶¶ 30-39.) Plaintiffs' counsel spoke with and interviewed more than 135
22 Class members; took eleven (11) depositions of Smith Barney managers, including senior-level
23 corporate officers; defended three-day depositions of each named plaintiff; reviewed over
24 160,000 pages of documents; propounded nine sets of discovery requests; and responded to
25 multiple sets of discovery requests propounded by Smith Barney. (*Id.* at ¶¶ 32-38.) In addition,
26 the parties litigated a motion to transfer pursuant to 28 U.S.C. § 1404(a), a motion to enjoin
27 discovery, multiple motions to compel, a cross-motion for a protective order, and a motion to
28 dismiss. (*Id.* at ¶ 31.) At the time of Settlement, plaintiffs' counsel had already prepared a

1 motion for class certification and all supporting papers and expert reports. (*Id.* at ¶¶ 37, 43.)

2 During discovery, plaintiffs' counsel also received substantial payroll, partnership, and
3 account distribution data from Smith Barney. (*See* Dermody Decl. in Support of Preliminary
4 Settlement Approval, ¶ 30.) From this data, plaintiffs' statistical expert conducted numerous
5 sophisticated, multi-variant regression analyses related to disparities in compensation and client-
6 account transfers. (*Id.* at ¶ 37.) Plaintiffs' expert calculations formed the basis for negotiations
7 regarding the monetary terms of the settlement. (*Id.*)

8 In sum, plaintiffs' counsel completed substantial investigation and discovery and
9 negotiated the proposed Settlement with a clear understanding of the strengths and weaknesses of
10 the case and the amounts necessary to compensate Class members for the harm allegedly
11 suffered. (*See* Dermody Decl. in Support of Preliminary Settlement Approval, ¶ 39.)

12 While discovery was ongoing, the parties simultaneously participated in negotiations with
13 the assistance of an experienced mediator, Hunter Hughes, Esq. of Atlanta, Georgia. (Dermody
14 Decl. in Support of Final Settlement Approval at ¶ 4.) The parties here had multiple, face-to-face
15 negotiating sessions in New York and San Francisco at various times in calendar years 2005,
16 2006, 2007 and 2008. (*Id.*) Under the supervision of the mediator, the parties' negotiations were
17 conducted at arm's length. (*Id.*) At the time the parties agreed to a settlement in principle,
18 plaintiffs had fully briefed, but not yet filed, their motion for class certification. (Dermody Decl.
19 in Support of Preliminary Settlement Approval at ¶ 43.) Only after all terms of the settlement had
20 been finalized did the parties discuss attorneys' fees. (*Id.*)

21 The extensive discovery allowed Class Counsel — who are experienced employment
22 discrimination attorneys — to assess the strengths and weaknesses of the claims against Smith
23 Barney and the benefits of the proposed settlement under the circumstances of this case.
24 (Dermody Decl. in Support of Preliminary Settlement Approval, ¶ 39.) As a result of discovery
25 exchanges and communications with Class members, Class Counsel were well informed
26 regarding Smith Barney's policies and practices and relied on that information in negotiating the
27 injunctive relief terms of the Settlement Agreement. (*Id.* at ¶ 42.)

28 In sum, the, proposed Settlement Agreement is the non-collusive result of extensive

1 factual and legal analysis and protracted arms' length negotiations between experienced and well-
2 informed counsel under the supervision of an experienced mediator.

3 **E. The Recommendations Of Experienced Counsel Favor Approval Of The**
4 **Settlement**

5 The judgment of experienced counsel regarding the settlement is entitled to significant
6 weight, *see, e.g., Hanlon*, 150 F.3d at 1026, and the recommendation of experienced class counsel
7 should be given a presumption of reasonableness. *See Boyd*, 485 F.Supp. at 622.

8 Class Counsel have extensive experience prosecuting and litigating employment
9 discrimination cases and complex class actions. (*See Dermody Decl. in Support of Preliminary*
10 *Settlement Approval at ¶¶ 4-27; Declaration of Adam T. Klein in Support of Preliminary*
11 *Settlement Approval (Docket No. 157) at ¶¶ 3-7; Declaration of Cyrus Mehri in Support of*
12 *Preliminary Settlement Approval (Docket No. 158) at ¶¶ 4-12; Declaration of James M. Finberg*
13 *in Support of Preliminary Settlement Approval (Docket No. 156) at ¶¶ 4-12.*) Class Counsel
14 conducted a comprehensive legal and factual investigation into the claims in this case, and Class
15 Counsel firmly believe that the proposed Settlement Agreement easily satisfies Rule 23(e)'s
16 requirements and is in the best interest of all Class members. (*Dermody Decl. in Support of*
17 *Preliminary Settlement Approval at ¶¶ 30-39; 50-52.*) This considered view of experienced
18 counsel weighs heavily in favor of final approval. *Hanlon*, 150 F.3d at 1026

19 **CONCLUSION**

20 For the reasons stated herein, in Plaintiffs' memorandum and points of authority in
21 support of preliminary approval and in the Court's May 1, 2008 Order, Plaintiffs respectfully
22 request that the Court enter an order granting final approval to the parties' settlement, granting
23 final certification to the proposed Settlement Class, and approving and ordering the distribution of
24 the Settlement Funds.

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Dated: July 24, 2008

Respectfully submitted,

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