

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

Susan Martin (AZ#014226)
Daniel L. Bonnett (AZ#014127)
Jennifer Kroll (AZ#019859)
MARTIN & BONNETT, P.L.L.C.
1850 N. Central Avenue, Suite 2010
Phoenix, Arizona 85004
Telephone: (602) 240-6900
smartin@martinbonnett.com
dbonnett@martinbonnett.com
jkroll@martinbonnett.com

Attorneys for Plaintiffs

David B. Rosenbaum, Atty. No. 009819
Dawn L. Dauphine, Atty. No. 010833
OSBORN MALEDON, P.A.
2929 North Central Avenue, Suite 2100
Phoenix, AZ 85012-2794
Telephone: (602) 640-9000
drosenbaum@omlaw.com
ddauphine@omlaw.com

Michael L. Banks, *Pro Hac Vice*
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000
mbanks@morganlewis.com

Howard Shapiro, *Pro Hac Vice*
Robert W. Rachal, *Pro Hac Vice*
PROSKAUER ROSE LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70130
Telephone: (504) 310-4088
howshapiro@proskauer.com
rrachal@proskauer.com

Attorneys for Defendants

Amy Covert, *Pro Hac Vice*
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036-8299
Telephone: (973) 274-3258
acovert@proskauer.com

Christopher Landau, P.C., *Pro Hac Vice*
Craig S. Primis, P.C., *Pro Hac Vice*
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, DC 20005-5793
Telephone: (202) 879-5000
clandau@kirkland.com
cprimis@kirkland.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Barbara Allen, Richard Dippold,
Melvin Jones, Donald McCarty,
Richard Scates and Walter G. West,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

Honeywell Retirement Earnings Plan,
Honeywell Secured Benefit Plan, Plan
Administrator of Honeywell
Retirement Earnings Plan, and Plan
Administrator of Honeywell Secured
Benefit Plan,

Defendants.

No. CV04-0424 PHX ROS

**JOINT MOTION FOR AND
MEMORANDUM IN SUPPORT
OF PRELIMINARY APPROVAL OF
AMENDED FINAL SETTLEMENT**

Plaintiffs, Barbara Allen, Richard Dippold, Melvin Jones, Donald McCarty,
Richard Scates, and Walter G. West, individually and on behalf of all others similarly
situated (“Plaintiffs”), and Defendants, the Honeywell Retirement Earnings Plan
 (“Retirement Plan”), the Honeywell Secured Benefit Plan (“Secured Benefit Plan”), the
 Plan Administrator of the Honeywell Retirement Earnings Plan, and the Plan
 Administrator of the Honeywell Secured Benefit Plan (collectively, “Defendants”),
 jointly by and through undersigned Counsel, respectfully move the Court to enter the
 proposed Order of Preliminary Approval of Final Settlement (“Preliminary Approval
 Order”), which is being submitted herewith. The Preliminary Approval Order has been
 agreed to by the *Parties*,¹ and is necessary to effectuate the proposed *Final Settlement* of

¹ The capitalized and italicized terms herein, to the extent not otherwise defined herein,
 have the meaning ascribed to them in the Amended Class Action Final Settlement
 Agreement.

1 this action. This motion is supported by the below Memorandum of Points and
2 Authorities and the Court's file in this matter.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 The Amended Class Action Final Settlement Agreement (the "Agreement")
5 attached hereto as Exhibit A, provides substantial benefits to all eligible members of the
6 *Settlement Class*.² The Agreement removes the risk of non-recovery and provides
7 benefits to all such *Settlement Class* members in this vigorously litigated complex ERISA
8 case. For the reasons explained herein, the *Parties* jointly request that the Court grant
9 their motion for preliminary approval of the *Final Settlement* and the Agreement.

10 **I. TERMS OF THE SETTLEMENT**

11 The terms and conditions of the *Final Settlement* are set forth in detail in the
12 Agreement. (See Exhibit A hereto), and the principal terms are summarized below:

13 **A. Scope:** The *Final Settlement* will settle all *Released Claims* as to all
14 *Released Parties*, including the *Three Remaining Claims*.

15 **B. Settlement Consideration:** When the *Final Settlement* is *Final*, the
16 *Retirement Plan* will be amended to provide *Eligible Participants*, *Eligible Beneficiaries*
17 and *Eligible Estate Representatives* with additional benefits of \$23.8 million, minus any
18 amounts awarded for attorneys' fees and costs pursuant to the *Fee Application*. In the
19 *Fee Application*, *Class Counsel* will seek approval from the Court for an award of \$5.75

20
21
22 ² *Settlement Class* members who are eligible to recover additional benefits under the
23 *Final Settlement* are former participants in the *Garrett Retirement Plan* and the *Garrett*
24 *Severance Plan* who (i) became a vested participant in the *Signal Retirement Plan*, (ii) is,
25 was or may become eligible for benefits under the *Signal Retirement Plan*, the *Allied*
26 *Signal Retirement Program* and/or the *Retirement Plan*, and (iii) was alive on July 1,
27 2002, or had a surviving *Beneficiary* who was alive on July 1, 2002 or such person's
28 beneficiary or eligible estate representative. Former participants in the *Garrett*
Retirement Plan and the *Garrett Severance Plan* with respect to whom the assets and
liabilities were transferred to a pension plan maintained by a third party unrelated to
Honeywell or its predecessor companies are not eligible for *Final Settlement Benefits*.

1 million in attorneys' fees. *Class Counsel* will also seek approval of \$800,000 for costs
2 incurred during the *Litigation* since October 1, 2007 and for the anticipated costs of
3 administration of the *Final Settlement* that are being borne by *Plaintiffs*.

4 The *Final Settlement Benefits* are in addition to the \$35 million that was agreed to
5 in the *Partial Settlement Agreement*, which was approved by the Court on February 7,
6 2008. In the *Partial Settlement*, the Parties agreed to a cap on *Defendants'* total liability
7 on the *Three Remaining Claims* of up to \$500 million. However, since that time, the
8 Court issued several important rulings in this case that significantly limited the likely
9 recovery on the *Three Remaining Claims*. A discussion of the rulings and the Rationale
10 for the agreed settlement amount are set forth on pp. 16-17, *infra*.

11 **C. Plan of Allocation:** The Agreement contemplates, subject to the Court's
12 approval, that the *Final Settlement* proceeds amounting to \$23,800,000 will be allocated
13 and paid as follows:

14 1. *Fee Award.* The amount of the *Fee Award* will be determined by the Court
15 upon application by *Class Counsel* and paid from the *Retirement Plan* as a reasonable
16 administrative expense. Part of the application for fees and costs will include \$800,000
17 for costs that have been incurred by *Plaintiffs* in the *Litigation* since October 1, 2007, and
18 the anticipated costs associated with the *Final Settlement* administration that are to be
19 borne by *Plaintiffs* under the Agreement. Some *Settlement Class* members contributed
20 money to help pay the costs incurred by *Plaintiffs* in the *Litigation*. *Class Counsel* will
21 reimburse all of the monies contributed by such *Settlement Class* members from the
22 \$800,000 in costs awarded as part of the *Fee Award*.

23 2. *Additional Retirement Benefits.* After allocation of the *Fee Award*, the
24 entire balance remaining from the \$23,800,000 will be allocated among all *Eligible*
25 *Participants*, *Eligible Beneficiaries* and *Eligible Estate Representatives* based on the Plan
26 of Allocation attached hereto as Exhibit B. The Plan of Allocation prepared by *Class*
27 *Counsel* provides for three *Final Settlement Benefit* categories based on *Class Counsel's*
28

1 analysis of the relative strengths and weaknesses of the *Three Remaining Claims* asserted
2 in the *Litigation*, Defendants' defenses, the Court's prior rulings and the likelihood of
3 success on appeal.³ *Class Counsel* will group *Settlement Class* members into the *Final*
4 *Settlement Benefit* categories based on *Class Counsel's* actuary's calculation of the value
5 of the retirement benefits paid or to be paid under the *Signal Retirement Plan*, the *Allied*
6 *Signal Retirement Program* or the *Retirement Plan* compared to *Class Counsel's*
7 actuary's calculation of the value of the retirement benefits that *Class Counsel* contends
8 would have been paid under the *Garrett Retirement Plan* if the *Garrett Retirement Plan*
9 had not been amended effective December 31, 1983 but utilizing the following criteria

11 ³ Only two groups of *Settlement Class* members, Groups A and B, will be entitled to
12 recover *Final Settlement Benefits*. The first two groups are comprised of *Participants*.
13 *Class Counsel* has determined that each member of Groups A and B would be entitled to
14 a recovery under at least one or more of the arguments and claims advanced by *Class*
15 *Counsel* on the *Three Remaining Claims*. Group C has been determined by *Class Counsel*
16 not to be entitled to any recovery under any of the claims or arguments advanced by
17 *Class Counsel* on the *Three Remaining Claims*. Group C, includes, *inter alia*, all
18 *Settlement Class* members whom *Class Counsel* has determined are not entitled to any
19 recovery under the *Final Settlement Agreement* because they could not or would not have
20 recovered under any of the *Three Remaining Claims*. *Class Counsel* has determined that
21 *Settlement Class* members in Group C either (A) suffered no losses under any of
22 *Plaintiffs'* theories of recovery or (B) are not *Participants* as defined in the Agreement
23 because they did not have a vested benefit under the *Signal Retirement Plan*, or because
24 their benefit was transferred to another pension plan, or because they died without a
25 beneficiary before July 1, 2002, or whose surviving beneficiary died before July 1, 2002.
26 The *Partial Settlement Agreement* provided relief to those who had *SBA* accounts ("*SBA*
27 *Participants*") by eliminating administrative fees on a going-forward basis on all *SBA*
28 accounts. *Class Counsel* has determined that the *Partial Settlement Agreement* fully
resolved all of the claims of all *Settlement Class* members who were *SBA Participants*
but not *Participants*. *Class Counsel* has also determined that the *Three Remaining*
Claims only concern *Settlement Class* members who had a vested, un-divested benefit
under the *Signal Retirement Plan*. Group C also includes *Participants* who are not in the
Database, did not submit a valid claim form under the *Partial Settlement Agreement* and
do not timely submit a valid claim form under the Agreement. *Defendants* continue to
deny liability for all of the *Three Remaining Claims*, and continue to maintain that no
Settlement Class member sustained any loss as a result of the *Signal Retirement Plan*
amendments.

1 (hereinafter “*Class Counsel’s Benefit Criteria*”): (1) each *Settlement Class* member’s
2 SBA balance as of December 31, 1983; (2) each *Settlement Class* member’s years of
3 service before and after December 31, 1983; (3) each *Settlement Class* member’s age at
4 retirement; (4) each *Settlement Class* member’s age at termination of employment; and
5 (5) each *Settlement Class* member’s final average compensation under the *Signal*
6 *Retirement Plan*.

7 As set forth in the Plan of Allocation, *Class Counsel* has determined that a reasonable
8 and equitable plan of allocation is one that entitles all Group A *Participants* to their
9 individual proportionate percentage share of the present value of the difference between
10 the value of benefits paid or to be paid to them under the *Signal Retirement Plan, Allied*
11 *Signal Retirement Program* or the *Retirement Plan* and the value of the retirement
12 benefits that *Class Counsel* contends would have been paid to them under the *Garrett*
13 *Retirement Plan* if the *Garrett Retirement Plan* had not been amended effective
14 December 31, 1983, but utilizing *Class Counsel’s Benefit Criteria*, and entitles all Group
15 B *Participants* to an equal per capita share of *Final Settlement Benefits* of \$500. *Class*
16 *Counsel’s* proposed Plan of Allocation is based in significant part, on the Court’s Order
17 on Defendants’ Motion for Reconsideration of the Court’s summary judgment ruling that
18 requires “the Court to examine the effects of plan amendments overall, rather than the
19 impact of isolated provisions,” (Doc. 481 at. 7), and on the Court’s dismissal of the
20 Minimum Benefits Claim. While *Class Counsel* believes that *Plaintiffs* might prevail on
21 appeal on the *Three Remaining Claims* as “stand alone claims” and that such recovery
22 would be significantly higher than the amount of the *Final Settlement Benefits*, and while
23 *Class Counsel* recognizes that *Plaintiffs* might prevail on appeal from the dismissal of the
24
25
26
27
28

1 *Minimum Benefits Claim*, *Class Counsel* believes that Group B members are less likely to
2 recover in this *Litigation* under a “net effect” damage calculation if the Court determines
3 that all relevant amendments to the *Signal Retirement Plan* were simultaneous and
4 adheres to the Court’s ruling that the “net effect” of simultaneous plan amendments must
5 be evaluated in determining if *Settlement Class* members’ benefits were reduced in
6 violation of ERISA § 204(g). *Class Counsel* and *Named Plaintiffs* agreed to the *Final*
7 *Settlement* amount of \$23,800,000 because of their determination that the risks of
8 continuing this *Litigation* to try to achieve a higher recovery on uncertain legal grounds
9 was outweighed by the benefits of a settlement that provided a significant percentage of
10 the losses *Class Counsel* contends were incurred under a “net effect” rationale.
11 Nevertheless, *Class Counsel* firmly believes that all *Settlement Class* members who
12 would have had a recovery under at least one the arguments advanced by *Plaintiffs* on
13 any of the *Three Remaining Claims* should be entitled to share in the *Final Settlement*
14 *Benefits*. This includes *Settlement Class* members who would have recovered under a
15 “stand alone” amendment analysis of the *SBA Offset Claim* and the *Social Security Offset*
16 *Claim* or under the *Minimum Benefits Claim*. Because *Class Counsel* believes the
17 likelihood of recovery on these grounds is not as strong as the likelihood of recovery on a
18 “net effect” determination, the allocation to *Settlement Class* members in Group B is
19 smaller than those in Group A. Further, because of the possibility of recovery under
20 these alternate theories and because each had its own specific damage model, the
21 allocation to this group with no recovery under a “net effect” analysis was determined to
22 be the same for each such *Settlement Class* member. Accordingly, *Class Counsel’s*
23
24
25
26
27
28

1 proposed Plan of Allocation allocates approximately two-thirds of the net *Final*
2 *Settlement Benefits* to Group A members and one-third to Group B members. Class A
3 funds are allocated pro rata, based on *Class Counsel's* individualized calculation, for each
4 *Settlement Class* member, of the difference between (A) the benefits paid or to be paid
5 under the *Signal Retirement Plan*, the *Allied Signal Retirement Program* or the
6 *Retirement Plan* and (B) the retirement benefits that *Class Counsel* contends would have
7 been paid under the *Garrett Retirement Plan* if the *Garrett Retirement Plan* had not been
8 amended effective December 31, 1983, but utilizing *Class Counsel's* Benefits Criteria.
9 The *Final Settlement Benefits* allocated to *Settlement Class* members in Group B are
10 allocated as a flat minimum benefit on a per capita basis.

11
12
13
14 The amounts calculated and set forth on the *Final Settlement Payment List* will be
15 final, binding and nonappealable as to all persons

16
17 **Group A.** Group A includes all *Settlement Class* members who are *Participants*
18 listed in the *Database* for whom *Class Counsel's* actuary has determined that they in fact
19 received or were scheduled to receive lesser benefits under the *Signal Retirement Plan*,
20 *Allied Signal Retirement Program* or the *Retirement Plan* compared to the value of the
21 retirement benefits that *Class Counsel* contends would have been paid under the *Garrett*
22 *Retirement Plan* if the *Garrett Retirement Plan* had not been amended effective
23 December 31, 1983, but utilizing *Class Counsel's* Benefits Criteria, ("Class Counsel's
24 Garrett-Signal Calculation") ("Group A members"). *Class Counsel* believes that the
25 losses for Group A members were computed in accordance with this Court's August 12,
26
27
28

1 2008 ruling that the Court examines “the effects of plan amendments overall, rather than
2 the impact of isolated provisions,” (Doc. 481 at 7), and the Court’s dismissal of the
3 *Minimum Benefits Claim*. Group A also includes all *Participants* not listed in the
4 *Database*, but who *Class Counsel* determines are *Participants* and for whom the
5 calculation required for Group A members can be reasonably calculated based on the
6 information provided to *Class Counsel* by the *Participant* or the *Participant’s*
7 representative. Based on the *Database* and other information received by *Class Counsel*,
8 there are approximately 3,643 *Settlement Class* members in Group A. Group A members
9 will receive their individualized proportionate percentage of approximately two-thirds of
10 the *Final Settlement Benefits*, which collectively will total approximately \$11,814,500
11 assuming the Court grants *Class Counsel’s* application for attorneys’ fees and costs.
12
13
14

15 **Group B.** Group B includes *Settlement Class* members who are *Participants* listed
16 in the *Database*, that *Class Counsel* has determined are each entitled to a *Final*
17 *Settlement Benefit* of \$500 assuming the Court grants *Class Counsel’s* application for
18 attorneys’ fees and costs. Group B also includes all *Participants* not listed in the
19 *Database*, but who *Class Counsel* determines is a *Participant* and for whom the
20 calculation required for Group B members cannot be reasonably calculated based on the
21 information available to the *Parties*. *Class Counsel* estimates that there are
22 approximately 10,871 *Settlement Class* members in Group B. Group B members will
23 share in approximately one third of the *Final Settlement Benefits* or a total of \$5,435,500,
24 assuming the Court grants *Class Counsel’s* application for attorneys’ fees and costs. As
25
26
27
28

1 set forth above, *Class Counsel* has determined that Group B members had the smallest
2 likelihood of recovery of any additional benefits if the Court applied the “net effect”
3 analysis and rejected *Plaintiffs’* argument that the *Signal Retirement Plan* amendments
4 were not simultaneous, and/or that *Plaintiffs* would not prevail on the *Minimum Benefits*
5 *Claim* on appeal. *Settlement Class* members are included in Group B if:

- 6
7
8 1. Based on *Plaintiffs’* expert disclosures, which were provided to the Court with
9 *Plaintiffs’* Motion for Summary Judgment, *Class Counsel’s* actuary determined
10 that the *Settlement Class* member would have had a recovery under one of the
11 *Three Remaining Claims* under at least one of the arguments advanced by
12 *Plaintiffs, and*
- 13 2. *Class Counsel’s* actuary calculated that the value of the retirement benefits
14 paid or to be paid to such *Settlement Class* member under the *Signal*
15 *Retirement Plan*, the *Allied Signal Retirement Program* or the *Retirement Plan*
16 was equal to or more than *Class Counsel’s* actuary’s calculation of the value of
17 the retirement benefits that *Class Counsel* contends would have been paid to
18 such *Settlement Class* member under the *Garrett Retirement Plan* if the
19 *Garrett Retirement Plan* had not been amended effective December 31, 1983,
20 but utilizing *Class Counsel’s* Benefits Criteria.

21 Group B also includes all *Settlement Class* members for whom, based on reasonably
22 available data and any additional data submitted to *Class Counsel* during the Notice
23 period, *Class Counsel* concludes that (1) there is not enough information to determine the
24 present value of the difference between a *Settlement Class* member’s retirement benefits
25 under the *Signal Retirement Plan*, *Allied Signal Retirement Program* or the *Retirement*
26 *Plan* and the value of the retirement benefits that *Class Counsel* contends would have
27 been paid under the *Garrett Retirement Plan* if the *Garrett Retirement Plan* had not been
28

1 amended effective December 31, 1983, but utilizing *Class Counsel's* Benefits Criteria,
2 and (2) would have recovered under at least one of the arguments advanced by *Plaintiffs*
3 on the *Three Remaining Claims*.

4 All *Participants* living on the payment date who are designated by *Class Counsel* as a
5 Group B *Settlement Class* member ("Group B Member") will receive an equal amount of
6 additional benefits allocated to a hypothetical *Final Settlement Benefit Account* under the
7 *Retirement Plan* of \$500 assuming the Court grants *Class Counsel's Fee Application*. If
8 the *Eligible Participant* is deceased on the payment date, the *Eligible Participant's*
9 surviving spouse or, if none, his estate representative, shall receive the *Final Settlement*
10 *Benefit* described in the preceding sentence.

11 **Group C.** Group C has been determined by *Class Counsel* not to be entitled to any
12 recovery under any of the claims or arguments advanced by *Class Counsel* on the *Three*
13 *Remaining Claims*. Group C, includes, *inter alia*, all *Settlement Class* members whom
14 *Class Counsel* has determined are not entitled to any recovery under the Agreement
15 because they could not or would not have recovered under any of the *Three Remaining*
16 *Claims*. *Class Counsel* has determined that *Settlement Class* members in Group C either
17 (A) suffered no losses under any of *Plaintiffs'* theories of recovery or (B) are not
18 *Participants* as defined in the Agreement because they did not have a vested benefit
19 under the *Signal Retirement Plan*, or because their benefit was transferred to another
20 pension plan, or because they died without a beneficiary before July 1, 2002, or whose
21 surviving beneficiary died before July 1, 2002. The *Partial Settlement Agreement*
22 provided relief to those who had *SBA* accounts ("*SBA Participants*") by eliminating
23 administrative fees on a going-forward basis on all *SBA* accounts. *Class Counsel* has
24 determined that the *Partial Settlement Agreement* fully resolved all of the claims of all
25 *Settlement Class* members who were *SBA Participants* but not *Participants*. *Class*
26 *Counsel* has also determined that the *Three Remaining Claims* only concern *Settlement*
27 *Class* members who had a vested, un-divested benefit under the *Signal Retirement Plan*.

28

1 Group C also includes *Participants* who are not in the *Database*, did not submit a valid
2 claim form under the *Partial Settlement Agreement* and do not timely submit a valid
3 *Claim Form* under the Agreement.

4 **D. Method and Manner of Providing Settlement Benefits**

5 As set forth in Article 3 of the *Settlement Agreement*, the *Retirement Plan*
6 *Amendment* will provide for payment of the *Final Settlement Benefits* in accordance with
7 the terms of the *Settlement Agreement*. These benefits are special one-time benefits and
8 shall not accrue until the *Retirement Plan* is amended as set forth in the Agreement. In
9 no event shall these benefits be deemed to be part of a *Participant's* prior accrued benefit.
10

11 All known *Settlement Class* member *Participants* and *Beneficiaries* or their estate
12 representatives who can be located and who do not affirmatively waive their *Final*
13 *Settlement Benefits* and are in Groups A or B, will be listed by *Class Counsel* on the
14 *Final Settlement Payment List* and will be entitled to receive *Final Settlement Benefits*.
15 Depending on the amount of the *Final Settlement Benefit*, whether the *Settlement Class*
16 member is already receiving his or her benefits under the *Signal Retirement Plan*, the
17 *Allied Signal Retirement Program* or the *Retirement Plan*, and the total amount of all
18 benefits received or to be received under the *Retirement Plan*, *Settlement Class* members
19 may be required to complete and return a form of election in order to receive *Final*
20 *Settlement Benefits*.⁴ If a *Participant* or *Beneficiary* has died, his surviving spouse or
21

22 ⁴ Under applicable provisions of ERISA and the Internal Revenue Code, a participant
23 who is entitled to a distribution from a qualified plan with a value in excess of \$200
24 cannot be paid such amount without first receiving a notice explaining the tax
25 consequences of the distribution and an election form giving him an opportunity to elect
26 whether he wants the distribution paid in cash or transferred into an individual retirement
27 account ("IRA"). If his benefit has a value less than \$1,000 and he does not make an
28 affirmative election within a reasonable period (no less than 30 days), the plan is
permitted to distribute his benefit in cash without any further consent, less required 20%
federal income tax withholding. If his benefit has a value greater than \$1,000, but less
than or equal to \$5,000, and he does not make an affirmative election, the plan is

1 estate representative must submit a *Change of Information Form* to provide proof to *Class*
2 *Counsel* of their eligibility as an estate representative.

3 The amounts contained herein are estimates based on the *Settlement Class* member
4 data contained in the *Database*, and the number of eligible *Settlement Class* members
5 who received or are entitled to receive benefits under the *Partial Settlement Agreement*.
6 If there are fewer *Participants, Beneficiaries* and estate representatives who are eligible
7 for *Final Settlement Benefits* than anticipated by *Class Counsel*, *Class Counsel* will
8 allocate the remaining *Final Settlement Benefits* to the *Participants, Beneficiaries* and
9 estate representatives in Group A. If there are more *Participants, Beneficiaries* and estate
10 representatives who are eligible for *Final Settlement Benefits* than anticipated by *Class*
11 *Counsel*, *Class Counsel* will reduce the *Final Settlement Benefits* to the *Participants,*
12 *Beneficiaries* and estate representatives in Group A so that everyone who is eligible for
13 *Final Settlement Benefits* will receive at least \$500 and the remainder will be allocated to
14 Group A members.

15 All *Final Settlement Benefits* under the Plan of Allocation will be calculated by the
16 actuarial firm of Cheiron USA based in Washington, D.C. under the direction of actuary
17 James Holland. Cheiron has been employed and will be paid by *Class Counsel*. To assist
18 with its calculations, *Class Counsel* provided Cheiron with a copy of the *Database*. The
19 amounts calculated and set forth on the *Final Settlement Payment List* will be final,
20 binding and nonappealable as to all persons.

21 *Defendants* will make the *Retirement Plan Amendment* and send out election
22

23 permitted, without any further consent, to deposit his benefit into an IRA account in his
24 name. If his benefit has a value greater than \$5,000, the plan cannot distribute the
25 amount due in a single payment without the participant's consent; rather, it must make
26 the distribution in the form of an annuity over the participant's life (or, if married, over
27 the joint lives of the participant and his spouse). If a participant has an existing benefit
28 under the plan, the value of that benefit would be added to the amount of the settlement
distribution in determining whether these thresholds are exceeded.

1 forms and distribute benefits in accordance with the provisions of Section 3.02 of the
2 Agreement.

3 **E. Released Claims:** Upon *Final Approval* and as set forth in the Agreement, the
4 *Named Plaintiffs* and each *Settlement Class* member will be deemed to have forever
5 released and discharged the *Released Parties* from the *Released Claims*, including the
6 *Three Remaining Claims*. Notwithstanding the foregoing, the *Final Settlement* will not
7 release a *Settlement Class* member's individual claims for benefits based on allegations
8 that the *Retirement Plan* and/or *Secured Benefit Plan* made an *Individual Mistake* as to
9 that individual's claim for benefits. An *Individual Mistake* does not include any claims
10 pertaining in any way to the Agreement, *Final Settlement Benefits*, or the *Final*
11 *Settlement Payment List*.

12 **II. CASE HISTORY AND SETTLEMENT NEGOTIATIONS**

13 *Plaintiffs* commenced the *Litigation* on March 1, 2004, claiming *Defendants* had
14 violated certain provisions of *ERISA*, and the terms of the *Garrett Retirement Plan*, the
15 *Garrett Severance Plan*, and the applicable successor plans. *Defendants* moved to
16 dismiss the Complaint and *Plaintiffs* cross-moved for partial summary judgment. On
17 July 19, 2005, the Court granted partial summary judgment for *Plaintiffs* on some of their
18 claims, including the *Three Remaining Claims*, and dismissed with prejudice many
19 others.

20 After extensive negotiations, the *Parties* entered into a *Partial Settlement*
21 *Agreement*, which was approved by the Court on February 7, 2008. In the *Partial*
22 *Settlement Agreement*, *Plaintiffs* released all claims except the *Three Remaining Claims*,
23 defined as the *SBA Offset Claim*, the *Social Security Offset Claim* and the *Minimum*
24 *Benefits Claim*. Pursuant to the *Partial Settlement Agreement*, *Defendants* paid *Plaintiffs*
25 over \$35 million, and agreed to stop charging administrative fees to the *Secured Benefit*
26 *Accounts*. The *Parties* also agreed to limit any recovery on the *Three Remaining Claims*
27 to \$500 million.

28

1 As discussed below, following the Court's approval of the *Partial Settlement*
2 *Agreement*, the Court issued several rulings vacating its July 2005 ruling that had granted
3 partial summary judgment in *Plaintiffs'* favor on the *Three Remaining Claims*.

4 Between October 2007 and August 2010, the *Parties* conducted extensive
5 discovery, including dozens of depositions. Throughout the *Litigation*, the *Parties* also
6 conducted significant written discovery, resulting in over one million pages of documents
7 produced by *Defendants*. There were also discovery motions decided by the Court,
8 including a decision on the scope of the fiduciary exception to the attorney-client
9 privilege. *See Allen v. Honeywell Ret. Earnings Plan*, 698 F.Supp.2d 1197 (D. Ariz.
10 2010). *Plaintiffs* retained three expert witnesses who produced multiple reports and
11 *Defendants* retained three expert witnesses who also proffered multiple reports. On
12 September 17, 2010, the *Parties* served Fed. R. Civ. P. 26(a)(3) disclosures. The Rule
13 26(a)(3) disclosures included hundreds of potential witnesses and thousands of
14 documents that would potentially be used at trial, if one were necessary.

15 On September 21, 2010, the *Parties* cross-moved for summary judgment on the
16 *SBA Offset Claim* and the *Social Security Offset Claim*. On November 5, 2010,
17 *Defendants* filed a Motion to Enforce the Partial Settlement Agreement, which *Plaintiffs*
18 opposed. Briefing on the cross-motions for summary judgment closed on December 8,
19 2010. Briefing on *Defendants'* Motion to Enforce the Partial Settlement Agreement
20 closed on December 22, 2010. At the time of the *Final Settlement*, the cross-motions for
21 summary judgment and *Defendants'* motion to enforce the *Partial Settlement Agreement*
22 were *sub judice*.

23 In May 2011, the *Parties* engaged in a two-day arms-length mediation with Eric
24 Green, a mediator with expertise in large class action mediation who had assisted with
25 the mediation that resulted in the Partial Settlement. The *Final Settlement* is the result of
26 this high level, arms-length and contentious two day process.

27
28

1 **III. RULINGS SUBSEQUENT TO THE *PARTIAL SETTLEMENT* AND**
2 **RATIONALE FOR THE *FINAL SETTLEMENT***

3 Following the *Partial Settlement*, the Court issued several rulings vacating its prior
4 ruling granting partial summary judgment in *Plaintiffs'* favor. In August 2008, the Court
5 granted *Defendants'* Motion for Reconsideration on the *SBA Offset Claim* and *Social*
6 *Security Offset Claim*, vacating its prior grant of partial summary judgment in *Plaintiffs'*
7 favor on those claims. The Court agreed with *Defendants* that it was bound to follow a
8 letter issued by the Secretary of Treasury, the effect of which the Court determined
9 required it to apply a "net effect" test in evaluating whether there was an unlawful
10 reduction in accrued benefits in violation of ERISA § 204(g). (Doc. 481.) The Court's
11 ruling that only the net effect of plan amendments adopted simultaneously can be looked
12 at to determine whether an ERISA violation has occurred significantly narrowed the
13 likely breadth of losses *Settlement Class* members might be determined to have suffered.
14 While *Plaintiffs* have argued and sought summary judgment on the grounds, *inter alia*,
15 that the amendments at issue were not simultaneous and that a stand alone amendment
16 analysis is nevertheless appropriate, unless *Plaintiffs* prevailed under those arguments,
17 the value of the claims in this lawsuit would be significantly reduced. Specifically,
18 *Class Counsel's* actuary had estimated the value of the *SBA Offset Claim* to be
19 approximately \$117 million and the value of the *Social Security Offset Claim* to be
20 approximately \$476 million using a stand alone amendment analysis. In contrast, *Class*
21 *Counsel's* actuary estimated that the value of the alleged losses to the *Settlement Class*
22 would be approximately \$29.3 million under a net effect analysis.

23 In addition, in October 2009, the Court entered summary judgment in *Defendants'*
24 favor on the *Minimum Benefits Claim*. (Doc. 555.) *Plaintiffs'* actuary had previously
25 estimated the value of that claim to be approximately \$382 million. Although absent
26 settlement, *Plaintiffs* intended to appeal that ruling, recovery on this claim would be
27 dependent on prevailing on an appeal to the Ninth Circuit.

28

1 After carefully considering the Court’s prior rulings, the likelihood of success on
2 the cross motions for summary judgment and *Class Counsel’s* evaluation of the general
3 success rate on appeals, and the significant delay that would result in litigating this case
4 through conclusion in this Court, together with the time encompassed in an appellate
5 process, *Class Counsel* and *Named Plaintiffs* determined to agree to a settlement that
6 provides a significant percentage of the alleged losses that *Class Counsel’s* actuary
7 calculated under a net effect analysis.

8 **IV. THE SETTLEMENT MEETS THE STANDARDS FOR PRELIMINARY**
9 **APPROVAL UNDER RULE 23(e)**

10 “[T]here is a strong judicial policy that favors settlements, particularly where
11 complex class action litigation is concerned.” *In re Syncor ERISA Litigation*, 516 F.3d
12 1095, 1101 (9th Cir. 2008) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276
13 (9th Cir. 1993)). The Ninth Circuit has stated: “it must not be overlooked that voluntary
14 conciliation and settlement are the preferred means of dispute resolution. This is
15 especially true in complex class action litigation....” *Id.* (quoting *Officers for Justice v.*
16 *Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)).

17 Although the procedure for approval of a class action settlement is not delineated
18 specifically in Fed. R. Civ. P. 23(e), a two step procedure is set forth and approved in the
19 Federal District Court’s Manual for Complex Litigation (Fourth), §21.632 - §21.634, at
20 320-22 (4th ed. 2004), and generally followed by federal courts considering class action
21 settlements. *See, e.g., In re McKesson HBOC, Inc. ERISA Lit.*, 391 F.Supp.2d 844, 847
22 (N.D.Ca. 2005); *Arnold v. Arizona Dep’t. of Pub. Safety*, CV-01-1463-PHX-LOA, 2006
23 WL 2168637, *4 (D. Ariz., July 31, 2006) (citing *In re Jiffy Lube Sec. Litig.*, 927 F.2d
24 155, 158 (4th Cir. 1991)); *see also Tennessee Ass’n of Health Maint. Org., Inc. v. Grier*,
25 262 F.3d 559, 565-66 (6th Cir. 2001). First, the court conducts a preliminary approval or
26 pre-notification hearing to determine whether to preliminarily approve the settlement
27 agreement. *Arnold*, 2006 WL 2168637 at *4; *Jiffy Lube*, 927 F.2d at 158. Second,
28

1 assuming that the court grants preliminary approval and notice is sent to the class, the
2 court conducts a “fairness hearing,” which provides all interested parties with an
3 opportunity to be heard on the proposed settlement. *Id.* The ultimate purpose of this
4 procedure is to ensure that the settlement is “fair, reasonable and adequate.” *Id.*; *Hanlon*
5 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

6 As is the case with final approval, the district courts have wide discretion in
7 making the first-stage determination regarding the reasonableness of particular class
8 action settlements. *Evans v. Jeff D.*, 475 U.S. 717, 742 (1986); *In re Mego Financial*
9 *Corp. Securities Lit. v. Nadler*, 213 F.3d 454, 458 (9th Cir. 2000). “The Court should
10 consider whether the proposed settlement appears to be the product of serious, informed,
11 non-collusive negotiations, has no obvious deficiency, does not improperly grant
12 preferential treatment to class representatives or segments of the class and falls within the
13 range of possible approval.” *Horton v. USAA Cas. Ins. Co.*, 266 F.R.D. 360, 363 (D.
14 Ariz. 2009) (citations omitted). The Supreme Court has stated that approval of a class
15 action settlement is committed to the “sound discretion of the district courts to appraise
16 the reasonableness of particular class-action settlement on a case-by-case basis, in light of
17 all the relevant circumstances.” *Evans*, 475 U.S. at 742; *see also Hanlon*, 150 F.3d at
18 1026 (the decision to approve or reject a settlement is committed to the sound discretion
19 of the trial judge because he is “exposed to the litigants, and their strategies, positions and
20 proof”) (internal quotations omitted). The Supreme Court has cautioned that in
21 reviewing a proposed class settlement, courts should “not decide the merits of the case or
22 resolve unsettled legal questions.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n. 14
23 (1981); *Evans*, 475 U.S. at 726-27; *Staton v. Boeing Co.*, 327 F.3d 938, 963 n.16 (9th Cir.
24 2003). Instead, courts have consistently held that the function of the court reviewing a
25 settlement is to determine whether the proposed settlement taken as a whole is
26 fundamentally fair, adequate, and reasonable, not to rewrite the settlement agreement or
27
28

1 to resolve issues intentionally left unresolved by the parties. *Hanlon*, 150 F.3d at 1026
2 (citing *Officers for Justice*, 688 F.2d at 628).

3 The Ninth Circuit has outlined eight factors that should be considered in
4 determining whether a settlement agreement is fundamentally fair, adequate, and
5 reasonable:

- 6 (1) the strength of the plaintiffs' case;
- 7 (2) the risk, expense, complexity, and likely duration of further litigation;
- 8 (3) the risk of maintaining class action status throughout the trial;
- 9 (4) the amount offered in settlement;
- 10 (5) the extent of discovery completed, and the stage of the proceedings;
- 11 (6) the experience and views of counsel;
- 12 (7) the presence of a governmental participant; and
- 13 (8) the reaction of the class members to the proposed settlement.

14 *See, e.g., Staton*, 327 F.3d at 959 (citing *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir.
15 2003)); *Mego Financial Corp.*, 213 F.3d at 458; *Hanlon*, 150 F.3d at 1026; *Draney v.*
16 *Wilson, Morton, Assaf & McElligott*, Civ. 79-1029, 1985 WL 5820, *1 (D. Ariz. Sept. 30,
17 1985). Courts have noted that this list is not exhaustive, the identified factors should not
18 be viewed as more significant than other factors, and not all factors will apply to every
19 class action settlement. *Torrisi v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir.
20 1993); *Officers for Justice*, 688 F.2d at 625. The Ninth Circuit has further noted that
21 because of the danger that class action settlements could compromise the interests of
22 class members due to the individual interests and incentives of class representatives and
23 class counsel, the district court must also consider whether there was fraud, overreaching,
24 or collusion in reaching the settlement. *Staton*, 327 F.3d at 960.

25
26 When examined under these applicable criteria, the *Final Settlement* is not only
27 fair, reasonable, and adequate, but an excellent result for the *Settlement Class* members.
28

1 **a. The Strength of *Plaintiffs'* case and the Significant Risk, Expense,**
2 **Complexity and Likely Duration of Further Litigation All Support the**
3 ***Final Settlement.***

4 As this Court is well aware, *ERISA* litigation is a complex, demanding and
5 evolving area of the law requiring the devotion of significant resources both by the
6 parties and the Court. This case has been vigorously litigated since March 2004 and the
7 claims have been in process since 2002 when the *Named Plaintiffs* initially filed their
8 claims with the plans. Since 2004, each party has filed numerous motions and briefs with
9 the Court and the Court has issued a number of rulings. Prior to this Joint Motion, there
10 were 716 docket entries in the *Litigation*.

11 The *Final Settlement* resolves the *Three Remaining Claims* and represents a final
12 resolution of this entire *Litigation*. In July 2005, the Court granted in part and denied in
13 part *Defendants'* motion to dismiss, and granted in part and denied in part *Named*
14 *Plaintiffs'* cross motion for partial summary judgment, ruling in favor of *Plaintiffs* on the
15 *Three Remaining Claims*. However, following the Court's approval of the *Partial*
16 *Settlement Agreement* in this case, the Court reversed summary judgment on each of
17 these claims, first vacating its summary judgment ruling on the *SBA Offset Claim* and the
18 *Social Security Offset Claim*, (Doc. 481), and thereafter granting summary judgment to
19 *Defendants* on the *Minimum Benefits Claim* (Doc. 555).

20 Given the complexity of the issues remaining in the *Litigation* and the risks to the
21 *Settlement Class* and the further delay of this case that would be entailed in completing
22 motion practice and a potential trial on the merits of the *SBA Offset Claim* and the *Social*
23 *Security Offset Claim* and likely appeals of the *Three Remaining Claims*, *Plaintiffs*
24 believe that the *Final Settlement* is fair, reasonable and in the best interests of the
25 *Settlement Class*. *Defendants* are represented by highly experienced and competent
26 counsel. *Defendants* have forcefully defended their actions and it is not unreasonable to
27 assume that *Defendants* would continue their vigorous defense of the *SBA Offset Claim*
28 and *Social Security Offset Claim* up through trial and a probable appeal regardless of the

1 trial's outcome. *Defendants* deny liability for all of the *Three Remaining Claims* and
2 have advanced a plethora of defenses, which were briefed extensively in the *Parties'*
3 cross-motions for summary judgment briefing and *Defendants'* Motion to Enforce the
4 Partial Settlement Agreement. *Plaintiffs* cannot discount the fact that a ruling in favor of
5 *Defendants* on the *SBA Offset Claim* and the *Social Security Offset Claim* could deprive
6 the *Settlement Class* members of the right to any additional monetary or other relief.
7 Rather than subject individual *Settlement Class* members (or the entire *Settlement Class*)
8 to such risk, the *Final Settlement* assures that virtually every eligible *Settlement Class*
9 member who had a vested retirement benefit will derive some additional benefit from this
10 *Litigation*. The *Final Settlement* also significantly minimizes the delay entailed in
11 litigation of the *Three Remaining Claims*, and advances a monetary recovery to
12 *Settlement Class* members by as much as several years.

13 The risks, delay and expense that will be avoided by the *Final Settlement* is
14 significant. If the *Final Settlement* is not approved, a substantial and significant amount
15 of additional work will need to be done, including the completion of motion practice and
16 a potential trial. There is no assurance that *Plaintiffs* would prevail on either the *SBA*
17 *Offset Claim* or the *Social Security Offset Claim*, either on summary judgment or at trial
18 or that they would prevail on the *Minimum Benefits Claim* on appeal. If the Court rules
19 there are triable issues of fact, a trial would involve a "battle of the experts" resulting in
20 significant time and a great deal of expense. If the *Final Settlement* is not approved, there
21 are substantial risks to the *Settlement Class* that they may not recover any additional
22 benefits in this *Litigation*. In addition, both *Parties* have expressed their intent to appeal
23 this Court's rulings in the future and have hired experienced Supreme Court ERISA
24 counsel to assist with the anticipated appeals in this case, which would result in
25 additional years of litigation. The *Final Settlement* completely eliminates any risk of
26 non-recovery on the *Three Remaining Claims*. Additionally, the *Final Settlement* saves
27 the *Parties* and the Court the time, cost, and effort of resolving these claims in Court and
28

1 provides complete prospective relief for virtually every eligible *Settlement Class*
2 member, regardless of any defenses or affirmative defenses. *See Nat'l Rural Telecom.*
3 *Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 526 (C.D.Cal. 2004) (unless settlement is clearly
4 inadequate, approval is preferable to lengthy and expensive litigation with uncertain
5 results).

6 Given the risks inherent in continuing the *Litigation, Named Plaintiffs* and *Class*
7 *Counsel* believe that the *Final Settlement*, which provides for significant additional
8 benefits to all *Eligible Participants, Eligible Beneficiaries* and *Eligible Estate*
9 *Representatives* is adequate, fair, reasonable and in the best interests of all *Settlement*
10 *Class* members. The *Final Settlement* eliminates the risks inherent in continuing the
11 *Litigation*, while advancing a monetary payment to all eligible *Settlement Class* members
12 by as much as several years.

13 **b. The Amount Offered in Settlement is Substantial.**

14 In the present matter, the amount offered in the *Final Settlement*, once it becomes
15 *Final*, is \$23.8 million, which includes attorneys' fees not to exceed \$5.75 million and
16 \$800,000 in costs. This amount is in addition to the \$35 million that was provided as a
17 result of the Partial Settlement and is also in addition to benefits that *Participants* and
18 *Beneficiaries* are currently entitled to or would be entitled to under the terms of the
19 *Retirement Plan* as it currently exists or under any other benefit plan sponsored by
20 Honeywell. Although this amount is considerably lower than the \$500 million cap
21 provided for under the *Partial Settlement Agreement*, as explained above, given the
22 rulings in the case following the *Partial Settlement*, it is a reasonable and fair settlement
23 amount that provides roughly 78% of the amount *Class Counsel* contends would be the
24 likely outcome of a "net effect" analysis. Considering the uncertainties of trial, the
25 expected duration of litigation and the uncertainty regarding the measure of damages
26 even if *Plaintiffs* prevail on the merits, given certain damages models, the amount offered
27 in the *Final Settlement* is highly favorable.

1 The *Final Settlement* is clearly appropriate in light of the uncertainties of trial.
2 *Mego Financial Corp.*, 213 F.3d at 459. In *Mego*, the Ninth Circuit approved a
3 settlement that was 42% of estimated damages and stated that even using the objectors'
4 damages estimates, a settlement of 14% would be fair. *Id.* The Ninth Circuit has also
5 noted that “[i]t is well-settled law that a cash settlement amounting to only a fraction of
6 the potential recovery does not per se render the settlement inadequate or unfair.”
7 *Officers for Justice*, 688 F.2d at 628.

8 **c. Counsel Has Performed Sufficient Discovery, and the Proceedings Are**
9 **Sufficiently Advanced, to Allow the Parties to Reach an Informed**
10 **Settlement Decision.**

11 The proposed *Final Settlement* was reached after more than seven years of
12 contested litigation. During this time, *Class Counsel* conducted an extensive
13 investigation, including the completion of broad based discovery that resulted in
14 *Defendants'* production of millions of pages of documents and dozens of depositions. A
15 settlement following sufficient discovery and genuine arms-length negotiation is
16 presumed fair. *Nat'l Rural Telecom. Coop.*, 221 F.R.D. at 528 (citing *City P'ship C. v.*
Atlantic Acquisition Ltd P'ship, 100 F.3d 1041, 1043 (1st Cir. 1006)).

17 During the *Litigation*, *Class Counsel* worked with three actuarial experts,
18 including the former chief pension actuary of the Internal Revenue Service, who played a
19 significant role in determining each individual *Settlement Class* member's purported
20 damages and *Final Settlement Benefits*. There has been substantial motion practice and
21 cross motions for summary judgment were pending at the time the parties reached the
22 *Final Settlement*. *Class Counsel* has abundant information on which to make an
23 informed decision about the *Final Settlement*.

24 **d. The Final Settlement Was Negotiated by Highly Experienced Class**
25 **Counsel, Who View It as Fair, Reasonable, and Adequate.**

26 *Class Counsel* includes the founding partners of the law firm Martin & Bonnett,
27 PLLC in Phoenix, Arizona. *Class Counsel* has hired experienced Ninth Circuit and
28

1 Supreme Court litigators to assist in prosecuting this case. *Class Counsel* has extensive
2 experience in *ERISA* litigation and is therefore very well equipped to negotiate a fair
3 settlement for the *Settlement Class*. *Class Counsel*'s opinion deserves great weight both
4 because of its familiarity with the *Litigation* and because of its extensive experience in
5 similar actions. See *In re Washington Pub. Power Supply Sys. Sec. Lit.*, 720 F. Supp.
6 1379, 1392 (D. Ariz. 1989) (citing *Officers for Justice*, 688 F.2d at 625). Courts may
7 attach a presumption of fairness, adequacy, and reasonableness to a class settlement
8 reached in arm's-length negotiations among experienced, capable counsel after
9 meaningful discovery. Manual for Complex Litigation (Third ed.) § 30.42 (1995).

10 In the Spring of 2011, the *Parties* jointly retained Eric Green, a mediator who
11 assisted in the Partial Settlement and who has substantial expertise in large complex class
12 action mediation. *Class Counsel* undertook extensive preparation for the mediation
13 including work with *Plaintiffs*' expert witness actuaries. In May, 2011, the *Parties*
14 engaged in two days of meetings with the mediator in an effort to reach the *Final*
15 *Settlement*.

16 *Class Counsel* has spent many thousands of hours litigating and analyzing the
17 merits of this case, the risks to the *Settlement Class* in continuing *Litigation*, the total
18 potential damages and the benefits and detriments of the *Final Settlement* reached with
19 *Defendants*. Based on an exhaustive review of the relevant factors in this case, *Class*
20 *Counsel* is satisfied that the *Final Settlement* is fair, reasonable, adequate and in the best
21 interests of *Named Plaintiffs* and the *Settlement Class*.

22 **e. The *Final Settlement* Was Reached After Extensive and Adversarial**
23 **Negotiations, and Is Not a Product of Collusion.**

24 There was no collusion between the *Parties* in reaching the *Final Settlement*. As
25 this Court is aware, this was a vigorously contested litigation from start to finish. As
26 explained above, the *Final Settlement* is the result of a high level, arm's length and hard
27 fought adversarial negotiation and mediation process. Both *Parties* represented the
28

1 interests of their clients vigorously and devoted a considerable amount of time, effort and
2 resources to secure the terms of the *Final Settlement* before this Court. The arm's-length
3 quality of the negotiations is further shown by the fact that the *Parties* engaged in
4 mediation with Eric Green, a nationally recognized and highly experienced complex class
5 action mediator. An agreement was reached only after two full days of mediation.

6 **IV. APPROVAL OF THE FORM AND METHOD OF NOTICE TO THE**
7 **SETTLEMENT CLASS**

8 The *Parties* request that the Court authorize the issuance of *Class Notice*, in the
9 form submitted herewith as Exhibit C, to *Participants*, *SBA Participants* and
10 *Beneficiaries* via first-class mail and through posting on a website to be identified in the
11 *Class Notice*. In addition, a summary of the *Class Notice* including pertinent contact
12 information will be published in a number of daily newspapers where *Settlement Class*
13 members reside and in a national newspaper.

14 The *Parties* request that the *Class Notice* be issued concerning this proposed *Final*
15 *Settlement*. In order to satisfy due process, notice to class members must be "reasonably
16 calculated, under all the circumstances, to apprise interested parties of the pendency of
17 the action and afford them an opportunity to present their objections." *Mullane v. Cent.*
18 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The notice should generally
19 describe the terms of the settlement "in sufficient detail to alert those with adverse
20 viewpoints to investigate and to come forward and be heard." *Torrison*, 8 F.3d at 1374,
21 (citing *In re Cement and Concrete Antitrust Lit.*, 817 F.2d 1435, 1440 (9th Cir. 1987)).

22 The proposed form of *Class Notice*, attached hereto as Exhibit C, describes in
23 plain English the terms of the *Final Settlement*, the considerations that led *Class Counsel*
24 to conclude that the *Final Settlement* is fair and adequate, the maximum counsel fees that
25 may be sought, the procedure for objecting to the *Final Settlement*, and the date and place
26 of the *Fairness Hearing*. With the Court's approval, the *Class Notice* will be distributed
27 no later than 90 days prior to the *Fairness Hearing*.

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

MARTIN AND BONNETT PLLC

OSBORN MALEDON, P.A.

By: s/Susan Martin
Susan Martin
Daniel L. Bonnett
Jennifer Kroll
1850 N. Central Ave., Suite 2010
Phoenix, Arizona 85004

By: s/David Rosenbaum (with permission)
David B. Rosenbaum
Dawn L. Dauphine
Osborn Maledon, P.A.
2929 North Central Avenue, Suite 2100
Phoenix, AZ 85012-2794

Attorneys for Plaintiffs

Howard Shapiro
Robert W. Rachal
PROSKAUER ROSE LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70112-4017

Amy Covert
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036-8299

Christopher Landau, P.C.
Craig S. Primis, P.C.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, DC 20005-5793

Michael L. Banks
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103

Attorneys for Defendants

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

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2011, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

David B. Rosenbaum
Dawn L. Dauphine
Osborn Maledon, P.A.
2929 North Central Ave., Suite 2100
Phoenix, AZ 85012-2794

Michael Banks
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

Howard Shapiro
Robert W. Rachal
Proskauer Rose LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70112-4017

Amy Covert
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299

Christopher Landau
Craig Primis
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Attorneys for the Defendants

s/J. Kroll