

STATEMENT FROM JUDITH MIONE:

I wish to add my endorsement to each of the issues raised in the opposition paper presented to this Court by Pamela Kay Martens and I wish to add the following points:

District Judges, U.S. Appeals Courts and the U.S. Supreme Court have previously held that named plaintiffs must satisfy the test as being adequate representatives of the entire class in across-the-board types of settlements. In re East Texas Motor Freight System, Inc. v. Rodriguez, 431 U.S. 395, 403-06, 97 S. Ct. 1891, 1896-98, 52 L. Ed 2d 453 (1977); Traffic Executive Association-Eastern Railroads, 627 F.2d 631, 634 (2nd Cir. 1980); Burwell v. Eastern Airlines, Inc., 68 F.R.D. 495, 499 (E.D. Va. 1975); Frost v. Weinberger, 515 F.2d 57, 65 (2nd Cir. 1975); Hariss v. Pan American World Airways, Inc. 74 F.R.D. 24, 44-45 (N.D. Cal 1977); General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 157 (1982).

By settling this suit despite my opposition to the terms, proposed class counsel (Linda Friedman and Mary Stowell) have violated the test of adequacy of class representation required under Federal Rule Civ. P. 23(a)(4). Upon information and belief, I am the only named plaintiff who holds a Branch Manager's license. The proposed Stipulation of Settlement purports to represent all females working in retail sales, et al. This would include female branch managers. By removing my voice from the terms of the settlement, by filing a motion before this Court to dismiss me from representation because of my opposition to the adequacy of the terms, proposed class counsel has violated proper representation for female branch managers while still sweeping them into the proposed class. The category of female branch managers is of critical importance to this suit since it is one of the highest paying positions in retail sales; since it is the position that could foster more equitable treatment of female subordinates; since it serves as a role model position to other females; and since it currently shows

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the most egregious discrimination based on gender. According to the June 3, 1996 issue of Business Week, Smith Barney admitted that only 8 of its 390 branch managers were women.

Equally important, I continue to work in the infamous "Boom Boom Room" branch where I have the clearest perspective on the sincerity of Smith Barney's "promises" for diversity initiatives. Despite my branch manager's license, I am required to work as a sales assistant and fill in as a switchboard operator. Other licensed females in the branch are also required to sit at the switchboard.

Since hiring attorneys to pursue this case, Smith Barney has taken the following actions in the Garden City branch:

- (1) Sent a memo to me indicating that I "would be dealt with harshly..."
- (2) Permitted a broker to yell at me that "I should be shot..."
- (3) Eliminated the 9 to 5 workday with one hour off for lunch; making all sales assistants now come in early or work late to have a lunch break.
- (4) Fired an Asian woman on the basis that she could not communicate adequately in English, despite the fact that she had earned a Master's Degree with all English speaking faculty.
- (5) Christmas bonuses were eliminated;
- (6) Cash matching in the 401(k) was eliminated;
- (7) Asked female sales assistants to come to the office in jeans to clean the basement;

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- (8) Promoted two of the individuals who stood silently by the side of Nicholas Cuneo when he threatened 24 sales assistants with loss of wages and benefits if they did not volunteer for his charity;

- (9) Sent a memo advising brokers to capitalize on the breast cancer seminars as a means of bringing in big accounts;

I have seen nothing that would suggest that Smith Barney is genuine in statements about diversity initiatives. It looks like nothing more than spin control to me.

My final point is that the Stipulation of Settlement is an unlawful contract in that no consideration is given. The non-opt out class members are giving up their civil rights for no monetary consideration; for no promise of continued employment; and no assurances, whatsoever, that the environment will change at Smith Barney.

Request for Exclusion

I, Judith Mione, am a named plaintiff in *Martens v. Smith Barney* 96 Civ. 3779. I am requesting exclusion (opting out) of the proposed settlement in this action. I reassert all claims made on my behalf in *Martens v. Smith Barney*. I am requesting exclusion because the settlement is unfair, inadequate, and legally flawed, and because I did not have proper legal representation.

What I am owed in this action is a finding of liability; injunctive relief and monetary damages to be determined at trial.

*I am a woman who is employed from 1-91 to present in Smith Barney Garden City office. I am a Settlement Class member in the lawsuit *Martens, et al v. Smith Barney Inc.* 96 Civ. 3779. I wish to exclude myself from the settlement Class in that case. I understand that by requesting exclusion, I will not be entitled to participate in the Dispute Resolution Process provided for under the Stipulation of Settlement preliminarily approved by the District Court as fair and reasonable. I understand also that if I exclude myself, I will not be represented in this matter by Class Counsel.*

Judith Mione 3/21/98
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