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6 and the Certified Plaintiff Class.
(Additional Counsel Appear on Signature Page)

7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO

9 JOEL I. ROOS and TOM SANTOS, on
10 behalf of themselves and all others similarly
11 situated,

12 Plaintiffs,

13 v.

14 HONEYWELL INTERNATIONAL, INC.
15 and DOES 1-100, inclusive,

16 Defendants.

Case No. CGC-04-436205

**DECLARATION OF DANIEL J. MOGIN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 2, 2014

Time: 9:00 a.m.

Dept: 304

Judge: Hon. Curtis E.A. Karnow

17
18 I, Daniel J. Mogin, declare as follows:

19 1. I am an attorney at law duly admitted to practice in the State of California and am the
20 attorney of record for Plaintiffs Tom Santos, Joel Roos and the Certified Class ("Plaintiffs"). This
21 declaration is submitted in support of Plaintiffs' Motion for Preliminary Approval of Class Action
22 Settlement. I have personal knowledge of the facts herein, and if called to do so, could and would
23 competently testify thereto.

24 2. I have substantial experience in antitrust cases, including both class actions and
25 private cases, and other types of class actions and complex litigation. I have litigated numerous
26 indirect purchaser antitrust class actions such as this one. I have served as a Lead or Liaison counsel
27
28

1 or as a member of Executive or Steering Committees charged with overall responsibility for
2 prosecution of antitrust class actions, including in both direct and indirect purchaser cases.

3 3. The settlement that is the subject of this motion is the result of over nine years of
4 litigation and arms-length, protracted negotiations between Plaintiffs and Defendant, including
5 formal mediation, informal settlement discussions among counsel and a settlement conference
6 before a sitting Judge of the San Francisco Superior Court.

7 4. Over the course of the litigation, the parties have engaged in extensive motion
8 practice, have propounded and responded to numerous sets of discovery and have taken numerous
9 depositions. As further detailed below, motion practice included, among other things, removal to
10 federal court, Multidistrict Litigation Proceedings and subsequent remand, amendments to the
11 complaint, two summary judgment motions, two motions for class certification, an Anti-SLAPP
12 motion and three appellate court proceedings including one to the California Supreme Court.
13 Additionally, the discovery in this matter resulted in the production of millions pages of
14 documents.

15 **DISCOVERY EFFORTS BY PLAINTIFFS' COUNSEL**

16 5. The parties engaged in extensive formal discovery in this matter. The following
17 discovery was propounded to Defendant Honeywell International Inc. ("Honeywell" or
18 "Defendant") in this action:

- 19 (A) First Request for Production of Documents to Defendant;
- 20 (B) Second Set of Requests for Production of Documents to Defendant;
- 21 (C) Third Set of Requests for Production of Documents to Defendant;
- 22 (D) Fourth Set of Requests for Production of Documents to Defendant;
- 23 (E) Fifth Set of Requests for Production of Documents to Defendant;
- 24 (F) Sixth Set of Requests for Production of Documents to Defendant;
- 25 (G) Seventh Set of Requests for Production of Documents to Defendant;
- 26 (H) First Set of Interrogatories to Defendant;
- 27 (I) Second Set of Interrogatories to Defendant;
- 28 (J) Third Set of Interrogatories to Defendant;

- 1 (K) Fourth Set of Interrogatories to Defendant;
- 2 (L) Fifth Set of Interrogatories to Defendant;
- 3 (M) Sixth Set of Interrogatories to Defendant;
- 4 (N) Seventh Set of Interrogatories to Defendant;
- 5 (O) First Set of Requests for Admissions to Defendant; and
- 6 (P) Second Set of Requests for Admissions to Defendant.

7 6. In response to Plaintiffs' discovery requests, Defendant interposed numerous
8 objections, which resulted in Plaintiffs filing several motions to compel. As a result of the
9 discovery completed to date, Defendant has produced millions of pages of documents, which have
10 been reviewed, coded and analyzed.

11 7. The parties have also taken depositions over the course of the litigation. Plaintiffs
12 deposed Honeywell's expert Dr. Edward Snyder on August 26, 2011; Honeywell employee Paul
13 Nurnberger on August 10-11, 2011; former Honeywell employee Kris Ruminsky on December 1,
14 2010; Michael Marn of McKinsey & Company on April 6, 2010; and Honeywell employee John
15 Shefchik on March 3, 2009. Honeywell deposed former Honeywell employee Dennis Gambiana
16 on May 3, 2012, and Plaintiffs' expert Dr. Roger Noll on November 17, 2010. Honeywell has
17 also deposed named plaintiffs Tom Santos, Joel Roos and Bryan Brock. In addition, Honeywell
18 deposed several third party contractors including George Rodriguez, Michael Shrin, and Corey
19 Flohs. Prior to the settlement, the parties discussed additional discovery, which would likely be
20 conducted in the absence of a settlement.

21 8. Plaintiffs' counsel retained the services of qualified experts, including Dr. Roger
22 Noll, Professor Emeritus of Economics at Stanford University, to assess the nature of
23 Honeywell's pricing structures, the economic evidence and effects of Defendant's alleged
24 anticompetitive conduct, and the methods for calculating class-wide damages. Plaintiffs' counsel
25 worked closely with Dr. Noll to develop an understanding of these issues. Dr. Noll also directed
26 the work of two econometricians, Dr. Michael Harris and Dr. Mark Dwyer of the Harris
27 Economic Group. In addition, Dr. Noll prepared several reports and declarations regarding his
28 findings, which Class counsel used to evaluate and litigate Plaintiffs' case. See ¶¶34-36, below.

1 13. On April 6, 2006, Plaintiffs filed a Motion for Class Certification. Honeywell was
2 not required to respond to this motion.

3 14. A First Amended Complaint was filed on June 16, 2006, which included additional
4 allegations regarding Honeywell's anticompetitive dealings with potential competitors to
5 foreclose the market. In response, Defendant filed a Demurrer and Motion to Strike the First
6 Amended Complaint on June 30, 2006. After briefing and a hearing on October 17, 2006, the
7 Court overruled Defendant's Demurrer and denied Defendant's Motion to Strike.

8 15. Over the next year, the litigation largely focused on the withdrawal of former class
9 representative Mr. Brock and Plaintiffs' proposed amendment to substitute a new named plaintiff.
10 On December 4, 2006, Plaintiffs filed a Motion for Leave to Amend their Complaint to substitute
11 Joel Roos as a named plaintiff. After opposition from Defendant, the Court denied the Motion to
12 Amend on August 28, 2007. On November 14, 2007, however, Plaintiffs filed a Renewed Motion
13 for Leave to Amend. On November 27, 2007, Defendant also filed a Renewed Motion for
14 Judgment on the Pleadings. Both motions were heard concurrently on December 10, 2007, and on
15 January 24, 2008, the Court entered an order granting Plaintiffs' Renewed Motion to Amend and
16 denying Defendant's Renewed Motion for Judgment on the Pleadings as moot. On February 8,
17 2008, Plaintiffs filed a Second Amended Complaint replacing Mr. Brock with Mr. Roos and Mr.
18 Santos as the class representatives and changing the case caption accordingly.

19 16. On March 21, 2008, Honeywell filed an Anti-SLAPP Motion pursuant to Code of
20 Civil Procedure section 425.16. After briefing and a hearing, the Court ultimately denied
21 Defendant's Anti-SLAPP motion on May 14, 2008, finding that the "commercial speech"
22 exception under Code of Civil Procedure section 425.17(c) applied. In response to the Court's
23 denial of its Anti-SLAPP Motion, Honeywell filed a Petition for Writ of Mandate and/or
24 Prohibition in the Court of Appeal on July 8, 2008, which was later denied on October 15, 2008
25 after full briefing by the parties.

26 17. Following a year of discovery and related motion practice, Plaintiffs filed a
27 Renewed Motion for Class Certification on October 15, 2009.
28

1 18. On November 12, 2009, Defendant filed a Motion for Summary Judgment or in the
2 Alternative Summary Adjudication, arguing that Plaintiffs' claims were barred by the litigation
3 privilege under Civil Code section 47(b), the *Noerr-Pennington* doctrine, and the *Walker Process*
4 doctrine. Defendant further argued that Mr. Roos failed to adequately demonstrate antitrust injury
5 and that his claims were time barred. On March 15, 2011, the Court denied Defendant's motion
6 with respect to the litigation privilege, the *Noerr-Pennington* doctrine, and the *Walker Process*
7 doctrine, but granted the motion with respect to Plaintiff Roos, stating that he failed to
8 demonstrate sufficient antitrust injury and that his claims were barred by the applicable statute of
9 limitations. Defendant contested the decision in a Petition for Writ of Mandate and/or Prohibition
10 filed in the Court of Appeal on April 4, 2011, which was denied after extensive briefing by the
11 parties. As indicated in the parties' Joint Case Management Statement #27, Defendant planned to
12 file an additional motion for summary judgment based on the Court's ruling against Mr. Roos. In
13 light of the California Supreme Court's subsequent decision in *Aryeh v. Canon Bus. Solutions*
14 (2013) 55 Cal. 4th 1185, Plaintiffs planned to challenge the summary judgment entered against
15 Mr. Roos. See ¶33, below, and Exhibit 4 hereto.

16 19. The Court held a hearing on Plaintiffs' Motion for Class Certification on
17 November 7, 2011, wherein Defendant again raised the issue of antitrust injury, arguing that
18 Plaintiffs would not be able to demonstrate injury on a class wide basis. See ¶32, below, and
19 Exhibit 3 hereto. Despite Defendant's arguments, the Court granted class certification on
20 February 21, 2012. Seeking review of the class certification order, Defendant filed a Petition for
21 Writ of Mandate and/or Prohibition or Other Appropriate Relief with the Court of Appeal on
22 April 23, 2012. The Court of Appeal denied Honeywell's petition on July 18, 2012. Honeywell
23 filed a Petition for Review with the California Supreme Court on July 30, 2012, which was denied
24 on October 10, 2012. Since then, the parties prepared a proposed class notice and were to confer
25 on a publication plan pursuant to a Stipulation and Order Extending Time to File a Publication
26 Plan dated June 5, 2013.

**DECLARATION OF DANIEL J. MOGIN IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

1 consideration for the benefits obtained under the Settlement, Plaintiffs and Class
2 members agree to release all claims against Defendant with respect to Honeywell
3 Round Thermostat products.

4 b. Each Class member to submit a valid and timely claim shall be eligible to receive a
5 payment of \$18.00 for each thermostat purchased for an unlimited number of
6 thermostats with proof of purchase and up to two thermostats without proof of
7 purchase. Valid claims must include a declaration indicating the number of
8 thermostats purchased, and the addresses where such thermostats were installed.
9 Such payments shall be distributed from the Settlement Fund upon final approval
10 of the Settlement and entry of judgment. If the aggregate number of claims exceeds
11 the Settlement Fund, payments may be subject to a pro rata reduction.

12 c. Notice was disseminated pursuant to the Court-approved notice plan tailored to
13 each state. A short form notice was published in multiple newspapers in each
14 state, and contained a general description of the lawsuit, the Settlement, and the
15 procedure for filing a claim, opting out of the Settlement, and filing objections to
16 the Settlement terms. The short form notice also provided a toll-free phone
17 number, and directed consumers to a Settlement Website
18 (www.roundthermostats.com), where Class members can obtain additional
19 information regarding the settlement. Through the Settlement Website, Class
20 members are able to access a long form notice and an electronic claim form.

21 d. Under the Settlement, Defendant agrees that Plaintiffs may seek incentive awards
22 for named Plaintiffs in the amount of \$2500 for their participation in this
23 proceeding. Such awards will be paid from the Settlement Fund subject to the
24 Court's approval. Pursuant to the Settlement Agreement, attorneys' fees and costs
25 will also be paid from the Settlement Fund to the extent they are awarded and
26 approved by the Court.

27 25. I have reviewed said terms and believe that they are fair, reasonable and adequate.

28 Given my experience with complex litigation, I believe the proposed Settlement Agreement

1 adequately addresses the alleged violations of the Cartwright Act, the Unfair Competition Law,
2 and the common law of monopolization raised in the complaint. Furthermore, I believe it affords
3 adequate relief to Plaintiffs and Class Members who submit claims in a timely fashion. Subject to
4 the Court's approval of the Settlement Agreement, Class Members will receive a substantial
5 monetary benefit from the \$8.15 million Settlement.

6 26. I also believe the proposed Settlement Agreement is in the best interest of the Class
7 in light of the risks involved with continued litigation and the benefits provided under the
8 Settlement Agreement. The present litigation has been extremely contentious, and the Defendant
9 has strongly contested Plaintiffs' ability to prove liability and damages. Honeywell repeatedly
10 challenged Plaintiffs' ability to prove antitrust injury and would likely continue to do so through a
11 future summary judgment motion, at trial, and/or on appeal. Further litigation would therefore
12 involve substantial uncertainty and time for the Class Members. The Settlement, on the other
13 hand, provides Class Members with 78% of the estimated damages in this case, as calculated by
14 Dr. Roger Noll. See ¶¶34-36 below. Claimants stand to receive more than twice their estimated
15 damages. This outstanding, certain and immediate recovery will put an end to over nine years of
16 litigation. In light of these considerations, I endorse the proposed Settlement as a fair, adequate,
17 and reasonable recovery for the Class Members.

18 27. On November 12, 2013, Plaintiffs sought preliminary approval of the Settlement.
19 On December 5, 2013, the Court denied Plaintiffs' motion, without prejudice, in light of some
20 concerns pertaining to the proposed notice plan. The Court's concerns were fully addressed and,
21 on January 22, 2014, my office renewed the request for preliminary approval on behalf of
22 Plaintiffs via an *ex parte* application. On February 4, 2014, the Court granted preliminary
23 approval of the Settlement and ordered plaintiffs to disseminate notice to the Class.

24 28. Plaintiffs placed notice forms in the weekly publications of People, Parade and
25 USA Weekend magazines on March 7, 2014, and March 9, 2014, respectively. I reviewed the
26 Court's February 4, 2014, Order, which granted plaintiffs the authority to "utilize all reasonable
27 procedures in connection with the administration of the settlement". It was my understanding that
28 this authorization gave us permission to disseminate notice in these three weekly publications a

1 few days beyond the Court-ordered 30 day window. It is also my understanding that the
2 remaining aspects of the notice plan were provided to Class members in accordance with the
3 February 4, 2014, Order and Court-approved notice plan.

4 **SUPPORTING DOCUMENTATION**

5 29. The following documents and information, referenced above and in Plaintiffs'
6 Memorandum of Points and Authorities In Support Of Their Motion for Final Approval of Class
7 Action Settlement, are incorporated with this Declaration:

8 30. A true and correct copy of the parties' Settlement Agreement, dated November 8,
9 2013, is attached hereto as **Exhibit 1**. The Settlement Agreement includes the following exhibits:

10 Exhibit A: Proposed Order of Judgment and Dismissal Approving Settlement

11 Exhibit B: Plan of Distribution of the Settlement Fund

12 Exhibit C: California Long Form Notice

13 Exhibit D: California Short Form Notice

14 Exhibit E: California Notice Dissemination Plan

15 Exhibit F: California Full Page Notice with Claim Form

16 Exhibit G: Vermont Long Form Notice

17 Exhibit H: Vermont Short Form Notice

18 Exhibit I: Vermont Notice Dissemination Plan

19 31. A true and correct copy of Plaintiff's Second Amended Complaint is attached hereto
20 as **Exhibit 2**.

21 32. A true and correct copy of the Transcript Proceedings from the class certification
22 hearing dated November 7, 2012 is attached hereto as **Exhibit 3**.

23 33. A true and correct copy of the Joint Case Management Conference Statement # 27 of
24 Plaintiffs and Defendant Honeywell International, Inc., dated April 29, 2013, is attached hereto as
25 **Exhibit 4**.

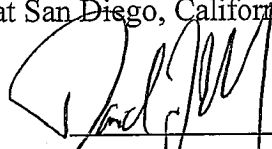
26 34. A true and correct copy of the relevant portions of the Declaration of Roger G. Noll
27 in Support of Plaintiffs' Renewed Motion for Class Certification dated October 13, 2009, is attached
28 hereto as **Exhibit 5**.

1 35. A true and correct copy of the relevant portions of the deposition transcript from the
2 Videotaped Deposition of Roger G. Noll taken November 17, 2010 is attached hereto as **Exhibit 6**.

3 36. In addition to the foregoing, Honeywell's estimated sales for Round Thermostat
4 during the class period are approximately 1,153,568 units in California and 102,486 units in
5 Vermont. Plaintiff's expert Roger G. Noll testified during deposition to class-wide overcharges in a
6 range of \$7-9, with a regression-indicated weighted average of \$8.33.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed this 24th day of April, 2014, at San Diego, California.

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13 Daniel J. Mogin
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