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23 Attorneys for Plaintiffs and the Classes

24 **IN THE UNITED STATES DISTRICT COURT**  
25 **FOR THE DISTRICT OF ARIZONA**

26 Levanna C. Traylor, *et al.*  
27  
28 Plaintiffs,  
  
vs.  
  
Avnet, Inc.; Avnet Pension Plan,  
  
Defendants.

No. 08-cv-00918-PHX-FJM

**DECLARATION OF ERIC J. MILLER**

1 I, Eric J. Miller, declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

2  
3 1. I am a Managing Senior Project Administrator for Rust Consulting, Inc.  
4 (“Rust” or “we”). Pursuant to the Plaintiffs’ Motion for Preliminary Approval of Class  
5 Action Settlement, and Memorandum of Points and Authorities in Support filed  
6 November 25, 2009 (the “Preliminary Approval Order”), we were retained as the  
7 Settlement Administrator to oversee the process of providing the Notice of Proposed  
8 Class Action Settlement and Settlement Hearing – Lump Sum Class (the “Notice  
9 Packet”) of the preliminarily approved Settlement and publication of the Published  
10 Notice to the members of the Lump Sum Class (“Class”). A copy of the Notice Packet  
11 is attached hereto as Exhibit 1. I submit this Declaration to describe the procedures we  
12 employed to notify the members of the Class and their rights in connection therewith.  
13 Rust was not hired to handle the Restricted Participant Class, only the Lump Sum Class

14  
15  
16 2. Pursuant to a previous Order filed July 9, 2009, Rust mailed the Notice of  
17 Pendency of Class Action Filed on Your Behalf (“NOP”) on August 7, 2009 (see  
18 Declaration of Eric J. Miller, attached hereto as Exhibit 2). During the normal course of  
19 administration of the NOP, the mailing list for the members of the Class changed as a  
20 result of the following:  
21

- 22
- 23 a. Rust uploaded the data into a segregated database and submitted the  
24 mailing records to the United States Postal Service (“USPS”) National Change of Address Service (“NCOA”) to ensure adequate  
25 address formatting, obtain current physical addresses, and qualify for postal discounts;
  - 26 b. Rust then electronically cleansed the data to ensure adequate  
27 formatting;
- 28

- 1 c. Rust updated Claimants' addresses pursuant to their written requests;  
2 and
- 3 d. Rust updated Claimants' addresses as a result of receiving forwarding  
4 addresses from the USPS or addresses found through a trace  
5 processing service.

6 3. On December 15, 2009, we received from Bolton Partners, Inc. one (1)  
7 electronic file consisting of 3,462 actuarial records for the members of the Class. We  
8 uploaded those records into the NOP segregated database and standardized the data to  
9 ensure adequate formatting.

10 4. Pursuant to ¶ II.F. "Proposed Notices to the Classes" of the Preliminary  
11 Approval Order, commencing on December 16, 2009 and completing on December 17,  
12 2009, Rust caused the Notice Packet to be mailed, by standard first-class U.S. Mail,  
13 postage prepaid, to 3,462 eligible participants of the Class referred to in ¶ 3 above.

14 5. As of February 3, 2010, the USPS has returned to us as undeliverable a  
15 total of 11 Notice Packets with a forwarding address. In all 11 cases, we re-mailed these  
16 Notice Packets to the addresses the USPS provided us.

17 6. As of February 3, 2010, the USPS also returned 303 Notice Packets as  
18 undeliverable without forwarding addresses. Rust utilized the services of LexisNexis, an  
19 information supplier to which Rust subscribes, to seek updated addresses. As a result,  
20 Rust received 196 updated addresses to which Rust subsequently re-mailed the Notice  
21 Packets. Of these 196 re-mailed Notice Packets, the USPS returned 13 as undeliverable  
22 without a forwarding address a second time.

23 7. Pursuant to ¶ II.F. "Proposed Notices to the Classes" of the Preliminary  
24 Approval Order, on December 22, 2009, Rust, in conjunction with Kinsella Media, LLC  
25

1 (“Kinsella”), an affiliate of Rust, caused the Published Summary Notice to be published  
2 in *USA Today*. A copy of the Published Notice is attached hereto as Exhibit 3.

3  
4 8. As the Settlement Administrator, Rust has acted as a repository for Class  
5 Member inquiries and communications received in this action. Rust established and  
6 maintains a Post Office Box, a toll-free telephone number and the settlement website,  
7 discussed in the next paragraph, to respond to potential inquiries from known members  
8 of the Class. Class Counsel prepared a script in a question-and-answer format for the  
9 call center representatives. Additionally, this Post Office Box was utilized to receive  
10 any undeliverable Notice Packets referred to in ¶ 6 above.

11  
12 9. On December 4, 2009, Class Counsel, through Rust, created and maintains  
13 a settlement website: [www.traylorpensionclassaction.com](http://www.traylorpensionclassaction.com). The website contains links to  
14 the Home Page, Frequently Asked Questions, Publication Notice, Notice, Overview,  
15 What are your Rights, Opt-Out Info, Important Dates, Court Documents, and Contact  
16 Information. As of February 3, 2010, the website has been viewed approximately 799  
17 times by unique visitors.  
18

19  
20 10. A caller to the toll-free telephone number (877-465-4894) is able to listen  
21 to a pre-recorded message which answers many frequently asked questions and is then  
22 prompted to press a telephone keypad number to contact a live “telephone  
23 representative” to answer additional questions. As of February 3, 2010, 355 callers had  
24 listened to the pre-recorded message and approximately 174 of those requested to speak  
25 with a telephone representative.  
26

27 11. We have standing instructions from Plaintiffs’ counsel to immediately  
28

1 forward to them any evidence that a Class member contacting us has registered or may  
2 wish to register an objection as to any aspect of the proposed settlement, however  
3 tentatively expressly. To date, we have not received any such calls from Class members  
4 expressing objections to the proposed settlement.  
5

6 I, Eric J. Miller, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of  
7 perjury that the foregoing is true and correct and that this declaration was executed on  
8 this 5<sup>th</sup> day of February, 2010.  
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Eric J. Miller  
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# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Levanna C. Traylor, *et al.* on behalf of themselves and  
on behalf of all others similarly situated,

Plaintiffs,

vs.

Avnet, Inc.; Avnet Pension Plan,

Defendants.

No. 08-cv-00918-PHX-FJM

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND  
SETTLEMENT HEARING -- LUMP SUM CLASS

To: <name1> <name2> <name3>  
<addr1>  
<addr2>  
<city>, <state> <zip5> <zip4>

Claimant ID #<clmnt\_idno>

<<□□□□□□□>> - «Seq\_no»

Your Settlement ID Number: «ID number»

Your Estimated Individual Net Settlement Benefit: «amount»

By Order of the United States District Court for the District of Arizona (the "Court"), this Notice is being sent to you in the belief that you are a member of the Lump Sum Class (the "Class") described below, to inform you as follows:

- The Court, which previously certified the Class defined below and directed notice be issued to Class Members of the pendency of this above-captioned lawsuit (the "Litigation"), has preliminarily approved a proposal to settle the Litigation which provides for the payment of an additional pension benefit to you and the other Class Members from the Defendants, Avnet, Inc. and the Avnet Pension Plan (the "Plan").
- On or about August 7, 2009, all persons believed to be members of the Lump Sum Class were sent a Notice regarding the Litigation, which among other things explained how members of the Class could timely submit a written request to be excluded from the Class. The time for submitting such requests has now passed, which means you may object to any aspect of the proposed settlement but, if the settlement is approved, you may not now opt-out of it. Any objections to the proposed settlement (including the recommended Plan of Allocation) and/or Class Counsel's request for attorneys' fees and for additional compensation for the Named Plaintiffs must be in writing and filed with the Court and served on Class Counsel and Defendants' Counsel (listed at the end of this Notice) on or before February 19, 2010, and must state the basis for the objection, attaching supporting documentation if any. Please note that the proposed settlement includes a broad Release of claims against Defendants. See Section IV of this Notice. If you believe you have an individual claim against Defendants or their affiliates that should not be released as part of the settlement, you must provide notice of that claim by February 19, 2010. See Section VI of this Notice.
- You need not do anything in order to receive a Settlement Benefit. However, if you do not timely elect to receive your additional payment in the form of a rollover, your payment will be paid directly to you *less* tax withholding as required by law.

**PLEASE READ THIS NOTICE CAREFULLY. THE PROPOSED SETTLEMENT WILL AFFECT YOUR RIGHTS AND, IN PARTICULAR, YOUR ENTITLEMENT TO AN INCREASED PENSION BENEFIT.**

**THE CLASS IS DEFINED AS:**

All persons for whom the Plan maintained a notional account at any time after December 31, 1993 and who received a lump sum distribution from the Plan between January 1, 1994 and August 17, 2006, and the lawful beneficiaries, estates, and alternate payees of such persons.

The following individuals, however, are not part of the Class: (1) persons not identified during the discovery process in this Litigation and therefore unknown to the Parties (other than successors to persons identified in discovery); (2) individuals who have no colorable claim to an additional benefit under any of Plaintiffs' theories of the case; and (3) individuals who timely opted out of the Lump Sum Class.

**I. NOTICE OF CLASS ACTION AND THE COURT'S PRELIMINARY APPROVAL OF SETTLEMENT**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and an Order of the Court, that an agreement to settle (the "Agreement") the Litigation has been entered into by and among Plaintiffs individually and on behalf of the Class and Defendants.

THE PURPOSE OF THIS NOTICE is to inform the Class Members of (i) a proposed settlement of the Litigation; and (ii) a hearing (the "Fairness Hearing") to be held before the Honorable Frederick J. Martone at the United States District Court for the District of Arizona, 401 West Washington Street, Phoenix, AZ 85003-2118, in Courtroom 506, on March 5, 2010 at 2:00 p.m. MST. The Fairness Hearing will determine (i) whether the Court should grant final approval of the settlement, including the Plan of Allocation; (ii) whether the Court should enter final judgment dismissing the Litigation with prejudice; (iii) if the Court approves the settlement and enters a final judgment, the amount of attorneys' fees, costs, and expenses to be awarded by the Court to Class Counsel (the "Class Counsel's Fees"); and (iv) the amount of compensation, if any, to be paid to the Named Plaintiffs for their contributions to the Class (the "Named Plaintiff Case Contribution Payments").

On November 25, 2009, the Court issued an Order granting Preliminary Approval of the Settlement Agreement, preliminarily finding that the terms of the Agreement, including the Plan of Allocation, are fair, reasonable, and adequate; approving the forms and methods of Notice to the Class Members; and scheduling the Fairness Hearing. This Notice is merely a summary of the terms of the Agreement, and you should refer to the Agreement, which is available at [www.traylorpensionclassaction.com](http://www.traylorpensionclassaction.com), for its complete terms.

THIS NOTICE IS NOT INTENDED TO BE, AND SHOULD NOT BE CONSTRUED AS, AN EXPRESSION OF ANY OPINION BY A COURT AS TO THE TRUTH OR FALSITY OF THE ALLEGATIONS IN THE LITIGATION OR THE MERITS OF THE CLAIMS OR DEFENSES ASSERTED.

**II. DESCRIPTION OF THE LITIGATION AND REASONS FOR SETTLEMENT**

1. On September 25, 2007, Named Plaintiff Levanna Traylor filed a Complaint under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), on behalf of herself and a proposed class of others who had received a lump sum payment from the Plan between January 1, 1994 and August 17, 2006 (the "Lump Sum Class" or the "Class"). An Amended Complaint was filed July 28, 2008 adding Named Plaintiffs Kevin Moses, James Coy, and Gwyn Moriarty as additional representatives of the Lump Sum Class, and adding Named Plaintiffs Linda Phillips, Thomas Small, Dwayne Cohen, and Steve Dison as representatives of a separate Restricted Participant Class (the "Restricted Participant Class"). The Complaint and Amended Complaint alleged that the Plan had failed to properly calculate lump sum distributions for members of the Lump Sum Class, and improperly denied the members of the Restricted Participant Class the opportunity to receive lump sum distributions.

2. More specifically, the Complaint alleged that the Plan, a defined benefit pension plan of the "cash balance" variety, unlawfully equated the participant's lump sum distribution to the balance of the participant's notional account. The Complaint alleged that ERISA required the lump sum to be calculated as no less than the present value of the participant's accrued benefit under the Plan projected to normal retirement age (age 65, under the Plan) using the Plan's interest crediting rate, which has always equaled at least 7%. According to the Complaint, had the required projection been performed, and the resultant projected account balance converted into an annuity using the Plan's annuity conversion factors and then reduced to a present value using the required statutory discount rate and mortality table, the actuarial equivalent of the participant's accrued benefit would have been more than the account balance because the statutorily-prescribed discount rate was always lower than 7%. For the Restricted Participant Class, the Amended Complaint alleged that the Plan improperly used the notional account balance to determine whether participants were eligible to receive a lump sum payment. According to the Amended Complaint, had the required projection been performed, all members of the Restricted Participant Class would have been eligible to receive lump sum payments upon termination of employment.

3. Defendants, which timely answered the Amended Complaint on March 2, 2009, denied and continue to deny all liability to Plaintiffs, the Lump Sum Class, and the Restricted Participant Class.

4. The Parties have engaged in extensive discovery with respect to liability, damages, class certification and limitations, including the taking of sixteen depositions. They have also engaged in substantial motion practice and exchanged detailed expert reports regarding liability and damages. The Agreement is the product of negotiations conducted during a formal mediation session before a private mediator in October 2009.

5. The Parties believe in the merits of their respective positions. However, the Parties enter this Agreement in order to avoid the expense, inconvenience, and distractions of burdensome, protracted litigation; obtain the benefits, releases, orders, and judgments contemplated by this Agreement; and finally resolve all claims, known and unknown, that have been or might be asserted by Plaintiffs or Class Members against the Plan and the other Released Parties.

6. Plaintiffs and their counsel extensively investigated and evaluated their claims and Defendants' available defenses and, considering the benefits promised by this Agreement and the costs and uncertainty of establishing a right to recovery, have concluded, after extensive negotiations over the terms of this Agreement, that this Agreement is fair, reasonable, and adequate and in the best interests of the Lump Sum Class Members and the Restricted Participant Class Members.

**III. DESCRIPTION OF THE SETTLEMENT BENEFITS**

The following is a description of the settlement of this Litigation and the Individual Net Settlement Benefit you will receive under the Agreement if the Agreement is finally approved by the Court in an order and judgment that becomes final and binding for all purposes:

**A. TOTAL SETTLEMENT AMOUNT AND NET SETTLEMENT BENEFIT**

The Total Settlement Amount to be paid or credited by the Plan or Avnet, Inc. is thirty-four million dollars (**\$34,000,000**). This amount is divided into a Lump Sum Class Settlement Fund of twenty-nine million dollars (**\$29,000,000**) and a Restricted Participant Class Settlement Fund of five million dollars (**\$5,000,000**).

The Net Settlement Benefit available for payment to Lump Sum Class Members is the Lump Sum Class Settlement Fund *less* (1) Class Counsel’s Fees as approved by the Court; (2) any Named Plaintiff Case Contribution Payments as approved by the Court; and (3) reimbursable case expenses and costs of settlement administration attributable to the Lump Sum Class Settlement Fund. Each of these reductions is further described below.

(1) The Court will determine the amount of Class Counsel’s Fees in accordance with Fed. R. Civ. P. 23(h), but Class Counsel has agreed not to seek an award of fees (exclusive of costs and expenses) in excess of **25% of the Total Settlement Amount, i.e., \$8.5 million**. Of this amount, \$7.25 million would be deducted from the Lump Sum Class Settlement Fund and \$1.25 million would be deducted from the Restricted Participant Class Settlement Fund.

(2) The Court will also determine the Named Plaintiff Case Contribution Payments (if any). There are eight Named Plaintiffs: four from the Lump Sum Class and four from the Restricted Participant Class. Each Named Plaintiff’s Case Contribution Payment (if any) would be deducted from his or her respective Class Settlement Fund. All Named Plaintiffs have agreed not to seek compensation in recognition of their time and efforts on behalf of the two Classes in excess of **three thousand dollars (\$3,000) each**.

(3) Class Counsel has also agreed not to seek case expense reimbursement (for experts, deposition expenses and other direct case costs) in excess of **\$400,000**. Of this amount, approximately \$340,000 would be deducted from the Lump Sum Class Settlement Fund and \$60,000 would be deducted from the Restricted Participant Class Settlement Fund. Class Counsel estimates that costs of settlement administration attributable to the Lump Sum Class Settlement Fund are not likely to exceed an additional **\$100,000**.

Therefore, if the maximum awards for both Class Counsel and the four Named Plaintiffs are approved and the estimated maximum case expenses and costs of settlement administration are reimbursed and expended, the Net Settlement Benefit for the Lump Sum Class would be approximately **\$21.3 million**.

**B. DETERMINATION OF CLASS MEMBERS’ SETTLEMENT BENEFIT**

A Net Settlement Benefit of \$21.3 million would represent to the approximately 3,470 members of the Class **an average additional net benefit of \$6,140**. However, Individual Net Settlement Benefits would not be an average but rather the result of a two-step allocation process.

Under the first step, known as the “Plan of Allocation” and proposed by Class Counsel, the approximately \$21.3 million Net Settlement Benefit for the Lump Sum Class would be divided among four subgroups of participants according to what Class Counsel considered the most significant statute of limitations defenses that Avnet and the Plan asserted against Class Members. The four subgroups are:

**Subgroup A.** This subgroup consists of those Lump Sum Class Members who received a lump sum payment from the Plan on or after September 25, 2001 – *i.e.*, within six (6) years of the date the lawsuit was filed – and who did not sign a Mutual Agreement to Arbitrate Claims that contained a one-year (1-year) contractual statute of limitations for claims against one or both of the Defendants (an “Arbitration Agreement”).

**Subgroup B.** This subgroup consists of those Lump Sum Class Members who received a lump sum payment from the Plan on or after September 25, 2001 and who did sign an Arbitration Agreement.

**Subgroup C.** This subgroup consists of those Lump Sum Class Members who received a lump sum payment from the Plan before September 25, 2001 – *i.e.*, more than six (6) years before suit was filed – and who did not sign an Arbitration Agreement.

**Subgroup D.** This subgroup consists of those Lump Sum Class Members who received a lump sum payment from the Plan before September 25, 2001 and who did sign an Arbitration Agreement.

While all four Subgroup Members’ claims faced obstacles to recovery and all such claims could have been eliminated had Defendants been successful under one or more of their statute of limitations defenses, the probability of Members overcoming these defenses varied considerably from one Subgroup to the next. Class Counsel believes that the fairest way to distribute the proceeds of the Lump Sum Class Settlement Fund is therefore to weight the percentage of total proceeds available to the Class according to Class Counsel’s assessment of Subgroups A, B, C and D’s relative probability of overcoming the Defendants’ statute of limitations defenses.

There were arguments advanced in the case under which the relevant statute of limitations might be one year, six years, or fifteen years. Defendants argued that under a one-year statute of limitations, no Class Members would have timely claims, and that under a six-year statute of limitations, only those Class Members who received lump sum payments less than six years before suit was filed would have timely claims (*i.e.*, Subgroup A Class Members). Class Members who received their lump sum payments more than six years before suit was filed thus faced an additional obstacle to recovery that was not faced by Class Members who received more recent lump sum payments.

In addition, many Class Members signed a Mutual Agreement to Arbitrate Claims when they began employment with Avnet. Defendants argued that this agreement required its signatories to give notice of any claim against Avnet or the Plan within one year of the event giving rise to the claim. According to Defendants, this agreement barred the claims asserted in this lawsuit for all employees who signed them. Class Members who signed such an agreement thus faced an additional obstacle to recovery that was not faced by other Class Members.

Taking into account the relative positions of the Subgroups and the arguments advanced against them, Class Counsel has concluded that the following assessment of the strength of the claims of members of Subgroups B, C, and D vis-à-vis the claims of members of Subgroup A (who had no risk of having their claims eliminated if the limitations period were six years or more) should be used and would result in the most fair and reasonable allocation of the Net Settlement Benefit for the Lump Sum Class:

	Relative Strength of Claims
Subgroup A	100%
Subgroup B	85%
Subgroup C	50%
Subgroup D	42.5%

This would result in an allocation of the estimated \$21.3 million Net Settlement Benefit among the four Subgroups in the following amounts and according to the following percentages. Percentages for each Subgroup represent the portion of the aggregate alleged underpayments of the Subgroup, calculated in accordance with Plaintiffs' basic theory of the case, recovered in the Settlement.

	Net Settlement Benefit	Gross Recovery Ratio	Net Recovery Ratio
Subgroup A	\$15,418,333	61.4%	45.1%
Subgroup B	\$2,596,763	52.2%	38.3%
Subgroup C	\$3,222,668	30.7%	22.5%
Subgroup D	\$65,295	26.1%	19.2%

The Court may approve the Plan of Allocation or order it modified in any manner consistent with the law but not in a way that would increase or decrease the overall amount Defendants have agreed to pay.

The second step of the allocation process is to divide the Subgroups' share of the Net Settlement Benefit among the Members of that Subgroup to arrive at the individual Class Members' "Individual Net Settlement Benefit." Under the Agreement, the Individual Net Settlement Benefit would be calculated in the same way for all Class Members, regardless of Subgroup: by multiplying (1) the portion of the Net Settlement Benefit payable to the Lump Sum Class Member's Subgroup, times (2) the ratio that his or her estimated underpayment, calculated in accordance with Plaintiffs' basic theory of the case, bears to the aggregate underpayment of all members of the Lump Sum Class Member's Subgroup.

This calculation yields the following average results per Subgroup.

	No. of Participants	Average Additional Payment
Subgroup A	1774	\$8,691
Subgroup B	421	\$6,168
Subgroup C	1254	\$2,570
Subgroup D	21	\$3,109

**NOTE:** Under the settlement, each Class Member's Individual Net Settlement Benefit shall be paid, to the greatest extent possible, from the Plan as an additional tax-qualified benefit from the Plan. If all or a portion of a Class Member's Individual Net Settlement Benefit cannot be paid from the Plan as a tax-qualified Settlement Benefit (because, for example, the payment would exceed applicable IRS limitations), the amount will be paid by Avnet, Inc.

**If (1) the maximum permitted Class Counsel's Fees are sought and approved by the Court, (2) the maximum permitted Named Plaintiff Case Contribution Payments are sought and approved by the Court, (3) the maximum estimated case expenses are reimbursed and costs of settlement administration costs are expended, and (4) the proposed Plan of Allocation is approved by the Court, it is estimated that you will receive an Individual Net Settlement Benefit paid by the Plan in the amount shown on the first page of this Notice.** You may receive a higher payment, proportionately determined, in the event that (1) less than the maximum Class Counsel's Fees are sought and/or approved; (2) less than the maximum Named Plaintiff Case Contribution Payments are sought and/or approved; and/or (3) actual costs of settlement administration or case expenses reimbursed are less than the estimated maximums. If any portion of the amount to which you are entitled exceeds the maximum tax-qualified Settlement Benefit payable to you, the balance will be paid to you by Avnet, Inc., less tax withholding. **You may also receive a lower payment than the estimated payment if, for example, costs of settlement administration exceed the estimated maximum, corrections are made to the data or processes used in generating the estimate, or the Court modifies the Plan of Allocation.**

If a member of the Lump Sum Class has died, or dies prior to receiving an Individual Net Settlement Benefit, the full Individual Net Settlement Benefit will be payable to the Class Member's beneficiary or estate.

### **C. PAYMENT OF YOUR SETTLEMENT BENEFIT**

**Before your Individual Net Settlement Benefit may be paid by the Plan, you must elect, by completing the last page of this Notice and returning it to the Settlement Administrator, one of the following rollover/distribution options:**

**1. Option 1 – Rollover:** A direct rollover of up to 100% of your tax-qualified Individual Net Settlement Benefit to an individual retirement account or annuity (an "IRA") or to another qualified plan that accepts rollovers that you designate in response to this Notice. If you elect to roll over less than 100% of your tax-qualified Individual Net Settlement Benefit, the balance will be paid directly to you as a distribution, less tax withholding.

**2. Option 2 – Direct Payment:** A direct payment to you of 100% of your tax-qualified Individual Net Settlement Benefit. If you elect this distribution option, the funds, less tax withholding, will be paid directly to you.

**ATTENTION—DEADLINE FOR MAKING ELECTION: To make a timely election, you must complete the information requested on the last page of this Notice and return that page to the Settlement Administrator by February 26, 2010. IF YOU DO NOT MAKE A TIMELY ELECTION, you will be deemed to have elected option two ("Direct Payment") and your Settlement Benefit will be paid directly to you, less tax withholding.**

No opinion concerning the tax consequences of the Agreement to individual Class Members is being given or will be given by Defendants, Defendants' Counsel, or Class Counsel, nor is any representation or warranty in this regard made by virtue of this Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending upon the particular circumstances of each individual Class Member.

**IV. WAIVER, RELEASE, AND DISCHARGE**

**PLEASE READ THIS SECTION CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT A WAIVER OF YOUR RIGHTS AS A CLASS MEMBER IF THE SETTLEMENT AGREEMENT BECOMES FINAL.**

A. If the settlement is approved by the Court, then, as of the Effective Date, you and all other Releasors (defined below) will be deemed to have released, acquitted, and forever discharged each of the Released Parties from the Released Claims.

Releasors means collectively all of the Named Plaintiffs in the Litigation and all members of the Lump Sum Class and Restricted Participant Class.

Released Parties means Defendants, together with their fiduciaries, officers, employees, directors, predecessors, successors, counsel, actuaries, agents, and other affiliated parties.

Released Claims means any and all past, present and future causes of action, claims, damages, awards, equitable, legal, and administrative relief, interest, demands or rights that are based upon, related to or connected with, directly or indirectly, in whole or in part, the allegations, facts, subjects or issues that have been, could have been, may be or could be set forth or raised in the Litigation, including but not limited to any and all “whipsaw” claims, claims that participants are entitled to lump sum payments in excess of their notional account balances, claims relating to the availability or unavailability of lump sum payments or other benefit distributions prior to normal retirement age, claims alleging that the term Cash Balance Account as used in the Plan means something other than a participant’s notional account balance, claims relating to the conversion of the Plan to a cash balance plan, claims of age discrimination relating to the calculation of benefits, claims relating to the lawfulness of the Plan’s interest crediting rates, claims relating to disclosures or communications relating to the Plan that Class Members did or did not receive, claims relating to the content of any Mailed Notice, Publication Notice, benefit election form, or related disclosure distributed in connection with this Settlement, and claims relating to the administration of the Lump Sum Class Settlement Fund or the calculation of Individual Net Settlement Benefits. Notwithstanding the foregoing, Released Claims do not include any claim (an “Individual Claim”) that a Named Plaintiff could not have asserted on behalf of a Class Member, such as a claim that an individual Class Member’s account balance was incorrectly calculated by reason of a factual error particular to that Class Member, provided that Effective Notice is given. Effective Notice means individual written notice to Class Counsel and Defendants’ Counsel of such claim and the grounds therefor, received no later than the deadline set by the Court for objecting to the Settlement. Any Individual Claim for which Effective Notice is not provided shall be included as a Released Claim. This release is intended to be construed broadly. Notwithstanding the foregoing, Released Claims do not include a claim that seeks to enforce the obligations imposed in this Settlement.

B. Releasors are, without limitation, precluded and estopped from bringing in the future any claim or cause of action released in the preceding subparagraph.

C. Releasors acknowledge that they are releasing claims that are known and unknown, suspected and unsuspected, and discovered and undiscovered, and are aware that they may hereafter discover legal or equitable claims or remedies presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, including those with respect to the allegations and subject matters in the Litigation. Nevertheless, it is the intention of Releasors to fully, finally, and forever settle and release all such matters, and all claims and causes of action relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in the Litigation).

D. Releasors expressly acknowledge certain principles of law applicable in some states, such as Section 1542 of the Civil Code of the State of California, which provide that a general release does not extend to claims that a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. Notwithstanding the choice of law provision in this Agreement, to the extent that California or other law may be applicable and enforceable, Releasors hereby agree that the provisions of Section 1542 of the Civil Code of the State of California and all similar federal and state laws, rights, rules, and legal principles of any other jurisdiction that may be applicable here, are hereby knowingly and voluntarily waived and relinquished by Releasors, and Releasors agree and acknowledge that this provision is an essential term of this Agreement and this Release.

E. Releasors further agree that no third-party shall bring any Released Claims on behalf of any Releasor against any Released Party. Should any third-party do so, Releasors shall take all necessary action to secure the dismissal with prejudice of any such claim.

F. This Release may be raised as a complete defense to and will preclude and bar any action or proceeding that is encompassed by this Release.

G. The provisions of this Release constitute an essential and material term of this Agreement to be included in the Final Order and Judgment entered by the Court.

**V. REPRESENTATION OF LUMP SUM CLASS MEMBERS**

Lump Sum Class Members are represented by Plaintiffs (Levanna Traylor, Kevin Moses, James Coy, and Gwyn Moriarty) and by Class Counsel appointed by the Court. Lead Class Counsel is:

Eli Gottesdiener  
Gottesdiener Law Firm, PLLC  
498 7<sup>th</sup> Street  
Brooklyn, NY 11215  
Tel: 718.788.1500  
Fax: 718.788.1650  
[eli@gottesdienerlaw.com](mailto:eli@gottesdienerlaw.com)

If the Court finally approves the Settlement Agreement and it becomes final for all purposes, you will be bound by all the provisions of the settlement and all determinations and judgments in this Litigation, including the Final Order and Judgment dismissing the Litigation with prejudice. No Class Member may opt-out of the settlement. If you wish to object to the Agreement, to Class Counsel's application for Fees, or Named Plaintiff Case Contribution Payments, you must present your objections by following the instructions in Section VI below.

**VI. OBJECTIONS TO THE SETTLEMENT, THE FAIRNESS HEARING, AND EFFECTIVE NOTICE OF INDIVIDUAL CLAIMS**

Any Class Member may appear at the Fairness Hearing, in person or by counsel of his own choice at his own expense, and be heard to the extent allowed by the Court in opposition to the fairness, reasonableness, and adequacy of the settlement, the recommended Plan of Allocation, the application for an award of attorneys' fees, costs, and expenses to Class Counsel, or to the Named Plaintiff Case Contribution Payments.

**However, in no event shall any person be heard in opposition to the settlement, the recommended Plan of Allocation, the application for an award of attorneys' fees, costs, and expenses to Class Counsel, or to Named Plaintiff Case Contribution Payments unless, on or before February 19, 2010, such person files with the Clerk of the Court a notice of an intention to appear and provides a written statement that indicates all basis for objection, all documentation in support of the objection, and legal authority, if any, supporting the objection and a list of witnesses the person may call by live testimony.**

Copies of such notice, statement, and documentation, together with copies of any other papers or briefs filed with the Court, must be simultaneously delivered to the following:

Class Counsel:

Eli Gottesdiener  
Gottesdiener Law Firm, PLLC  
498 7<sup>th</sup> Street  
Brooklyn, NY 11215  
Tel: 718.788.1500  
Fax: 718.788.1650  
[eli@gottesdienerlaw.com](mailto:eli@gottesdienerlaw.com)

Defendants' Counsel:

Robert D. Wick  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004

Any Class Member who does not object in the foregoing manner shall be deemed to have waived all objections and shall be foreclosed from making any objections to the settlement. The Court has reserved the right to adjourn and/or reschedule the Fairness Hearing without further notice of any kind; therefore, any Class Member intending to attend the Fairness Hearing should (in addition to complying with all instructions and requirements above) confirm the date, time, and location of the Fairness Hearing with Class Counsel.

**Please also note that the Release set forth in Section IV of this Notice contains a broad Release of claims against Defendants. If you have an Individual Claim against Defendants or their affiliates that falls within the language of the Release and you do not wish to release that claim, you must send written notice of the claim and the grounds therefor to Class Counsel and Defendants' Counsel at the address listed above. If you provide such notice on or before February 19, 2010, and if a Named Plaintiff could not have asserted the claim on behalf of a Class Member, the claim will be preserved. Otherwise, the claim will be released if the proposed settlement is approved.**

**VII. NO NEED TO DO ANYTHING TO PARTICIPATE IN SETTLEMENT**

You do not need to do anything to participate in the settlement. Class Counsel strongly recommends, however, that you fill out the attached Election Form and return it to the Settlement Administrator to assure that you receive your payment at the address and in the manner that you wish to receive it. If you neglect to fill out the form, you will receive a direct payment of your Individual Net Settlement Benefit, less tax withholding, at the address to which this Notice was directed.

**VIII. FURTHER INFORMATION**

This Notice is only a summary of the settlement. If there is any inconsistency between this Notice and the actual Settlement Agreement, the Settlement Agreement governs. More detailed information about this Litigation, including the Settlement Agreement, key pleadings and filings of the Parties, and the Orders and rulings entered by the Court, may be obtained at the following website, [www.traylorpensionclassaction.com](http://www.traylorpensionclassaction.com); by requesting them from Class Counsel; by inspecting the papers concerning this Litigation at the Office of the Clerk, United States District Court for the District of Arizona, 401 West Washington Street, Phoenix, AZ 85003-2118, during regular business hours; or by registering and paying a modest fee to the PACER service, <http://pacer.psc.uscourts.gov/>, which permits inspection of the papers filed in the case online. You may also contact the Settlement Administrator by phone, toll-free, at 877-465-4894 or write to: Avnet Pension Plan Class Action, c/o Rust Consulting, Inc., P.O. Box 24602, West Palm Beach, FL 33416.

**ALL INQUIRIES CONCERNING THIS NOTICE SHALL BE DIRECTED TO CLASS COUNSEL, NOT THE COURT.**

Dated: December 16, 2009

CLERK  
UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA



**MAILED  
NO LATER THAN  
FEBRUARY 26, 2010**

# ELECTION OF ROLLOVER/DIRECT PAYMENT

For Official Use Only

Before your tax-qualified Individual Net Settlement Benefit will be paid by the Plan you must select, by placing a ✓ next to one of the following options, either the rollover or direct payment of your tax-qualified Settlement Benefit.

\_\_\_\_ 1. **Rollover:** I elect a direct rollover of up to \_\_\_\_\_% (maximum of 100%) of my tax-qualified Individual Net Settlement Benefit, paid to the following account (either an IRA or another qualified plan):

**[Include the name of your account; the account number; and the name of the institution holding that account for you.]**

Name of Account

Account Number

Name of Institution Holding Account

If you elect to roll over less than 100% of your tax-qualified Individual Net Settlement Benefit, the balance will be paid directly to you as a distribution, less tax withholding as required by law.

\_\_\_\_ 2. **Direct Payment:** I elect a direct payment to me of 100% of my tax-qualified Individual Net Settlement Benefit, which should be sent by check to the following address:

P.O. Box/No. and Street/Apt. or Suite

City

State

Zip Code

If you elect this distribution option, the funds, less tax withholding, will be paid directly to you. **To make a timely election of either option 1 or 2, you must sign where indicated below and return a copy of this page by February 26, 2010 to:**

Avnet Pension Plan Class Action  
c/o Rust Consulting, Inc.  
P.O. Box 24602  
West Palm Beach, FL 33416  
Toll-Free: 877-465-4894

Signature

Print Name

Date

Contact Telephone Number

P.O. Box/No. and Street/Apt. or Suite

City

State

Zip Code

Date of Birth

Social Security Number



Claimant ID # <<        >>



Avnet Pension Plan Class Action  
c/o Rust Consulting, Inc.  
P.O. Box 24602  
West Palm Beach, FL 33416

Claimant ID #«clmnt\_idno»

«» – «Seq\_no»

«name1» «name2» «name3»  
«addr1»  
«addr2»  
«city», «state» «zip5» «zip4»

# **EXHIBIT 2**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Levanna C. Traylor, et al. on behalf of themselves  
and on behalf of all others similarly situated,

Plaintiffs,

No. 08-cv-00918-PHX-FJM

vs.

Avnet, Inc.; Avnet Pension Plan,

Defendants.

**DECLARATION OF ERIC J. MILLER**

I, Eric J. Miller, hereby declare under penalty of perjury, pursuant to 18 U.S.C. § 1746:

1. I am a Managing Senior Project Administrator for Rust Consulting, Inc. (“Rust). Pursuant to the Order filed July 9, 2009, Rust was retained as the Notice Administrator to oversee the process of providing notice and the right to opt-out to all Lump Sum Class Members (“Class Members”). I submit this Declaration to describe the procedures Rust employed to notify the Class Members and their rights in connection therewith.

2. Rust caused the Notice of Pendency of Class Action Filed on Your Behalf (the “Notice”) to be printed and mailed to all Class Members in this Action. A copy of the Notice is attached hereto as Exhibit 1.

3. On July 17, 2009, Rust received from Co-Lead Counsel, Eli Gottesdiener of the Gottesdiener Law Firm, PLLC, one (1) electronic file consisting of 3,486 mailing records for the Class Members. Rust uploaded the data into a segregated database and submitted the 3,486 mailing records to the United States Postal Service (“USPS”)

1 National Change of Address service (“NCOA”) to ensure adequate address formatting,  
2 obtain current physical addresses, and qualify for postal discounts. Rust then  
3 electronically cleansed the data to ensure adequate formatting and to remove  
4 duplicative name and address records. This resulted in 3,466 distinct names and  
5 addresses which Rust used for mailing the Notice to Class Members (“Mailing List”).

6 4. On August 7, 2009, pursuant to the Preliminary Approval Order, Rust  
7 mailed the Notice to the Mailing List by standard first-class U.S. Mail, postage prepaid.

8 5. Thus far, the USPS returned 5 Notices as undeliverable with a forwarding  
9 address. Rust subsequently re-mailed the Notices to the addresses provided by the  
10 USPS.

11 6. Thus far, the USPS also returned to 419 Notices as undeliverable without  
12 a forwarding address.

13 7. Rust utilized the services of an address trace service, seeking updated  
14 addresses for the 419 Class Members whose Notices were returned as undeliverable,  
15 referred to in ¶ 6 above. As a result, thus far, Rust has received 361 updated addresses  
16 and subsequently re-mailed a Notice to each updated address received from the trace  
17 process.

18 8. Thus far, a total of 58 Notices remain undeliverable.

19 9. Rust established and maintains a Post Office Box which was utilized to  
20 receive any undeliverable Notices referred to in ¶¶ 5-6 above.

21  
22 I, Eric J. Miller, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of  
23 perjury that the foregoing is true and correct.

24 Executed this 24<sup>th</sup> day of August, 2009 in Palm Beach Gardens, Florida.

25  
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27 \_\_\_\_\_  
28 Eric J. Miller

# **EXHIBIT 3**

Levanna C. Traylor, <i>et al.</i> on behalf of themselves and on behalf of all others similarly situated	)	No. 08-cv-00918-PHX-FJM
Plaintiffs,	)	
vs.	)	<b>SUMMARY NOTICE</b>
Avnet, Inc.; Avnet Pension Plan,	)	<b>OF PROPOSED CLASS</b>
Defendants.	)	<b>ACTION SETTLEMENT</b>

**TO: ALL PERSONS WHO RECEIVED A LUMP SUM DISTRIBUTION FROM THE AVNET PENSION PLAN (THE "PLAN") BETWEEN JANUARY 1, 1994 AND AUGUST 17, 2006 WHO DID NOT TIMELY OPT-OUT OF THE LUMP SUM CLASS; AND THE LAWFUL BENEFICIARIES AND ESTATES OF SUCH PERSONS AND ALTERNATE PAYEES UNDER A QUALIFIED DOMESTIC RELATIONS ORDER.**

YOU MAY BE A CLASS MEMBER. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IF YOU ARE A CLASS MEMBER, YOUR RIGHTS WILL BE AFFECTED BY PROCEEDINGS IN THIS ACTION.

ANY CLASS MEMBER WISHING TO OBJECT TO THE SETTLEMENT MUST SUBMIT DOCUMENTATION ON OR BEFORE FEBRUARY 19, 2010.

THE PURPOSE OF THIS NOTICE is to inform the Class Members of (i) a proposed settlement of the above-captioned lawsuit (the "Lawsuit"); and (ii) a hearing (the "Fairness Hearing") to be held before the Honorable Frederick J. Martone at the United States District Court for the District of Arizona, 401 West Washington Street, Phoenix, AZ 85003-2118, in Courtroom 506, on March 5, 2010 at 2:00 p.m. The Fairness Hearing will determine (i) whether the Court should grant final approval of the settlement, including the Plan of Allocation; (ii) whether the Court should enter final judgment dismissing the Lawsuit with prejudice; (iii) if the Court approves the settlement and enters a final judgment, the amount of attorneys' fees, costs, and expenses to be awarded by the Court to Class Counsel ("Class Counsel's Fees"); and (iv) the amount of compensation, if any, to be paid to the four Named Lump Sum Plaintiffs for their contributions to the Class ("Named Plaintiff Case Contribution Payments").

The Lawsuit alleged that the Plan had failed to calculate lump sum distributions in accordance with The Employee Retirement Income Security Act of 1974 ("ERISA"). Defendant denied and continues to deny these and other critical allegations, but has agreed to settle the Lawsuit for a Total Settlement Amount of \$34 million, of which \$29 million is to be paid to the Lump Sum Class defined above, minus court-approved deductions for Class Counsel's attorneys' fees (not to exceed 25% of the Total Settlement Amount or \$8.5 million) and expenses (not to exceed \$400,000), settlement administration costs (estimated maximum to be \$100,000), and a possible award to the eight named plaintiffs of a case contribution payment in recognition of the time and efforts expended on behalf of the Class (not to exceed \$3,000 dollars each). All such deductions, except settlement administration costs which apply only to the Lump

Sum Class, would be applied in proportion to the Lump Sum Class's share of the Total Settlement Amount, *i.e.*, according to a 29/34 ratio. (A second Class, the Restricted Participant Class comprised of current Plan participants, is to receive \$5 million under the proposed settlement.)

The Court has directed individualized Notice to each Class Member. If you did not receive such individualized Notice, more information about this Lawsuit may be obtained at the following website, [www.traylorpensionclassaction.com](http://www.traylorpensionclassaction.com), by inspecting all the papers concerning this Lawsuit at the Office of the Clerk, United States District Court for the District of Arizona, during regular business hours, by registering and paying a modest fee to the PACER service, <http://pacer.psc.uscourts.gov/>, or by contacting Lead Class Counsel:

Eli Gottesdiener  
Gottesdiener Law Firm, PLLC  
498 7<sup>th</sup> Street  
Brooklyn, NY 11215  
Tel: 718.788.1500  
Fax: 718.788.1650  
eli@gottesdienerlaw.com

If the Court finally approves the Settlement, all Class Members shall be bound by all the provisions of the Settlement and all determinations and judgments in this Lawsuit, including the Final Order and Judgment dismissing the Lawsuit with prejudice and releasing Class Member's claims relating to the Avnet Plan. No Class Member may opt-out of the Settlement. Any Class Member may appear at the Fairness Hearing, in person or by counsel of his own choice at his own expense, and be heard to the extent allowed by the Court in opposition to the fairness, reasonableness, and adequacy of the Settlement, the recommended Plan of Allocation, the application for an award of attorneys' fees, costs, and expenses to Class Counsel, or to the Named Plaintiff Case Contribution Payments. **However, in no event shall any person be heard in opposition unless, on or before February 19, 2010, such person files with the Clerk of the court a notice of an intention to appear and provides a written statement that indicates all basis for objection, all documentation in support of the objection, and legal authority, if any, supporting the objection and a list of witnesses the person may call by live testimony.** Copies of such notice, statement, and documentation, together with copies of any other papers or briefs filed with the Court, must be simultaneously delivered to Class Counsel referenced above and to Defendant's Counsel:

Robert D. Wick  
Covington & Burling LLP  
1201 Pennsylvania Avenue NW  
Washington, DC 20004

Any Class Member who does not object in the foregoing manner shall be deemed to have waived all objections and shall be foreclosed from making any objections to the Settlement.

**ALL INQUIRIES CONCERNING THIS NOTICE SHALL BE DIRECTED TO CLASS COUNSEL, NOT THE COURT.**

CLERK, UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA