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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO / OAKLAND DIVISION

19 DAISY JAFFE and DENISE WILLIAMS
20 on behalf of themselves and all others
21 similarly situated,

21 Plaintiffs,

22 v.

23 MORGAN STANLEY DW, INC.,

24 Defendant.

Case No. C-06-3903 TEH

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT
AND RULE 26(F) REPORT**

**Conference Date: October 30, 2006
1:30 p.m.**

1 The parties to the above-entitled action jointly submit this Case Management
2 Statement.

3 **SUMMARY OF CASE**

4 **Plaintiffs' View**

5 Plaintiffs Daisy Jaffe ("Jaffe") and Denise Williams ("Williams") (collectively,
6 "Plaintiffs") have brought this class action lawsuit against Defendant Morgan Stanley DW, Inc.
7 (hereinafter "Defendant", "MSDW", or "Morgan Stanley"), alleging that Morgan Stanley has
8 engaged in a nationwide pattern, practice and policy of discriminating against female Financial
9 Advisors in compensation, business opportunities, and other terms and conditions of employment.
10 Plaintiffs claim that Morgan Stanley's conduct has violated Title VII of the Civil Rights Act of
11 1964, 42 U.S.C. §§ 2000e, *et seq.*, the California Fair Employment and Housing Act, Cal. Gov't
12 Code § 12940 *et seq.* ("FEHA"), and the Elliot-Larsen Civil Rights Act, M.C.L.A. §§ 37.2101 *et*
13 *seq.* ("Elliott-Larsen"), among others. This is the second pattern and practice discrimination case
14 filed against Morgan Stanley by Plaintiffs' counsel here alleging systematic gender discrimination
15 relating to the compensation of female financial services professionals. The first,
16 EEOC/Schieffelin v. Morgan Stanley, involved the Institutional Equity Division of the company
17 and ultimately settled in 2004 for \$54 million - including \$12 million for Allison Schieffelin, the
18 lead plaintiff - and substantial injunctive relief.

19 Plaintiffs' respectfully submit that there is no legitimate basis for staying this case.
20 Defendant has stated that it is in settlement talks in a similar action, Augst-Johnson v. Morgan
21 Stanley DW, Inc., Case No. 06-C-01142-RWR (D.D.C.), filed the same day as this case, that
22 could impact Plaintiffs' claims here. If so, Plaintiffs have requested to be included in such
23 discussions to protect their interests and those of the proposed Class. Moreover, this action is
24 now progressing more rapidly than the D.C. action, with the parties here having completed their
25 Rule 26(f) conference and discovery having been served. There is no guarantee that talks in the
26 D.C. case will result in any settlement or that, if it does, such talks will ultimately benefit
27 Plaintiffs here.

1 Plaintiffs' counsel also respectfully submit that they are likewise experienced
2 employment lawyers with substantial previous experience representing Wall Street employees,
3 including *Financial Advisors at Morgan Stanley* and other Wall Street companies, in individual
4 and class cases. The Outten & Golden firm, Plaintiffs' counsel in this action, recently represented
5 the lead plaintiff in the EEOC/Schieffelin v. Morgan Stanley case, and was directly involved in
6 the development, prosecution, and settlement of that case, including filing the first pattern and
7 practice claim; retaining and working with experts developing the systemic evidence and legal
8 strategy for all purposes (EEOC and intervenors); and prosecuting the case with the EEOC.
9 Morgan Stanley's statements below about Plaintiffs' counsel's participation in the prior litigation
10 are inaccurate.

11 Plaintiffs' counsel from both firms here have also worked extensively and
12 successfully with the mediator retained in the D.C. case in numerous other class action cases,
13 including cases involving Financial Advisors alleging gender discrimination, such as is alleged
14 here.

15 **Defendant's View**

16 Morgan Stanley denies that it discriminated against the named plaintiffs or that it
17 has engaged in a nationwide pattern, practice and policy of discriminating against female
18 Financial Advisors in compensation, business opportunities, and other terms and conditions of
19 employment, and denies each and every allegation of discrimination in the Amended Complaint.
20 Morgan Stanley submits that Plaintiffs' class claims of gender discrimination should be stayed by
21 this Court because those claims are subsumed in a nationwide gender discrimination class action
22 pending before Honorable Judge Richard W. Roberts in the United States District Court for the
23 District of Columbia, captioned Augst-Johnson v. Morgan Stanley DW, Inc., Case No. 06-C-
24 01142-RWR (D.D.C.) (the "D.C. Action"). The D.C. Action involves a putative class of current
25 and former female Financial Advisors that includes all of the putative class members sought to be
26 represented by Plaintiffs in this action. The putative class members in the D.C. Action are
27 represented by competent counsel, experienced in litigating large, complex class actions
28 involving employment discrimination issues, including Mehri & Skalet, PLLC and Sprenger &

1 Lang. The parties in the D.C. Action have been engaged in settlement discussions since April,
2 2005 and are using the services of a prominent mediator, Hunter Hughes, to aid in their settlement
3 discussions. Throughout the settlement discussions in the D.C. Action, the parties have
4 exchanged voluminous data and information and have made significant progress towards
5 settlement. In light of the advanced stage of those settlement discussions, Morgan Stanley
6 respectfully submits that in the interests of fairness and judicial economy, the Court should stay
7 Plaintiffs' class claims of gender discrimination, while allowing their individual, non-class claims
8 of age and race discrimination (and their gender discrimination claims if they choose to litigate
9 them individually) to proceed in this court. Morgan Stanley will be filing a motion to stay the
10 class action aspects of this case.

11 Defendant believes that Plaintiffs misrepresent the EEOC/Schiefflin case and the
12 role of one of Class Counsel's firms in that case. The EEOC/Schiefflin case was not against
13 Morgan Stanley DW Inc., the defendant in this case. It was against a different Morgan Stanley
14 company. The class that plaintiffs seek to represent in this case are retail stockbrokers who are
15 paid entirely on a commission like basis. The employees in the EEOC/Schiefflin case were the
16 Institutional Equities Division of Morgan Stanley who were involved in institutional business and
17 paid a salary and bonus not on a commission basis. The Outten & Golden firm's role in that case
18 was to represent an individual-intervenor in the case.

19 Defendants also believe that it would be extremely disruptive and
20 counterproductive to add at this time two more law firms to the settlement negotiations which
21 have been going on in the DC action since April of 2005. The two plaintiffs in this case will have
22 the option if the DC action is settled, to either object to the settlement if they are not pleased with
23 it, opt out of that settlement or participate in it. It is also misleading to suggest that this case is
24 proceeding more rapidly than the DC action merely because a request was served. As plaintiffs'
25 counsel are well aware there has been an extensive exchange of information in the DC action over
26 the past 18 months. Even if the DC case does not settle, it could proceed to trial much more
27 expeditiously given the extensive exchange of information.

AGENDA ITEMS**I. Jurisdiction****A. Plaintiffs' View**

The Court has subject matter jurisdiction over all claims. Such jurisdiction is based on federal question (Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, and 42 U.S.C. § 1981) and supplemental jurisdiction (FEHA and Elliott-Larsen claims). All Plaintiffs timely filed administrative charges with the Equal Employment Opportunity Commission (EEOC). All parties before the Court are subject to the Court's jurisdiction. Plaintiffs are residents of California and Ohio who were employed by Defendant in California and Michigan. Plaintiffs have served process on Defendant. There appears to be no argument that the Court has jurisdiction over all gender discrimination and age discrimination claims, and all race discrimination claims under § 1981. To the extent there is any legitimate concern about the Court's jurisdiction over Plaintiff Williams' Title VII race discrimination charge, this may easily be cured.

B. Defendant's View

The Court has original subject jurisdiction over Plaintiff Jaffe's federal claim asserted under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act, and supplemental jurisdiction over Jaffe's state law claims asserted under the California Fair Employment and Housing Act.

The Court has original jurisdiction over Plaintiff Williams' federal claim asserted under 42 U.S.C. §1981 and supplemental jurisdiction over Williams' state law claims asserted under Michigan's Elliot-Larsen Civil Rights Act. The Court does not have jurisdiction over Plaintiff Williams' race discrimination claims under Title VII because the EEOC has not issued Williams a right to sue notice, which is a condition precedent to her bringing those claims in court.

1 **II. The Principal Factual Issues In Dispute and Bases for Claims/Defenses**

2 **A. Plaintiffs' View**

3 Plaintiffs allege the following facts:

4 (1) Morgan Stanley has denied female Financial Advisors accounts and
5 business opportunities by utilizing a discriminatory and subjective account distribution policy and
6 practice that favors male Financial Advisors across its offices nationwide.

7 (2) Morgan Stanley perpetuates the historical exclusion of women from
8 account distribution, business lead assignment, and partnerships, by using biased and tainted
9 variables based on historical discrimination to determine the assignment of accounts and other
10 business opportunities. This is a uniform practice across Morgan Stanley offices.

11 (3) By entrusting Branch Managers, virtually all of whom are men, with
12 undue discretion in compensation and business opportunity decisions, Morgan Stanley maintains
13 a system whereby the Branch Managers may apply their own personal preferences and biases in
14 making decisions that directly and detrimentally affect the earning potential of female Financial
15 Advisors.

16 (4) Morgan Stanley creates terms and conditions of employment that
17 discriminate against female Financial Advisors and in favor of men by creating a hostile work
18 environment in which the concerns and complaints of female employees are ignored or ridiculed.

19 (5) These discriminatory actions are taken pursuant to corporate policies
20 and practices determined at, and communicated from, the highest levels of the Company.

21 (6) Morgan Stanley implements these discriminatory policies and practices
22 by ensuring that corporate employees and regional managers exercise substantial control over
23 each branch's employment practices.

24 (7) Plaintiffs Daisy Jaffe and Denise Williams represent a range of
25 experience in the industry, with Plaintiff Jaffe working for over 20 years for Defendant Morgan
26 Stanley or its predecessor companies.

27 (8) Plaintiff Daisy Jaffe is a female resident of Hillsboro, California. She
28 was employed by Morgan Stanley as a Financial Advisor from August 1982 to August 2005.

1 During the course of her employment, Morgan Stanley denied Ms. Jaffe business opportunities
2 and compensation on the basis of her gender and age.

3 (9) Plaintiff Denise Williams is a female resident of Sylvania, Ohio. She is
4 currently employed by Morgan Stanley as a Financial Advisor in the Detroit, Michigan, office.
5 She has been employed by Morgan Stanley since March 2004. During the course of her
6 employment, Morgan Stanley has denied Ms. Williams business opportunities and compensation
7 on the basis of her gender and race.

8 **B. Defendant's View**

9 Morgan Stanley vigorously disputes Plaintiffs' allegations and denies that its
10 business policies and practices are discriminatory on any basis. Morgan Stanley's Financial
11 Advisors ("FAs"), including the named plaintiffs, are compensated entirely on a formulaic which
12 is based mathematically on the revenue each FA generates, primarily from clients they attracted
13 to Morgan Stanley. While re-distribution of accounts does occur on occasion, the revenue
14 streams from those accounts make up a very small portion of a Financial Advisor's compensation.
15 Moreover, Morgan Stanley utilizes an objective standards for distributing accounts.

16 Further, Morgan Stanley maintains policies and procedures for the prevention of
17 discrimination in its workplace. Managers and employees receive periodic guidance and training
18 as to the detection, reporting and prevention of discrimination. Managers and employees are held
19 accountable for such acts, which may include discipline up to and including termination. Morgan
20 Stanley specifically denies that it has denied Jaffe, or any of its Financial Advisors, business
21 opportunities or compensation on the basis of gender or age. Morgan Stanley specifically denies
22 that it has denied Williams, or any of its Financial Advisors, business opportunities or
23 compensation on the basis of gender or race.

24 **III. The Principal Legal Issues In Dispute**

25 **A. Plaintiffs' View**

26 The following legal questions are genuinely in dispute:

27 (1) For the class: Whether Morgan Stanley has violated Title VII of the Civil
28 Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*;

1 (2) For the California subclass: Whether Morgan Stanley has violated the
2 California Fair Employment and Housing Act, Cal. Gov't Code § 12940 *et seq.* ("FEHA"); and

3 (3) For the Michigan subclass: Whether Morgan Stanley has violated the Elliot-
4 Larsen Civil Rights Act, M.C.L.A. §§ 37.2101 *et seq.* ("Elliott-Larsen").

5 **B. Defendant's View**

6 Morgan Stanley submits that in addition to the above issues, there are several
7 threshold legal issues to be decided, including:

8 (1) Whether, in the interest of fairness and judicial economy, Plaintiffs' class
9 claims of gender discrimination should be stayed. The claims of the putative class members are
10 already being aggressively pursued in the D.C. Action, where the exchange of information and
11 data and settlement discussions have been ongoing for more than 18 months. Those discussions
12 are at an advanced stage, the interests of the putative class are being fully represented in that
13 action by competent counsel, and the settlement discussions are being overseen by a nationally
14 recognized mediator.

15 (2) Whether this action can be maintained as a class action under Rule 23 of the
16 Federal Rules of Civil Procedure. Resolution of this issue involves several sub-issues, including:

17 (a) Whether Plaintiffs' are adequate representatives of the class and/or sub-
18 classes they purport to represent.

19 (b) Whether Plaintiffs' claims are typical of the claims of others in the class
20 and/or sub-classes they purport to represent.

21 (c) Whether common questions of law and fact predominate over questions
22 affecting only the individual named Plaintiffs.

23 (d) Whether a class action is superior to other means of deciding the claims
24 asserted by Plaintiffs.

25 (e). Whether there is the likelihood of inconsistent or varying adjudications
26 that would establish incompatible standards of conduct for Defendant.

1 (f) Whether there is a risk of adjudication with respect to individual
2 putative class members that would be dispositive of the interests of third parties or impair their
3 ability to protect their interests.

4 (g) Whether Defendant has acted on grounds that are generally applicable
5 to the entire class, making injunctive or declaratory relief an appropriate remedy.

6 (h) Whether putative class members have a greater interest in pursuing
7 separate actions.

8 (i) Whether litigation with respect to similar issues has already
9 commenced in any other forum.

10 (j) Whether there is a desirability of concentrating the action in this forum.

11 (k) Whether difficulties are likely to be encountered in managing this class
12 action.

13 **IV. Narrowing of Issues**

14 At this time, the parties know of no issues that can be narrowed by agreement.

15 **V. Anticipated Motions**

16 **A. Plaintiffs' View**

17 Plaintiffs intend to file a motion for class certification pursuant to Rule 23.
18 Plaintiffs will oppose Defendant's motion to stay for the reasons set forth above, and will oppose
19 any motion to strike class claims. The time for deciding class certification issues is in connection
20 with a properly-filed motion for class certification, which Morgan Stanley may oppose. To the
21 extent that Morgan Stanley raises any legitimate concern about Plaintiff Williams' EEOC right to
22 sue, such problems may easily be cured. Plaintiffs anticipate opposing Defendant's motion for
23 summary judgment.

24 **B. Defendant's View**

25 Morgan Stanley intends to file several motions at the outset challenging the ability
26 of Plaintiffs to pursue their purported nationwide gender discrimination class action, as well as
27 motions directed to the merits of Plaintiffs' individual claims, including:
28

1 (1) Motion to Stay Class Claims. As noted above, Plaintiffs' nationwide class
2 claims are subsumed in the nationwide class action being pursued in the D.C. Action. The
3 putative class in the D.C. action includes the same class members that would be covered in this
4 action, though the class period in the D.C. Action is arguably broader in temporal scope than in
5 this action, and the interests of the putative class members are being represented by competent
6 class action counsel. Given the advanced stage of the information exchange and settlement
7 discussions in the D.C. Action, a stay of Plaintiffs' class action claims is appropriate. Plaintiffs'
8 separate individual claims of age and race discrimination should proceed in this court and can be
9 much more promptly and efficiently resolved without simultaneously litigating the same class
10 issues which are likely to be resolved by the D.C. Action.

11 (2) Motion to Strike Class Claims. If the action is not stayed, Morgan Stanley
12 intends to file a motion to strike the class allegations, insofar as Plaintiffs are not adequate class
13 representatives and do not have claims typical of the class and/or sub-classes they purport to
14 represent.

15 (3) Motion to Dismiss. Morgan Stanley intends to file a motion to dismiss the
16 Title VII race discrimination claim of Plaintiff Williams, insofar as the EEOC has not issued
17 Williams a right to sue notice, which is a condition precedent to her bringing that claim in court.

18 (4) Motion for Summary Judgment. Morgan Stanley intends to file summary
19 judgment motions on Plaintiffs' individual claims of discrimination.

20 **VI. Intended Discovery and Possible Discovery Limitations**

21 **A. Plaintiffs' View**

22 Plaintiffs intend to seek discovery directed to, among other things, Morgan
23 Stanley's personnel, human resources, and EEO policies; compensation and business allocation
24 policies and practices; electronic and personnel databases containing compensation and business
25 allocation information pertaining to Financial Advisors; EEO- and retaliation-related complaints
26 and investigations; and the company structure and organization.

27 Plaintiffs believe that they may need to exceed the deposition and interrogatory
28 limitations provided under the Federal Rules, and will meet and confer as necessary to address

1 these issues as they arise before bringing such issues before the Court. Plaintiffs do not believe
2 bifurcation of discovery into “class” and “merits” phases is necessary, practical, or appropriate
3 here. Because there will be significant overlap among the issues relevant to class certification
4 and class liability, Plaintiffs believe that any attempt to bifurcate discovery will result in greater
5 inefficiency and may generate endless disputes about line-drawing.

6 In addition, as courts have recognized, there is no requirement that “class”
7 discovery be bifurcated from merits or individual discovery. See Gray v. First Winthrop Corp.,
8 133 F.R.D. 39, 41 (N.D. Cal. 1990) (“[a]n order restricting discovery to class issues would be
9 impracticable because of the closely linked issues, and inefficient because it would be certain to
10 require ongoing supervision of discovery”); Harriss v. Pan Am. World Airways, Inc., 74 F.R.D.
11 24, 36 (N.D. Cal. 1977) (facts relevant to the class action determination and definition may
12 largely overlap with those relevant to the merits); Barnhart v. Safeway Stores, Inc., No. S92-0803
13 WBS, 1992 WL 443561, *9 (E.D. Cal. Dec. 14, 1992) (declining to limit discovery to “class”
14 related matters noting that the court should have all information that it might find relevant).
15 Indeed, as the Manual for Complex Litigation -- Fourth makes clear, “Courts have recognized
16 that information about the nature of the claims on the merits and the proof that they require is
17 important to deciding certification. Arbitrary insistence on the merits/class discovery distinction
18 sometimes thwarts the informed judicial assessment that current class certification practice
19 emphasizes.” See Federal Judicial Center, Manual for Complex Litigation – Fourth, § 21.14
20 (2004).

21 To the extent Defendant believes that Plaintiffs’ discovery is burdensome or
22 otherwise objectionable, the proper way to address that is through the meet and confer process.

23 **B. Defendant’s View**

24 Morgan Stanley believes that class discovery should be stayed insofar as Plaintiffs’
25 class claims should be stayed in favor of the more mature proceedings in the D.C. Action.
26 Morgan Stanley submits that discovery on Plaintiffs’ individual claims of discrimination can
27 proceed on the following schedule:
28

1	Last Day for fact discovery	February 16, 2007
2	Last day for expert discovery:	March 16, 2007
3	Last day to file dispositive motions:	May 31, 2007

4 Morgan Stanley does not agree at this time to any waiver of the limitations
5 imposed by the Federal Rules of Civil Procedure concerning the number of depositions and
6 interrogatories, but will meet and confer with Plaintiffs should they request such a waiver.

7 **VII. Confidentiality/Protective Orders**

8 The parties anticipate submitting a stipulated protective order applying to
9 nonpublic trade- mark, copyright, trade secret, or confidential personnel information. Plaintiffs
10 provided a draft protective order to Defendant on October 23, 2006.

11 **VIII. Relief Sought; Amount Of Damages; Computation Of Damages**

12 Plaintiffs on behalf of themselves and the Class¹ seek injunctive relief in the form
13 of a preliminary and permanent injunction preventing Morgan Stanley from continuing to
14 discriminate against female Financial Advisors in the manner described in the Amended
15 Complaint, an order that Morgan Stanley institute equal employment policies for women and
16 eradicate the effects of its past and present discrimination; and equitable relief in the form of back
17 pay and front pay. Plaintiffs on behalf of themselves and the Class also seek compensatory and
18 punitive damages subject to proof. Plaintiffs' calculation of damages will depend on information
19 to be received from Morgan Stanley in discovery.

20 Defendant's position is that Plaintiffs, individually and on behalf of the class they
21 purport to represent, are not entitled to relief.

22 **IX. ADR Processes**

23 The parties have discussed the various ADR alternatives. Plaintiffs believe that
24 private mediation, at an early practicable time, would be appropriate for all Plaintiffs' claims,

25 ¹ The Class is defined as all female Financial Advisors employed by MSDW in the United States
26 at any time from August 5, 2003 to the present. Plaintiff Jaffe also brings this Class Action
27 pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on behalf of a Subclass of all female Financial
28 Advisors employed by MSDW in California at any time from November 1, 2004 to the present.
Plaintiff Williams brings this action pursuant to Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) on behalf
of a Subclass of female Financial Advisors employed by MSDW in Michigan at any time from
December 13, 2005 to the present.

1 while Defendant has proposed private mediation of Plaintiffs' individual claims. Defendant
2 intends to file a motion to stay the class aspects of the case and thus the parties have been unable
3 to reach agreement as to class claims. Plaintiffs respectfully submit that, if Defendant is
4 considering a resolution that would compromise Plaintiffs' claims, Defendant should include
5 Plaintiffs' counsel in that discussion. This is particularly true given Plaintiff counsel's prior
6 successful litigation efforts in the EEOC/Schieffelin v. Morgan Stanley case, and other similar
7 financial services industry discrimination cases.

8 Defendant takes the position that any settlement of the DC action would not
9 compromise plaintiffs' claims. If settlement is reached in that case, plaintiffs will have the option
10 to object to the settlement if they find it unacceptable, opt out of the settlement should they wish
11 to pursue their own claims or participate in that settlement as class members. It would be
12 enormously disruptive and would substantially delay the settlement discussions in the DC action
13 to inject two new law firms at this late stage after the extensive negotiations and information
14 exchange have taken place over the past 18 months. As noted above, the Outten & Golden firm
15 misrepresents its role in the EEOC/Schiefflin settlement negotiations. Their only substantive role
16 was to represent one individual plaintiff and not the class on whose behalf the EEOC sought
17 relief.

18 **X. Settlement Prospects**

19 Plaintiffs have informed Morgan Stanley that they are willing to discuss settlement
20 with Defendant at an early practicable date, and have been informed that Morgan Stanley has
21 been engaged in settlement talks with another group of plaintiffs in a related case, filed the same
22 day as this case, pending on the East Coast. Plaintiffs' counsel here have worked extensively and
23 successfully with the mediator in that other case in numerous other class action cases, including
24 cases involving Financial Advisors alleging gender discrimination. To date, Morgan Stanley has
25 refused to involve Plaintiffs here in those discussions.

26 Morgan Stanley has informed Plaintiffs that the members of the purported class of
27 female Financial Advisors they seek to represent are already being represented by competent
28 counsel in the D.C. Action. The settlement discussions in the D.C. Action have been ongoing for

1 more than 18 months and are being overseen by a prominent mediator. It would be enormously
2 disruptive and counterproductive to introduce two new law firms into those negotiations after 18
3 months. Morgan Stanley has informed Plaintiffs that it is prepared to promptly mediate the
4 individual age and race claims of the plaintiffs and to the extent they wish to pursue settlement of
5 their own individual gender claims outside of the ongoing class action settlement discussions in
6 the D.C. Action, Morgan Stanley is also willing to discuss settlement of those individual claims.

7 **XI. Magistrate Judge Trials**

8 The parties do not consent to having a Magistrate Judge conduct all further
9 proceedings.

10 **XII. Trial Issues**

11 The Plaintiffs respectfully submit that it is premature to set trial dates or estimate
12 the length of trial. Plaintiffs have requested a jury trial. Plaintiffs believe that bifurcation into
13 class liability and individual damages phases may be appropriate here. Defendant believes it is
14 premature to decide this issue.

15 Defendant believes that plaintiffs' individual claims can be tried, if not settled or
16 dismissed by summary judgment within one week. Defendant would be prepared for such trial if
17 the Court denies summary judgment within 30 days of the court's denial of the summary
18 judgment motions.

19 **XIII. Related Cases**

20 The parties are unaware of any related cases in this Court. As noted above, there
21 is a similar case pending in the District of Columbia District Court, Augst-Johnson v. Morgan
22 Stanley DW, Inc., Case No. 06-C-01142-RWR (D.D.C.), filed the same day as this case, which is
23 also a nationwide class action purporting to represent the female Financial Advisors who are or
24 were employed by Morgan Stanley. Defendant asserts, though Plaintiffs disagree, that the
25 temporal scope of the putative class covered in the D.C. Action is arguably broader than the
26 temporal scope of the putative class that would be covered in this action. Defendant also
27 maintains that the D.C. Action is much further advanced in terms of document and information
28 exchanges, and settlement discussions in that case have been ongoing since April 2005.

1 Plaintiffs note that the temporal scope of both cases is identical, but submit that
2 this case also includes subclasses for California and Michigan employees. Plaintiffs believe that
3 the prosecution of this case, not the D.C. case, is farther along in terms of the Rule 26(f)
4 conference, formal document requests (which Plaintiffs here have served), and the initial CMC.
5 Plaintiffs further submit that the exchange of documents in connection with settlement
6 discussions in the D.C. case does not in any way guarantee that the case has progressed at all,
7 much less that it has progressed quickly.

8 Defendant disagrees that the instant matter is farther along, in any respect, than the
9 matter pending in the District of Columbia. Defendant has been engaged in an 18 month process
10 of information exchanges, mediation and negotiations with experienced counsel representing a
11 putative class that claims to be identical to plaintiffs in the instant action. The extensive
12 negotiations process is being conducted by a nationally recognized dispute resolution expert.

13 Tremendous time and resources have been allocated to the endeavor in the District of Columbia,
14 which will include also provide plaintiffs in the instant case with an ability to object to the
15 settlement if they find it unacceptable, opt out of the settlement should they wish to pursue their
16 own claims or participate in that settlement as class members. As noted above, it would be
17 enormously disruptive and would substantially delay the settlement discussions in the DC action
18 to inject two new law firms at this late stage.

19 **XIV. Class Certification**

20 **A. Plaintiffs' View**

21 Pursuant to Civil L.R. 16-9(a), any party seeking to maintain a case as a class
22 action must include in the case management statement the following additional information:

23 **1. The Specific Paragraphs of Fed. R. Civ. P. 23 under which the Action** 24 **is Maintainable as a Class Action:**

25 Plaintiffs contend that this action is maintainable under Rule 23 paragraphs (a),
26 (b)(2) and (b)(3).

1 In addition, a class may be also be certified under Federal Rule of Civil Procedure
2 23(b)(3). Each member of the Class has been damaged and is entitled to recovery as a result of
3 Morgan Stanley's common, uniform, and unfair personnel policies and practices that discriminate
4 against female Financial Advisors.

5 There are questions of law and fact common to the Class that predominate over
6 any questions affecting only individual members of the Class, including without limitation, all of
7 the following:

8 (1) Whether Morgan Stanley has discriminated against women in allocating
9 accounts and business opportunities that impacts their opportunities for increased compensation,
10 including, but not limited to, leads, call- ins, walk- ins, accounts from departing brokers' books,
11 and other sources of business;

12 (2) Whether Morgan Stanley has relied upon biased, subjective, gender-
13 based and/or arbitrary criteria utilized by a nearly all-male managerial workforce in making
14 business allocation decisions that directly impact compensation;

15 (3) Whether Morgan Stanley has established and maintained an arbitrary
16 and biased policy or system regarding business allocation that has had the effect of denying
17 compensation to qualified women;

18 (4) Whether Morgan Stanley has failed and refused to take reasonable and
19 adequate steps to eliminate the effects of Defendant's past discriminatory practices;

20 (5) Whether Morgan Stanley has maintained a compensation system that
21 perpetuates past discrimination;

22 (6) Whether Morgan Stanley has maintained a discriminatory and gender-
23 biased corporate culture; and

24 (7) Whether Morgan Stanley has made employment decisions based on
25 gender stereotypes.

26 A class action is superior to other means of deciding this controversy.
27
28

1 4. **A Proposed Date for the Court to Consider whether the Case can be**
 2 **Maintained as a Class Action:**

3 Plaintiffs propose the following schedule for class certification briefing, which
 4 takes into account the fact that Defendant has not yet begun to produce documents and gives the
 5 parties more time to oppose and reply than is usual under regular motion practice:

6 Plaintiffs' Motion for Class Certification:	June 15, 2007
7 Defendant's Opposition:	July 20, 2007
8 Plaintiffs' Reply:	August 10, 2007

9 Plaintiffs believe that discovery of experts, to the extent necessary, can readily be
 10 completed within this proposed briefing schedule, particularly given that "dueling" between
 11 experts "is not relevant to the certification determination." *Caridad v. Metro-North Commuter*
 12 *R.R.*, 191 F.3d 283, 292 (2d Cir. 1999) (internal quotations and citations omitted).

13 Plaintiffs propose that the parties agree beforehand to use a common database,
 14 make experts available in designated periods, and otherwise to work cooperatively to facilitate
 15 any discovery on an expedited basis.

16 Plaintiffs disagree with Defendant's allegations regarding Plaintiff Williams'
 17 suitability to serve as a class representative, but submit that such allegations may properly be
 18 explored during the discovery process.

19 **B. Defendant's Statement Regarding Class Allegations**

20 Morgan Stanley does not understand itself to have an obligation under Local Rule
 21 16.9 to respond to Plaintiffs' statement regarding class allegations. Morgan Stanley believes,
 22 however, that Plaintiffs cannot maintain a class action for several reasons, including the fact that
 23 Plaintiffs are not adequate class representatives because their claims are not typical of those in the
 24 purported class or sub-classes and their claims are subject to unique, individual defenses given
 25 their individual circumstances. For example, Plaintiff Williams is a Morgan Stanley Relationship
 26 Migration Financial Advisor ("RMFA"), and as an RMFA, she is subject to different policies than
 27 are the Financial Advisors she purports to represent. Indeed, Williams is not even an adequate
 28 class representative for the sub-class of Michigan Financial Advisors she purports to represent.
 Morgan Stanley plans to move to strike the class allegations and oppose Plaintiffs' class action
 allegations at the appropriate time.

1 Further, Morgan Stanley believes that it is premature to set a schedule for the
2 determination of whether a class can be maintained insofar as discovery with respect to the class
3 should be stayed in favor of the more mature proceedings in the D.C. Action. Furthermore, the
4 schedule as proposed by Plaintiffs' counsel is inadequate for the consideration of substantive and
5 vigorous analysis as mandated by Federal Rule of Civil Procedure 23(a) & (b). Should this Court
6 consider the class certification issues, Plaintiffs proposed schedules also fails to provide for
7 adequate time and consideration of expert disclosure and discovery. Moreover, proposed
8 schedule should encompass a dispositive motion date that is far in advance of any filing for
9 certification of the class.

10 **XV. Scheduling: Dates For Discovery Cutoff, Pretrial Conference, And Trial**

11 Defendant maintains that, if Plaintiffs' class claims are stayed, discovery and
12 dispositive motion cutoff dates can be as set forth above in Section VI.B. Plaintiffs disagree with
13 this schedule, as it appears to assume a non-class schedule or a distinction between merits and
14 class discovery that is inappropriate. If the class claims are not stayed, the parties respectfully
15 submit that it is premature to set cut-off dates for discovery and dispositive motions, the Pretrial
16 Conference, or Trial and that such dates should not be set until the scope of this action is
17 determined.

18 **XVI. Other Matters**

19 **A. ALTERNATIVE DISPUTE RESOLUTION**

20 **1. ADR Certifications**

21 On September 5, 2006, and October 20, 2006, respectively, Plaintiffs Daisy Jaffe
22 and Denise Williams filed and served their ADR Certifications pursuant to Civil L.R. 16-8.
23 Defendant shall file and serve its ADR Certification, pursuant to Civil L.R. 16-8, by October 27,
24 2006.

25 **2. ADR Process or Deadline**

26 The parties have not yet participated in an ADR Phone Conference, and none is
27 scheduled at this time.

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B. DISCLOSURES

Plaintiffs certify that Plaintiff Jaffe has served her initial disclosures pursuant to Fed. R. Civ. P. 26. Because Plaintiff Williams just joined the case as a new Plaintiff, she will be serving her initial disclosures shortly. Defendant will serve disclosures in the time and manner prescribed by the Federal Rules of Civil Procedure.

C. COUNSEL AND SERVICE

Plaintiffs' counsel are the firms of Lief, Cabraser, Heimann & Bernstein LLP; and Outten & Golden LLP. Defense counsel is the firm of Morgan, Lewis & Bockius LLP. For documents other than those served through the Court's electronic filing system, Plaintiffs shall serve one copy of any pleading, motion, or other document on Morgan Stanley's defense counsel; and Defendants shall serve one copy of any pleading, motion, or other document on the two Plaintiffs' counsel firms.

Respectfully submitted,

Dated: October 24, 2006

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Dated: October 24, 2006

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