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23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO DIVISION

26 DAISY JAFFE, DENISE WILLIAMS, and
27 MARGARET BENAY CURTIS-BAUER
28 on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

MORGAN STANLEY & CO.
INCORPORATED, f/k/a/ MORGAN
STANLEY DW, INC.,

Defendant.

Case No. C 06 3903 (TEH)

**DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY
SETTLEMENT APPROVAL AND
PROVISIONAL CERTIFICATION OF
SETTLEMENT CLASS**

I. INTRODUCTION

Defendant Morgan Stanley & Co. Incorporated (“Morgan Stanley” or “Defendant”) hereby submits this memorandum, along with the accompanying supplemental declarations of Kathleen K. Lundquist (“Lundquist Supp. Dec.”) and Alexa B. Pappas (“Pappas Supp. Dec.”), pursuant to this

1 Court's Order of December 12, 2007. Defendant submits this information to provide the Court
2 with additional evidence about the programmatic relief agreed to by the parties and the value such
3 relief can be anticipated to provide to the proposed class of African American and Latino Financial
4 Advisors and Financial Advisor Trainees ("minority FAs").

5 As Dr. Lundquist's declaration confirms, it is premature to determine the exact
6 recommendations the industrial psychologists will make to Morgan Stanley. However, based on
7 her extensive knowledge and experience in formulating such programs, as well as the commitment
8 that Morgan Stanley has already shown to working with the industrial psychologists, she is
9 confident that the programmatic relief will further enhance Morgan Stanley's success in attracting
10 and retaining minority FAs and increase their productivity during employment. Making modest
11 assumptions about the level of success to be achieved by the changes, Dr. Lundquist believes that
12 millions of dollars of value will be delivered to the minority FAs over the term of the settlement
13 agreement in addition to the \$16 million monetary settlement fund.

14 The supplemental Pappas declaration demonstrates that Morgan Stanley's management has
15 made very significant commitments above and beyond the implementation of the recommendations
16 of the industrial psychologists. Morgan Stanley has agreed to adopt new diversity programs and
17 maintain and improve upon its race-based diversity programs, policies and initiatives throughout
18 the five-year term of the settlement agreement. This commitment, which includes an agreement by
19 Morgan Stanley not to discontinue or eliminate certain of its existing diversity programs, will also
20 deliver significant value to the minority FAs. Morgan Stanley also agreed to make changes to its
21 Power Rankings formula in addition to the changes originally agreed to in the *Augst-Johnson*
22 gender discrimination matter. These changes were designed to specifically address the concerns
23 raised by class counsel on behalf of African American and Latino Financial Advisors, by placing
24 more emphasis on current performance and activities of Financial Advisors, and significantly
25 reducing the reliance on historical performance. As a result, African American and Latino
26 Financial Advisors who are currently performing well will likely enjoy increased participation in
27 the account distributions.

28 While the ultimate *value* of the new and committed programmatic changes cannot be

1 determined at this time with precision, the programmatic changes agreed upon, and those to be
2 developed by the industrial psychologists, are estimated to *cost* approximately \$7.5 million. These
3 programs and changes can be expected to deliver many millions of dollars of value to the proposed
4 class of African American and Latino FAs.

5 **II. ARGUMENT**

6 This Court has already found that “[t]he programmatic relief set out in sections VII.B,
7 VII.C, VII.D.2.d., VII.E and VII.G [of the proposed settlement agreement] appears to represent a
8 genuine expansion rather than a dilution of relief already ordered in [the] *Augst-Johnson* [gender
9 discrimination settlement agreement].” (December 12, 2007, Order at pg. 6). Morgan Stanley
10 estimates that it will spend approximately \$7.5 million to implement the programmatic relief. This
11 relief will result in improved success in hiring, training, developing, retaining minority FAs and
12 enhance their production.

13 **A. The Industrial Psychologists Believe, Based On Their Experience And**
14 **Expertise, That The Programmatic Changes Will Increase Morgan Stanley’s**
15 **Success In Attracting, Developing And Retaining Minority FAs And Increase**
16 **The Production Of Those Minority FAs.**

17 As set forth in Dr. Lundquist’s declaration, she has extensive experience as an
18 industrial psychologist in some of the nation’s largest and most well-known class action race
19 discrimination settlements. (Lundquist Supp. Dec. ¶¶2-3). She also has experience designing
20 recommendations and programs to meet the injunctive relief provisions of large race and gender
21 class action settlements. (See Lundquist Supp. Dec. ¶¶2-7).

22 The parties’ settlement agreement in the instant matter gives the industrial
23 psychologists broad responsibilities and empowers them to make recommendations to improve
24 Morgan Stanley’s hiring practices; EEO and problem resolution processes; posting and selection
25 procedures for Branch Management positions; diversity training; compensation for management to
26 reinforce diversity efforts; account distribution processes; development, training and mentoring
27 programs; and exit interviews. (Lundquist Supp. Dec. ¶5); see also Sections VII.B, VII.C,
28 VII.D.2.d., VII.E and VII.G of the proposed settlement agreement). The work has already begun.
Dr. Lundquist, along with the other appointed industrial psychologist, Dr. Irwin Goldstein, has

1 reviewed FA compensation information and analyzed documents and policies to get a base
2 understanding of Morgan Stanley's policies, practices and initiatives. They have begun job
3 observations and evaluations, and have conducted numerous interviews of Morgan Stanley's FAs.
4 They have also interviewed the Human Resource professionals responsible for hiring, mentoring
5 and training, and have met with Regional Management and the firm's senior-most executives.
6 (Lundquist Supp. Dec. ¶6). Morgan Stanley has demonstrated it is committed to bring about
7 change, and it is prepared to implement changes recommended by the industrial psychologists that
8 are likely to enable it to improve its hiring, development and retention of minority FAs. (Pappas
9 Supp. Dec. ¶¶8-9; Lundquist Supp. Dec. ¶7).

10 Although it is too early in the process for Dr. Lundquist to state the actual program
11 recommendations that will be presented to Morgan Stanley for implementation, her past
12 experiences in similar situations provide a framework for identifying certain factors that she
13 believes will enhance Morgan Stanley's success in attracting, retaining and increasing the
14 productivity of minority FAs during their employment at Morgan Stanley. (Lundquist Supp. Dec.
15 ¶8). Based upon her work in other matters, Dr. Lundquist expects the recommended changes will
16 deliver significant value to the class.

17 Even with conservative estimates as to the improvement in productivity, retention
18 and hiring that will be accomplished as a result of the changes, Dr. Lundquist expects the
19 programmatic relief will deliver millions of dollars of value to the minority FAs. (Lundquist Supp.
20 Dec. ¶9). For example, if the programmatic changes enable Morgan Stanley to attract and retain
21 just three additional African American and/or Latino FAs in each of the next five years, this would
22 also represent a value of approximately \$4 million to the class of minority FAs over the settlement
23 term. (Lundquist Supp. Dec. ¶9(c)).

24 Similarly, if the programmatic changes enable Morgan Stanley to retain five
25 minority FAs each year for just one additional year of service over the course of the settlement,
26 this would also represent a value of approximately \$4 million to the class of minority FAs over the
27 settlement term. (Lundquist Supp. Dec. ¶9(b)).

28 Finally, in addition to improvement in hiring and retaining minority FAs, Dr.

1 Lundquist expects the programmatic changes to improve the productivity, and thus the earnings, of
2 minority FAs during the course of their employment with Morgan Stanley. If the earnings of
3 minority FAs increase just 2% each year of the settlement agreement, this will represent a value of
4 approximately \$4 million over the settlement term. (Lundquist Supp. Dec. ¶9(a)).

5 Dr. Lundquist believes the above-referenced goals are attainable based upon her past
6 experience in similar situations. She is also encouraged by the enthusiastic feedback she has
7 received from Morgan Stanley and the level of commitment and participation that Morgan Stanley
8 has already demonstrated with regard to the injunctive relief provisions of the settlement
9 agreement. (Lundquist Supp. Dec. ¶7). Such factors are not only a strong indication that Morgan
10 Stanley will accept the recommendations of the industrial psychologists, but they bolster the stated
11 commitment to bring about change and increase benefits to minority FAs.

12 **B. Morgan Stanley’s Commitment To Programmatic Relief And Its Agreement To**
13 **Adopt And Implement Race-Based Initiatives And Changes To The Power**
14 **Rankings Formula Will Deliver Significant Value To The Class.**

15 As a result of the settlement negotiations with counsel in this case, and in response
16 to the concerns of African American and Latino Financial Advisors raised by their counsel,
17 Morgan Stanley agreed to programmatic changes involving several race-based diversity programs,
18 policies and initiatives that reflect its commitment to increase its recruiting, hiring and retention of
19 African Americans and Latinos. The minority-focused programs, policies and initiatives include:

- 20 a. Maintaining a dedicated position within the Global Wealth Management
21 Group (“GWMG”) whose primary function is sourcing and recruitment of diverse
22 candidates.
- 23 b. Sourcing diverse candidates for entry level jobs through Morgan Stanley’s
24 Summer Internship, Richard Fischer Scholarship and similar programs.
- 25 c. Conducting a biannual Minority Business Exchange, a national program
26 for African Americans, Latinos and other minorities Financial Advisors, where the
27 different pathways to success at Morgan Stanley are discussed and
28 recommendations for business development and growth are shared.
- d. Providing additional study materials and resources to assist the Financial

1 Advisor Trainees in obtaining the Series 7 registration.

2 e. Conducting exit interviews of Financial Advisors and Registered Financial
3 Advisor Trainees who terminate voluntarily in order to gain a better understanding
4 as to the reason for the departures. (Pappas Supp. Dec. ¶4).

5 Many of the programmatic changes agreed to in connection with the *Augst-*
6 *Johnson* gender discrimination matter have been extended to include and address race-based
7 concerns. These programs include:

8 a. Including a diversity component in Branch Manager compensation designed to
9 measure and reward efforts at recruiting, training, and retaining diverse Financial
10 Advisors, including African Americans and Latinos (although the monitoring of
11 this process is enhanced in the Jaffe agreement).

12 b. Developing workplace initiatives designed to attract certain employee populations
13 (e.g., women in *Augst-Johnson*, and African Americans and Latinos in the Jaffe
14 agreement) to encourage their recruitment, retention and enhanced success (with
15 enhanced emphasis in the Jaffe agreement on scholarships, targeted mentoring and
16 training, and access to networking groups). (Pappas Supp. Dec. ¶5).

17 Furthermore, certain of the programs agreed to in the *Augst-Johnson* settlement
18 inure to the benefit of the African American and Latino Financial Advisors. These programs
19 include:

20 a. Increasing opportunities for Branch Manager mobility by posting all
21 available Branch Manager, Financial Advisor in Charge, Sales Manager, and
22 Assistant Branch Manager positions on GWMG's Internal Job Bank; and

23 b. Using GWMG's newly-developed comprehensive management assessment
24 and development program to provide candidates with a formal and transparent path
25 to assessment and selection as branch managers, and provide field management
26 with an established and tested protocol for selection of high-potential candidates
27 by trained assessors. (Pappas Supp. Dec. ¶6).

28 Some programs and initiatives, such as providing additional study materials and

1 resources to assist the Financial Advisor Trainees in obtaining the Series 7 registration are new
 2 initiatives for Morgan Stanley and are being implemented as a result of the parties' settlement.
 3 Some, such as including a component in Branch Manager compensation designed to measure and
 4 reward their efforts in recruiting diverse candidates, represent an enhancement of Morgan
 5 Stanley's existing programs. Other programs, such as the Minority Business Exchange, have been
 6 conducted in the past, but the settlement incorporates Morgan Stanley's agreement to continue and
 7 not to eliminate such programs throughout the term of settlement. (Pappas Supp. Dec. ¶7).

8 Morgan Stanley's commitment to meeting the concerns of minority FAs is further
 9 demonstrated by its agreement to change the Power Ranking formula. For the Court's review, the
 10 modified formula has been filed with the Court under seal. (Dkt. #100). The changes place more
 11 emphasis on current performance and activities of FAs and reduce the reliance on historical
 12 performance. (Pappas Supp. Dec. ¶3). As a result, minority FAs who are currently performing
 13 well will likely enjoy increased participation in the account distributions than they otherwise would
 14 have under the old factors. (Pappas Supp. Dec. ¶3).

15 It is estimated that Morgan Stanley will spend \$7.5 million implementing the
 16 programmatic relief that is aimed squarely at the class members in this case — African American
 17 and Latino Financial Advisors and Registered Financial Advisor Trainees. The policies, programs
 18 and initiatives implemented as a result of this settlement will attract and benefit African American
 19 and Latino Financial Advisors and Registered Financial Advisor Trainees during all phases of their
 20 careers at Morgan Stanley. These efforts will result in significantly increasing the number of
 21 African American and Latino Financial Advisors Morgan Stanley hires, improving its ability to
 22 retain those individuals, and increasing their success at Morgan Stanley, all of which will result in
 23 increased earnings and significant value to its African American and Latino population.

24 **III. CONCLUSION**

25 As demonstrated by the declarations of Dr. Lundquist and Alexa Pappas, the programmatic
 26 relief provisions of the settlement agreement is expected to provide millions of dollars of value to
 27 the minority FAs. Morgan Stanley respectfully submits that this Court should grant the parties'
 28 joint motion for preliminary approval and provisional certification of the class.

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By: /s/ L. Julius M. Turman

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