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

MARGARET BENAY CURTIS-BAUER, on behalf of herself and all others similarly situated,

Plaintiff,

v.

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

Defendant.

Case No. C-06-3903 TEH

PLAINTIFF'S SEPARATE MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT; (2) CERTIFICATION OF SETTLEMENT CLASS; (3) APPROVAL AND (4) DISTRIBUTION OF SETTLEMENT FUNDS

Date: June 16, 2008
Time: 10:00 a.m.
Place: Courtroom 12, 19th Floor

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INTRODUCTION

The parties have agreed to a settlement that provides comprehensive injunctive relief and monetary relief totaling $16,000,000 plus interest accruing since Preliminary Approval. The parties' settlement, embodied in the Settlement Agreement, easily satisfies the "fair, reasonable, and adequate" standard for final approval. *See* Federal Rule of Civil Procedure 23(e).[1]

The Settlement Agreement provides exceptional relief to African-American and Latino Financial Advisors and Registered Financial Advisor Trainees at Morgan Stanley & Co., Incorporated ("Morgan Stanley"). The Settlement Agreement's extensive injunctive relief provisions address class members' claims, and will materially advance the goal of equal employment opportunity for Morgan Stanley's African-American and Latino Financial Advisors and Registered Financial Advisor Trainees. The monetary relief provided to class members is also substantial and fairly allocated. Taken together, the injunctive and monetary provisions of the Settlement Agreement will provide class members with prompt, certain, and comprehensive relief — in contrast to the complexity, delay, expense, and risk of continuing litigation.

Class members have generally responded favorably to the settlement. Class notice was mailed to 1,331 class members on February 27, 2008 and to 35 class members on April 30, 2008.[2] The deadline for submitting claim forms is not until May 23, 2008 for those whose notice was mailed on February 27, 2008 and on May 30, 2008 for those whose notice was mailed on April 30, 2008. As of May 1, 2008, the Claims Administrator had received 253 claim forms. Twenty-five class members have opted out, and nine class members who have not opted out have submitted objections. Class counsel, who are experienced in litigating employment discrimination and class action cases, firmly believe that this proposed settlement is in the best interest of the class.

[1] The Settlement Agreement was revised and filed as Docket No. 159.

[2] The deadline for postmarking objections and opt outs is April 28, 2008 for those whose notice was mailed on February 27, 2008 and May 30, 2008 for those whose notice was mailed on April 30, 2008. (*See* Stipulation and Order Re Class Members Inadvertently Left Off Class List, Docket No. 164.) Plaintiff will address any objections received after May 30, 2008 in a reply brief.

SUMMARY OF SETTLEMENT TERMS

The proposed Settlement Agreement provides comprehensive injunctive relief and substantial monetary relief.

I. INJUNCTIVE RELIEF

Morgan Stanley has agreed to implement comprehensive relief addressing the claims in this action. During the five-year period of the Settlement Agreement, the parties anticipate that Morgan Stanley will spend approximately $7,500,000 on diversity efforts, including programs for training, re-education, and other development programs for African-American and Latino Financial Advisors and Registered Financial Advisor Trainees. Morgan Stanley will retain two jointly-appointed Industrial Psychologists, a Diversity Monitor and employees who will work on diversity programs. The Settlement Agreement also obligates Morgan Stanley to provide extensive injunctive relief, including the following:

A. Hiring: Morgan Stanley will maintain its commitment to increase diversity in the Financial Advisor position, including the representation rate of Latino and African-American Financial Advisors. Morgan Stanley will maintain a dedicated position within Morgan Stanley whose primary function is the sourcing and recruitment of qualified diverse candidates, including qualified Latinos and African-Americans. (*See* Settlement Agreement, § VII.B.) Morgan Stanley will work with the Industrial Psychologists to identify and develop sourcing alternatives for qualified Latino and African-American Financial Advisors, including but not limited to, developing relationships with organizations and educational institutions with high representation rates of Latinos and African-Americans and historical connections with those communities. Morgan Stanley will continue to source qualified diverse candidates for its various entry-level positions, including the Summer Internship Program, the Richard B. Fischer Scholarship Program and/or successor or similar programs. (*Id.*) Furthermore, Morgan Stanley will inform any third-party recruiter or executive search firm it utilizes in its sourcing efforts that Morgan Stanley expects that the vendor will present a diverse slate of candidates, where possible. *(Id.*)

B. Development Opportunities. Morgan Stanley will work with the Industrial Psychologists to develop initiatives designed to attract and retain African-Americans and Latinos

to Morgan Stanley as Financial Advisors, and to enhance their success. (*See* Settlement Agreement, § VII.E.) The Industrial Psychologists shall make recommendations for increasing participation of African-American and Latino Financial Advisors and Registered Financial Advisor Trainees in development opportunities. Morgan Stanley will provide additional resources to assist Registered Financial Advisor Trainees in obtaining the Series 7 registration (and passing the Series 7 test) necessary to be a licensed broker.

Morgan Stanley will also conduct exit interviews of Financial Advisors and Registered Financial Advisor Trainees who terminate voluntarily and will report the results annually to the Industrial Psychologists, the jointly-appointed Diversity Monitor and individuals within Morgan Stanley responsible for hiring Financial Advisors and Registered Financial Advisor Trainees. (*See* Settlement Agreement, § VII.E.)

Morgan Stanley will maintain its commitment to the biannual Minority Business Exchange. (*See* Settlement Agreement, § VII.E.)

C. Diversity-Related Compensation: Branch Manager compensation will have a meaningful diversity component designed to measure and reward efforts at diversifying representation rates in the Financial Advisor position including the recruiting, training, and retaining qualified African-American and Latino Financial Advisors. (*Id.* at § VII.C.) Field sales management will be required to report on their best efforts and results in the areas of sourcing, recruiting, mentoring, training and promoting a diverse workforce, including qualified African-American and Latino Financial Advisors and Registered Financial Advisor Trainees. Field sales management will be reviewed and held accountable (including through bonus compensation) by senior Morgan Stanley management for these efforts. (*Id.*) The Diversity Monitor will review the diversity-related quarterly self-assessment for field sales management and the diversity component of the Branch Manager compensation process. (*Id.*)

D. Branch Management Posting. Morgan Stanley will post all available field sales management positions on its Internal Job Bank, as well as minimum requirements for qualification for those management positions, for a minimum of five (5) business days. (*See* Settlement Agreement, § VII.C.) Morgan Stanley will also develop and implement a

computerized system to generate an electronic mail notification to Financial Advisors who request to be informed of new management job postings. (*Id.*) Either the hiring manager or Human Resources will follow up with each applicant/candidate in a timely manner. (*Id.*)

E. Branch Management Training. Morgan Stanley has developed and implemented a comprehensive management assessment and development program to make the assessment and selection process for branch managers formalized and transparent. (*See* Settlement Agreement, § VII.C.) Morgan Stanley will provide all management-level field personnel with diversity training no less than every other year. (*Id.* at § VII.C.) Morgan Stanley will also provide diversity-related training to field sales branch management that incorporates elements of the Implicit Association Test or similar tool agreed upon by the parties. (*Id.*)

F. Account Distribution. Morgan Stanley has agreed to make significant changes to its Power Ranking system, including reducing reliance on historical factors and weighting more heavily criteria that reflect recent performance. (*See* Settlement Agreement, § VII.D.1-2.) Morgan Stanley will provide the methodology for calculating the Power Rankings to each Financial Advisor upon hire and will make it available to all Financial Advisors electronically. (*Id*. at § VII.D.2.b.) Morgan Stanley will also inform each Financial Advisor of his or her individual ranking at the time an account distribution is made. (*Id*. at § VII.D.2.c.) The actual distribution of a departing Financial Advisor's book will be made available to a Financial Advisor in the Branch confidentially upon request. (*Id.*)

After a full calendar year has passed following implementation of these new Power Ranking criteria, the Industrial Psychologists will review how the process has been operating, including all exceptions and complaints. In addition, the Industrial Psychologists will review annually the actual account distributions and related compensation data and the rankings of African-American and Latino Financial Advisors on each of the individual factors and use such information in considering recommendations, if any, for changes to the Power Ranking formula. (*See* Settlement Agreement, § VII.D.2.d.) They will report their findings and recommendations to the Diversity Monitor on an annual basis. (*Id.*) Class counsel and counsel for Morgan Stanley

will discuss annually the findings of the Industrial Psychologists and whether further appropriate changes to the Power Ranking criteria or distribution process should be made. (*Id.*)

Morgan Stanley will issue a comprehensive account distribution policy statement that will include policies covering the distribution of the accounts of departing Financial Advisors, retiring Financial Advisors, departing partners, and leads, call-ins, and walk-ins. (*See* Settlement Agreement, § VII.D.3.a.) Morgan Stanley will also train Branch Managers on account distribution and procedures at the time the Settlement becomes effective and will similarly train all new managers that are subsequently hired. (*Id.*) Morgan Stanley will enhance its technology to allow its account distribution process to be computer automated, subject to branch manager review to ensure compliance with regulatory requirements. The results of all account distributions shall be stored and readily retrievable for monitoring to ensure compliance with account distribution policies. (*Id.* at § VII.D.3.d.)

Any book of business formerly serviced by a retiring or departing Financial Advisor, serviced by a producing manager who is transferred to a non-producing branch manager position, or serviced by a Financial Advisor who moves to a non-producing sales manager position, will be distributed through the Power Ranking system unless a Joint Production Arrangement/Agreement has been in effect for twenty-four (24) months or longer. (*See* Settlement Agreement, § VII.D.4.a; VII.D.5.a; § VII.D.7.) The Industrial Psychologists will also make recommendations for increasing participation of African-Americans and Latinos in the receipt of retiring Financial Advisor's books of business. (*Id.* at § VII.D.4.b; § VII.D.5.b.)

Each Branch Office will implement a "Financial Advisor of the Day" program in which all client prospects who either walk in or telephone the branch and who are seeking a Financial Advisor shall be directed to the Financial Advisor serving as the Financial Advisor of the Day. (*See* Settlement Agreement, § VII.D.6.a-f.)

Any disputes between Morgan Stanley and a Financial Advisor or a Registered Financial Advisor Trainee concerning any account distribution will initially go through Morgan Stanley's internal complaint process, which includes access to mediation and tolling of administrative charge deadlines. (*See* Settlement Agreement, § VII.D.8.)

G. Complaint Process and Training. The complaint process will be communicated in writing to all Financial Advisors and Registered Financial Advisor Trainees upon hire and annually. (*See* Settlement Agreement, § VII.F.)

Morgan Stanley will provide its Human Resources staff supporting Financial Advisors and Registered Financial Advisor Trainees with appropriate training regarding compliance with state, federal, and local EEO laws; Morgan Stanley's anti-discrimination and harassment policies; the Settlement Agreement; and the best practices for complaint investigation and resolution. (*See* Settlement Agreement, § VII.F.) Human Resources will be trained to treat all complaints or inquiries as confidentially as legally possible and to carry out their duties in a manner consistent with the law. In addition, Human Resources will implement controls designed to ensure that only non-complaining employees or managers with a need to know will be advised of a complaint or investigation. In all instances, upon being informed of a complaint or investigation, the non-complaining employees and managers so informed will be reminded of Morgan Stanley's policy against retaliation. Morgan Stanley will retain documents sufficient to show complaints by African-American and Latino Financial Advisors and Registered Financial Advisor Trainees of race or color discrimination, race or color bias, and/or retaliation related to such complaints for the term of the Settlement Agreement. (*Id.*)

H. Communications. Morgan Stanley shall distribute its Non-Discrimination and Anti-Harassment Policy to all employees upon hire (in hard copy or by electronic mail) and then on an annual basis via email from Morgan Stanley's CEO. (*See* Settlement Agreement, § VII.A.) The President and COO of Morgan Stanley will also issue a separate statement annually in support of the Policy and its underlying tenets.

I. Appointments. The parties will jointly appoint a Diversity Monitor, Fred W. Alvarez, Esq., who is external to and independent of Morgan Stanley, but will report directly to the COO and President of Morgan Stanley. The Diversity Monitor will monitor Morgan Stanley's effort to carry out the terms of the Settlement Agreement, and report to Lead Counsel and Morgan Stanley semi-annually. (*See* Settlement Agreement, § VII.G.1.a-i.) The Diversity Monitor will monitor by (a) receiving monthly reports regarding complaints of Financial

Advisors and Registered Financial Advisor Trainees alleging race discrimination and resolution of investigations of such complaints through the CARE program or otherwise; (b) reviewing quarterly reports regarding the branches in which Branch Managers have filed exception reports reflecting a deviation from the account distribution process; (c) reviewing account distribution data, exception reports, and complaints to monitor policy compliance and, if potential non-compliance is identified, will inform Morgan Stanley and Class Counsel (and Morgan Stanley shall be required to take appropriate corrective actions to address instances of non-compliance); (d) reviewing the diversity-related quarterly self-assessment process for field sales management and the diversity component of the branch manager compensation process; (e) monitoring bi-annual training of management on EEO policies, and policies against discrimination and retaliation, and ensure that the training agreed to was implemented; (f) reviewing how Human Resources handles investigations and the resolution process for inquiries and complaints; (g) reviewing the annual results of the exit interviews of African-American and Latino Financial Advisors and Registered Financial Advisor Trainees; (h) providing reports to Class Counsel and Morgan Stanley at least semi-annually regarding the items monitored, including the analysis of the account distribution system; and (i) maintaining records for the term of this Settlement Agreement. (*Id.*)

The parties will also jointly appoint Industrial Psychologists Dr. Kathleen Lundquist and Dr. Irwin Goldstein to work with Morgan Stanley and Class Counsel to improve the representation and success rates of African-Americans and Latinos in the Financial Advisor and Registered Financial Advisor Trainee positions. (*See* Settlement Agreement, § VII.G.2.a.) The Industrial Psychologists will monitor the implementation of the programs, policies and initiatives set forth in the Settlement Agreement and will report their findings to the Diversity Monitor. (*Id.* at § VII.G.2.b.) They will report annually on the representation rates and efforts to recruit African-Americans and Latinos in the Registered Financial Advisor Trainee and Financial Advisor positions and present recommendations to a senior executive panel of Morgan Stanley and Class Counsel. (*Id.* at § VII.G.2.b-c.) The Industrial Psychologists will also review how the revised account distribution process has been operating and provide the Diversity Monitor with

findings of any deviations from the account distribution system. (*Id.* at § VII.G.2.d.) They will make recommendations (a) concerning sourcing and recruitment strategies and programs to improve the representation rates of African-Americans and Latinos in the Financial Advisor and Registered Financial Advisor Trainee positions; (b) for increasing the Series 7 passage rates of African-American and Latino Registered Financial Advisor Trainees; (c) for increasing the production and earnings of African-American and Latino Financial Advisors, including policies and practices with respect to training, development, and mentoring; (d) for increasing participation of African-American and Latino Financial Advisors in the receipt of retiring Financial Advisors' books of business; (e) for increasing participation of African-American and Latino Financial Advisors in partnerships; (f) concerning policies and practices with respect to training, development, and mentoring, that will enhance opportunities for African-American and Latino Registered Financial Advisors and Financial Advisor Trainees; (g) concerning a mentoring program for all Registered Financial Advisor Trainees and Financial Advisors; and (h) concerning a system of semi-annual internal data collection and a monitoring process.

J. Term of Settlement Agreement: The Settlement Agreement will be for five years. During that time, as set forth above, Morgan Stanley will collect data regarding hiring, retention, compensation, partnerships, account distributions, and complaints of race or color discrimination, among other things. (*See* Settlement Agreement, § IX.A.) Morgan Stanley, with input from the Industrial Psychologists and consent from Class Counsel, will create and implement a system for monitoring compliance with the policies designed under the Settlement Agreement, including the account distribution policy. (*Id.* at § IX.B.) The Diversity Monitor will provide Class Counsel with semi-annual reports regarding the data collected through the monitoring system, including the analysis of the account distribution system. (*Id.* at § IX.C.) Morgan Stanley and Class Counsel will meet at least once every six months regarding compliance. (*Id.* at § IX.D.)

II. MONETARY RELIEF

In addition to the comprehensive injunctive relief described above, Morgan Stanley will establish a Settlement Fund of approximately $ 16 million plus interest at the rate of 5% per

annum from the date of Preliminary Approval until the deposit into the Settlement Fund less the specified credits for opt outs. (*See* Settlement Agreement, §§ VIII.A; IV.C.9.) This Fund will compensate all Class Members, including the Named Plaintiff, who do not opt out and who submit timely claims; will provide a service payment to the Named Plaintiff and payment for the settlement of the Named Plaintiff's individual claims; will provide all attorney's fees and costs awarded by the Court; and notice fees and costs. (*Id.)* The Settlement Sum does not include Morgan Stanley's share of taxes or contributions (*i.e.*, FICA, FUTA, SUTA and Medicare) which will be paid separately by Morgan Stanley to the Claims Administrator in addition to the $16 million fund. (*Id.)*

Approximately $14,000,000 of the Settlement Fund is allocated for payment directly to Class members, reduced only by the service payment and release of non-class claims by the Named Plaintiff (or less than 1% of the Settlement Fund), by the attorneys fees and costs (5% of the Settlement Fund), $150,000 per year for the five-year term of the Settlement for future fees and expenses related to monitoring and enforcing the settlement, by the actual cost of providing notice, and any opt-out credits. (*See* Settlement Agreement, Section VIII.A.)[3]

Each class member who does not opt out of the settlement will receive a share of the net Settlement Fund based on an Allocation Formula consisting of two components: (1) a Claim Form Survey Component to be determined by a jointly-selected Special Master and (2) an Earnings Regression Component developed by Class Counsel's statistical experts. (*See* Settlement Agreement, Section VIII.)

The Claim Form Survey will constitute 85% of the Allocation Formula. Claimants are to be awarded 1 point for each week worked between October 12, 2002 and December 3, 2007 as a Financial Advisor or Registered Financial Advisor Trainee. Claimants may also receive up to 50 additional points for extreme emotional distress. Claimants will also be eligible for up to 50 additional points for responses to questions about termination arising out of low production,

[3] Morgan Stanley is entitled to a credit for each class member who submits a timely and complete opt-out request and who does not rescind that opt out as provided in Section IV.C.5 of the Settlement Agreement. The opt out credit to which Morgan Stanley is entitled shall be a pro rata share of the Settlement Fund based on the number of Class Members who have opted out in relation to the total number of Class Members. (*Id*. at IV.C.9.)

failure to satisfy position requirements, failure to satisfy requirements of the training program, production related reductions-in-force, other production based performance related termination and/or any claim for constructive discharge based on the same set of facts or circumstances. (Settlement Agreement at VIII.D.2.)

The remaining 15% of the Allocation Formula will be paid to Claimants based upon the Earnings Regression Component. Class Members whose annual earnings in any year between October 12, 2002 and December 3, 2007 fall below an annual earnings curve which is set at two deviations above the mean earnings curve for white Financial Advisors are eligible for a monetary award under the Earnings Regression Component. For eligible Claimants, the Earnings Regression Component will take into account the Claimant's earnings during that year and will control for the length of tenure at Morgan Stanley as a Financial Advisor, registration date and branch office location. (*See* Settlement Agreement, § VIII.D.1.) A separate comparable earnings regression model will be conducted with respect to Registered Financial Advisor Trainees.

The Special Master will determine the monetary award to be paid to each Claimant from the Settlement Fund. (*See* Settlement Agreement, § VIII.D.3.a.) The Special Master will submit the proposed allocation to the Court under seal for *in camera* review. (*Id.*, § VIII.D.3.c.) The Claims Administrator will then send Notice and/or Releases to the Claimants and make awards after Releases are executed. (*Id.*, § VIII.D.3.d.) Any undistributed funds that remain after six months from the mailing of the Notice of Award due to unsubmitted releases shall be distributed to 501(c)(3) organizations advancing opportunities for African-Americans and/or Latinos, including opportunities in the financial services industry, as jointly selected by Class Counsel and Morgan Stanley. (*Id.*)

III. RELEASE OF CLAIMS

If the Court grants final approval to the parties' settlement and the proposed Settlement Agreement, the Settlement Class Members who do not timely opt out will release all race and/or color discrimination claims against Morgan Stanley under federal and state laws that are certified by the Court on June 16, 2008, for the liability period of October 12, 2002, through December 3,

2007.[4] (*See* Settlement Agreement, § V.A.)

The Release states:

> I hereby waive, release and discharge (herein collectively referred to as "Release of Claims") Morgan Stanley & Co. Incorporated ("Morgan Stanley"), including its officers, directors, subsidiaries, predecessors, successors, fiduciaries, insurers. employees and agents ("Released Parties"), from any and all claims, known and unknown, for race and/or color discrimination based on the allegations in the Second Amended Complaint of the Litigation, including acts or circumstances relating to compensation, production, account distribution, team or partnership formation, allocation of support or business opportunities or other allegations in the Second Amended Complaint that I may have against the Released Parties relating to my employment at Morgan Stanley. Based on this Agreement, this Release of Claims also shall apply to termination and advancement into management claims for race and/or color discrimination, as referenced in the Second Amended Complaint, arising out of low production, failure to satisfy position requirements, failure to satisfy requirements of the training program, production related reductions-in-force, other production based performance related terminations and any claims for constructive discharge based on the same set of facts or circumstances, it being understood that such Release of Claims does not apply to any other termination, advancement into management, constructive discharge or harassment claims. I understand that this release includes all race and/or color discrimination claims, as referenced herein and in the Second Amended Complaint, that I have or may have arising at any time on or before February 7, 2008. I also understand that my release includes all related claims for monetary damages, injective, declaratory or equitable relief, and costs and attorneys' fees, whether arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 1981, or any other federal, state, local or common laws or regulations.

(Settlement Agreement, Exhibit A.)

The release does not include other claims of discrimination "such as sex, age, or national origin discrimination, or claims arising under the Fair Labor Standards Act or the Employment Retirement Income Security Act." (*Id.*)

LEGAL STANDARD

The Ninth Circuit has recognized a strong policy favoring voluntary settlement of

[4] For purposes of injunctive and declaratory relief, the injunctive-relief class which was preliminarily approved by the Court in its February 7, 2008 Order under Federal Rules of Civil Procedure 23(a) and 23(b)(2) consists of: "All African-Americans and Latinos employed as Financial Advisors or Registered Financial Advisor Trainees in the Global Wealth Management Group of Morgan Stanley & Co. Incorporated or its predecessor, Morgan Stanley DW Inc. at any time between October 12, 2002 and December 3, 2007." (Doc. No. 158 at 4.) For purposes of the monetary relief provided under the Settlement Agreement, the "Settlement Class" under Rule 23(a) and Rule 23(b)(3) consists of: "All African-American and Latinos employed as Financial Advisor or Registered Financial Advisor Trainees in the Global Wealth Management Group of Morgan Stanley & Co. Incorporated or its predecessor, Morgan Stanley DW Inc. at any time between October 12, 2002 and December 3, 2007, who do not timely opt out." (*Id.*)

complex class actions. "[V]oluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Servo Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). This is "especially true in complex class action" cases, *id.*, which lend themselves to compromise because 'of the difficulties of proof, uncertainty of outcome, and length and complexity of litigation. *See also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) ("strong judicial policy ... favors settlements, particularly where complex class action litigation is concerned").

Public policy also favors the settlement of Title VII cases. In *Carson v. American Brands, Inc.*, 22 450 U.S. 79 (1981), the Supreme Court explained that "[i]n enacting Title VII, Congress expressed a strong preference for encouraging voluntary settlement of employment discrimination claims." *Id.* at 88, n.14; *see also Officers for Justice*, 688 F.2d at 625. This Court has reached the same conclusion. *See Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) ("settlement is favored in resolving Title VII litigation").

Federal Rule of Civil Procedure 23(e) requires that a class action settlement be "fair, adequate and reasonable" in order to merit approval. The Ninth Circuit has identified a non-exhaustive list of factors to guide the final approval inquiry, including (1) the amount offered in settlement, (2) the reaction of the class to the proposed settlement, (3) the strength of the plaintiff's case balanced against the "risk, expense, complexity, and likely duration of further litigation" and the "risk of maintaining class action status throughout the trial," (4) the "extent of discovery completed" and the "stage of the proceedings," and (5) the informed views of experienced counsel. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also* Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003). With respect to the last factor, the "recommendations of plaintiffs' counsel should be given a presumption of reasonableness," particularly when counsel has significant experience litigating similar cases. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979); *Ellis*, 87 F.R.D. at 18 ("the fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight").

When determining whether to grant final approval, "the court's intrusion upon what is

otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625; *see also Hanlon*, 150 F.3d at 1026 ("It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness.").

ARGUMENT

I. THE COURT SHOULD GRANT FINAL APPROVAL TO THE SETTLEMENT AND SETTLEMENT AGREEMENT

A. The Settlement Agreement Provides Exceptional Injunctive And Monetary Relief To The Class

1. The Settlement Agreement Provides Exceptional Injunctive Relief.

As described above, the proposed Settlement Agreement provides exceptional injunctive relief that will materially advance the goal of equal employment opportunity for African-American and Latino brokers and broker trainees at Morgan Stanley.

The Settlement Agreement provides that Morgan Stanley will take steps to increase hiring of minority candidates, including maintaining a dedicated position within the company whose function will be to recruit diverse candidates, and working with the Industrial Psychologists and recruiters toward that goal.

Morgan Stanley must also develop initiatives to attract and retain African-Americans and Latinos, provide resources to assist them in obtaining their Series 7 registration, and conduct exit interviews of those who terminate their employment voluntarily. Branch Manager compensation will be tied to diversity efforts.

Field sales management will be required to report efforts to increase diversity and those reports will be reviewed by the Diversity Monitor. Field sales management will be held accountable for their efforts.

Branch management positions will be posted and notifications of openings in management will be provided to those who request it. Morgan Stanley will also provide diversity training to management-level field personnel.

The Power Ranking system will be revised to ensure fairness by reducing reliance on historical factors. Information regarding the system and each broker's respective ranking will be provided to him/her. This process and the results of its implementation will be reviewed by the Industrial Psychologists and the findings will be reported to the Diversity Monitor. Class counsel and counsel for Morgan Stanley will also monitor the system to determine if any further changes are necessary. Changes will also be made to ensure that the accounts of retiring and departing Financial Advisors are distributed fairly.

The complaint process will be communicated to all Financial Advisors and Financial Advisor trainees. Appropriate training and will be given to Human Resources and investigation processes will be subject to increased controls and record keeping.

The Non-Discrimination and Anti-Harassment Policies will be distributed to all employees upon hire and a separate annual statement will be issued by the President and COO in support of the policy.

The parties will jointly appoint an external independent Diversity Monitor to monitor Morgan Stanley's efforts to carry out the terms of the Settlement Agreement. The Diversity Monitor will provide at least semi-annual reports to Class Counsel and Morgan Stanley regarding the data collected and items monitored, including the analysis of the account distribution system.

The parties will also jointly appoint two Industrial Psychologists to work with Morgan Stanley and Class Counsel to improve representation and success rates of African-Americans and Latinos in the Financial Advisor and Registered Financial Advisor Trainee positions. They will monitor the implementation of programs, policies and initiatives set forth in the Settlement Agreement and report their findings to the Diversity Monitor. Annually, they will also provide reports regarding representation rates and recruiting efforts for African-Americans and Latinos in the Financial Advisor and Registered Financial Advisor Trainee positions. They will also review the implementation of the account distribution process and report their findings to the Diversity Monitor.

2. The Monetary Relief Provided by the Settlement Agreement Is Substantial and Fairly Allocated.

The Settlement Agreement provides substantial monetary relief. The total fund created by the Settlement will be $16 million plus interest, with approximately $14 million allocated for payments directly to the Class. In order to claim monetary benefits, the Class members must complete a three and a half page form which asks for (1) contact information; (2) racial or ethnic background; (3) a short description of any facts regarding emotional or physical effects of discriminatory conduct; and (4) a short description of any facts related to termination or constructive discharge arising out of low production, failure to satisfy position requirements, failure to satisfy requirements of the training program, production related reductions-in-force, other production based performance related termination and/or any claims for constructive discharge based on the same set of facts and circumstances.

Each Class member's monetary recovery will be determined based on an Allocation Formula consisting of two components: (1) a Claim Form Survey Component to be determined by a jointly-selected Special Master and (2) an Earnings Regression Component developed by Class Counsel's statistical experts.

The Claim Form Survey will constitute 85% of the Allocation Formula. Claimants are to be awarded 1 point for each week worked between October 12, 2002 and December 3, 2007 as a Financial Advisor or Registered Financial Advisor Trainee. Claimants may also receive up to 50 additional points for extreme emotional distress and up to 50 additional points for responses to questions about termination arising out of low production, failure to satisfy position requirements, failure to satisfy requirements of the training program, production related reductions-in-force, other production based performance related termination and/or any claim for constructive discharge based on the same set of facts or circumstances. Settlement Agreement at § VIII.D.2.

The remaining 15% of the Allocation Formula will be paid to Claimants based upon the Earnings Regression Component. Class Members whose annual earnings in any year between October 12, 2002 and December 3, 2007 below an annual earnings curve which is set at two deviations above the mean earnings curve for white Financial Advisors are eligible for a

monetary award under the Earnings Regression Component. For eligible Claimants, the Earnings Regression Component will take into account the Claimant's earnings during that year and will control for the length of tenure at Morgan Stanley as a Financial Advisor, registration date and branch office location. *See* Settlement Agreement, § VIII.D.1. A separate comparable earnings regression model will be conducted with respect to Registered Financial Advisor Trainees.

B. The Reaction Of The Class Supports Approval Of The Settlement

Class notice and claim forms were sent to 1,331 class members on February 27, 2008 and to 35 Class members on April 30, 2008. (Declaration of Mark Patton ("Patton Decl.") at ¶ 2.) Thirty-five notices and claim forms were also sent on April 30, 2008 after it was determined that they were omitted from the first mailing due to a clerical error. (*Id.* at ¶ 3.) The list of notice recipients was determined using data provided by Morgan Stanley and data gathered by class counsel during the course of litigation. (*Id.* at ¶ 4.) The settlement also generated substantial news coverage.

For the 1,331 Class members whose notices and claim forms were mailed on February 27, 2008, Class member claims must be postmarked by May 23, 2008. (*See* Patton Decl. at ¶ 5.) As of May 1, 2008, the claims administrator had already received approximately 253 claims. *Id.* ¶ 6. Twenty-five class members have opted out, and nine Class members who have not opted out have submitted a objections.[5] Class Counsel, who are experienced in litigating employment discrimination and class action cases, respectfully submit that this proposed settlement is in the best interest of the Class.

C. The Objections Are Without Merit

The objections filed to date fall into 2 categories: (1) 29 Objections filed by counsel for the Moore Group (the Moore Group Opt Out Objectors and Supplemental Moore Group Objectors)[6]; and (2) 1 objection filed by an objector, Billy Manning, who reiterates allegations of

[5] The deadline for receipt of objections and opt outs is April 28, 2008 for those whose notice was mailed on February 27, 2008 and May 30, 2008 for those whose notice was mailed on April 30, 2008. (*See* Stipulation and Order Re Class Members Inadvertently Left Off Class List, Docket No. 164.) Plaintiff will address any objections received after May 30, 2008 in a reply brief.

[6] Marilyn White, who is one of the Supplemental Moore Group Objectors listed in Docket No. 161 also submitted a separate letter of objection dated April 24, 2008. Ms. White's letter does not reference any new objections aside from those included in the Moore Group Objections

the Moore Group but who so far appears to be unrepresented by Moore counsel. At least 21 of these objections were improperly filed by Moore Group Opt Outs who lack standing to object, and all objections filed by Moore Group Opt Outs and Supplemental Moore Group counsel merely rehash prior concerns raised by the Moore Group that the Court addressed and cautioned Moore counsel not to refile. None of the objections has merit.[7] Moreover, none of the other approximately 1,366 Class members who have considered the settlement based on the notice objected. Instead, over 250 Class members have already indicated by submitting their claim forms that they want the settlement to go forward.

1. The Moore Group Objectors' Objections Have Previously Been Considered and Rejected and/or Are Otherwise Meritless.

On November 9, 2007, fourteen putative class members and one non-class member applicant (the "Moore Group Objectors") filed objections to the Parties' Joint Motion for Preliminary Settlement Approval of Class Action Settlement, Provisional Certification of the Settlement Class, Approval and Distribution of Notice of Settlement, and Approval of a Schedule for the Final Settlement Approval Process. (*See* Docket No. 95.) Arguments in favor of those objections were made by counsel for the Moore Group Objectors at the preliminary approval hearing on December 2, 2007. On December 12, 2007, the Court considered and rejected a number of issues raised by the Moore Group Objectors and requested further briefing on the Motion for Preliminary Settlement Approval. (Order, Docket No. 130.)

After further briefing by counsel for the Moore Group Objectors regarding their objections and the submission of additional evidence from the parties in support of settlement, by Order entered February 7, 2008, the Court granted preliminary approval of the settlement. (Docket No. 158.) In its Order, the Court stated that it "carefully considered the arguments of Objectors presented in their properly filed briefs and motions, specifically in Docket Nos. 95, 129

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and Supplemental Moore Group Objections. Because she is among those listed as making the Supplemental Moore Group Objections and because her separate letter raises no other issues, her letter will not be addressed here separately. (*See* Dermody Decl., Ex. C.)

[7] One of the "Opt Out" Objectors included in the Statement and Objections of Moore Group and Other Opt-Out Class Members to Proposed Settlement (Docket No. 162) is Vincent Griffin. Neither Class Counsel nor the Claims Administrator have a record of this person having submitted an opt-out letter.

and 152, and the declarations and other documents supporting them, and the arguments of both the Parties and Objectors at the hearing held December 3, 2007." (*Id.* at 11-12.) It stated that "the Parties' additional submissions have assuaged its concerns about both the adequacy of representation and the fairness of the settlement, which appears at this stage to be fundamentally fair, adequate and reasonable when viewed as a whole. The Court therefore GRANTS provisional class certification and preliminary approval of the settlement." (*Id.* at 2.)

The Order addressed the concerns of the Moore Group Objectors in detail. It also warned, "The Court will not consider a motion for reconsideration of this Order. Counsel for the Moore Group Objectors are forewarned that further repetitive submissions may subject them to sanctions under 28 U.S.C. § 1927 for vexatiously multiplying this litigation." (*See* Docket No. 158 at 1, n. 1.)

Nevertheless, on April 28, 2008, counsel for the Moore Group Objectors filed a Statement and Objections to the Proposed Class Settlement on behalf of certain "Opt-Out Objectors," some of whom were also members of the Moore Group Objectors. (*See* Docket No. 162.) These objections not only lack merit but should be stricken as improper under the Court's prior Order (Docket No. 158) as improper repetitive submissions and because the Objectors lack standing.

a. <u>The Moore Opt Out Objectors Lack Standing to Object.</u>

None of the twenty-one opt out objectors has standing to object to the settlement; particularly the monetary relief portion of the settlement. *Glass v. UBS Fin. Serv., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at *8 (N.D.Cal. Jan. 26, 2007) (citing *Mayfield v. Barr*, 985 F.2d 1090 (D.C.Cir. 1993) as holding "[t]hose who are not class members, because they are outside the definition of the class or have opted out" lack standing to object to class settlement); and *Jenson v. Continental Fin. Corp.*, 591 F.2d 477, 482, n.7 (8th Cir. 1979) as stating "Opt-outs . . . are not members of the class and hence are not entitled to the protection of Rule 23(e)."). These objections should be stricken from the record.

b. Even if they Had Standing, the Moore Group Opt Out Objections Have Previously Been Considered and Rejected and Have Been Re-Filed in Violation of the Court's February 7, 2008 Order.

The Moore Group Opt Outs ask the Court to "accept and consider the objections, evidence and submissions presented by the Moore Group prior to preliminary approval of the Settlement (Docket Nos. 95, 119, 123, 129, 145, 152) in light of additional facts and arguments contained in the objections filed by class members who have objected to the Settlement but not opted out. The Opt-Outs agree with and join in those objections." (Docket No. 162, at 1.) The only basis for refiling their prior objections is that they believe that it is their "moral obligation to reaffirm their" prior objections and request that the Court again consider those prior objections. (*Id*. at 1.) Accordingly, other than making additional irrelevant accusations addressed below, the Moore Group Opt Outs do not state any legitimate new grounds on which to seek reconsideration of their prior objections. (*See infra* note 6.) Thus, even if these opt out objectors had standing to object, which they do not, their objections were previously raised, addressed by the parties and the Court, lack merit and constitute a "repetitive submission that may subject [the Counsel for the Moore Group Objectors] to sanctions." (Docket No. 158 at 1, n.1.)

2. The Supplemental Moore Group Objectors' Objections Likewise Have Previously Been Considered and Rejected and/or Are Otherwise Meritless.

On April 28, 2008, counsel for the Moore Group Objectors also filed objections on behalf of eight additional objectors who were not included in the original Moore Group. (*See* Docket No. 161.) These Supplemental Moore Group objectors asked the Court to consider "the objections, arguments and evidence presented by the Moore Group in Docket Nos. 95, 119, 123, 129, 145, 152 in light of the entire record and new information presented to the Court." (*Id*. at 1.) They also "incorporated" the Objections and Supplemental Objections of the Moore Group "as their own as if fully stated herein." (*Id*.)

The Supplemental Moore Group objectors' new submissions are nothing more than

reassertions of points the Moore Group Objectors previously made to the Court in one of their six previous submissions.[8] (Docket Nos. 95, 119, 123, 129, 145, 152.) These resubmissions constitute a blatant violation of the Court's admonition that "further repetitive submissions may subject [counsel for the Moore Group] to sanctions." (Docket No. 158, at 1 n.1). As set forth below, the Court has previously considered these restated objections and found them to be meritless.

The Supplemental Moore Group Objectors make two primary arguments in support of their objections, the second of which was broken into fifteen subparts, some of which address multiple issues. Each of these objections was previously raised and considered by the Court or is otherwise meritless as set forth below.

a. The Objection Regarding The Alleged Lack of Client Involvement in Settlement Discussions Was Previously Considered.

The Supplemental Moore Group objector's first primary objection, that "lawyers are not substitutes for clients," raises here again Ms. Curtis-Bauer's alleged lack of participation in the settlement and her resulting lack of adequacy to represent the Class. (*See* Docket No. 161 at 7-8.) This issue was raised by the Moore Group in their objections to preliminary settlement approval. (*See* Docket No. 95 at 9-12; 14-15). The objectors also raised this issue in their Motion for Discovery. (Docket No. 129 at 13 ("The limited record, therefore, is consistent with the Moore Group's belief that Ms. Curtis-Bauer only joined this lawsuit after the settlement was largely complete.") They also raised this issue in their Supplemental Briefing. (*See* Docket No. 145 at 1-8 ("The presence and involvement of class counsel during negotiations is not a substitute for the active representation of a named plaintiff, regardless of whether class counsel are experienced and able at their task.")).

[8] Indeed, the only so-called "new" information are alleged "facts" supporting Moore counsel's previous accusations about the involvement of clients directly in mediation. Notably, most of this information is supplied by a former client of Class Counsel. While Class Counsel disagrees with much of what has been said, as Moore counsel no doubt knows, Class Counsel is ethically prohibited from clarifying the record lest they disclose attorney-client communications. However, if the Court seeks a supplemental response from Class Counsel on these matters, Class Counsel respectfully request that they be allowed to do so *ex parte* under seal so as not to reveal any of Ms. Williams' client confidences to Morgan Stanley.

Numerous declarations previously filed by the Objectors are also filed again here regarding the facts and circumstances surrounding Ms. Curtis-Bauer's involvement in the lawsuit. For instance, Docket Entry No. 161-5, was also previously filed as Docket No. 145-4 (Declaration of Mary Harris Evans). Likewise, Docket Entry No. 161-6 was also filed as Docket No. 95-10 (another Declaration of Mary Harris Evans). Docket Entry No. 126-4, the Declaration of Brian Roy, was also refiled as Docket No. 161-7.[9] The Declaration of Maurice Mabon was filed as both Docket No. 145-5 and 161-8. Accordingly, these declarations were previously considered and raise no new issues.

The Supplemental Moore Group objectors also voiced their concern regarding Ms. Curtis-Bauer's participation in the settlement at the preliminary settlement hearing. (Declaration Of Kelly M Dermody In Support Of Final Settlement Approval, Plaintiff's Application For Attorneys' Fees And Reimbursement Of Costs And Expenses, And Application Of Plaintiff For Approval Of Service Payment ("Dermody Decl.") Exh. A, Transcript of Proceedings held December 3, 2007, at 31-33.) Plaintiff responded in her submissions to the Court and at the preliminary settlement approval hearing. (Docket No. 137 at 5-6; Dermody Decl., Exh. A, at 64-65.)

The Court has considered this issue a number of times. In its Order of December 12, 2007, the Court stated, "There is no requirement that the class representative, rather than class counsel, negotiate the terms of a settlement, and the Court's decision about whether Ms. Curtis-Bauer is an adequate representative will not turn on the number of days, weeks, or months before the settlement that she joined the litigation." (Docket No. 130 at 3.) The Court later determined that Ms. Curtis-Bauer "was not presented with the settlement as a *fait accompli* before joining the suit; instead, she expressed interest in becoming a plaintiff, and then evaluated the proposed settlements. Her declaration shows that she was aware of her fiduciary duties to the class, felt capable of assessing the settlement and the approach of counsel, and found that approach appropriate to meeting the goals of the suit. She suggested substantive changes which were

[9] A different declaration for Mr. Roy was also filed as Docket No. 145-25 stating that he is part of the Moore Group.

ultimately incorporated into the settlement agreement." (Docket No. 158 at 7; *see also* Dermody Decl., Exh. A, at 10, 92.) Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.

b. The Supplemental Moore Group Objectors' Objections Regarding the Adequacy and Fairness of the Settlement Were Previously Considered and Rejected and Otherwise Lack Merit.

The Supplemental Moore Group objectors next contend that the "lack of clients resulted in an inadequate and unfair settlement." (Docket No. 161 at 8.) In support of this proposition, the objectors state fifteen purported arguments, some of which raise multiple issues. These objections have been previously raised and lack merit.

i. The Objection that Jurisdiction is Not Retained and that there is No Meaningful Supervision Was Previously Considered and/or is Otherwise Without Merit.

The first issue raised by the objectors regarding the substance of the settlement is that it did not require the Court to retain jurisdiction over the settlement and receive regular reports from Morgan Stanley. (Docket No. 161 at 9.) The objectors raised this concern during the preliminary approval hearing. (Dermody Decl., Exh. A at 62) ("And another concern, Your Honor, is this settlement divests this Court of jurisdiction to hear any disputes about the settlement."). Plaintiff's counsel responded at that time. (*Id*. at 70) ("that's certainly our understanding, that the final judgment will reserve continuing jurisdiction."). The Settlement Agreement filed on February 11, 2008, provides that the Court does maintain jurisdiction to enforce the terms of the Settlement Agreement. (*See* Settlement Agreement, Docket No. 159, at 47; *see also* Post-Hearing Memorandum of Plaintiff Curtis-Bauer, Docket No. 137 at 3.) Accordingly, this objection has previously been raised and is without merit.

In addition, this objection ignores the very extensive and on-going monitoring of the Settlement that will be conducted by the independent Diversity Monitor, Fred W. Alvarez, Esq. Mr. Alvarez will monitor by, among other things: (a) receiving monthly reports regarding complaints of Financial Advisors and Registered Financial Advisor Trainees alleging race discrimination and resolution of investigations of such complaints through the CARE program or

otherwise; (b) reviewing quarterly reports regarding the branches in which Branch Managers have filed exception reports reflecting a deviation from the account distribution process; (c) reviewing account distribution data, exception reports, and complaints to monitor policy compliance and, if potential non-compliance is identified, will inform Morgan Stanley and Class Counsel (and Morgan Stanley shall be required to take appropriate corrective actions to address instances of non-compliance); (d) reviewing the diversity-related quarterly self-assessment process for field sales management and the diversity component of the branch manager compensation process; (e) monitoring bi-annual training of management on EEO policies, and policies against discrimination and retaliation, and ensure that the training agreed to was implemented; (f) reviewing how Human Resources handles investigations and the resolution process for inquiries and complaints; (g) reviewing the annual results of the exit interviews of African-American and Latino Financial Advisors and Registered Financial Advisor Trainees; (h) providing reports to Class Counsel and Morgan Stanley at least semi-annually regarding the items monitored, including the analysis of the account distribution system; and (i) maintaining records for the term of this Settlement Agreement. (*See* Settlement Agreement, § VII.G.1.a-i.) Mr. Alvarez will also report to Lead Counsel and Morgan Stanley semi-annually. (*See id*.) This extensive monitoring will ensure implementation of the Class relief.

ii. <u>The Objection Regarding Settlement Goals and Timetables and the Industrial Psychologists Was Previously Considered.</u>

The second issue raised by the objectors regarding the substance of the settlement is that it does not require "concrete, measurable goals and timetables to remedy" Morgan Stanley's discriminatory practices and that Industrial Psychologist Kathleen Lundquist should not be appointed here because she is also serving in *Augst-Johnson* and has routinely represented employers. (Docket No. 161 at 9-11.)

The objectors raised their concern that the programmatic relief did not include sufficiently measurable goals during the preliminary settlement approval hearing. (Dermody Decl., Exh. A at 37-38; 62) ("We believe that a key part of the change is actual concrete goals and timetables, as well as financial penalties and having to adequately compensate African-Americans for their

losses.") Plaintiff's counsel responded during the hearing and addressed this concern. (*Id*. at 68 and 75) ("the literature says that affecting manager compensation is a particularly effective way of making change in a company;" "There is going to be a five-year consent decree, they have reporting requirements regarding compensation, account distribution, hiring and turnover. Class counsel will look at the numbers and the diversity monitor will look at the numbers. . . . If they do not do anything, it will have serious consequences.").

The issue of Dr. Lundquist serving as the industrial psychologist for both the gender and race settlements was also addressed at the preliminary settlement approval hearing. Counsel for Plaintiff explained that, "as Dr. Lundquist set forth in her Declaration, [there are]actually advantages having the same person because we already started with them on the huge learning curve . . . . Already several meetings with all the managers in the organization to get them up to speed to understand those things. . . . We all agreed, including counsel in that case, there's an advantage in having the same consultants." (Dermody Decl., Exh. A at 78.) Moreover, Dr. Lundquist filed a Declaration with the Court setting out her qualifications and noting her work in the same capacity in numerous other cases, including on behalf of employees.[10] (*See* Docket Entry No. 143 at 2.)

In its Order of December 12, 2007, the Court found that "the injunctive relief package is not simply a 'carbon copy' of the relief that Morgan Stanley has already agreed to in the *Augst-Johnson* settlement." (Docket No. 130 at 6). It further found that "the industrial psychologists and diversity monitor provided for in the settlement will be devoting additional time, analysis, and resources to address race issues, and not displacing relief already agreed to in *Augst-Johnson.* (*Id*.)

In its Order of February 7, 2008, the Court relied on Dr. Lundquist's opinion that "the programmatic changes that Morgan Stanley will make as a result of the settlement and of her recommendations will improve productivity, retention, and hiring of minority financial advisors." (Docket No. 158 at 15.) Based on this and other facts, the Court found that "the programmatic

[10] Dr. Lundquist has worked as an expert for Class Counsel in other discrimination cases, and Class Counsel submit that it is a reflection of her tremendous skill and integrity that she is highly sought after by both plaintiffs and defendants in litigation.

relief set out in the Settlement Agreement is substantive, meaningful, and valuable to the class." (*Id*. at 16.) Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.

iii. The Objection Regarding Transparency Was Previously Considered.

The third issue raised by the objectors regarding the substance of the settlement is that it does not require transparency. (Docket No. 161 at 11-12.) Specifically, the objectors argue that they should be permitted to have access to the power ranking system and to the relevant workforce data. (*Id*.)

The objectors raised this concern in their previously-filed objections, stating "Morgan Stanley refuses to disclose the Power Ranking." (*See* Docket No. 95 at 21.) They also raised it extensively in their Motion for Discovery Regarding Proposed Class Settlement. (*See* Docket No. 129 at 11-13) (Section IV titled, "The Power Ranking Should Be Disclosed To Class members and Any Adverse Impact Studies Produced"). Likewise, the objectors complained during the preliminary settlement approval hearing that they were not provided with compensation and other workforce data. (Dermody Decl., Exh. A at 33) ("we tried to get data from Morgan Stanley about compensation and account distribution and partnerships and representation and for longer period than one year, we wanted it for the class period. . . we would like the opportunity to study the data ourselves.").

The objectors also again raise the issue of the lack of disclosure to the settlement class of the Moore Group's objections and previous negotiations with Morgan Stanley. (Docket No. 161 at 12.) This issue too was raised in their previously filed objections. (*See* Docket No. 95 at 17) ("Morgan Stanley did not inform Plaintiffs or the counsel about the existence of the Moore group or the nature of their claims.").

After analysis, the Court held "this Court will not grant Objectors discovery of workforce data, or order disclosure of the privileged work product in Mr. Klein's declaration filed under seal, so that the Objectors can provide an alternative valuation of damages." (Docket No. 158 at 14.) The Court also found that the settlement was the result of "extensive, arms' length

negotiations between the Parties after Class Counsel investigated the class claims and became familiar with the strengths and weaknesses of Plaintiffs' case." (*Id*. at 12.) Finally, the Court found that it would not order disclosure of the Power Ranking formula. (*Id*. at 16, n.7.) Specifically, the Court stated that "The Power Ranking formula is already in place as part of the *Augst-Johnson* settlement; disclosure of the formula here will serve no purpose." (*Id*.) Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.)

iv. The Objection Regarding Changes to the Power Ranking Formula Was Previously Considered.

The fourth issue raised by the objectors regarding the substance of the settlement is that the changes to the Power Ranking formula are inadequate.[11] (Docket No. 161 at 12-13; Docket No. 161-12 (Declaration of Michael Barnett).) They also again complain that the Power Ranking formula was not provided to them. (*Id*.)

The objectors have raised this issue at least three times with the Court. (Docket No. 95 at 22 ("Had the Moore group been allowed to participate in the discussion about whether a Power Ranking should be adopted to distribute accounts, they certainly would have argued that until the gap in wages between African-American and white FAs narrows, awarding points based on commission generated or assets under management only institutionalizes and perpetuates the bias."); Docket No. 145 at 13 ("Plaintiff does not allege that she conducted a statistical analysis of account transfers for purposes of determining damages or the impact of the account transfer and teaming policies on African-Americans and Latinos"); Docket No. 145-7 (Declaration of Michael Barnett) at 8 ("It is my understanding that the Power Ranking system proposed by Morgan Stanley will perpetuate this discrimination because the proposed settlement expressly states that accounts from team relationships will be counted in the Power Ranking."); Dermody Decl., Exh. A at 46, 88 ("And then the fifth thing, sir, I think, there has to be, programmatically has to be some relief in the area of power rankings.").

The Court has considered these arguments and found disclosure of the Power Ranking

[11] Curiously, objectors assert this complaint while acknowledging they have not seen the formula.

formula would "serve no purpose" and that "the programmatic relief set out in the Settlement Agreement is substantive, meaningful and valuable to the class." (Docket No. 158 at 16 and n.7). Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.

v. The Objection Regarding Changes to Partnerships and Teams Was Previously Considered.

The fifth issue raised by the objectors regarding the substance of the settlement is that it does not reform partnerships or teams. (Docket No. 161 at 13-14.) This concern was also raised multiple times in the objectors' previously-filed objections and in the preliminary approval hearing. (*See* Docket No. 95 at 22 ("Further, it allows that if African-Americans are excluded from partnerships, and assets of retiring FAs transfer through teams, African-Americans are disadvantaged by teams."); Docket No. 129 at 7, n.8 ("The Moore Group does not accept the settlement proponents' contention that Morgan Stanley can do nothing about its teaming policies because FAs are 'entrepreneurs.'"); Docket No. 145 at 13 ("unlike African-Americans, Latinos are not excluded from favorable teams."); Docket No. 145-7 (Declaration of Michael Barnett); Docket No. 145-8 at 8-10 (Declaration of Maurice Mabon); Docket No. 145-9 (Declaration of Ronald Moore); Dermody Decl., Exh. A at 44, 88-90 (arguing that the settlement should "make it mandatory for African-Americans to be included on teams in every office in the United States" and that "teams are formed and then accounts go from team to team during end run around the power ranking process. So yes, we have trouble with teams.").) During the preliminary approval hearing, counsel for Plaintiff explained that teams are not created by "a company policy per se" and that the industrial psychologists will be charged with the duty of reviewing the team structure. (*Id*. at 73-74.)[12]

In granting preliminary approval of the settlement, after analysis the Court held that "all these factors convince the court that the programmatic relief set out in the Settlement Agreement

[12] In so far as the objectors compare the terms of this settlement to any other settlement reached in any other employment discrimination class action lawsuit, the comparisons are without merit in that those settlements involved different companies with different compensation and partnership schemes where different allegations were made. The only viable comparison here is to the settlement with Morgan Stanley in *Augst-Johnson*, to which this Settlement compares favorably.

is substantive, meaningful, and valuable to the class." (Docket No. 158 at 16.) Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.

vi. The Objection Regarding Isolation of African-Americans Was Previously Considered.

The sixth issue raised here by the objectors regarding the substance of the settlement is that it did not address the isolation of African-American class members in the workplace. (Docket No. 161 at 6). The objectors raised this issue previously. (*See* Docket No. 95 at 21 ("the isolation of and hostility faced by African-Americans at Morgan Stanley is not a phenomenon systematically faced by women at Morgan Stanley."); Docket No. 129 at 6 ("African-Americans are also far more isolated within the Morgan Stanley branch office system.")) After consideration of the objections, the Court held that "the programmatic relief set out in the Settlement Agreement is substantive, meaningful, and valuable to the class." (Docket No. 158 at 16.) Notably, the training, monitoring, exit interviews, and Industrial Psychologist input mandated by the Agreement all support this finding. Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.

vii. The Objection Regarding Damages Calculation Was Previously Considered.

The seventh issue raised here by the objectors regarding the substance of the settlement is that the damages calculation was deficient because it was limited to consideration of the compensation shortfall. (Docket No. 161 at 17-18.) This issue was briefed extensively in the objectors' Supplemental Brief in Opposition to Class Certification and Proposed Settlement. (*See* Docket No. 145 at 8-10.) ("A 'compensation shortfall' analysis, however, does not capture the losses of class members or damages recoverable as a matter of law.") The objectors also raised this issue in the preliminary settlement approval hearing. (Dermody Decl., Exh. A at 33) ("The damages estimated suggested seem enormously low.").) Additionally, the objectors raised this issue in their Administrative Motion for Production of Materials Filed Under Seal and In Camera. (Docket No. 152 at n.1 ("based on their understanding of the compensation shortfall analysis, they do not believe this method accurately captures the losses caused by the claims the *Jaffe*

settlement seeks to release.").)

The Court has addressed this issue stating, "The settlement is not unfair, either overall or to African-Americans as a subgroup, because it chooses to compensate class members primarily on the basis of their tenure at Morgan Stanley during the class period. Compensation shortfalls are susceptible of easy calculation, and the complaint alleges that the shortfalls stem in part from nationwide use of a formula with an adverse impact on class members. . . . The Parties can reasonably choose to focus monetary relief on the strongest or most easily proved portion of their claims as a means of compromising their claims." (*See* Docket No. 158 at 13.) The Court further held that, although the "estimate of the amount of compensation shortfalls does not capture emotional distress damages, or damages from terminations arising from low production or constructive determination. . . . Plaintiffs can reasonable choose to focus on pay disparities." (*Id.* at 14.) Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.[13]

viii. <u>The Objection Regarding Sufficiency of Monetary Relief Was Previously Considered.</u>

The eighth issue raised by the objectors regarding the substance of the settlement is that the monetary relief is insufficient. (Docket No. 161 at 18-19.) Again, the Moore Group Objectors raised their concern regarding the monetary portion of the settlement multiple times in their previously-filed objections. They stated, "This fund is grossly inadequate and will not provide meaningful relief or adequate compensation to the victims of the Firm's systemic racial discrimination." (Docket No. 95 at 17; *see also* Docket No. 129 at 9 ("The Moore Group respectfully submits that even the $36 million starting point . . . is extremely low and would not make whole the victim of Morgan Stanley's discrimination."); *see also* Docket No. 145 at 8-12.) The objectors also raised their concerns regarding the adequacy of the monetary portion of the settlement during the preliminary approval hearing. (Dermody Decl., Exh. A at 33, 39-50, 58 ("I want to speak to the topic of whether $16,000 give or take as an average for individuals is

[13] To the extent the Moore Group Opt Out Objectors also incorporate this objection, they clearly lack standing to challenge the sufficiency of the monetary relief.

adequate. We contend it certainly isn't.")

In approving the settlement, however, the Court found that, for the reasons set forth above regarding the use of the compensation shortfall damage analysis, the settlement amount "is obviously not deficient, and a sizeable discount is to be expected in exchange for avoiding uncertainties, risks, and costs that come with litigating a case to trial. Again, the issue is not whether the settlement 'could be better,' but whether it falls within the range of appropriate settlements. This settlement certainly does." (Docket No. 158 at 14 (citation omitted).) Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.

ix. <u>The Objection Regarding the Scope of the Release Was Previously Considered.</u>

The ninth issue raised by the objectors regarding the substance of the settlement is that the class member release is too broad. The Moore Group Objectors raised this issue in their Motion for Discovery Regarding Proposed Settlement. (Docket No. 129 at 9 ("however, class members are required to waive claims for termination based on low production.")) This objection was also raised in the Objectors' Supplemental Brief in Opposition to Class Certification and Proposed Settlement. (*See* Docket No. 145 at 10 ("Class members should not be required to release claims or damages not included in the 'compensation shortfall' analysis, including claims for termination, emotional distress, punitive damages, front pay and others not sought by the class.")) It was raised again in the Objector's Administrative Motion for Production of Materials Filed Under Seal and In Camera. (Docket No. 152)("The Objectors believe that the proposed settlement requires release of termination claims, but plaintiff's compensation shortfall damages calculation does not take account of or value relief required by law for these claims.")

Having considered this objection previously, the Court rejected it, recognized the value of the class monetary relief, and observed that "the programmatic relief set out in the Settlement Agreement is substantive, meaningful, and valuable to the class." (Docket No. 158 at 14, 16.) Accordingly, this argument was previously raised and lacks merit.[14]

[14] To the extent the Moore Group Opt Out Objectors also incorporate this objection, they clearly

x. The Objection To Ms. Curtis-Bauer's Settlement of Individual Claims Was Previously Considered.

The tenth issue raised by the objectors regarding the substance of the settlement is that it provided for settlement of Ms. Curtis-Bauer's individual claims, thereby conferring "special treatment." (Docket No. 161 at 19-20.) They also contend Ms. Curtis-Bauer's claims are time-barred. (*Id.*)

These objections have been raised numerous times. (Docket No. 95 at 11 ("Class representatives cannot receive disproportionately special treatment. . . . It is also unclear what other claims Ms. Curtis-Bauer could have that are still timely, given that she left Morgan Stanley in 2002."); Docket No. 129 ("her special award of $150,000 may have left her disinterested in testing the formula for distribution of the remaining common fund. This special treatment left no class representative to stand in the shoes of absent class members and to test the sufficiency of the fund or the method of distributing its proceeds."); Docket No. 152 at 3-4 ("in light of the substantial difference between the monetary award Ms. Curtis-Bauer will receive for her non-class claims as compared to her class claims, it is appropriate to examine whether there is even an appearance that the sole class representative is being provided with an improper incentive to support the proposed settlement and whether the circumstances of this settlement create a conflict of interest that renders her an inadequate class representative.") The objectors also voiced these issues during the preliminary settlement approval hearing. (Dermody Decl., Exh. A at 32-33) ("those claims are time-barred").

Plaintiff responded to these concerns at the hearing by explaining, "these are not claims that were time barred, your honor, these were legitimate claims and that's why she's entitled to a payment for signing a release that's considerably broader than the release that class members are governed by." (*Id*. at 66.) The legitimacy of her individual claims was also addressed extensively in the Post-Hearing Memo of Plaintiff Curtis-Bauer. (Docket No. 137 at 3-5.)

The Court considered these objections in its February 7, 2008 Order. It concluded that Ms. Curtis-Bauer's individual claims were "distinct from the claims asserted in this action."

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lack standing to challenge the scope of the class release.

(Docket No. 158 at 7.) It further found that she is an adequate representative who participated in the decision to settle the case and the relief negotiated on behalf of the Class. (*Id.* at 7-9.) Specifically, the Court stated that it "declines to reject her as a representative merely because Objectors perceive an appearance of impropriety where there is no evidence and only Objectors' speculation that any improprieties have taken place." (*Id*. at 9.) In finding her to be an adequate representative, the Court concluded that Ms. Curtis-Bauer "is an engaged representative, that she has taken her duties as a class representative seriously, that she has released distinct non-class claims, and that her interests are aligned with those of the class." (*Id*.) Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.[15]

xi. The Objection Regarding Inclusion of Latinos In the Settlement Classes Was Previously Considered.

The eleventh issue raised by the objectors regarding the substance of the settlement is that the class included both African-Americans and Latinos. (Docket No. 161 at 20.) The objectors have raised this concern in their prior objections. (Docket No. 95). They stated, "The parties have not explained the basis for their decision to create a single 'race and color' class for all discrimination claims of African-Americans and Latinos. . . . It is naive and dangerous to assume that Latinos and African-Americans necessarily have the same experiences, and the same claims, or that the discrimination they face can be remedies with the same programs." (*Id*. at 12, 16). They also repeated this objection in their Supplemental Briefing. (*See* Docket No. 129 at 6 ("The Moore Group believes that Morgan Stanley's workforce data will reveal different outcomes for Latino and African-American Financial Advisors at Morgan Stanley and actual antagonism within the proposed class that prevents certification in one lawsuit of both groups.); Docket No. 145 ("The Moore group respectfully submits that the challenged practices do not affect African-Americans and Latinos in the same way and that the working conditions and outcomes of the two groups at Morgan Stanley are very different. . . . actual conflicts exist between African-Americans and Latino class members that should prevent a single class.")) The objectors also

[15] To the extent the Moore Group Opt Out Objectors also incorporate this objection, they clearly lack standing to challenge class and non-class monetary relief.

voiced their concern that Latinos are not as disadvantaged in comparison to African-American brokers during the preliminary approval hearing. (Dermody Decl., Exh. A at 35-36.) Counsel for Plaintiff addressed these concerns at the hearing. (*Id*. at 65-66) ("We have this power ranking system which adversely affected both African-American and Latinos in the same way.").

The Court addressed this issue in its December 12, 2007 Order. It stated "Although Objectors argue on 'information and belief' that African-Americans have lower representation rates, lower compensation, and higher rates of attrition than Latinos, they have not suggested that those differences are related to different discriminatory practices. . . . Rule 23(a)(3)'s typicality requirement can be satisfied even if class members are 'denied promotion or promoted at different rates,' provided that the 'discrimination they allegedly suffered occurred through an alleged common practice.'" (Docket No. 130 at 4 (citations omitted.)) It also stated that it "rejects Objectors' vague arguments that inclusion of Latinos in the settlement makes it unfair." (*Id*. at 6, n.3.)

Additionally, in approving the settlement, the Court stated that it was "satisfied by the information provided in the Supplemental Declaration of Adam T. Klein, filed under seal for *in camera* inspection, that the disparities in compensation are not so great that it is unfair or inappropriate to treat African-Americans and Latinos in a similar fashion for the purposes of the monetary relief." (Docket No. 158 at 13.) After analysis of the settlement, the Court found that "the programmatic relief set out in the Settlement Agreement is substantive, meaningful, and valuable to the class." (Docket No. 158 at 16.) Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.

xii. <u>The Objection Regarding The Adequacy of the Monetary Relief Was Previously Considered.</u>

The twelfth issue raised by the objectors regarding the substance of the settlement is that the monetary portion of the settlement is insufficient. (Docket No. 161 at 21.) This issue was addressed above (paragraph 8) and will not be addressed again here. The objection is thus without merit.

xiii. The Objection Regarding Arbitration Was Previously Considered.

The thirteenth issue raised by the objectors regarding the substance of the settlement is that the settlement provides that disputes will be resolved by arbitration for the term of the settlement. (Docket No. 161 at 21.) This issue was previously raised by the objectors. (Docket Entry No. 95 at 23) ("Any meaningful settlement should include Morgan Stanley's agreement to continue to provide employees access to the court, and not mandatory arbitration of their civil rights claims, for the duration of any consent decree."). The objectors also raised this issue during the preliminary approval hearing. (Dermody Decl., Exh. A at 62) ("And another concern, Your Honor, is this settlement divests this Court of jurisdiction to hear any disputes about the settlement and only the parties are allowed to bring any claims and they must bring it in arbitration.").

Notably, there is no evidence in the record that Morgan Stanley compels brokers with discrimination claims to arbitration. In fact, the evidence shows the opposite. This is an objection in search of a problem.

Counsel for Plaintiff also addressed this concern at the hearing, stating "that's certainly our understanding, that final judgment will reserve continuing jurisdiction." (*Id*. at 71.) The Settlement Agreement filed on February 11, 2008, provides that the Court does maintain jurisdiction to enforce the terms of the Settlement Agreement. (*See* Settlement Agreement, Docket No. 159, at 47; *see also* Post-Hearing Memorandum of Plaintiff Curtis-Bauer, Docket No. 137 at 3.) Accordingly, this objection has been considered and is without merit.

xiv. The Objection Regarding Adequacy of Notice Was Previously Considered In Part and is Otherwise Without Merit.

The fourteenth issue raised by the objectors regarding the substance of the settlement is that notice was inadequate. (Docket No. 161 at 22.) This issue, too, was previously raised by the objectors. (Docket Entry No. 95 at 23) (asserting that the Notice is "confusing and inaccurate."). The objectors now contend that the Notice is ineffective because the use of Morgan Stanley's last known address to locate class members may contain inaccurate information.

This complaint is absurd on its face. The Order preliminarily approving the settlement directs that the Claims Administrator "will update any new address information for potential class members as may be available through the National Change of Address ("NCOA") system." (Docket No. 158 at 19.) It further provides that "The Claims Administrator will trace all returned undeliverable notices and re-mail to the most recent address available." (*Id.*) Here, the Claims Administrator traced and remailed all returned undeliverable notices to the most recent addresses available. (Declaration of Mark Patton, ¶ 3.)

The objectors also complain that those Class members who received the Notice did not have full information about the case because the Notice references an incorrect website address[16] through which class members could receive a copy of the Notice and other documents. (Docket No. 161 at 22.) Given the fact that the only way class members would even know about the incorrect web address were if they had already received the Notice, the incorrect web address certainly did not affect the delivery of actual Notice of the settlement terms to the Class. Moreover, the Order approving the settlement does not reference a website as a material component of Notice. (Docket No. 158 at 18.) Instead, the Order reflects that "the Claims Administrator will distribute the Class Notice and Claim Form to Settlement Class members by first class U.S. Mail to their last known addresses. There is no additional method of distribution that would be reasonably likely to notify Class Members who may not receive notice pursuant to the proposed distribution plan." (*Id.*)

Accordingly, anyone who received the Notice with the incorrect website was already provided with full information about the settlement through the Notice they received. Any information that Class members could have received by visiting the website was entirely redundant to the Notice. In addition, the Notice contained information regarding the case name and number and the contact information for counsel, the Claims Administrator, and the Court. Any Class member wishing to view the actual settlement documents could have obtained them by contacting either the Clerk's office, the Claims Administrator, Class Counsel, or Morgan Stanley.

[16] Class Counsel discovered the problem with the web posting independently in late April 2008 and corrected the problem as soon as it was identified.

There was no requirement that Notice be given via the Internet, and no class members were prejudiced by any inability to locate the information via a web posting. Thus, this objection is without merit.

xv. The Objection Regarding Ledbetter Was Previously Considered.

The fifteenth issue raised by the objectors regarding the substance of the settlement is that it did not take *Ledbetter* into account. The objectors raised this issue with the Court in the preliminary settlement approval hearing. (Dermody Decl., Exh. A at 26.) ("Under Supreme Court in recent rulings *Ledbetter* following the earlier decision in Morgan, said even though they affect current earnings you can't look at them, you need to look at what decision did the employer make in the relevant time frame, that is the statute of limitations period.").) Accordingly, this argument was previously raised, addressed by the parties and the Court and lacks merit.

3. Billy Manning's Objections Regarding the Inclusion of Latinos in the Class, the Adequacy of Ms. Curtis-Bauer, the Adequacy of the Monetary Portion of the Settlement, and the Scope of the Release Lack Merit

Class member Billy Manning individually submitted a letter setting forth objections to the settlement on April 28, 2008. (Dermody Decl., Exh. B.) He states four grounds for objections to the settlement, all of which were raised by the Moore Group Objectors, were considered and rejected by the Court prior to preliminary approval of the settlement, and are otherwise without merit.[17]

Mr. Manning's first objection is that the settlement class includes both African-Americans and Latinos. (Dermody Decl., Exh. B at 2.) As set forth above (*see supra* §C.1.b.iv) this issue has been raised and rejected by the Court. Specifically, the Court has found that, "Although Objectors argue on 'information and belief' that African-Americans have lower representation rates, lower compensation, and higher rates of attrition than Latinos, they have not suggested that

[17] Mr. Manning does not appear to be represented by Counsel for the Moore Group Objectors. However, it is apparent that Mr. Manning is, at minimum, in communication with the Moore Group Objectors, if not part of their Group, because his objections are nearly identical to a number of those raised by the Moore Group Objectors and are based on issues not described in the Notice. (*See* Dermody Decl., Exh. B.)

those differences are related to different discriminatory practices. . . . Rule 23(a)(3)'s typicality requirement can be satisfied even if class members are 'denied promotion or promoted at different rates,' provided that the 'discrimination they allegedly suffered occurred through an alleged common practice.'" (Docket No. 130 at 4 (citations omitted.)) The Court also stated that it "rejects Objectors' vague arguments that inclusion of Latinos in the settlement makes it unfair." (*Id*. at 6, n.3.)

Mr. Manning next complains that Ms. Curtis-Bauer became involved in this action only after members of the Moore Group had attempted to negotiate a settlement with Morgan Stanley. (Dermody Decl., Exh. B at 2.) The Court addressed this issue when it was raised by the Moore Group Objectors. The Court stated that it "declines to reject [Ms. Curtis-Bauer] as a representative merely because Objectors perceive an appearance of impropriety where there is no evidence and only Objectors' speculation that any improprieties have taken place." (Docket No. 158 at 9.) In finding her to be an adequate representative, the Court concluded that Ms. Curtis-Bauer "is an engaged representative, that she has taken her duties as a class representative seriously, that she has released distinct non-class claims, and that her interests are aligned with those of the class." (*Id*.)

Mr. Manning next contends that the monetary portion of the settlement is insufficient. (*See* Dermody Decl., Exh. B at 2.) ("$ 16 million dollars is a miniscule amount of money to the firm.") This issue, as set forth above, has been raised many times by the Moore Group Objectors and has been rejected by the Court. (*See supra* § C.1.b.viii.) Specifically, the Court found that the settlement amount "is obviously not deficient" and "certainly" falls within the range of appropriate settlements. (Docket No. 158 at 14.) Accordingly, this argument was previously raised, addressed by the parties and the Court, and lacks merit. (*Id*. at 1, n.1.)

Finally, Mr. Manning objects that the release is too broad. (Dermody Decl., Exh. B at 2.) This issue was raised by the Moore Group Objectors and rejected by the Court. (*See supra* § C.1.b.ix; Docket No. 158 at 16.)

Because each objection raised by Mr. Manning has been raised by the Moore Group Objectors (sometimes *verbatim*) and rejected by the Court, Plaintiff respectfully requests that the

Court similarly reject Mr. Manning's objections.

4. Conclusion Regarding Objectors

The Moore Group Objectors — both original and supplemental — have simply restated the objections they previously made to this settlement in direct contravention of the Court's admonition that they should not raise objections that have already been raised. No new information is presented, and no new arguments of substance are made which would have any bearing on the Court's prior ruling. Likewise, Billy Manning's objections – seemingly lifted from the Moore Group filings - are without merit. The Court's preliminary determination of fairness should not be changed.

D. The Litigation Involved Substantial Potential Risks.

The "risk, expense, complexity, and likely duration of further litigation" are factors to be considered in assessing a proposed settlement. *Hanlon*, 150 F.3d at 1026.

The factual and legal issues in this case are complex, as demonstrated by the parties' years of hard-fought litigation and the terms of the Settlement Agreement itself. Any liability phase trial of plaintiff's claims - which involve thousands of class members employed throughout Morgan Stanley would also be complex and would require substantial additional preparation and many fact and expert witnesses. Remedial phase proceedings would add to this complexity. All of these complex proceedings would be expensive and would result in significant delay before any potential recovery.

Litigating the case to trial also presents substantial risks. Although plaintiff and class counsel believe class members' claims are strong, it is clear that Morgan Stanley would put on a vigorous defense, and it would ultimately be up to the fact-finder to determine, for example, whether Morgan Stanley acted with a prohibited discriminatory intent or whether its policies had a prohibited discriminatory impact that cannot be defended on job relatedness or business necessity grounds.

In contrast to the complexity, delay, risk and expense of continuing litigation, the proposed settlement will yield a prompt, certain, and substantial recovery for class members.

E. The Parties Conducted Extensive Investigation And Analysis And The Settlement Was Reached through Arms' Length Negotiations.

The parties engaged in extensive fact-gathering and informal discovery before agreeing to the terms of the proposed Settlement Agreement. In connection with settlement discussions, Morgan Stanley produced a substantial number of documents (including vast amounts of data) from which Plaintiff's counsel's experts conducted numerous data analyses. This information, along with witness interviews and information regarding Morgan Stanley's policies, alerted Plaintiff to the scope of systemic problems affecting African-American and Latino Financial Advisors and Registered Financial Advisor Trainees.

The parties participated in negotiations with the assistance of an experienced mediator, Hunter Hughes. The parties' negotiations were protracted and required multiple lengthy sessions, including face-to-face meetings in March, July and August, 2007. (Dermody Decl., at ¶ 6.) Under the supervision of the mediator, all negotiations were conducted at arms' length and in good faith. (*Id*.)

The extensive fact-gathering and informal discovery allowed class counsel — who are experienced employment discrimination attorneys - to assess the strengths and weaknesses of the claims against Morgan Stanley and the benefits of the proposed settlement under the circumstances of this case. (Dermody Decl. at ¶ 7.) As a result of discovery exchanges and communications with class members, class counsel were well informed regarding Morgan Stanley's policies and practices and relied on that information in negotiating the injunctive relief terms of the Settlement Agreement. (*Id.*)

Class counsel were also well informed regarding the potential for monetary recovery. Plaintiff's statistical experts performed promotions and compensation analyses, and then a damages analysis, using the computerized personnel and payroll data provided by Morgan Stanley. (Dermody Decl. at ¶ 8.) Morgan Stanley's experts did the same. (*Id.*) The parties' expert calculations formed the basis for negotiations regarding the monetary terms of the settlement. (*Id.*)

In sum, the, proposed Settlement Agreement is the non-collusive result of extensive factual and legal analysis and protracted arms' length negotiations between experienced and well-

informed counsel under the supervision of an experienced mediator.

F. The Recommendations Of Experienced Counsel Favor Approval Of The Settlement.

The judgment of experienced counsel regarding the settlement is entitled to significant weight, *see, e.g.*, *Hanlon*, 150 F.3d at 1026, and the recommendation of experienced class counsel should be given a presumption of reasonableness. *See Boyd*, 485 F.Supp. at 622.

Class Counsel have extensive experience prosecuting and litigating employment discrimination cases and complex class actions. (*See* Dermody Decl. ¶¶ 13-26; Klein Decl. ¶¶ 3-4; Finberg Decl. ¶ 10.) Class Counsel conducted a comprehensive legal and factual investigation into the claims in this case, *see* discussion *supra*, and class counsel firmly believe that the proposed Settlement Agreement easily satisfies Rule 23(e)' s requirements and is in the best interest of all class members. (Dermody Decl. ¶ 10.) This considered view of experienced counsel weighs heavily in favor of final approval.

II. THE COURT SHOULD GRANT FINAL CLASS CERTIFICATION.

The Court's February 7, 2008 preliminary approval order conditionally certified an injunctive relief class under Rule 23(b)(2) and a monetary relief Settlement Class under Rule 23(b)(3). (*See* Doc. 158 at 4). The Court ruled that the injunctive-relief class satisfied all of the requirements of Rule 23(a) and 23(b)(2) and that the Settlement Class satisfies all of the requirements of Rule 23(a) and Rule 23(b)(3). (*Id.* at 5-11.) The Court also appointed the named plaintiff as Class representative and plaintiff's counsel as Class Counsel. (*Id.* at 11.)

For the reasons stated in plaintiff's motion for preliminary approval and in the Court's February 7, 2008 Order, the Court should grant final certification to the injunctive- relief and monetary-relief class and should confirm the appointment of the Class representatives and Class Counsel.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval to the parties' settlement, grant final certification to the proposed class, and enter the proposed Settlement Agreement.

Dated: May 12, 2008

Respectfully submitted,

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