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14 Morgan Stanley & Co. Incorporated

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

18 JEREMY J. DRAKE and ADAM  
19 SCOTT, on behalf of themselves and  
others similarly situated,

20 Plaintiffs,

21 v.

22 MORGAN STANLEY & COMPANY,  
23 INC., MORGAN STANLEY DW, INC.  
and DOES 1 through 100 inclusive,

24 Defendants.

Case No. CV 09-6467 ODW (RCx)

**[PROPOSED] PROTECTIVE  
ORDER RE USE OF PRIVATE  
AND CONFIDENTIAL  
INFORMATION**

NOTE CHANGES MADE BY THE COURT.

1 Good cause appearing, the Court hereby approves and enters this  
2 Protective Order relating to the use of private and confidential information,  
3 stipulated, consented to and agreed by Plaintiff Jeremy Drake, Plaintiff Adam Scott  
4 and Defendant Morgan Stanley & Co. Incorporated (collectively “Stipulating  
5 Parties”), through their respective counsel of record.

6 1. The preparation and trial of this action may require the  
7 discovery or disclosure of documents, information or other material, including but  
8 not limited to documents, depositions, and interrogatory responses or other papers  
9 (“Discovery Material”) claimed by one or more of the parties to this action or  
10 others to be confidential.

11 2. In order to expedite the flow of information, facilitate the  
12 prompt resolution of disputes over confidentiality, adequately protect material  
13 entitled to be kept confidential, and serve the ends of justice, a protective order for  
14 such information is prudent and necessary.

15 3. Any Stipulating Party may designate any Discovery Material as  
16 “Confidential” or “Highly Confidential” as those terms are defined in Paragraphs 4  
17 and 5 below, that a Stipulating Party has kept secret or confidential and which, if  
18 disclosed, could place a Stipulating Party at a competitive disadvantage in the  
19 marketplace or cause disclosure of information protected by the right to privacy.  
20 Discovery Material shall be designated confidential by stamping the word  
21 “Confidential” or “Highly Confidential,” as appropriate, on each page of the  
22 document containing the information or by a Stipulating Party advising the other  
23 Stipulating Party in writing that such documents are deemed to be “Confidential” or  
24 “Highly Confidential.” Any such designation shall subject the documents or  
25 information, its contents, and any portion thereof, to this Protective Order without  
26 any further act on the part of the designating party.

27 4. “Confidential Information” includes documents or other  
28 information constituting trade secrets, proprietary or other confidential commercial

1 information that belongs to Morgan Stanley & Co. Incorporated (“Morgan  
2 Stanley”) and which if disclosed could place Morgan Stanley at a competitive  
3 disadvantage in the marketplace or cause disclosure of information protected by the  
4 right to privacy, including the following specific categories of documents:

5 (a) documents that reveal confidential employee information  
6 such as name, address, telephone number, salary, commission or asset information,  
7 or demographic or other personal information;

8 (b) documents that reveal financial or personal information  
9 regarding Morgan Stanley’s clients; and

10 (c) documents that reveal confidential financial or  
11 commercial information regarding Morgan Stanley’s business that is not available  
12 to the public or Morgan Stanley’s competitors and which if disclosed could place  
13 Morgan Stanley at a competitive disadvantage in the marketplace or cause  
14 disclosure of information protected by the right to privacy. “Confidential  
15 Information” also includes documents or information protected by the right to  
16 privacy relating to Jeremy Drake, Adam Scott, or past and present employees of  
17 Morgan Stanley, including private personnel or medical information.

18 5. “Highly Confidential” information includes any Confidential  
19 Information which contains information of the most sensitive nature that must not  
20 only be protected from disclosure to non-parties, but also from disclosure to the  
21 parties themselves.

22 6. Neither the provisions of this Stipulated Protective Order, nor  
23 any designation or failure to designate any particular Discovery Material by a party  
24 as Confidential or Highly Confidential Information shall, in this litigation or any  
25 other litigation, constitute a waiver of the rights of a party to assert confidentiality  
26 with respect to any document, material or information meeting the definition of  
27 Confidential or Highly Confidential Information in Paragraphs 4 or 5 above. Upon  
28 discovery of an inadvertent or otherwise non-designation, the discovering party will

1 immediately notify the opposing party and the Discovery Material will be  
2 henceforth treated as if it had been originally designated as Confidential or Highly  
3 Confidential Information, as appropriate, and will be subject to the terms of this  
4 Stipulated Protective Order.

5           7.     Should any Stipulating Party object to the Confidential or  
6 Highly Confidential treatment of any information designated Confidential or  
7 Highly Confidential under the terms hereof, such Stipulating Party shall, after  
8 meeting and conferring in good faith with the designating party, <sup>and complying with local Rule 3</sup> move the Court for  
9 an order releasing the material from the designation as Confidential or Highly  
10 Confidential.

11           8.     All Confidential Information provided by the parties pursuant to  
12 discovery or otherwise obtained in the course of this litigation shall be treated as  
13 confidential and shall not be disseminated to any person not directly connected with  
14 this specific litigation. Specifically, all Confidential Information listed in  
15 Paragraph 4 that is obtained through discovery or otherwise from the parties in this  
16 case shall not be disclosed to anyone other than:

17                   (a)     retained and corporate attorneys for any Stipulating Party  
18 who are engaged in litigating this action and the employees of such attorneys;

19                   (b)     persons not employees of any Stipulating Party who serve  
20 as experts or consultants (“outside experts”) to assist such Stipulating Party’s  
21 counsel in the preparation of this action for trial, including, but not limited to  
22 auditors, accountants, statisticians, economists, medical and mental health experts,  
23 attorneys and other experts, and the employees of such persons;

24                   (c)     a Stipulating Party, or principals, officers, employees,  
25 agents or representatives of any Stipulating Party, whose assistance or consultation  
26 is required by counsel in connection with the prosecution or defense of this action;

27                   (d)     potential witnesses in connection with this litigation;

28

1 (e) any mediator hired by the parties to assist in resolving this  
2 case; and (f) the Court and its personnel.

3 9. All Highly Confidential Information provided by the parties  
4 pursuant to discovery or otherwise obtained in the course of litigation shall be treated  
5 as highly confidential. Specifically, all Highly Confidential Information listed in  
6 Paragraph 5 that is obtained through discovery or otherwise from the parties in this  
7 case shall not be disclosed or made available without written consent from the  
8 designating party or owner of the "Highly Confidential" material and may be made  
9 ONLY to the following persons:

10 (a) Counsel of record in this Action, including employees of  
11 such law firms; other outside counsel associated with Counsel of record in the  
12 representation of a Party in this Action and in-house counsel and legal assistants  
13 employed by a party to this Action and providing services in connection with this  
14 Action provided that all such persons shall be bound by the provisions of this  
15 Protective Order; and

16 (b) independent experts or consultants of the receiving party  
17 to whom disclosure is reasonably necessary for this litigation. An expert shall be  
18 considered an independent expert or consultant only if he or she is not currently  
19 employed by or consulting with any competitor of the party producing the Highly  
20 Confidential Information. Defendant's competitors for purposes of this provision  
21 are defined as any current employee or principal of any large or mid-sized national  
22 or international brokerage firm; and (c) the Court and its personnel.

23 10. No person shall make any disclosure of Confidential  
24 Information to any person falling within categories (b), (c) or (d) in Paragraph 8  
25 without first obtaining from any such person a signed statement in the form  
26 attached hereto as Exhibit "A." No person shall make any disclosure of Highly  
27 Confidential Information to any person falling within category (b) in Paragraph 9  
28 without first obtaining from any such person a signed statement in the form

1 attached hereto as Exhibit "A." Either party may request of the other a copy (if  
2 any) of said signed statement(s) to counsel. The other party must promptly comply  
3 with such a request by providing copies of the signed statement(s) by telecopier or  
4 other appropriate means, and in no event beyond five (5) court days of such a  
5 request. If a party objects to the disclosure of information to a particular person, the  
6 Stipulating Party objecting to such disclosure shall <sup>promptly comply with local Rule 37 and</sup> ~~have five (5) court days to seek~~  
7 a protective order from the Court barring such disclosure and no such disclosure  
8 shall be made until further order of the Court.

9 11. No disclosure of Confidential or Highly Confidential  
10 Information shall be made except in accordance with this Stipulation and Protective  
11 Order, and no use shall be made of any Confidential or Highly Confidential  
12 Information except in accordance with this Stipulation and Protective Order.

13 12. This order shall in no way impair the right of any party to raise  
14 or assert a defense or objection, including but not limited to defenses or objections  
15 to the production of documents or information and to the use, relevancy or  
16 admissibility at the trial of this litigation of any evidence, based on privacy, trade  
17 secret, confidentiality, attorney-client privilege, attorney work product, relevancy or  
18 any other grounds (when the parties deem such an objection to be necessary or  
19 appropriate) whether or not comprised of documents or information are governed  
20 by this order.

21 13. Absent consent by the designating party or owner of the  
22 Confidential or Highly Confidential Information, in the event that counsel for any  
23 party determines to file with the Court any pleading, motions, brief or other papers  
24 which contain or make reference to Confidential or Highly Confidential  
25 Information, such papers shall not be filed in the public records, but shall be lodged  
26 with the Court under seal in sealed envelopes or other appropriate sealed containers,  
27 until such time as any other affected party, non-party, designating party, or owner  
28 of the Confidential or Highly Confidential Information files a Motion to Seal the

Local Rule 79-5 and

provided para. 14 does not

1 documents in accordance with Paragraph 14 below, ~~On the outside of the envelope~~ conflict  
2 envelopes, a copy of the first page of the document shall be attached. If 79-5. with LR

3 Confidential or Highly Confidential Information is included in the first page  
4 attached to the outside of the envelopes, it may be deleted from the outside copy.

5 The word "Confidential" shall be stamped on the envelope and a statement  
6 substantially in the following form shall also be printed on the envelope:

7 "This envelope is sealed pursuant to Order of the Court,  
8 contains Confidential Information and is not to be opened  
9 or the contents revealed, except by Order of the Court or  
agreement by the parties."

10 14. A party that files with the Court, or seeks to use at trial or any  
11 hearing in this matter, materials designated as Confidential or Highly Confidential  
12 Information by anyone other than itself, and who does not seek to have the record  
13 containing such information sealed, shall comply with the following requirements:

14 (a) At least five (5) court days prior to offering Confidential  
15 or Highly Confidential Information into evidence at trial or at any hearing in open  
16 court, the submitting party shall give notice to all other parties of the submitting  
17 party's intention to file or use the Discovery Material, including specific  
18 identification of the Discovery Material (e.g., bates number). Any affected party,  
19 non-party, designating party, or owner of the Confidential or Highly Confidential  
20 Discovery Material may then apply for an order that the evidence be received in  
21 camera or under other less public circumstances to prevent unnecessary disclosure.  
22 This procedure does not apply to materials designated as Confidential or Highly  
23 Confidential used exclusively for impeachment purposes. If materials designated as  
24 Confidential or Highly Confidential are used exclusively for impeachment, the  
25 party seeking to use such materials shall seek to have the proceedings closed prior  
26 to introduction of such material and shall abide by paragraphs 13 and 14 if the  
27 material is thereafter filed with the court.  
28

1 (b) At the time of filing a motion or brief with the Court  
2 involving Confidential or Highly Confidential Information, the submitting party  
3 will not file the documents in the public record, but shall lodge the materials with  
4 the Court under seal. Any affected party may then file a motion to seal, pursuant to  
5 Local Rule 79-5, within fifteen (15) court days after such lodging. Documents  
6 lodged under seal shall bear a legend stating that such materials shall be unsealed  
7 upon expiration of fifteen (15) court days, absent the filing of a motion to seal or  
8 Court order. ~~All such materials shall be accepted by the Clerk of the Court for~~  
9 ~~lodging and shall be maintained by the Clerk of the Court separate from the public~~  
10 ~~records in this action and shall be released only upon further Order of the Court~~  
11 ~~pursuant to Local Rule 79-5 regarding the Sealing of Documents.~~ Where possible,  
12 only Confidential or Highly Confidential portions of the filings with the Court shall  
13 be lodged under seal. The failure by the designating party or owner of Confidential  
14 or Highly Confidential Information to lodge such material with the Court under seal  
15 in no way alters or waives the protected and Confidential or Highly Confidential  
16 nature of the said material, which remains subject to the restrictions and limitations  
17 set forth in this Protective Order.

18 15. Nothing in this Protective Order shall be interpreted to constitute  
19 an agreement by the parties as to what documents or information must be filed under  
20 seal in this litigation or shall block public access to non-confidential information.  
21 Rather, this Protective Order sets forth only the procedure for lodging documents  
22 designated as Confidential or Highly Confidential temporarily under seal with the  
23 Court so that any affected party, non-party, designating party, or owner of the  
24 Confidential or Highly Confidential Information may file a proper Motion to  
25 permanently Seal the documents from the public record.

26 16. Any such Motion to Seal must comply with federal rules and  
27 Local Rules for such sealing. The Court's refusal to order certain documents sealed  
28 does not impact or abrogate any party's designation of those documents as



1 Confidential or Highly Confidential Information. If a Motion to Seal is not filed  
2 within the time limits set forth above in Paragraph 14 (a) and (b) after proper notice  
3 that Confidential or Highly Confidential Information has been lodged under seal with  
4 the Court, the documents shall be removed from the sealed envelope(s) or sealed  
5 container(s) referenced in Paragraph 13 and shall be placed in the public record.

6 17. Nothing in this order shall preclude any party from using  
7 Confidential or Highly Confidential Information at the trial of this litigation;  
8 provided, however, that prior to using such material the party offering it advises the  
9 Court and all other parties so that steps can be taken to ensure the preservation of the  
10 confidential nature of the information to be used, if deemed necessary and  
11 appropriate by the Court.

12 18. Nothing contained herein shall restrict in any way the rights of  
13 any Stipulating Party who owns the Confidential or Highly Confidential Information  
14 to release that information or otherwise make it non-Confidential.

15 19. At the conclusion of the litigation, all Confidential and Highly  
16 Confidential Information designated in accordance with this Order shall be placed by  
17 counsel for the discovering party in a sealed envelope with the words to the effect  
18 "Confidential Pursuant to Protective Order" on the envelope and shall be kept safe,  
19 secure and confidential in accordance with the terms of this Order. Notes,  
20 summaries and other documents protected by the work product doctrine shall remain  
21 subject to this Stipulation and Protective Order.

22 20. This Stipulation and Protective Order shall not limit the right of  
23 any party to apply for further protective orders as modifications or extensions of  
24 this order, and shall not restrict the use by any party of its own information.

25 21. Once protections in this Stipulation and Protective Order have  
26 attached to a document, statement or item of information hereafter communicated,  
27 such protections shall not be reduced or waived by further communicating,  
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restating, summarizing, discussing or referring to any such documents, statements or information.

22. This Court and its personnel shall not be bound by the terms of this Protective Order.

**IT IS SO ORDERED**, as amended at paras. 7 through 10, 13 and 14.

Dated: Jan. 21, 2010

  
~~OTIS D. WRIGHT, II~~  
~~UNITED STATES DISTRICT JUDGE~~

ROSALYN M. CHAPMAN  
UNITED STATES MAGISTRATE JUDGE

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JEREMY J. DRAKE and ADAM SCOTT, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

MORGAN STANLEY & COMPANY, INC., MORGAN STANLEY DW, INC. and DOES 1 through 100 inclusive,

Defendants.

Case No. CV 09-6467 ODW (RCx)

**CERTIFICATION RE USE OF PRIVATE AND CONFIDENTIAL INFORMATION**

I \_\_\_\_\_, declare under penalty of perjury under the laws of the State of California thereby that I have read in its entirety and understand the attached Protective Order re Private and Confidential Information (the "Protective Order") in the matter of *Drake et al. v. Morgan Stanley & Co. Incorporated et al.*, United States District Court, Central District of California, Case No. CV 09-6467 ODW (RCx). I hereby agree to fully comply with the terms and conditions thereof. I also hereby consent to be subject to the jurisdiction of the above-captioned court with respect to any proceedings relating to enforcement of the Protective Order.

Executed this \_\_\_\_ day of \_\_\_\_\_ 200\_\_, at \_\_\_\_\_.

\_\_\_\_\_  
(Signature)