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Attorneys for Plaintiff  
GARY E. AFFONSO

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GARY E. AFFONSO

PLAINTIFF,

v.

METROPOLITAN LIFE INSURANCE  
COMPANY; MORGAN STANLEY SMITH  
BARNEY LLC (PLAN ADMINISTRATOR)

DEFENDANTS.

**Case No.: CV 10 5054 PJH**

**PLAINTIFF'S AND DEFENDANTS'  
STIPULATION REGARDING: 1)  
METROPOLITAN LIFE INSURANCE  
COMPANY'S AND MORGAN STANLEY  
BENEFITS PLAN'S MOTION FOR ABUSE  
OF DISCRETION REVIEW; 2) PLAINTIFF'S  
MOTION TO AUGMENT THE  
ADMINISTRATIVE RECORD; AND 3)  
DEFENDANT MORGAN STANLEY & CO  
INCORPORATED'S MOTION TO DISMISS**

**AND ORDER**

Date: June 22, 2011

Time: 9: 00 a.m.

Ctrm: 3, Third Floor (Oakland)

1  
2 Plaintiff's Counsel has represented to the parties and the Court that Plaintiff's Counsel, Larry  
3 Padway, is ill, suffering from the flu in the course of recuperating from a knee surgery. Plaintiff's  
4 counsel has further advised that Mr. Padway is Plaintiff's ERISA specialist, and the only attorney on  
5 Plaintiff's team who is knowledgeable regarding the ERISA issues presented by the following three  
6 motions set for hearing at 9:00 a.m. on June 22, 2011 before this Court: 1) Defendants Metropolitan Life  
7 Insurance Company's and Morgan Stanley Benefits Plan's Motion for Abuse of Discretion Review; 2)  
8 Plaintiff's Motion to Augment the Administrative Record; and 3) Defendant Morgan Stanley & Co  
9 Incorporated's Motion to Dismiss the Third Claim for Relief Contained in Plaintiff's First Amended  
10 Complaint (collectively referred to hereafter has the "Three Motions"). As a result of Mr. Padway's  
11 illness, Plaintiff's counsel has represented that it is impossible for Mr. Padway to appear at tomorrow's  
12 hearing on the Three Motions.  
13

14  
15 In light of Plaintiff's Counsel's representations regarding Mr. Padway's illness, his inability to  
16 attend tomorrow's hearing and the role that he serves as Plaintiff's ERISA specialist, the Parties, by and  
17 through their respective counsel hereby stipulate: 1) to submit the Three Motions on the papers, and thus  
18 without a corresponding hearing, provided that the Court has no related questions of counsel and  
19 believes that there is no need for a hearing on the Three Motions; and 2) in the event that the Court has  
20 questions and/or feels that a hearing on the Three Motions is necessary, to continue the hearing on the  
21 Three Motions to a future date that is convenient to the parties and the Court.  
22

23 Date: June 21, 2011

Respectfully submitted,

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25 **GUY KORNBLUM & ASSOCIATES**  
26 **LESS & WEAVER**

27  
28 By: /s/ Guy Kornblum  
GUY O. KORNBLUM  
Counsel for PLAINTIFF

1 **SEDGWICK DETERT MORAN & ARNOLD LLP**

2  
3  
4 By: /s/ Rebecca Hull  
5 REBECCA A. HULL  
6 ERIN A. CORNELL  
7 Counsel for Defendant METROPOLITAN LIFE  
8 INSURANCE COMPANY, MORGAN STANLY  
9 BENEFITS PLAN, incorrectly sued herein as  
10 MORGAN STANLEY & CO., INCORPORATED,  
11 BASIC AND SUPPLEMENTAL LIFE  
12 INSURANC PLAN: 501

13 **LAW OFFICES OF STEVEN A. ELLENBERG**

14 By: /s/ Mark Boennighausen  
15 MARK BOENNIGHAUSEN  
16 Counsel for Defendant MORGAN STANLEY &  
17 CO., INC.

18 6/22/11



THE MOTIONS HEARING IS CONTINUED TO JUNE 29, 2011 AT 9:00 A.M. DUE TO THE COURT'S CALENDAR ALREADY BEING FULL ON JUNE 29, 2011 THIS CASE WILL BE CALLED LAST AND THE PARTIES WILL HAVE TO MAKE DUE WITH WHATEVER TIME IS LEFT AFTER THE OTHER MATTERS HAVE BEEN HEARD.