United States District Court, S.D. New York.
Stella MITCHELL, Hwa-Mei C. Gee, Barbara LaChance, Durpatty Persaud, and Janet Ramsey, on behalf of themselves and all others similarly situated, Plaintiffs,
v.
METROPOLITAN LIFE INSURANCE COMPANY, INC. d/b/a Metlife, Defendant.
No. 01-CV-2112 (WHP).
August 10, 2001.

Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion for Disqualification of Lieff, Cabraser, Heimann & Bernstein, LLP

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I. *INTRODUCTION*

Plaintiffs submit this Memorandum and supporting papers[FN1] in opposition to defendant's motion to disqualify Lieff, Cabraser, Heimann & Bernstein ("Lieff, Cabraser") from serving as plaintiffs' co-counsel in their gender discrimination class action against Metropolitan Life Insurance Company, Inc. ("MetLife" or "defendant"). As described below, the determination of this motion requires a fact-intensive analysis. However, in reviewing the facts, it is clear that defendant has failed to meet its high burden of demonstrating that this lawsuit is "substantially similar" to MetLife matters on which a current Lieff, Cabraser attorney, who is not assigned to the *Mitchell* matter, worked during her tenure with another firm. Accordingly, for the reasons described below, defendant's motion should be denied.

FN1. Filed together with this Memorandum of Law are Declarations from Kelly M. Dermody, Rachel Geman, Leila K. Hilal, Richard T. Seymour, Steven M. Tindall, and Charles W. Wolfram, and the Affirmation of Wendy R. Fleishman, referred to, respectively, as *Dermody Decl., Geman Decl., Hilal Decl., Seymour Decl., Tindall Decl., Wolfram Decl.,* and *Fleishman Aff.*

II. *PROCEDURAL BACKGROUND*

On April 17, 2001, defendant contacted plaintiffs' counsel requesting information about attorney Wendy R. Fleishman ("Fleishman") and the ethical screens utilized at Lieff, Cabraser. *Dermody Decl.,* ¶ 11. Plaintiffs promptly responded, setting forth the details of the ethical screen employed by Lieff, Cabraser and noting that the Lieff, Cabraser conflicts attorneys have informed plaintiffs that "Ms. Fleishman has never represented MetLife in any employment discrimination matter, or in any manner substantially related to any employment discrimination matter." Def. Br., *Fagin Aff.,* Ex. E.[FN2]

FN2. The Memorandum of Law in Support of Defendant's Motion for Disqualification of Lieff, Cabraser,

Heimann & Bernstein, LLP is referred to as "Def. Br."

Approximately one month later, the parties engaged in a pre-motion exchange of letters to this Court. Despite the information readily provided by Lieff, Cabraser in response to defendant's inquiry and letters, defendant continued to pursue its motion, to which plaintiffs herein respond.

III. *FACTUAL BACKGROUND*

The relevant facts for the purposes of this motion involve (1) the issues raised by *Mitchell;* (2) the work Fleishman performed at Skadden; (3) Fleishman's work at Lieff, Cabraser; (4) the Lieff, Cabraser firm structure and ethical wall separating Fleishman from MetLife matters; and (5) the staffing of *Mitchell.* This section sets forth the pertinent facts in each of these areas.

A. *The Issues Raised By Mitchell.*

Plaintiffs filed their class action complaint against MetLife on March 13, 2001. MetLife is one of the largest insurance and financial services companies in the United States, serving millions of consumers, businesses and other entities. The *Mitchell* complaint alleges that MetLife has engaged in a policy and practice of gender discrimination in, among other things, hiring, compensation, and promotions throughout the division of the company that sells insurance and financial services products.[FN3] Plaintiffs also contend that qualified male applicants are almost twice as likely to be hired as qualified female applicants; that MetLife discriminates against female employees by maintaining a gender-based glass ceiling on promotional opportunities; and that gender bias in the sales force causes differential compensation between male and female employees. *See Complaint* ¶¶ 5-7, 48, 67.

FN3. Plaintiffs have identified this division as the "Insurance and Financial Services Division." However, defendant describes this division as the "MetLife Financial Services Division."

The proof in this case will turn in considerable part on statistical analyses regarding utilization and compensation data across the account representative and management-level positions. This case will also examine MetLife's human resources and personnel systems and will evaluate how MetLife treats its female applicants and employees, including the named plaintiffs. This case will not address MetLife's insurance products, including the terms and conditions of those products; the content of MetLife's sales and marketing pitches to customers; MetLife's former workforce in Europe; general insurance regulations; or consumer protection laws.

B. *Fleishman's Unrelated Work at Skadden, Arps.*

Fleishman, a new Lieff, Cabraser attorney, represented MetLife in various mass tort and consumer litigation matters during her tenure as an attorney in the Mass Tort and Insurance Litigation Group at her former firm, Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"). In her eight-year tenure as an attorney with Skadden, Fleishman did not work on employment discrimination matters for MetLife, or for any other client, and was not a member of Skadden's Labor and Employment Law Group.[FN4] *See Fleishman Aff.,* ¶ 23; *Dermody Decl.,* Ex. A (excerpts from Skadden's website). In particular, Fleishman did not work on any matters involving gender discrimination, equal employment opportunity, or general human resources practices. *Fleishman Aff.,* ¶ 6.

FN4. Indeed, although defendant reports that Fleishman worked on approximately 90 MetLife matters, they

have not identified even one that was remotely related to employment discrimination. Def. Br. at 6; *see also Geman Decl.,* ¶¶ 6-14, Exs. D-O (none of the documents produced by defendants regarding Fleishman demonstrate a substantial relationship to *Mitchell.*

The matters on which Fleishman worked for MetLife concerned the sales and marketing of life insurance products and annuities. *See Fleishman Aff.,* ¶ 7; *see also id.,* ¶¶ 8-13, 15-22; Def. Br., *Sullivan Aff.,* ¶ 4 (the "common thread running through virtually all of the MetLife litigation being handled by the Skadden/McCarter team was the allegation that [MetLife] had engaged in improper sales practices in connection with their sale of insurance (or other financial products) to MetLife customers"). The issues that arose in these cases implicated consumer protection statutes, common law tort and fraud claims, securities laws, and related fields such as trusts and estates and tax law. *Fleishman Aff.,* ¶¶ 8-13, 15-22; *Geman Decl.,* Exs. D-K (complaints produced by defendants in response to plaintiffs' requests for production of documents; plaintiffs' requests for production of documents).

In working on MetLife matters, Fleishman never had occasion to "seek or obtain any documents from human resources" nor to review "general compensation data for the sales force." *Fleishman Aff.,* ¶ 11. She never sought or obtained "any documents that concerned hiring, evaluations, promotions, demotions, or training other than specific training about MetLife products." *Id.* Fleishman was "not privy to *any* information about hiring, training, supervision, or discipline of any member of the sales force in connection with anything other than the integrity and truthfulness of the *representations* made to customers in connection with the sales and marketing of MetLife products." *Id.* (emphasis added).

As set forth fully in the Fleishman Affirmation and in defendant's affidavits, the Metlife cases on which Fleishman worked concerned the following specific issues:

• *In re: Metropolitan Life Insurance Company Sales Practices Litig.,* MDL No. 1091: This case concerned alleged material misrepresentations in connection with the sale of insurance policies and annuities. *See Fleishman Aff.,* ¶ 8; *Geman Decl.,* Ex. D (complaint). Fleishman's role was limited to collecting documents and interviewing witnesses related to the sales and marketing of insurance products and annuities; training account representatives in connection with the sales and marketing of MetLife products; computer records regarding the sales and marketing of products; and complaints made to MetLife in connection with the sales and marketing of the products at issue in the *Sales Practices* litigation. *See Fleishman Aff.,* ¶¶ 11-12. Fleishman reports that the "race, age, ethnic origin or gender of the sales forces was never a subject of inquiry or discussion, nor was there any discussion about gender discrimination." *Id.,* ¶ 11. In addition, "if any individual [she] interviewed had been promoted, demoted, passed over for a position, or not promoted, [she] was unaware of such facts because their personal employment 'experience' was never a subject of inquiry." *Id.,* ¶ 13.

• *Heslin, et al. v. Metropolitan Life Ins. Co., et al.,* Case No. 2186-99. This case involved plaintiffs who opted out of the settlement class in the *Sales Practices* litigation and who alleged essentially identical claims involving a particular MetLife employee. *See Fleishman Aff.,* ¶ 16; Def. Br., *Finnegan Aff.,* ¶ 5; *Geman Decl.,* Ex. E (complaints). Fleishman's role involved reviewing documents pertaining to the sales made to the plaintiffs and interviewing the employee and his supervisors regarding the alleged misrepresentations at issue in the case. *Fleishman Aff.,* ¶ 16. To the extent any interview involved any information about training or supervision, "such information was limited to [the one employee] and the sale of the products." *Id.*

• *Middleton, et al. v. Metropolitan Life Ins. Co., et al.,* Case No. CV99-02189. This was also a sales practices case regarding alleged improper sales of insurance policies and financial products. *See Fleishman Aff.,* ¶ 17; Def. Br., *Finnegan Aff.,* ¶ 6; *Geman Decl.,* Ex. F (complaint). Fleishman's role involved interviewing employees regarding the manner in which the sales were made to the plaintiffs, the materials used as part of the sales, and the training and supervision of the employees "solely in connection with those sales." *Fleishman Aff.,* ¶ 17. Fleishman did not explore "the treatment of account representatives generally; the assignment of customers; or promotions or demotions." *Id.* To

the extent Fleishman participated in settlement discussions, Fleishman reports that "nothing was discussed or learned that would have any bearing on the *Mitchell* case before the Court." *Id.*

• *Whalen v. Metropolitan Life Ins. Co., et al.,* Case No. CV98-8405. This case concerned allegedly-improper sales of certain financial products to an elderly consumer. *See Fleishman Aff.,* ¶ 18; Def. Br., *Seltzer Aff.,* ¶ 6; *Geman Decl.,* Ex. G (complaints). As with other sales practices matters, Fleishman interviewed MetLife employees "solely in connection with the investigation of the plaintiff's allegations." *Fleishman Aff.,* ¶ 18. To the extent Fleishman participated in settlement discussions, Fleishman reports that "nothing that arose in connection with the *Whalen* matter had anything to do with the *Mitchell* lawsuit that is currently before the Court." *Id.*

• *Moravec v. Metropolitan Life Ins. Co.,* Case No. CV99-04963845. This case involved allegedly-improper sales and "intricate issues of estate planning and tax consequences." *Fleishman Aff.,* ¶ 19; Def. Br., *Seltzer Aff.,* ¶ 6; *Geman Decl.,* Ex. H (complaint). Accordingly, Fleishman interviewed the MetLife employee who sold the annuities, the employee's supervisor, and a MetLife representative regarding the products at issue in the litigation. *See Fleishman Aff.,* ¶ 19. This matter did not involve any employment issues whatsoever. *Id.*

• *Dornberger, et al. v. Metropolitan Life Ins. Co.,* Case No. CV95-10374. This class action involved the allegedly-unauthorized sale of insurance products and annuities outside the United States during the period from 1957 until MetLife closed its European operations in 1994. *See Fleishman Aff.,* ¶ 20; Def. Br., *Elberg Aff.,* ¶¶ 5-6, *Sullivan Aff.,* ¶¶ 7-9, *Wilson Aff.,* ¶ 2, 5; *Geman Decl.,* Ex. I (complaints). While Fleishman assisted Skadden partner Sheila Birnbaum in connection with settlement, she reports that "[n]othing in the *Dornberger* case has anything to do with the *Mitchell* case before this Court." *Id.,* ¶ 20.

• *Cular v. Metropolitan Life Ins. Co.,* Case No. CV95-5250. This case arose out of and was linked to *Dornberger* because plaintiff Cular had been the European account representative who sold the challenged products in the *Dornberger* class action to the named plaintiff, Mrs. Dornberger. *See Fleishman Aff.,* ¶ 21; Def. Br., *Elberg Aff.,* ¶ 7; *Geman Decl.,* Ex. J (complaints). While an employee Cular had also reportedly encouraged plaintiff Dornberger to pursue the class action; in Cular's subsequent lawsuit, plaintiff Cular claimed she had been improperly required to participate in MetLife's "scheme" of defrauding European customers and terminated her in connection with her assistance to the *Dornberger* litigation. *See Fleishman Aff.,* ¶ 21; *Geman Decl.,* Ex. J (amended complaint). The wrongful termination and breach of contract claims in this action thus had nothing to do with discrimination or gender bias. *See Fleishman Aff.,* ¶ 21. Moreover, the case was defended by Skadden's Labor and Employment Group, with Fleishman's role limited to factual supervision arising out of her knowledge of *Dornberger* and settlement efforts. *Id.*

• *Rabouin v. Metropolitan Life Ins. Co., et al.,* Case No. CV99-111355. This case involved alleged mismanagement of assets, including how asserts were tracked and managed by MetLife. *See Fleishman Aff.,* ¶ 22; Def. Br., *Finnegan Aff.,* ¶ 4; *Geman Decl.,* Ex. K (complaints). Fleishman's role involved interviewing MetLife employees, reviewing accounting materials, and performing litigation activities "directed solely to defending MetLife in connection with the plaintiff's claims of mismanagement." *Fleishman Aff.,* ¶ 22.

Through the course of her representation of MetLife, Fleishman never spoke to any witness about gender discrimination issues. *See Fleishman Aff.,* ¶ 14. Her interviews were limited to the sales practices and products at issue in each case, and did not involve any issues raised in *Mitchell. Id.* Finally, Fleishman does not recognize the names of the plaintiffs in this case, does not specifically recall whether she ever interviewed any person identified in Plaintiffs' Initial Disclosures about any topic, and, to her knowledge, never spoke with any person identified in Plaintiffs' Initial Disclosures about anything related to the plaintiffs. *Id.*

C. *Lieff, Cabraser Firm Structure.*

Lieff, Cabraser, a 54-lawyer national class action firm, is co-counsel to plaintiffs in this matter. *See Dermody Decl.,* ¶ 5. Lieff, Cabraser has offices in San Francisco, New York, Boston, Nashville, and Washington, D.C.[FN5] *Id.* The firm brings cases on behalf of plaintiffs in at least seven broadly-defined practice areas, including environmental law, products liability, consumer protection, mass torts, and employment. *Id.* Lieff, Cabraser has clients in all fifty states and numerous foreign countries. *Id.,* ¶ 6. In New York alone, the 12 attorneys in the New York office work on over 100 active cases or investigations in all of the practice areas. *Id.* It is not the practice of the firm to discuss all matters in litigation among all partners or attorneys, but rather such conversations occur within specific cases and practice groups. *Id.,* ¶ 7. Each practice group meets separately, with practice group lawyers from the five offices participating in the meetings by conference call. *Id.* The volume and variety of Lieff, Cabraser's cases preclude the sort of highly-informal structure that characterizes many small firms whose practice involves limited subject areas or only one office or state. *Seymour Decl.,* ¶ 14; *see also Dermody Decl.,* ¶¶ 5-10.

FN5. The Washington, D.C. office, where Mr. Seymour has his office, opened on August 1, 2001. *See Dermody Decl.,* ¶ 8.

The practice group prosecuting this action is the employment practice group. *Dermody Decl.,* ¶ 8. The three partners in this group are Kelly M. Dermody ("Dermody"), James M. Finberg ("Finberg"), and Richard T. Seymour ("Seymour"). *Id.* Dermody and Finberg co-chair the group and are in the San Francisco office. *Id.* Seymour, a recently-hired partner, is the head of the recently-opened Washington, D.C. office.[FN6] *Id.; Seymour Decl.,* ¶ 1.

FN6. Before opening the DC office, Mr. Seymour was loosely affiliated with the New York office. During the time of this affiliation (as of February 9, 2001), he spent approximately 12 days - less than two full weeks - in the New York office. *See Seymour Decl.,* ¶ 2. Seymour had no voicemail or permanent office in New York. His primary office and files remained in Washington unless such files were on the road with him for cases or other professional matters. *Id.,* ¶ 7.

The only New York lawyers in the employment group are Rachel Geman ("Geman") and Leila K. Hilal ("Hilal"), both of whom participate in the meetings by phone from their respective offices. *See Dermody Decl.,* ¶ 9; *Geman Decl.,* ¶ 4; *Hilal Decl.,* ¶ 4.

D. *Management and Staffing of the Mitchell Case.*

The management of *Mitchell* has been consistent with the management of other cases prosecuted by Lieff, Cabraser's employment group. Dermody and Finberg are the partners in charge of the case, in consultation with Seymour; no New York-based partner is involved at all. *See Dermody Decl.,* ¶ 10. Geman and Hilal, also attorneys on the case, are associates with the firm. They report to the San Francisco partners on separately-scheduled *Mitchell* calls; there is no New York partner to whom they report on the *Mitchell* matter. *See Geman Decl.,* ¶ 3; *Hilal Decl.,* ¶ 3. Mr. Seymour, whose office is in Washington, D.C.,[FN7] has not to date been involved in the day-to-day management of the *Mitchell* matter. *See Seymour Decl.,* ¶ 13.

FN7. *See* footnotes 5-6, *supra.*

E. *Fleishman's Lack of Involvement in Employment Matters at Lieff, Cabraser.*

As addressed below, Wendy Fleishman is screened off the *Mitchell* matter. *See Fleishman* Decl., ¶¶ 24-25, 27; *Tindall Decl.,* ¶¶ 3-5. In addition, she is not a member of the employment practice group, and none of her cases are employment

cases. *See Dermody Decl.,* ¶ 13; *Seymour Decl.,* ¶ 8. Fleishman's only involvement in any employment-related issue in the firm was her extremely-limited role in reviewing and filing a Second Circuit *amicus* brief that Lieff, Cabraser and a number of national civil rights organizations submitted in *Robinson v. Metro-North Commuter Railroad Co.,* Docket No. 00-9417 (2d Cir.). *See Seymour Decl.,* ¶¶ 3-8, 10. Lieff, Cabraser partner Rick Seymour was the principal drafter of the brief; Fleishman had no role in the drafting process. *See id.* In fact, Seymour was not in the New York office at any time during his research or drafting of this brief. *Id.,* ¶ 6.

Because Seymour was not admitted to the Bar of the Second Circuit at the time the brief was to be filed, Fleishman and Lieff, Cabraser attorney John Low-Beer, both of whom are admitted to the Second Circuit, reviewed the brief on the day it was to be filed. *See Seymour Decl.,* ¶ 10. Fleishman and Low-Beer made some minor stylistic changes to the brief, including changing the font size, which did not affect the substance of the brief. *Id.* Seymour's first conversation with Fleishman about the brief was on March 12, 2001, the date of its filing, when Fleishman told him that she wanted to make those stylistic changes. *Id.*

F. *Lieff, Cabraser Has Maintained A Thorough and Sophisticated Ethical Wall.*

Lieff, Cabraser has never been disqualified by a Court due to an ethical conflict, and has successfully litigated the propriety of its ethical screening procedures. *See, e.g., Dermody Decl.,* Ex. B. ("Order Denying Defendants' Motion to Disqualify the Law Firm of Lieff, Cabraser, Heimann, & Bernstein and Granting Plaintiff's Motion Recognizing Propriety of Representation" in *Barbanti v. W.R. Grace & Co.*). Throughout Lieff, Cabraser's relationship with Fleishman, the firm has utilized these ethical screening procedures to ensure that even theoretically-confidential communications regarding MetLife could not be passed from Fleishman to any Lieff, Cabraser employee. *See Fleishman Aff.,* ¶ 24; *Tindall Decl.,* ¶ 3. For example, during the hiring process, Fleishman was informed that "if Lieff, Cabraser ever brought cases against [her former] clients, regardless of the subject matter, [she] would not be able to participate in those cases or, even, any discussions relating to such cases."[FN8] *Fleishman Aff.,* ¶ 24.

> FN8. As an extra precaution, Fleishman also initially sought a waiver from MetLife in advance of joining Lieff, Cabraser. *See Fleishman Aff.,* ¶ 26. At that time, Fleishman believed that Lieff, Cabraser had a class action pending against MetLife. *Id.* MetLife's in-house counsel informed Fleishman that no case had been filed; accordingly, a waiver was premature. *Id.*

Since joining the firm on January 17, 2001, Fleishman has not discussed MetLife with any Lieff, Cabraser employee with the exception of attorneys Steven M. Tindall and Hector D. Geribon of Lieff, Cabraser's Conflicts Resolution Department. *See Fleishman Aff.,* ¶¶ 1, 25; *see also Tindall Decl.,* ¶¶ 2-3, 6 (such conversations involved descriptions of cases and duties and did not involve information "relating to MetLife itself"). In advance of the filing of the *Mitchell* lawsuit, the Lieff, Cabraser Conflicts Resolution Department interviewed Fleishman and determined that her prior representation of MetLife was not substantially related to the gender discrimination class action to be filed against MetLife. *See Tindall Decl.,* ¶ 3; *Fleishman Aff.,* ¶ 26. Because of this determination, Lieff, Cabraser did not pursue a waiver upon the commencement of litigation. *Fleishman Aff.,* ¶ 26.

In addition, Lieff, Cabraser's Conflicts Department created and maintained a stringent ethical wall between Fleishman and MetLife matters. *See Tindall Decl.,* ¶¶ 3-5. Such wall has included: (1) written instructions to the firm's information services, records, and word processing departments to deny Fleishman access to any files, in either electronic or hard copy form, relating to MetLife; (2) written instructions to all of the firm's partners, associates, and paralegals not to communicate with Fleishman in any way about the *Mitchell* case or about MetLife itself; (3) written and oral instructions to Fleishman not to seek access to any files relating to this matter or MetLife; and (4) written and oral instructions to Fleishman that she is ineligible and will not participate if any fee is generated by this case. *See Tindall Decl.,* ¶¶ 4-5, Exs. A-B; *Fleishman Aff.,* ¶¶ 24-25, 27. Fleishman has signed a document indicating her understanding of the screen. *Tindall Decl.,* ¶ 5; *Fleishman Aff.,* ¶ 27. In addition, Fleishman has been assigned a liaison within the firm who is a different

individual from the attorney who erected the ethical wall. *Tindall Decl.,* ¶¶ 4-5, Exs. A-B.

While Fleishman now works on a non-employment matter with Leila Hilal, an associate on the *Mitchell* case, the matter on which they work together, the Sulzer Hip and Knee Replacement Litigation, is a medical/pharmaceutical case involving claims of strict products liability, negligence, breach of warranty, misrepresentation, and fraud in connection with orthopedic hip and knee replacement devices. *See Hilal Decl.,* ¶ 5. Sulzer does not involve employment discrimination issues or any claims set forth in *Mitchell,* and Fleishman and Hilal have never discussed employment discrimination cases generally, the *Mitchell* case, or Fleishman's work on behalf of MetLife. *Id.,* ¶¶ 5-6.

IV. *ARGUMENT*

Disqualification is an extraordinary penalty, not to be utilized unless the moving party meets the very high burden of proof required by the Second Circuit. *See Evans v. Artek Sys. Corp.,* 715 F.2d 788, 791 (2d. Cir. 1983) ("A party seeking disqualification must meet a high standard of proof before disqualification will be granted."). For the reasons set forth below, defendant has failed to meet this burden, and disqualification should not be ordered.

A. *Motions to Disqualify Counsel Are Disfavored in the Second Circuit.*

In the Second Circuit, "[m]otions to disqualify counsel are generally viewed with disfavor ... [and] Courts have been directed to take a restrained approach." *Fields-D'Arpino v. Restaurant Assoc., Inc.,* 39 F. Supp. 2d. 412, 514 (S.D.N.Y. 1999) (Pauley, J.) (citing cases). Because motions "are often interposed for tactical reasons, and ... even when made in the best of faith ... inevitably cause delay," the Second Circuit has recognized the need for caution rather than rigid application of the Model Code. *Rosewood Apartments Corp. v. Perpignano,* 2000 WL 145982, * 3 (S.D.N.Y. Feb. 7, 2000) (citing cases). As the Second Circuit has explained, this caution is also justified because "in disqualification matters we must be solicitous of a client's right to freely choose his counsel...." *Government of India v. Cook Indus., Inc.,* 569 F.2d 737, 739 (2d Cir. 1978).

These policy considerations have particular resonance in this case. To date, the parties have expended considerable time and energy litigating disqualification, while to date there have been no documents produced (other than those relating to disqualification) and no depositions scheduled. *See Dermody Decl.,* ¶ 12. In addition, while the Outten & Golden firm is a fine firm, with excellent lawyers skilled in handling employment disputes, plaintiffs selected Lieff, Cabraser as co-counsel with Outten & Golden because of the firm's experience with national class action litigation (including employment discrimination class actions), as well as its size and financial resources. An employment discrimination class action of this complexity and scope requires the experience, staffing and financial resources that Lieff, Cabraser is able to provide.

B. *Defendant Has Failed to Demonstrate That The Relationship Between The Prior and Current Representations Is "Substantially Similar".*

The parties agree that the instant inquiry is governed by the Second Circuit's interpretation of Canons 4, 5, and 9 of the ABA's Model Code of Professional Responsibility and the corresponding Canons of the New York Code of Professional Responsibility. The applicable ethical canons "require, respectively, that an attorney protect the confidences of his client, refrain from acting in a manner injurious to the interests of his client and avoid appearances of impropriety." *Rosewood,* 2000 WL 145982, *4; *see also NCK Org'n, Ltd. v. Bregman,* 542 F.2d 128, 130, n.2 (2d. Cir. 1976) ("The [ABA] Code is "recognized by both federal and state courts in this circuit as prescribing appropriate guidelines for the professional conduct of the bar.").

In the "former client" scenario presented here, there is no dispute that the Second Circuit has long established that an attorney may only be disqualified from representing a client in a particular case if:
(1) the moving party is a former client of the adverse party's counsel;
(2) there is a substantial relationship between the subject matter of the counsel's prior representation of the moving party and the issues in the present lawsuit; and
(3) the attorney whose disqualification is sought had access to, or was likely to have access to, relevant privileged information in the course of his prior representation of the client.

See, e.g., Evans, 715 F.2d at 791; *Rosewood,* 2000 WL 145982, * 3 (citing cases).

Defendant acknowledges that it needs to demonstrate that there is a "substantial relationship" between the two matters at issue. Def. Br. at 15. However, in the Second Circuit, where disqualification is explicitly disfavored, a finding of substantial relationship requires a "thorough" review of the facts. *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Co.,* 518 F.2d 751, 753 (2d. Cir. 1975), *overruled on other grounds in Armstrong v. McAlpin,* 625 F.2d 433 (2d Cir. 1980), *vacated,* 449 U.S. 1106 (1981) ("ethical problems cannot be solved in a vacuum .... [t]horough consideration of the facts ... is required") (internal citations omitted); *see also Renz v. Beeman,* 1989 WL 16062, *8 (N.D.N.Y. Feb. 21, 1989) ("district courts deciding disqualification motions must consider the factual record in detail" and grant the motion "only if the facts present a real risk that the trial will be tainted")(citations omitted). Moreover, this review of the facts must demonstrate that the relationship between issues is "patently clear" and that the "issues involved have been identical or [are] essentially the same." *Cook Indus.,* 569 F.2d at 737; *Silver Chrysler,* 518 F.2d at 754.

District courts in the Second Circuit have consistently interpreted the "substantial relationship" test to require a very close fit between the facts in the case at issue and any previous representations by the subject attorney. *See, e.g., Vestron v. National Geographic Soc.,* 750 F. Supp. 586, 595 (S.D.N.Y. 1990); *see also Wolfram Decl.,* ¶ 7, n. 1 (observing that "Courts in the Second Circuit ruling on conflict-based disqualification motions have invariably insisted that the movant satisfy a standard that is considerably more difficult to establish than the substantialrelationship test derived from the ethical rules"). For example, in *Vestron,* a case involving a breach of contract claim brought by a distributor of the National Geographic Society's videocassettes, the plaintiff's law firm had previously represented defendant National Geographic Society ["NGS"] in a trademark action involving the purported trade dress NGS used for its *Traveler* magazine. As MetLife alleges in this case, defendant NGS alleged there that a "substantial relationship" between the matters was established because the law firm at issue was familiar with NGS's views on settlement and "generally how National Geographic functioned during a protracted litigation." *Vestron,* 750 F. Supp. at 595. In addition, NGS argued that, in both matters, "National Geographic's trademark is at issue once again." *Id.*

Ironically, the law firm that was the subject of a disqualification motion in *Vestron* was Proskauer, Rose, the firm representing the moving party here. However, in *Vestron,* Proskauer argued that NGS could not satisfy the substantial relationship test because:
All [NGS] can do is strain to find some way to tie the two litigations together by virtue of the fact that National Geographic owns a trademark. This assertion falls far short of the facts required for a substantial relationship. NGS also argues that Proskauer attorneys were exposed to in-house counsel's views "as to when settlement was appropriate, and when and on what basis the Society was prepared to litigate issues and generally how National Geographic functioned during a protracted litigation." But this argument, even if true, proves too much, for it would apply in almost all prior representation situations and thereby swallow up the Second Circuit's substantial relationship test.

Geman Decl., Ex. P, p. 16 (Proskauer's Mem. in Opp'n to Def.'s Motion to Dismiss Complaint or Disqualify Pl.'s Counsel) (internal citations omitted). The court agreed with Proskauer, explaining:
[The trademark argument] betrays the emptiness of the Society's argument [for disqualification]. This is not litigation over a trademark; it is a breach of contract case. Although the contract provides for trademark protection along with a host of other things, the trademark is not at issue here. Thus, there is no substantial relationship .... Furthermore... if insight into a former client's general 'litigation thinking' were to constitute 'relevant privileged information', then

disqualification would be mandated in virtually every instance of successive representation. *That clearly is not the law....*

Id. at 595 (emphasis added); *see also Matthews v. LeBoeuf, Lamb, Greene & MacRae,* 902 F. Supp. 26, 31 (S.D.N.Y. 1995) (knowledge of firm's "internal" or settlement practices, or financial reports insufficient for disqualification).

On similar facts to those presented here, the court in *Beck v. Bd. of Regents,* 568 F. Supp. 1107 (D. Kan. 1983), determined that disqualification was likewise unwarranted where the plaintiff's lawyer's prior representation of the defendant involved employment discrimination while the *Beck* matter involved medical malpractice and an alleged failure to provide adequate police protection in a hospital emergency room. *See Beck,* 568 F. Supp. at 1109-10. Making similar arguments to those defendant raises here, the defendant argued that disqualification was necessary because, among other things, "plaintiffs' counsel had access to confidential information regarding policy and administration of the Medical Center and access to [its] methods and patterns of decision-making .... [and] confidential information regarding the supervision of subordinate employees of the Medical Center." *Id.* at 1110. The court denied the motion, observing that "the facts in each case involve totally different theories of liability." *Id.* at 1113.

The same arguments that plaintiffs successfully made in *Vestron* and *Beck* apply here. Fleishman's prior representation of MetLife involved consumer sales practices litigation; it had nothing to do with employment discrimination, gender issues, equal employment opportunity, the named plaintiffs here, or any of the relevant issues in this litigation. *See* Section III (B), above. Like most large and sophisticated corporations, MetLife has itself preserved the divisions in litigation subject matters by using different law firms for different kinds of cases, thus separating such areas as employment discrimination and consumer practices litigation.[FN9] Neither Skadden in general, nor Fleishman in particular, operated as "general counsel" for MetLife. Moreover, far from having a "unique perspective," as defendants maintain, *see* Def. Br. at 2, Fleishman was just one of many specialized attorneys from myriad firms who had discrete knowledge about a specialized type of litigation involving the financial products sold by MetLife. Every relevant fact in this case militates against disqualification.

> FN9. In fact, in the scores of employment discrimination cases brought against MetLife during Fleishman's tenure at Skadden, neither Fleishman nor the Skadden firm appear once as counsel for MetLife, *See Geman Decl.,* ¶ 5; *see also Fleishman Aff.,* ¶ 15.

Defendant here argues that it is significant that at some point, among all the hours Fleishman purportedly worked for MetLife defending consumer cases, Fleishman spoke with one (unidentified) supervisor also listed on Plaintitffs' Initial Disclosures. *See* Def. Br. at 7. Notably, under similar facts, the party seeking disqualification in *Beck* asserted that disqualification was necessary because the same high-level individual who was named as a defendant in a previous employment action, then defended by opposing counsel, was also involved in *Beck,* a malpractice action, because that individual had operational responsibility for the medical center at issue. *See Beck,* 568 F. Supp. at 1112. The court rejected this argument, finding the "possibility that plaintiffs' counsel ... were privy to the confidences and innermost workings of the methods and patterns of decision-making at the Medical Center as related to the issues in the present actions, too remote to be deemed reasonable or substantial....". *Id.* Similarly, here, Fleishman confirms that any conversation she may have had with any individual named in Plaintiffs' Initial Disclosures would have been limited to the specific and unrelated subject matter of the cases on which she worked. *See Fleishman Aff.,* ¶ 14. Such interviews would not have included hiring, compensation, or promotional issues, nor any discussion of gender discrimination.[FN10] *Id.*

> FN10. Further, Fleishman does not even recall "having spoken with or interviewing any person on the Witness List." *Fleishman Aff.,* ¶ 14.

Significantly, the four cases upon which defendant relies to argue that a substantial relationship exists here - *Red Ball*

Interior Demolition Corp. v. Palmadessa, 908 F. Supp. 1226 (S.D.N.Y. 1995); *Fernandez v. City of New York,* 2000 WL 297175 (S.D.N.Y. March 21, 2000); *Bennett Silvershein Assoc. v. Furman,* 776 F. Supp. 800 (S.D.N.Y. 1991); and *Ullrich v. Hearst Corp.,* 809 F. Supp. 229 (S.D.N.Y. 1992) - only underscore why this case is not even a close call. For example, in *Red Ball,* the court found a substantial relationship because the transaction at issue (illegal dumping at a site) was identical and the only difference was that one case involved criminal proceedings and the other involved administrative proceedings. *See Red Ball,* 908 F. Supp. at 1244-45. By contrast, the "transactions" here are entirely different: the decision not to hire or promote women, or even a named plaintiff, because of gender, has nothing to do with the work Fleishman performed for MetLife, such as defending cases challenging the sales, marketing and terms of MetLife products.

Similarly, in *Fernandez,* involving a claim for malicious prosecution against a police officer, the firm representing the plaintiff had previously represented the same officer in a criminal investigation examining serious charges of misconduct against the officer. This close overlap of the one central figure in both cases constituted a substantial relationship. *See Fernandez,* 2000 WL 297175 at * 2. Notably, there is no such overlap between the matters here.[FN11]

> FN11. Red *Ball* and *Fernandez* would only be apposite if, for example, one of the prior MetLife matters on which Fleishman worked had been criminal (e.g., representing MetLife through an Attorney General investigation into MetLife's alleged sale of illegal vanishing premiums) and this action was a civil class action addressing the same subject of the criminal proceedings (e.g., brought on behalf of the consumers allegedly victimized by the vanishing premium practices). Such facts obviously do not exist here.

In *Bennett Silvershein,* the plaintiff sought to disqualify defendant's law firm because it had consulted with the firm on unrelated matters years before the litigation. On much closer facts than exist here, the court found that the substantial relationship test was *not* met because, in large part, there was not sufficient overlap between the matters at issue. *See Bennett Silvershein,* 776 F. Supp. at 804.

Likewise, in *Ullrich,* a consolidated proceeding involving disqualification motions made in one wrongful termination and two employment discrimination cases, the court recognized the high degree of overlap between matters necessary to support disqualification. The defendant there moved to disqualify because the plaintiff's lawyer in all three of the underlying cases had, for twenty years previously, "represented [defendant] Hearst in discrimination claims... handled numerous discrimination lawsuits ... [and] negotiated settlements of numerous settlements of employee discrimination claims and severance packages," among other employment-related matters in his portfolio. *Ullrich,* 809 F. Supp. at 230. Given the extraordinary overlap in his prior employment defense of Hearst and the three plaintiffs' employment claims against Hearst in *Ullrich,* the court determined that the lawyer should be disqualified. *See id.* at 235-36.

There is simply no overlap in the facts in this case and Fleishman's previous representation of MetLife. *See, e.g., In re: Metropolitan Life Insurance Company Sales Practices Litigation* (class action concerning alleged material misrepresentations in connection with the sale of insurance policies and annuities); *Heslin, et al. v. Metropolitan Life Ins. Co., et al.* (optout plaintiffs from *Sales Practices* litigation brought essentially-identical individual consumer claims); *Middleton, et al. v. Metropolitan Life Ins. Co., et al.* (sales practices case regarding alleged improper sales of insurance policies and financial products); *Whalen v. Metropolitan Life Ins. Co., et al.* (concerning allegedly-improper sales of certain financial products to an elderly consumer); *Moravec v. Metropolitan Life Ins. Co.* (concerning allegedly-improper sales and intricate issues of estate planning and tax consequences); *Dornberger, et al. v. Metropolitan Life Ins. Co.* (class action concerning allegedly-unauthorized sale of insurance products and annuities in Europe between 1957 and 1994); *Cular v. Metropolitan Life Ins. Co.* (involving wrongful termination claims brought by former European employees who allegedly spearheaded the *Dornberger* consumer class action); *Rabouin v. Metropolitan Life Ins. Co., et al.* (concerning alleged mismanagement of assets, including how asserts were tracked and managed by MetLife).

Each of these lawsuits, which defendant identifies, involved complex and specific issues of the vastly-complicated and

heavily-regulated insurance industry. They had nothing to do with employment discrimination or any related issues pertinent to this case. There is not even a suggestion that Fleishman worked on general human resource issues, employee benefits issues, equal employment opportunity compliance, or any sort of issue that would make her privy to confidential information central to *Mitchell.*

Because defendant is unable to present facts supporting the requisite relatedness between Fleishman's "confidences" and those that will be relevant here, defendant instead merely lists generic topic areas about which Fleishman purportedly had some, unspecified knowledge. *See* Def. Br. at 7-9. Most of these topics are either facially irrelevant (*e.g.,* "the products sold by account representatives"; "the sales literature and sales materials used by account representatives"), or extremely general (*e.g.,* "the regulatory environment in which account representatives operate"; MetLife's "internal audit system"). With respect to any of the issues that could be relevant in this case, *e.g.,* hiring, promotions or compensation issues, this list is impermissibly vague and does not provide the requisite nexus between her alleged knowledge in these areas and the way such topics relate to this case.[FN12]

> FN12. Rather than focusing on defendant's list, what is telling is the examination of the issues *actually* at stake in Fleishman's lawsuits. For example, the case on which Fleishman worked that is most frequently referenced by defendant is *Dornberger.* A simple comparison of the common questions of law and fact in that case, versus those in the *Mitchell* Complaint, provides a context for defendant's list of topic areas and demonstrates the complete disjunction between these two cases. *See* Complaint, ¶ 26; *Geman Decl.,* Ex. I (*Dornberger* complaint).

Defendant's sole argument regarding why Fleishman's prior work relates to Title VII employment discrimination issues is that she "would be uniquely able to offer strategies for challenging the non-discriminatory reasons offered by MetLife for allegedly discriminatory employment practices." Def. Br. at 17-18 (citing the *McDonnell Douglas Corp. v. Green* threepart test, 411 U.S. 792, 93 S.Ct. 1817 (1973)). Given defendant's own descriptions of Fleishman's prior unrelated work and her lack of experience in employment defense, it is clear that Fleishman's theoretical ability to strategize on the *McDonnell-Douglas* defense would not provide sufficient advantage to experienced plaintiffs' employment discrimination lawyers to warrant disqualification. Indeed, it is clear that such a theoretical and attenuated risk does not "present a real risk that the trial will be tainted." *Renz,* 1989 WL 16062, *8 (disqualification should be ordered "only if the facts present a real risk that the trial will be tainted").

Defendant has not met its burden here. *See Wolfram Decl.,* ¶¶ 2, 6-13 (opinion of ethics expert in which he states, "[I]t is my opinion that there is no evidence in the materials submitted by MetLife to support its position that there is the required 'substantial relationship' between the former representation of it and the present matter....").[FN13]

> FN13. See *also Wolfram* Decl., ¶ 14 ("In my view, based on the foregoing analysis, Lieff, Cabraser should not be disqualified even if Ms. Fleishman had been actively involved in representing Plaintiffs in this matter since she joined Lieff, Cabraser. There would thus be no occasion to consider the further question of firm-wide disqualification.").

C. *Canon 9 is Inapplicable Because There is Neither Actual Nor Apparent Impropriety Here.*

In the absence of actual impropriety, defendant suggests that the Court disqualify Lieff, Cabraser on the grounds that the firm's representation of plaintiffs here presents an appearance of impropriety pursuant to Canon 9. However, in this Circuit, the overwhelming authority reflects that there can be no finding of a Canon 9 violation absent the finding of a substantial relationship between matters, in violation of Canon 4.[FN14] *See Society for Good Will to Retarded Children, Inc. v. Carey,* 466 F. Supp. 722, 724 (E.D.N.Y. 1979) (Weinstein, J.) ("The possibility that an attorney's representation in a given case may give rise to an 'appearance of impropriety' is not enough to disqualify"); *Furman,* 776 F. Supp. at 806 (recognizing that where the alleged violation of Canon 4 is "devoid of substance" it would be "downright perverse to hold that what has been held not to exist nonetheless 'appears.' ").[FN15] Indeed, courts have admonished, "Canon 9

should not be used promiscuously as a convenient tool for disqualification when the facts simply do not fit within the rubric of other specific ethical and disciplinary rules." *Furman,* 776 F. Supp. at 806 (citing cases).

FN14. In *National Geographic Society, supra,* Proskauer similarly observed that "because there are no grounds for disqualification under Canon 4, disqualification under Canon 9 is also inappropriate." *Geman Decl.,* Ex. P, 17 (Proskauer opposition brief to defendant's disqualification motion) (citing cases).

FN15. Defendant cites to one case where a Canon 9 violation was purportedly sufficient to trigger a disqualification. *See Rosman v. Shapiro,* 653 F. Supp. 1441 (S.D.N.Y. 1987) (Sprizzo, J.). Judge Sprizzo, noting the plethora of cases holding that disqualifications based on Canon 9 alone were inappropriate, stated that, on the other hand, the Second Circuit had not held that "disqualification may *never* be appropriate on Canon 9 grounds." *Id.* at 1446 (emphasis in original). *But see Cohen v. Acorn Int'l,* 921 F. Supp. 1062, 1064, n.2 (S.D.N.Y. 1995) (Scheindlin, J.) (criticizing Judge Sprizzo's suggestion that a finding of disqualification under Canon 9 alone could ever be appropriate under Second Circuit authority). In any case, *Rosman* is distinguishable on the grounds that the law firm that was subject to the disqualification motion had previously been retained by the opposing party for a consultation regarding the very contract at issue in the *Rosman* breach of contract lawsuit. *See* 921 F. Supp. at 1445.

Regardless, there is no appearance of impropriety in Lieff, Cabraser's representation of plaintiffs in *Mitchell.* Not only is there no relationship between the matters, but there is also no risk of transmission of even irrelevant information within the scope of Fleishman's knowledge due to the Lieff, Cabraser firm structure (whereby cases are prosecuted by case teams and practice groups, not by office); the management and staffing of the *Mitchell* case (which is managed by San Francisco partners and does not, and has never, included Fleishman); Fleishman's lack of involvement in employment matters at Lieff, Cabraser (whereby Fleishman is not assigned to a single employment matter and has only had the limited experience of reviewing and filing a Second Circuit *amicus* brief in an unrelated employment case on the day it was to be filed); and Lieff, Cabraser's ethical wall (screening Fleishman from any MetLife discussions or documents). *See* Sections III (C)-(F), above.[FN16] The Lieff, Cabraser firm has not violated Canon 9.

FN16. By contrast, the cases on which defendant relies are inapposite. *See, e.g., Cheng v. GAF Corp.,* 631 F.2d 1052 (2d. Cir. 1980), *vacated,* 450 U.S. 903 (1981) (involving successive representation in the identical matter; Canons 4 and 5 violated as well as Canon 9); *NCK Org'n,* 542 F.2d at 129 (substantial relationship between matters, implicating Canons 4 and 9); *In re Manchul Constr. Corp.,* 1998 WL 405039 (impropriety where substantial relationship existed because identical transaction at issue in both matters and only difference was that one matter was a criminal proceeding and the other arose in bankruptcy); *Rosman, supra,* 653 F. Supp. 1441 (described in footnote 15, above).

D. *In The Alternative, If the Court Determines that Wendy Fleishman Should Be Disqualified, it Would be Unnecessary to Disqualify the Entire Lieff, Cabraser Firm Due to the Firm's Comprehensive Screening Procedures mechanism.*

Even if the facts were different and disqualification of Fleishman were appropriate, there would be no need to impute that disqualification to the Lieff, Cabraser firm. As explained by legal ethics expert Charles W. Wolfram:

Even if, hypothetically, one were to reject the conclusion that Ms. Fleishman was not personally disqualified, there would remain the further question of whether her new firm's other lawyers are disqualified. While, of course, courts will generally impute a single lawyer's violation of DR 5-108(a) to all other lawyers in the personally-disqualified lawyer's firm, courts in the Southern District and in New York generally have recognized an exception to such a rule of imputed disqualification in an appropriate case in which the circumstances sufficiently indicate that screening of the personally-disqualified lawyer provides ample assurance that the conveyance of confidential information that the former-client rule seeks to prevent will not in fact occur. Courts in the Southern District have generally employed a "facts and circumstances" approach to screening, rather than any sort of flat rule (found in some other courts) that screening is always ineffective in privaterepresentation situations or that it is always ineffective in smaller law offices such as the

New York City office of Lieff, Cabraser.

Wolfram Decl., ¶ 14.

The New York Court of Appeals confirmed this view in recently holding that "where one attorney is disqualified as a result of having acquired confidential client information at a former law firm, the presumption that the entirety of the attorney's current firm must be disqualified may be rebutted." *Kassis v. Teacher's Ins. and Annuity Assoc.,* 93 N.Y.2d 611, 616, 695 N.Y.S.2d 515, 518 (1999). So long as the information acquired by the disqualified lawyer was unlikely to be significant or material in the litigation, the *Kassis* court held that "in that factual scenario, with the presumption rebutted, a 'Chinese Wall' around the disqualified lawyer would be sufficient to avoid firm disqualification." *Id.*

Courts in the Second Circuit have similarly held that the presumption of firm disqualification is rebuttable. *See, e.g., Fields-D'Arpino* 39 F. Supp. 2d at 417 (firm in question "had not even attempted to implement screening procedures that would prevent [the sharing of] confidential information"); *see also Wolfram Decl.,* ¶ 14. Thus, to the extent defendant suggests that screening is impermissible, it is simply incorrect.

In the alternative, defendant argues that the specific facts presented preclude the possibility of an effective screen. *See* Def. Br. at 20-23. Defendant then cites to cases where the small size or informal structure of the firm[FN17] or the untimely introduction of the screen[FN18] meant that the firm at issue had failed to ensure that information would not be transmitted, or where the type of case at issue was uncomplicated, undercutting concerns about plaintiff's choice of counsel.[FN19] In this case, unlike in the cases cited, the timely ethical wall at issue is sufficient to rebut any presumption of firm disqualification. The ethical wall complements the Lieff, Cabraser structure which, due to the breadth, complexity, size, and volume of the firm's cases, and its organization around practice groups, is more akin to a large firm. Because the screening procedures at Lieff-Cabraser - approved by another court[FN20] - cannot be "subject to any doubt," they rebut any presumption of firm disqualification. *See Fields-D'Arpino,* 39 F. Supp. 2d at 417.

FN17. *See, e.g., Adams v. Lehrer McGovern Bovis, Inc.,* 208 A.D. 377, 617 N.Y.S.2d 9 (1st Dep't 1994) (cited by defendant) (four attorney firm is small); *Van Jackson v. Check'N Go of Ill., Inc.,* 114 F. Supp. 2d 731 (N.D. Ill. 2000) (cited by defendant) (four attorney firm is small).

FN18. *See, e.g., Alicea v. Bencivenga,* 270 A.D.2d 125, 704 N.Y.S.2d 578 (1st Dep't 2000) (cited by defendant).

FN19. *See, e.g., Steel v. General Motors Corp.,* 912 F. Supp. 724, 744 (D.N.J. 1995) (cited by defendant) (focusing on the lack of complexity of individual lemon law cases and their short life span; noting that in other circumstances the use of ethical walls "as effective prophylactic mechanisms has been endorsed.").

FN20. *See Dermody Decl.,* Ex. B (order in *Barbanti v. W.R. Grace & Co.*) (discussed above in Section III(F)). The matters at issue here are substantially more attenuated than those identified by W.R. Grace in its motion. In that case, unlike here, similar issues were litigated in both matters, rendering appropriate the disqualification of the lawyer in question. Here, the issues raised in the various cases bear no relationship to the issues here, and an ethical wall has existed since the inception of the case.

Lieff, Cabraser's ethical screening procedures are illustrative of the firm's cautious practice in connection with all matters undertaken by the firm. Lieff, Cabraser strives to more than comply with applicable ethical Canons. By doing so, Lieff, Cabraser also manages to stave off the vast majority of tactical disqualification motions brought by defendants in

complex cases, thereby preventing such motions from impeding the progress of litigation, distracting plaintiffs' counsel from focusing on the merits, and delaying the administration of justice. Lieff, Cabraser has taken the appropriate prophylactic measures here, and it will continue to do so throughout this case.

In light of all of these measures, at most, disqualification of Fleishman alone should suffice to address any potential former-client conflict situation. *See Wolfram Decl.,* ¶¶ 14-15.

V. *CONCLUSION*

Because defendant has failed to demonstrate that Fleishman's prior representation of MetLife and this gender discrimination class action are substantially related pursuant to Second Circuit authority, and because Lieff, Cabraser has taken appropriate steps to ensure that no eventheoretically confidential information in Ms. Fleishman's possession will be communicated to anyone in the firm, plaintiffs respectfully request that defendant's motion be denied.

Appendix not available.

Stella MITCHELL, Hwa-Mei C. Gee, Barbara LaChance, Durpatty Persaud, and Janet Ramsey, on behalf of themselves and all others similarly situated, Plaintiffs, v. METROPOLITAN LIFE INSURANCE COMPANY, INC. d/b/a Metlife, Defendant.