

IMPORTANT LEGAL NOTICE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRANDON HARVEY, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

MORGAN STANLEY SMITH BARNEY LLC,

Defendant.

CASE NO.: 3:18-cv-02835 WHO

**NOTICE OF (1) PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; (2) FINAL APPROVAL
HEARING; AND (3) RIGHT TO OBJECT
OR OPT OUT**

**THIS NOTICE AFFECTS YOUR RIGHTS.
PLEASE READ IT CAREFULLY.**

To: All current or former employees of Morgan Stanley Smith Barney LLC who worked for MSSB within the State of California from May 14, 2014, through September 5, 2019, in the job title of Financial Advisor and/or Private Wealth Advisor ("Class Member")

Why You are Receiving This Notice

You are receiving this Notice because the U.S. District Court, for the Northern District of California, has preliminarily approved a proposed class action settlement that may affect you. The proposed Settlement will resolve all class claims in the lawsuit of *Harvey v. Morgan Stanley Smith Barney LLC* ("Lawsuit"). The purpose of this Notice is to inform you of the Settlement of this Lawsuit and your legal rights under the Settlement.

The Court has ordered that this Notice be sent to you because you may be a Class Member. Records show that you were employed with Morgan Stanley Smith Barney LLC at some time from May 14, 2014, through September 5, 2019.

The amount you will receive from the Settlement is listed on your Notice below. You will be bound by the terms of the Settlement unless you exclude yourself from the Class; see instructions below. Please see below for a more complete explanation of your options under the Settlement.

SUMMARY OF CASE

On or about May 14, 2018, Plaintiff Brandon Harvey filed a putative class action on behalf of himself and other employees that Defendant Morgan Stanley Smith Barney LLC employed as Financial Advisors in California from May 14, 2014 through September 5, 2019. The operative complaint alleges that Defendant failed to pay wages, made unlawful wage deductions, violated the California Employee Bond Law, failed to provide accurate itemized wage statements, and failed to indemnify all reasonable and necessary business expenses, enumerating alleged violations of Labor Code §§ 201-204.2, 221-224, 226, 400-410, 1174, 1174.5, 1198, 2802 and Cal. Code of Reg., tit. 8, § 11040(8). Plaintiff also alleged derivative claims pursuant to the California Unfair Competition Law, California Business & Professions Code § 17200, et seq. ("UCL") and the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2698, et seq. Plaintiff's claims are based on Defendant's Alternative Flexible Grid ("AFG") program. Plaintiff alleges that the claims should be certified as a class action. In Plaintiff's complaint, he seeks recovery of allegedly unpaid wages, expense reimbursements, penalties, interest, and attorneys' fees and costs.

After several months of formal litigation and the exchange of relevant information, the Parties agreed to participate in multiple private mediations to try and resolve the claims. The Parties thereafter reached the Settlement that is memorialized in the Settlement Agreement that is on file with the Court, and whose terms are generally summarized in this Notice.

POSITIONS OF THE PARTIES AND REASONS FOR SETTLEMENT

Defendant contends that it compensates and reimburses employees in full compliance with the law. It denies each of the claims and contentions alleged by Plaintiff in the Lawsuit. Although Defendant has strong defenses to the Lawsuit, it has concluded that a lengthy and expensive lawsuit is not in the best interests of either side. Defendant has, therefore, agreed to settle this Lawsuit in the manner and upon the terms set forth in the proposed Settlement to put to rest all claims that are or could have been asserted against it in the Lawsuit. Nothing regarding the Settlement may be construed as, or may be used as, an admission, concession or indication by or against Defendant of any fault, wrongdoing or liability whatsoever.

Class Counsel recognize the expense and length of continued proceedings necessary to continue the Lawsuit against Defendant through certification, trial and any possible appeals, the uncertainty and the risk of the outcome of further litigation, including the risk that the class might not be certified, as well as the difficulties and delays generally inherent in such litigation, the burdens of proof necessary to establish liability for the claims, and of the difficulties in establishing damages for the Class Members. Class Counsel believes the proposed Settlement is fair, adequate and reasonable and in the best interests of the Class Members.

The Court has made no ruling on the merits of the Class Members' claims and has determined only that certification of the Class for settlement purposes is appropriate.

SUMMARY OF SETTLEMENT TERMS

Settlement Amount. The Settlement Agreement provides that Defendant will pay \$10,235,000 (the “Maximum Settlement Amount”) to fully resolve the claims in the Lawsuit. The Maximum Settlement Amount includes (a) a Cash Payment of \$8,500,000 (“Cash Payment Amount”) and (b) an Expense Fund of \$1,735,000.

(a) Cash Payment Amount. The following deductions will be made from the Cash Payment Amount:

(i) *Settlement Administration.* The Court has tentatively approved a payment of approximately \$32,000 to the Settlement Administrator, KCC Class Action Services, for the costs incurred in notifying the Class of this Settlement and processing any claims.

(ii) *Attorneys’ Fees and Costs.* The Court preliminarily appointed the following attorneys as Class Counsel to represent the Class in this Lawsuit: Edward J. Wynne, Wynne Law Firm, James F. Clapp, Clapp & Lauinger LLP, and David S. Markun, Markun Zusman Freniere & Compton LLP.

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WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd.
Suite 3-G
Larkspur, CA 94939
ewynne@wynnelawfirm.com
(415) 461-6400

David S. Markun
MARKUN ZUSMAN FRENIERE
& COMPTON LLP
17383 West Sunset Boulevard
Suite A380
Pacific Palisades, CA 90272
dmarkun@mzclaw.com
(310) 454-5900

James F. Clapp
CLAPP & LAUINGER LLP
701 Palomar Airport Road
Suite 300
Carlsbad, CA 92011
jclapp@clapplegal.com
(760) 209-6565

Class Counsel will ask the Court to approve a Fee and Cost Award not to exceed twenty-five percent (25%) of the Maximum Settlement Amount as the Fee Award, in addition to reasonable actual expenses not to exceed \$35,000, as the Cost Award. Class Counsel have been prosecuting the Lawsuit on behalf of the Class on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. The Fee and Expense Award will constitute full compensation for all legal fees and litigation expenses of Class Counsel in the Lawsuit, including any work they do in the future. Class Members are not personally responsible for any fees or litigation expenses.

(iii) *Named Plaintiff Award.* Class Counsel will also ask the Court to approve a payment in the amount of \$10,000 for Named Plaintiff Brandon Harvey for acting as the representative on behalf of the Class, spending time assisting with the Lawsuit, signing a general release of all claims he might have against Defendant, agreeing to never apply for or accept employment with Morgan Stanley, which is not required of Class Members.

(iv) *PAGA Payment.* A total of \$600,000 is allocated to pay all applicable civil penalties under California Labor Code’s Private Attorneys General Act of 2004 (“PAGA”). \$100,000 shall be allocated to settle PAGA claims for the portion of the PAGA Period extending from May 9, 2014 through the end of the PAGA Period (“Tier 2 PAGA Payment”). \$500,000 shall be allocated to settle claims for civil penalties pursuant to PAGA for the portion of the PAGA Period extending from April 23, 2013 to May 9, 2014 (“Tier 1 PAGA Payment”).

Seventy-five percent (75%) of the PAGA Payment shall be paid to the California Labor and Workforce Development Agency (“LWDA”) as required by California law, and twenty-five percent (25%) shall be distributed to Aggrieved Employees based on the proportionate number of Individual PAGA Pay Periods worked.

The balance of the Cash Payment Amount after the deductions described above is called the Net Cash Distribution. Any portion of the Fee and Cost Award, Named Plaintiff Award, and/or Administration Costs not awarded shall also be distributed to Class Members.

Each Class Member’s Individual Class Settlement Payment will be calculated by multiplying the Net Cash Distribution by each Settlement Class Member’s Percentage Class Share. Each Class Member’s Percentage Class Share is based on his/her number of semimonthly pay periods with Defendant as a Class Member, as reflected by Defendant’s corporate and business records, exclusive of leaves of absence (“Individual Class Pay Periods”). Approximations and averages will be used to cover periods where data is missing or otherwise not available. Class Members may dispute the Individual Class Pay Periods that are attributed to him or her by producing evidence to the Settlement Administrator establishing the dates he or she contends to have worked during the Class Period.

Assuming you do not opt out of the Settlement and the Settlement is approved by the Court, your Individual Class Settlement Payment is _____ based on _____ Individual Class Pay Periods.

For tax purposes, the Individual Class Settlement Payments will be allocated as follows: 20% (one-fifth) to settlement of wage claims, which portion will be subject to required tax withholdings, and 80% (four-fifths) to settlement of claims for expenses, penalties and interest, which portion will be paid without withholding any amount. The portion allocated to wages shall be reported on an IRS Form W-2, and the portion allocated to expenses, interest and penalties shall be reported on an IRS Form 1099. IRS Forms W-2 and 1099 (and the equivalent California forms) will be distributed to Class Members reflecting the payments they receive under the Settlement. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

(b) Expense Fund. Morgan Stanley will also allocate \$1,735,000 from the Maximum Settlement Amount to future payments of business expenses. This Expense Fund shall be available separate and apart from the AFG Program. The Expense Fund shall be made available to current California Financial Advisors for expenses that otherwise could have been submitted to AFG through Defendant's current policies, and for specific categories of expenses to be determined solely by Defendant. Defendant agrees that it will use its best efforts to spend the Expense Fund in calendar year 2020, 2021 or within two years of the Payment Obligation and Release Date. Examples of types of costs that may be covered under this provision include remote computing (including corporate iPhone or MobileIron access) and personalized web pages.

Release of Claims. If the Settlement is approved by the Court, it will bar any Class Member who does not timely opt out of the Settlement from bringing certain claims against Defendant, described below. The Settlement will fully release and discharge Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, assigns, subsidiaries, affiliates, and parents (the "Released Parties") from all claims, demands, rights, liabilities, obligations, penalties, attorneys' fees, and causes of action that were pled or could have been pled by Class Members in the operative complaint based on the facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act alleged in the operative complaint against Defendant from May 14, 2014 through September 5, 2019, including but not limited to claims for alleged unlawful wage deductions, failure to pay wages, cash bond or violations of the California Employee Bond Law, untimely final or other pay, inaccurate itemized wage statements and records, unreimbursed business expenses and/or failure to indemnify all necessary business expenses, claims alleging violations of California Labor Code sections 201-204.2, 221-224, 226, 400-410, 1174, 1174.5, 1198, 2802 and 2804, derivative claims for unfair business practices under California Business & Professions Code section 17200 *et seq.*, derivative claims for penalties under the Private Attorneys General Act ("PAGA"), and California state common law claims based on the alleged conduct in the operative complaint.

These claims that Class Members are agreeing to release and discharge are referred to as "Class Released Claims," as that term is more fully defined in the Settlement Agreement. This is true whether the Class Released Claims are known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist. However, those Class Members who do not cash their Individual Class Settlement Payment shall not have released their claims under the Fair Labor Standards Act.

The Class Members agree not to sue or otherwise make a claim against any of the Released Parties for the Class Released Claims. The Individual Class Settlement Payments are paid to Class Members specifically in exchange for the release of the Released Parties from the Class Released Claims and for their agreement not to sue concerning the Class Released Claims.

YOUR OPTIONS UNDER THE SETTLEMENT

Option 1 – Do Nothing and Receive Your Individual Class Settlement Payment

You do not have to do anything and you will receive money from the Settlement if the Court grants Final Approval of the Settlement. If you choose this **Option 1**, and if the Court grants Final Approval of the Settlement, you will be deemed to have released the Class Released Claims against the Released Parties.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you can request to be excluded from the Settlement (except that you may not opt out of the portion of the Settlement resolving PAGA claims for civil penalties on behalf of the State of California). To do so, you must submit an Exclusion Request to the Settlement Administrator stating your name, address, telephone number and last four digits of your social security number, as well as the following statement, or something similar: "I request to be excluded from the class action proceedings taking place in the matter of *Harvey v. Morgan Stanley Smith Barney LLC*, Northern District of California Case No. 3:18-cv-02835 WHO."

You must sign, date, and mail the Exclusion Request by First Class U.S. Mail or equivalent postmarked no later than December 5, 2019 to:

Harvey v. Morgan Stanley Smith Barney LLC
Settlement Administrator
P.O. Box 43208
Providence RI 02940-3208

If you choose this **Option 2**, you will no longer be a Class Member. You will not be deemed to have released the Class Released Claims, you will not receive an Individual Class Settlement Payment from the Settlement, and you will be barred from filing any objection to the Settlement.

Option 3 – File an Objection with the Court

You can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement should be in writing and filed with the Court. All written objections and supporting papers must (a) clearly identify the case name and number (*Harvey v. Morgan Stanley Smith Barney LLC*, Case Number 3:18-cv-02835 WHO), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Ave, San Francisco, California 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before December 5, 2019.

You may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. The Final Approval hearing on the Settlement is currently set for February 5, 2020 at 2:00 p.m. in Courtroom 2, 17th Floor of the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Ave, San Francisco, California 94102. The date and time of the hearing may change without notice. For updated information, please visit the settlement website or access the Court docket (details below).

If you file an objection, you are not excluding yourself from the Settlement. If the Court overrules your objection, you will be deemed to have released the Class Released Claims against the Released Parties. To exclude yourself from the Settlement, you must follow the directions described above in Option 2. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only.

If you choose this **Option 3**, you may still receive an Individual Settlement Payment.

ADDITIONAL INFORMATION

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at www.MSSBFAsettlement.com. You may also email the Settlement Administrator at info@MSSBFAsettlement.com, or call or mail the contact information below:

Harvey v. Morgan Stanley Smith Barney LLC
Settlement Administrator
P.O. Box 43208
Providence RI 02940-3208
1-866-523-2930

You can also access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Ave, San Francisco, California 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING.

PLEASE DO NOT TELEPHONE THE COURT, THE COURT CLERK'S OFFICE, DEFENDANT OR DEFENDANT'S ATTORNEYS TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.