

EXHIBIT 1

[COUNSEL LISTED ON FOLLOWING PAGE]

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

**AMENDMENT TO CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

1 LYNNE C. HERMLE (SBN: 99779)
lchermle@orrick.com
2 ORRICK, HERRINGTON &
SUTCLIFFE LLP
3 1000 Marsh Road
Menlo Park, CA 94025-1015
4 Telephone: 650-614-7400
Facsimile: 650-614-7401

5 ANDREW R. LIVINGSTON (SBN: 148646)
alivingston@orrick.com
6 ORRICK, HERRINGTON &
SUTCLIFFE LLP
7 The Orrick Building
405 Howard Street
8 San Francisco, CA 94105-2669
9 Telephone: 415-773-5700
Facsimile: 415-773-5759

10 JINNIFER PITCHER (SBN: 252880)
jpitcher@orrick.com
11 ORRICK, HERRINGTON &
SUTCLIFFE LLP
12 400 Capitol Mall, Suite 3000
13 Sacramento, CA 95814-4497
Telephone: 916-447-9200
14 Facsimile: 916-329-4900

15 **Attorneys for Defendant**
MORGAN STANLEY SMITH
16 **BARNEY LLC**

EDWARD J. WYNNE (165819)
ewynne@wynnelawfirm.com
WYNNE LAW FIRM
Wood Island
80 E. Sir Francis Drake Blvd., Ste. 3-G
Larkspur, CA 94939
Telephone: (415) 461-6400
Facsimile: (415) 461-3900

DAVID S. MARKUN (108067)
dmarkun@mzclaw.com
JEFFREY K. COMPTON (142969)
jcompton@mzclaw.com
MARKUN ZUSMAN FRENIERE &
COMPTON LLP
17383 Sunset Boulevard, Suite A380
Pacific Palisades, CA 90272
Telephone: (310) 454-5900
Facsimile: (310) 454-5970

JAMES F. CLAPP (145814)
jclapp@clapplegal.com
CLAPP & LAUINGER LLP
701 Palomar Airport Road, Suite 300
Carlsbad, CA 92011
Telephone: (760) 209-6565
Facsimile: (760) 209-6565

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

1 This AMENDMENT OF THE CLASS ACTION SETTLEMENT AGREEMENT AND
2 RELEASE (the “Amendment”) is made and entered into between Plaintiff Brandon Harvey and
3 Defendant Morgan Stanley Smith Barney LLC (“Morgan Stanley”).

4 1. Plaintiffs and Morgan Stanley have entered into a Class Action Settlement
5 Agreement and Release (“Settlement Agreement”), a true and correct copy of which is attached
6 hereto as Exhibit A.

7 2. The Settlement Agreement is hereby amended as follows:

8 (a) The first four words in Paragraph 48 that read “Tier 1 PAGA Payment”
9 shall be replaced with “Tier 2 PAGA Payment”;

10 (b) The first four words in Paragraph 49 that read “Tier 2 PAGA Payment.”
11 Shall be replaced with “Tier 1 PAGA Payment”;

12 (c) The first six words in Paragraph 51 that read “Total Tier 1 PAGA Pay
13 Periods” shall be replaced with “Total Tier 2 PAGA Pay Periods”;

14 (d) The first six words in Paragraph 52 that read “Total Tier 2 PAGA Pay
15 Periods” shall be replaced with “Total Tier 1 PAGA Pay Periods”;

16 (e) All other Paragraphs, including Paragraphs 23, 24, 25, 26, 39 and 40,
17 remain unchanged.

18 3. The Settlement Agreement is hereby further amended as follows:

19 (a) Paragraph 32 shall be replaced with the following: “Notice” means the
20 Court-approved form of notice to Class Members, and, where referred to as “PAGA Notice,” the
21 letter to Aggrieved Employees to accompany the Individual PAGA Settlement Payments, both
22 substantially in the form as Exhibit 1, attached hereto.

23 (b) The phrase “and Aggrieved Employees” shall be struck from Paragraph 69.

24 (c) Paragraph 79 shall include the following additional sentence: “The PAGA
25 Notice shall accompany all checks for Individual PAGA Settlement Payments.”

26 (d) All other Paragraphs remain unchanged.
27
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1 4. Except as expressly set forth in Paragraphs 2 and 3 above, all other provisions of
2 the Settlement Agreement remain in full force and effect.

3 5. Plaintiff represents that he has read this Amendment, that he has discussed it
4 thoroughly with his attorneys, that he understands its provisions, and that he enters into it
5 voluntarily.

6 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the
7 foregoing terms and conditions by executing this Agreement as of the date indicated below.

8
9 **APPROVED AND AGREED:**

10 Dated: June 11, 2019



Brandon Harvey, Plaintiff

11
12
13 Dated: June __, 2019

MORGAN STANLEY SMITH BARNEY LLC

14
15 _____
16 By:
17 Its:

18 **APPROVED AS TO FORM AND CONTENT:**
19
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27
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1 4. Except as expressly set forth in Paragraphs 2 and 3 above, all other provisions of
2 the Settlement Agreement remain in full force and effect.

3 5. Plaintiff represents that he has read this Amendment, that he has discussed it
4 thoroughly with his attorneys, that he understands its provisions, and that he enters into it
5 voluntarily.

6 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the
7 foregoing terms and conditions by executing this Agreement as of the date indicated below.


8 **APPROVED AND AGREED:**

9
10 Dated: June __, 2019

Brandon Harvey, Plaintiff

11
12
13 Dated: June 11, 2019

MORGAN STANLEY SMITH BARNEY LLC

14
15 
16 By: Mark Greenfield
17 Its: Managing Director

18 **APPROVED AS TO FORM AND CONTENT:**

1 Dated: June 11, 2019

EDWARD J. WYNNE
Wynne Law Firm

2
3
4 By: 

EDWARD J. WYNNE
Attorneys for Plaintiff

5
6 Dated: June __, 2019

LYNNE C. HERMLE
ANDREW R. LIVINGSTON
Orrick, Herrington & Sutcliffe LLP

7
8
9
10 By: _____

ANDREW R. LIVINGSTON
Attorneys for Defendant

1 Dated: June ____2019

EDWARD J. WYNNE
Wynne Law Firm

2
3
4 By: _____
EDWARD J. WYNNE
Attorneys for Plaintiff

5
6 Dated: June 11, 2019

7 LYNNE C. HERMLE
ANDREW R. LIVINGSTON
Orrick, Herrington & Sutcliffe LLP

8
9
10 

11 _____
ANDREW R. LIVINGSTON
Attorneys for Defendant

EXHIBIT 2

[COUNSEL LISTED ON FOLLOWING PAGE]

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

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

1
2 LYNNE C. HERMLE (SBN: 99779)
lchermle@orrick.com
3 ORRICK, HERRINGTON &
SUTCLIFFE LLP
4 1000 Marsh Road
Menlo Park, CA 94025-1015
5 Telephone: 650-614-7400
Facsimile: 650-614-7401

6 ANDREW R. LIVINGSTON (SBN: 148646)
alivingston@orrick.com
7 ORRICK, HERRINGTON &
SUTCLIFFE LLP
8 The Orrick Building
9 405 Howard Street
San Francisco, CA 94105-2669
10 Telephone: 415-773-5700
Facsimile: 415-773-5759

11 JINNIFER PITCHER (SBN: 252880)
jpitcher@orrick.com
12 ORRICK, HERRINGTON &
SUTCLIFFE LLP
13 400 Capitol Mall, Suite 3000
14 Sacramento, CA 95814-4497
Telephone: 916-447-9200
15 Facsimile: 916-329-4900

16 **Attorneys for Defendant**
MORGAN STANLEY SMITH
17 **BARNEY LLC**

EDWARD J. WYNNE (165819)
ewynne@wynnelawfirm.com
WYNNE LAW FIRM
Wood Island
80 E. Sir Francis Drake Blvd., Ste. 3-G
Larkspur, CA 94939
Telephone: (415) 461-6400
Facsimile: (415) 461-3900

DAVID S. MARKUN (108067)
dmarkun@mzclaw.com
JEFFREY K. COMPTON (142969)
jcompton@mzclaw.com
MARKUN ZUSMAN FRENIERE &
COMPTON LLP
17383 Sunset Boulevard, Suite A380
Pacific Palisades, CA 90272
Telephone: (310) 454-5900
Facsimile: (310) 454-5970

JAMES F. CLAPP (145814)
jclapp@clapplegal.com
CLAPP & LAUINGER LLP
701 Palomar Airport Road, Suite 300
Carlsbad, CA 92011
Telephone: (760) 209-6565
Facsimile: (760) 209-6565

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

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement”) is made and entered into by and between Plaintiff Brandon Harvey (“Plaintiff” or “Class Representative”), individually and on behalf of all Class Members and Aggrieved Employees as defined herein, and Defendant Morgan Stanley Smith Barney LLC (“Defendant” or “MSSB”), and their respective counsel of record, subject to the terms and conditions hereof and the approval of the Court.

A. DEFINITIONS

1. “Action” means the case entitled *Brandon Harvey, individually and on behalf of all others similarly situated, v. Morgan Stanley Smith Barney LLC*, pending in the United States District Court for the Northern District of California, Case No. 3:18-cv-02835-WHO.

2. “Accrued Interest” means interest that will accrue at the rate of 5% on the Cash Payment Amount if the order granting final approval of this settlement and related judgment are appealed by any named Plaintiff in the *Chen* Case for the period starting with the filing of the notice of appeal and running until the appeal has been finally resolved (i.e., the Payment Obligation and Release Date). Any such interest will be added to the Cash Payment Amount. The “*Chen* Case” is *Chen v. Morgan Stanley Smith Barney*, Case No. 30-2014-00724866-CU-OE-CXC, currently pending before Judge William D. Claster in the Superior Court of the State of California, County of Orange.

3. “Administration Costs” means the actual and direct costs reasonably charged by the Settlement Administrator for its services in administering the Settlement, currently projected by the Parties not to exceed \$32,000.

4. “Aggrieved Employees” means all current and former Financial Advisors who were employed by MSSB within the State of California at any time during the PAGA Period.

5. “Cash Payment Amount” is Eight Million Five Hundred Thousand Dollars (\$8,500,000) plus any Accrued Interest. The Cash Payment Amount means the Maximum Settlement Amount (\$10,235,000) less the Expense Fund (\$1,735,000), plus any Accrued Interest. The Individual Class Settlement Payments, the Fee and Cost Award, the Named

1 Plaintiff Award, the Tier 1 PAGA Payment and Tier 2 PAGA Payment, and Administration
2 Costs shall be paid out of the Cash Payment Amount. The entire Cash Payment Amount will be
3 paid out pursuant to the terms of this Agreement.

4 6. "Class" means all current and former Financial Advisors who were employed by
5 MSSB within the State of California at any time during the Class Period. Members of the Class
6 are referred to herein as a "Class Member" or "Class Members."

7 7. "Class Counsel" means the Wynne Law Firm, Clapp & Lauinger LLP, and
8 Markun Zusman Freniere & Compton LLP, who are the attorneys for Plaintiff, the LWDA by
9 way of Plaintiff as its proxy, and the Aggrieved Employees, and who seek to be appointed as
10 counsel for the Class Members at the Preliminary Approval hearing.

11 8. "Class Period" is the period beginning May 14, 2014 through the date of
12 Preliminary Approval.

13 9. "Class Released Claims" means any and all claims, demands, rights, liabilities,
14 obligations, penalties, attorneys' fees and causes of action that were pled or could have been pled
15 by Class Members in the operative complaint based on the facts, transactions, events, policies,
16 occurrences, acts, disclosures, statements, omissions, or failures to act alleged in the operative
17 complaint against MSSB from May 14, 2014 through the date of Preliminary Approval, including
18 but not limited to claims for alleged unlawful wage deductions; failure to pay wages; cash bond or
19 violations of the California Employee Bond Law untimely final or other pay; inaccurate itemized
20 wage statements and records; unreimbursed business expenses and/or failure to indemnify all
21 necessary business expenses; claims alleging violations of California Labor Code sections
22 201-204.2, 221-224, 226, 400-410, 1174, 1174.5, 1198, 2802 and 2804; derivative claims for
23 unfair business practices under California Business & Professions Code section 17200 *et seq.*;
24 derivative claims for penalties under the Private Attorneys General Act ("PAGA"), California
25 Labor Code section 2698 *et seq.*; and any and all California state common law claims based on
26 the conduct alleged in the operative complaint or that could have been asserted based on the
27 conduct alleged, including but not limited to claims for fees and costs, damages, conversion,
28

1 penalties, equitable remedies, and/or pre- or post-judgment interest, up to Preliminary Approval.

2 10. "Complaint" means the operative Complaint filed in the Action and all
3 amendments thereto.

4 11. "Court" means the United States District Court for the Northern District of
5 California.

6 12. "Defendant's Counsel" means the law firm of Orrick, Herrington & Sutcliffe LLP.

7 13. "Employer Payroll Taxes" means the employer's portion of FICA, FUTA and all
8 other state and federal payroll taxes.

9 14. "Exclusion Request" means a request submitted by a Class Member to the
10 Settlement Administrator and postmarked by the Objection/Exclusion Deadline that includes the
11 Class Member's name, signature, date, and last 4 digits of the Class Member's social security
12 number and words that must be substantially similar to the following statement: "I request to be
13 excluded from the class action proceedings in the matter of *Brandon Harvey v. Morgan Stanley*
14 *Smith Barney LLC*, Case No. 18-cv-02835."

15 15. "Expense Fund" refers to the portion of the Maximum Settlement Amount
16 consisting of One Million Seven Hundred and Thirty-Five Thousand Dollars (\$1,735,000) that
17 MSSB will allocate to future payments of business expenses. This Expense Fund shall be
18 available separate and apart from the Alternative Flexible Grid ("AFG") Program. The Expense
19 Fund shall be made available to current California Financial Advisors for expenses that
20 otherwise could have been submitted to AFG through Defendant's current policies, and for
21 specific categories of expenses to be determined solely by Defendant.

22 16. "Fee and Cost Award" means such award of fees and actual litigation
23 costs/expenses as the Court may award to Class Counsel for the services they have rendered and
24 will render to Plaintiff, the Class, the LWDA, and the Aggrieved Employees in relation to
25 prosecuting the claims involved in this Action, which will be paid out of the Cash Payment
26 Amount and which is agreed by the Parties not to exceed twenty-five percent (25%) of the
27 Maximum Settlement Amount as the Fee Award, in addition to reasonable actual expenses, not
28

1 to exceed \$35,000, as the Cost Award. Any portion of the Fee and Cost Award not awarded to
2 Class Counsel shall become part of the Net Cash Distribution.

3 17. "Financial Advisors" or "FAs" refers to current or former MSSB employees who
4 worked for MSSB within the State of California in the job titles of Financial Advisors and/or
5 Private Wealth Advisors.

6 18. "Final Approval Order and Judgment" or "Final Approval" means an Order
7 Granting Final Approval of the Settlement of the Action and Judgment have been entered by the
8 Court.

9 19. "Individual Class Pay Periods" means the semimonthly pay periods that each
10 Class Member worked during the Class Period as an FA as reflected by Defendant's corporate
11 and business records, exclusive of leaves of absence. Approximations and averages will be used
12 to cover periods to the extent any data is missing or otherwise not available.

13 20. "Individual Class Settlement Payment" means the portion of the Net Cash
14 Distribution distributable to each Class Member.

15 21. "Individual PAGA Pay Periods" means the semimonthly pay periods that each
16 Aggrieved Employee worked during the PAGA Period as an FA as reflected by Defendant's
17 corporate and business records, exclusive of leaves of absence. Approximations and averages
18 will be used to cover periods to the extent any data is missing or otherwise not available.

19 22. "Individual PAGA Settlement Payment" means the portion(s) of the Tier 1 PAGA
20 Payment and/or Tier 2 PAGA Payment distributable to each Aggrieved Employee.

21 23. "Individual Tier 1 PAGA Pay Periods" are those Individual PAGA Pay Periods
22 worked by an Aggrieved Employee as an FA from April 23, 2013 up to May 9, 2014.

23 24. "Individual Tier 2 PAGA Pay Periods" are those Individual PAGA Pay Periods
24 worked by an Aggrieved Employee as an FA from May 9, 2014 through the end of the PAGA
25 Period.

26 25. "Individual Tier 1 PAGA Payment" means the portion(s) of the Tier 1 PAGA
27 Payment distributable to each Aggrieved Employee.
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26. “Individual Tier 2 PAGA Payment” means the portion(s) of the Tier 2 PAGA Payment distributable to each Aggrieved Employee.

27. “Maximum Settlement Amount” means Ten Million Two Hundred and Thirty-Five Thousand Dollars (\$10,235,000) reflecting the Cash Payment (\$8,500,000) plus the Expense Fund (\$1,735,000). Any Accrued Interest of the Cash Payment Amount may be added to the Maximum Settlement Amount. The Maximum Settlement Amount, plus Accrued Interest, is the maximum amount that Defendant shall pay as settlement consideration as a result of this Settlement Agreement and in exchange for, among other things, the release of the Class Released Claims and PAGA Released Claims. The Maximum Settlement Amount excludes MSSB’s Employer Payroll Taxes.

28. “Mediators” means Tripper Ortman and Mark Rudy.

29. “Named Plaintiff Award” means the sum to be paid to Plaintiff Brandon Harvey in recognition of his service, initiative, and effort in obtaining the benefits of the Settlement, his agreement to release all known and unknown claims against the Released Parties, and agreement to no re-employment. Subject to Court approval, the Named Plaintiff Award shall be Ten Thousand Dollars (\$10,000). The Named Plaintiff Award shall be paid out of the Cash Payment Amount.

30. “Net Cash Distribution” means the Cash Payment Amount less (1) the Fee and Cost Award, (2) the Named Plaintiff Award, (3) 75% of the Tier 1 PAGA Payment and 75% of the Tier 2 PAGA Payments, and (4) Administration Costs, as approved and awarded by the Court. Any portion of the Fee and Cost Award, Named Plaintiff Award and/or Administration Costs not awarded shall become part of the Net Cash Distribution.

31. “Net Settlement Value” means that Net Cash Distribution plus the Expense Fund. At this time, the Net Settlement Value is estimated to be \$7,149,250.

32. “Notice” means the Court-approved form of notice to Class Members, and, where referred to as “PAGA Notice,” the letter to Aggrieved Employees, to accompany the Individual PAGA Settlement Payments, both substantially in the form as Exhibit 1, attached hereto.

1 33. “Objection/Exclusion Deadline” means the date forty-five (45) days following the
2 date on which the Settlement Administrator first mails the Notice to the Class Members.

3 34. “PAGA Period” is the period beginning April 23, 2013 through the date of
4 Preliminary Approval.

5 35. “PAGA Released Claims” means all claims, demands, rights, liabilities,
6 obligations, penalties, attorneys’ fees and causes of action based on any and all PAGA claims
7 seeking civil penalties or any other relief under California Labor Code sections 558 and/or 2698
8 *et seq.* predicated on any alleged Labor Code violations that are alleged in, or could have been
9 alleged in, the operative Complaint by Aggrieved Employees based on the facts, events, policies,
10 occurrences, or acts alleged in the operative Complaint and/or based any alleged unlawful wage
11 deductions, failure to pay wages, cash bond or violations of the California Employee Bond Law,
12 untimely final or other pay, inaccurate itemized wage statements or records, failure to reimburse
13 or indemnify all necessary business expenses, or any California Labor Code violations alleged in
14 the Complaint (which include Labor Code sections 201-204.2, 221-224, 226, 400-410, 1174,
15 1174.5, 1198, 2802 and 2804) during the PAGA Period.

16 36. “Parties” means Plaintiff and Defendant, collectively.

17 37. “Payment Obligation and Release Date” means the date on which the Court’s
18 Final Approval Order and Judgment becomes final. For purposes of this paragraph, the Court’s
19 Final Approval Order and Judgment “becomes final” upon the last to occur of the following: (a)
20 the date of final affirmance on appeal of the Judgment; (b) the date of final dismissal of any
21 appeal from the Judgment or the final dismissal of any proceeding to review the Judgment; or (c)
22 if no appeal is filed, the expiration date of the time for filing or noticing of any appeal from the
23 Court’s Final Approval Order and Judgment.

24 38. “Percentage Class Share” means each Class Member’s Individual Class Pay
25 Periods divided by the Total Class Pay Periods.

26 39. “Percentage Tier 1 PAGA Share” means each Aggrieved Employee’s Individual
27 Tier 1 PAGA Periods divided by Total PAGA Tier 1 Pay Periods.
28

1 40. “Percentage Tier 2 PAGA Share” means each Aggrieved Employee’s Individual
2 Tier 2 PAGA Periods divided by Total PAGA Tier 2 Pay Periods.

3 41. “Plaintiff” or “Class Representative” shall mean Brandon Harvey, the named
4 plaintiff in the Action and the private attorney general standing in as a proxy for the LWDA, and
5 who will seek appointment as the Class Representative at the time of Preliminary Approval.

6 42. “Preliminary Approval” means that the Court has entered an order substantially in
7 the form as Exhibit 2, attached hereto, preliminarily approving the terms and conditions of this
8 Settlement Agreement, including the manner of providing the Notice to Class Members.

9 43. “QSF” shall mean the Qualified Settlement Fund established by the Settlement
10 Administrator for the benefit of the Class Members and Aggrieved Employees into which
11 Defendant will deposit the Cash Payment Amount.

12 44. “Released Parties” means MSSB and its past or present officers, directors,
13 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
14 attorneys, consultants, insurers and reinsurers, and their respective successors and predecessors in
15 interest, assigns, subsidiaries, affiliates and parents.

16 45. “Settlement” and “Settlement Agreement” shall refer to this Settlement
17 Agreement and the terms and conditions set forth in this document.

18 46. “Settlement Class Member” means any Class Member who does not submit a
19 timely and valid Exclusion Request.

20 47. “Settlement Administrator” means KCC Class Action Services, LLC or such other
21 entity which the Parties mutually agree shall serve as Settlement Administrator.

22 48. “Tier ~~1~~2 PAGA Payment” means the sum of One Hundred Thousand Dollars
23 (\$100,000.00), which shall be allocated from the Cash Payment Amount to settle claims for civil
24 penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, for the portion of the PAGA
25 Period extending from May 9, 2014 through the end of the PAGA Period; seventy-five percent
26 (75%) of which shall be paid to the Labor and Workforce Development Agency (“LWDA”) in
27
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1 accordance with PAGA, and twenty-five percent (25%) of which shall be distributed to
 2 Aggrieved Employees as set forth in this Agreement.

3 49. “Tier 21 PAGA Payment” means the sum of Five Hundred Thousand Dollars
 4 (\$500,000.00), which shall be allocated from the Cash Payment Amount to settle claims for civil
 5 penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, for the portion of the PAGA
 6 Period extending from April 23, 2013 to May 9, 2014; seventy-five percent (75%) of which shall
 7 be paid to the LWDA in accordance with PAGA, and twenty-five percent (25%) of which shall
 8 be distributed to Aggrieved Employees as set forth in this Agreement.

9 50. “Total Class Pay Periods” means the sum of all Individual Class Pay Periods for
 10 all Class Members.

11 51. “Total Tier 12 PAGA Pay Periods” means the sum of all Individual PAGA Pay
 12 Periods for Aggrieved Employees between May 9, 2014 through the end of the PAGA Period.

13 52. “Total Tier 21 PAGA Pay Periods” means the sum of all Individual PAGA Pay
 14 Periods for Aggrieved Employees between April 23, 2013 to May 9, 2014.

15 **B. GENERAL**

16 53. On or about May 14, 2018, Plaintiff filed a putative class action on behalf of
 17 himself and other employees that Defendant employed as Financial Advisors in California from
 18 May 14, 2014 through the present. On July 12, 2018, Plaintiff filed a First Amended Complaint
 19 (“FAC”) alleging that Defendant—as to Plaintiff, the Aggrieved Employees and the
 20 Class—failed to pay wages, made unlawful wage deductions, violated the California Employee
 21 Bond Law, failed to provide accurate itemized wage statements, and failed to indemnify all
 22 reasonable and necessary business expenses, enumerating alleged violations of Labor Code §§
 23 221-224, 226, 400-410, 1174, 1174.5, 1198, 2802 and Cal. Code of Reg., tit. 8, § 11040(8).
 24 Plaintiff also alleged derivative claims pursuant to the California Unfair Competition Law,
 25 California Business & Professions Code § 17200, *et seq.* (“UCL”) and PAGA, Labor Code §
 26 2698, *et seq.* Plaintiff’s claims are based on MSSB’s Alternative Flexible Grid (“AFG”)
 27 program. Plaintiff alleges that the claims should be certified as a class action. In Plaintiff’s
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1 FAC, he seeks recovery of allegedly unpaid wages, expense reimbursements, penalties, interest,
2 and attorneys' fees and costs.

3 54. On April 23, 2014, written notice of Defendant's Labor Code violations was given
4 by an allegedly aggrieved employee to the LWDA and to Defendant via certified mail on behalf
5 of all current and former California employees of Morgan Stanley Smith Barney LLC, including
6 Plaintiff Harvey. The LWDA did not respond to the notice within the time provided by Labor
7 Code § 2699.3.

8 55. Defendant denies any liability and wrongdoing of any kind associated with the
9 claims alleged in the Action, and further denies that the Action is appropriate for class or
10 representative treatment for any purpose other than this Settlement. Defendant contends, among
11 other things, that it has complied at all times with the California Labor Code, the Industrial
12 Welfare Commission Wage Orders, the California Business and Professions Code and the Fair
13 Labor Standards Act. In addition, it is Defendant's position that, if this case were to be litigated,
14 class certification would be inappropriate and the PAGA claim would be unmanageable as a
15 representative action.

16 56. The Class Representative believes that the Action is meritorious and that class
17 certification is appropriate.

18 57. Class Counsel have conducted a thorough investigation into the facts of the
19 Action, including extensive pre-litigation investigation, litigation of similar claims, and
20 appropriate informal discovery. Based on the informal and formal discovery as well as their own
21 independent investigation and evaluation, and experience litigating similar claims, Class Counsel
22 are of the opinion that the settlement with Defendant for the consideration and on the terms set
23 forth in this Settlement Agreement is fair, reasonable and adequate and is in the best interest of
24 the Class Members in light of all known facts and circumstances. Further, the Class
25 Representative has carefully evaluated the terms of the Settlement, and, based upon that review,
26 has determined that it is fair and reasonable. By signing this Settlement Agreement, Plaintiff
27 agrees to be bound by the terms herein. If Plaintiff Harvey objects to or opts-out of the
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1 Settlement, Defendant will have the option at its discretion of rejecting the Class Settlement in its
 2 entirety. Defendant agrees not to dispute that the Settlement is fair, reasonable and adequate.

3 58. The Parties stipulate and agree to the conditional certification of the Class for
 4 purposes of this Settlement only. Should, for whatever reason, the Court not grant Final
 5 Approval, the Parties' stipulation to class certification as part of the Settlement shall become null
 6 and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with,
 7 the issue of whether or not certification would be appropriate in a non-settlement context.
 8 Defendant expressly reserves its right and declares that it intends to continue to oppose class
 9 certification and manageability vigorously should this Settlement not be granted Final Approval.
 10 The Parties stipulate and agree that no certification is requested or required for the Aggrieved
 11 Employees or the PAGA claims alleged in this Action.

12 **C. PRELIMINARY APPROVAL MOTION AND AMENDED COMPLAINT**

13 59. Class Counsel shall request a hearing before the Court to seek Preliminary
 14 Approval of the Settlement on the earliest practical mutually available date. In conjunction with
 15 such hearing, Class Counsel shall submit this Settlement Agreement, together with the exhibits
 16 attached hereto, and any other documents necessary to implement the Settlement. Class Counsel
 17 shall provide the papers they intend to file in support of Preliminary Approval to Defendant's
 18 Counsel for their review at least two (2) business days prior to filing.

19 60. Immediately prior to the filing of Plaintiff's Motion for Preliminary Approval,
 20 Plaintiff and Defendant shall file a stipulation seeking leave to file a Second Amended
 21 Complaint (SAC) in the form attached hereto in Exhibit 3.

22 **D. SETTLEMENT COMPONENTS**

23 61. The Settlement in this Action shall have six components: (1) the Individual Class
 24 Settlement Payments; (2) the Tier 1 PAGA Payment and Tier 2 PAGA Payment; (3) the Named
 25 Plaintiff Award; (4) the Fee and Cost Award; (5) the Expense Fund and (6) the Administration
 26 Costs. All these components are included in the Maximum Settlement Amount. Defendant will
 27 pay the Maximum Settlement Amount in full and final settlement of the Action (except that
 28

Defendant will also pay the Employer Payroll Taxes, separate and apart from, and in addition to, the Maximum Settlement Amount). The Maximum Settlement Amount will constitute adequate consideration for this Settlement. Since any uncashed Individual Class Settlement Payment and Individual PAGA Settlement Payment check funds will be distributed pursuant to the *cy pres* doctrine, this Agreement and the associated Judgment do not and will not create any unpaid residue or unpaid residual, and no distribution of such shall be required.

a. **Calculation of Individual Class Settlement and PAGA Payments:**

The Settlement Administrator shall have the authority and obligation to calculate the amounts of Individual Class Settlement Payments and Individual PAGA Settlement Payments in accordance with the methodology set forth in this Settlement Agreement and orders of the Court. Defendant contends that claims for relief in the Action are extremely difficult to determine with any certainty for any given year, or at all, and are subject to myriad differing calculations and formulas. The Parties agree that the formula for allocating the Individual Class Settlement Payments and Individual PAGA Settlement Payments to Settlement Class Members and Aggrieved Employees, respectively, provided herein is reasonable and that the payments provided herein are designed to provide a fair settlement to such persons.

It shall be the responsibility of the Settlement Administrator to timely and properly withhold from Individual Class Settlement Payments and Individual PAGA Settlement Payments all applicable payroll and employment taxes, but not Employer Payroll Taxes, and to prepare and deliver the necessary tax documentation and, thereafter, to cause the appropriate deposits of withholding taxes and informational and other tax return filing to occur. Each Settlement Class Member and Aggrieved Employee's share of all applicable payroll and employment taxes (excluding Employer Payroll Taxes) withheld and deposited with the applicable governmental authorities in accordance with this Settlement Agreement shall be a part of, and paid out of, the Individual Class Settlement Payments and Individual PAGA Settlement Payments to each Settlement Class Member and/or Aggrieved Employee, respectively. Each Settlement Class Member and Aggrieved Employee will be responsible for paying the employee's share of all

1 applicable state, local, and federal income taxes on all amounts the Settlement Class Member
2 receives pursuant to this Settlement Agreement (excluding Employer Payroll Taxes).

3 (i) *Individual Class Settlement Payments:* The Parties have agreed that
4 the Individual Settlement Payments will be calculated on the basis of the number of Individual
5 Class Pay Periods and Individual PAGA Pay Periods. The Individual Class Settlement Payments
6 will be calculated by multiplying the Net Cash Distribution by each Settlement Class Member's
7 Percentage Class Share, and the result of this multiplication will be the Settlement Class
8 Member's Individual Class Settlement Payment. The Individual Class Settlement Payments will
9 be allocated as follows: 20% (one-fifth) to settlement of wage claims, which portion will be
10 subject to required tax withholdings, and 80% (four-fifths) to settlement of claims for expenses,
11 penalties and interest, which portion will be paid without withholding any amount. The portion
12 allocated to wages shall be reported on an IRS Form W-2, and the portion allocated to expenses,
13 interest and penalties shall be reported on an IRS Form 1099.

14 (ii) *Individual PAGA Settlement Payments:* The Parties have agreed
15 that the Individual PAGA Settlement Payments will be calculated as follows: Each Aggrieved
16 Employee's Individual PAGA Settlement Payment shall be the sum of that Aggrieved
17 Employee's (1) Individual Tier 1 PAGA Payment and (2) Individual Tier 2 PAGA Payment.
18 Each Aggrieved Employee's Individual Tier 1 PAGA Payment will be calculated by multiplying
19 the following: (a) 25%; (b) the Tier 1 PAGA Payment; and (c) the Aggrieved Employee's
20 Percentage Tier 1 PAGA Share. Similarly, each Aggrieved Employee's Individual Tier 2 PAGA
21 Payment will be calculated by multiplying the following: (a) 25%; (b) the Tier 2 PAGA Payment;
22 (c) and the Aggrieved Employee's Percentage Tier 2 PAGA Share. The Individual PAGA
23 Settlement Payments will be allocated entirely to settlement of claims for civil penalties pursuant
24 to PAGA, which portion will be paid without withholding any amount and which shall be
25 reported on an IRS Form 1099.

26 b. **Named Plaintiff Award:** Defendant agrees not to challenge Class
27 Counsel's request for the Named Plaintiff Award to the Class Representative. The Named
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1 Plaintiff Award will be paid in addition to Plaintiff's Individual Class Settlement Payment and
2 Individual PAGA Settlement Payment. Should the Named Plaintiff Award approved by the
3 Court be less than the amount sought, the difference shall become part of the Net Cash
4 Distribution. An IRS Form 1099 will be issued to the Class Representative in connection with
5 the Named Plaintiff Award.

6 Plaintiff agrees not to request exclusion from the Settlement. Any such request for
7 exclusion shall therefore be void and of no force or effect. Plaintiff stipulates to a general release
8 of all Released Parties for all claims, demands, rights, liabilities, and causes of action, including
9 without limitation known or unknown claims, whether for economic damages, non-economic
10 damages, punitive damages, restitution, tort, contract, penalties, injunctive or declaratory relief,
11 attorneys' fees, costs, or other monies or remedies that Plaintiff had, has, or may have arising out
12 of any event, act, occurrence, or omission taking place on or before Final Approval. This release
13 by Plaintiff (on his own behalf and on behalf of his heirs, beneficiaries, trustees, executors,
14 administrators, assigns, agents, insurers, representatives and successors) includes all federal, state
15 and local statutory claims, and federal and state common law claims (including but not limited to
16 those for contract, tort and equity), including, without limitation, the Americans with Disabilities
17 Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as
18 amended), 42 U.S.C. §1981, 42 U.S.C. § 1983, the Fair Labor Standards Act, the Employee
19 Retirement Security Income Act of 1974, the California Constitution, the California Fair
20 Employment and Housing Act, the California Unfair Competition Act (California Business and
21 Professions Code section 17200 et seq.), and the California Labor Code, including section 132a
22 claims. Plaintiff acknowledges the language of Section 1542 of the California Civil Code, which
23 provides:

24
25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
26 **THAT THE CREDITOR OR RELEASING PARTY DOES**
27 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
28 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR OR RELEASED PARTY.

1 Plaintiff expressly waives the protection of Section 1542. Plaintiff understands and agrees that
2 claims or facts in addition to or different from those which are now known or believed by him to
3 exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all of the
4 claims he now has against the Released Parties, whether known or unknown, suspected or
5 unsuspected. The Named Plaintiff Award shall be paid to Plaintiff specifically in exchange for
6 the general release of the Released Parties from all claims, including those specified in this
7 paragraph and a covenant not to sue the Released Parties. Named Plaintiff further agrees never to
8 apply for or accept employment with MSSB, although MSSB agrees that if Plaintiff is employed
9 by a financial firm that MSSB later acquires, merges with or enters into a joint venture with,
10 Plaintiff will not be required to resign his employment as a result of this provision. MSSB will
11 comply with its reference policy with respect to Harvey.

12 c. **Class Counsel's Fees and Costs:** Class Counsel will apply to the Court
13 for its Fee and Cost Award which Defendant will not object to. Should the Fee and Cost Award
14 approved by the Court be less than the amount sought, the difference shall become part of the
15 Net Cash Distribution. A Form 1099 will be issued to each of the Class Counsel firms with
16 respect to its share of the award of attorneys' fees and costs/expenses. Payment of the Fee and
17 Cost Award to Class Counsel shall constitute full satisfaction of any obligation to pay any
18 amounts to any person, attorney or law firm for attorneys' fees, expenses or costs in the Action
19 incurred by any attorney on behalf of Plaintiff or the Class, and shall relieve Defendant and
20 Defendant's Counsel of any other claims or liability to any other attorney or law firm for any
21 attorneys' fees, expenses and/or costs to which any of them may claim to be entitled on behalf of
22 Plaintiff and/or the Class in relation to this Action. Upon the Payment Obligation and Release
23 Date, Class Counsel, Plaintiff, the LWDA, Aggrieved Employees, and the Class will be deemed
24 to have released Defendant from any and all claims for fees and costs resulting from the Action.

25 d. **Expense Fund:** In addition to the Cash Payment Amount, Defendant
26 agrees to allocate One Million Seven Hundred and Thirty-Five Thousand Dollars (\$1,735,000) in
27 future payments of business expenses. This Expense Fund shall be available separate and apart
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1 from the Alternative Flexible Grid (“AFG”) Program. The Expense Fund shall be made
 2 available to current California Financial Advisors for expenses that otherwise could have been
 3 submitted to AFG through Defendant’s current policies, and for specific categories of expenses
 4 to be determined solely by Defendant. Defendant agrees to make its best efforts to spend the
 5 Expense Fund in calendar year 2020, 2021 or within two years of the Payment Obligation and
 6 Release Date. Examples of types of costs that may be covered under this provision include
 7 remote computing (including corporate iPhone or MobileIron access) and personalized web
 8 pages.

9 e. **Employer Payroll Taxes:** The Maximum Settlement Amount does not
 10 include Employer Payroll Taxes, which shall be paid by Defendant separate and apart from the
 11 Maximum Settlement Amount. Employer Payroll Taxes will be computed by the Settlement
 12 Administrator based on the amounts to be paid to the Settlement Class Members. The Settlement
 13 Administrator shall be responsible for making all necessary payments and government filings in
 14 connection with such payments.

15 **E. RELEASES BY THE CLASS, LWDA, AND AGGRIEVED EMPLOYEES**

16 62. **Release by the Class.** Upon the Payment Obligation and Release Date, the
 17 Settlement Class Members, on behalf of themselves and each of their respective agents,
 18 successors, heirs and assigns, will be deemed to have, and by operation of the Final Approval
 19 Order and Judgment will have, fully, finally, and forever released, relinquished and discharged
 20 the Released Parties from the Class Released Claims, except that those Settlement Class
 21 Members who do not cash their Individual Class Settlement Payment shall not have released
 22 claims under the FLSA. The Settlement Class Members agree not to sue or otherwise make a
 23 claim against any of the Released Parties for the Class Released Claims. The Individual Class
 24 Settlement Payments shall be paid to Settlement Class Members specifically in exchange for the
 25 release of the Released Parties from the Class Released Claims and the covenant not to sue
 26 concerning the Class Released Claims. Consistent with the foregoing, Settlement Class
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Members may not sue or otherwise make a claim against any of the Released Parties that is in any way related to, arises out of, or is connected with any of the Class Released Claims.

63. Release by the Aggrieved Employees. Upon the Payment Obligation and Release Date, Plaintiff, on behalf of himself and on behalf of all who claim by and through him, or in his stead, including every Aggrieved Employee (which includes any legal heirs and/or successors-in-interest of every Aggrieved Employee) and as proxy and representative of the State of California LWDA, will fully release the Released Parties from the PAGA Released Claims for the PAGA Period. Plaintiff as the proxy and representative of the State of California LWDA and Aggrieved Employees agree not to sue or otherwise make a claim against any of the Release Parties for the PAGA Released Claims. The seventy-five percent of each of the Tier 1 PAGA Payment and the Tier 2 PAGA Payment (both of which are to be paid to the LWDA) and the Individual PAGA Settlement Payments (which shall be paid to Aggrieved Employees) are made specifically in exchange for the release of the Released Parties from the PAGA Released Claims and covenant not to sue for those claims. The Final Approval Order and Judgment shall have the effect of binding all Aggrieved Employees and State of California labor law enforcement agencies pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009).

F. NOTICE PROCESS

64. In accordance with Labor Code section 2699(1)(2), Class Counsel shall submit a copy of this proposed Settlement to the LWDA on the same date on which it files the Preliminary Approval motion.

65. Within ten (10) calendar days following the filing of the Motion for Preliminary Approval, MSSB, through the Settlement Administrator, shall serve notice of the proposed Settlement upon the required governmental officials pursuant to the Class Action Fairness Action of 2005, 28 U.S.C. § 1715 (with a copy to Class Counsel).

66. The Parties agree to jointly utilize a third-party Settlement Administrator to give notice of and communicate with Class Members regarding the Settlement, and to distribute the Individual Class Settlement Payments, the Tier 1 PAGA Settlement Payment and Tier 2 PAGA

1 Settlement Payment (including the payments to the LWDA), the Named Plaintiff Award, the Fee
 2 and Cost Award, and the Administration Costs. The Settlement Administrator shall be
 3 responsible for creating and maintaining a website for Class Members and Aggrieved Employees
 4 that links to the Settlement Agreement, Notice, motions for approval and for attorneys' fees, and
 5 other important documents in the case including the ability for Class Members and Aggrieved
 6 employees to update their contact information and contact Class Counsel. The Parties selected
 7 KCC Class Action Services LLC to administer the Settlement but may jointly select a different
 8 settlement administrator subject to the approval of the Court. If the actual cost of settlement
 9 administration is less than the amount approved by the Court, the remaining amount shall be
 10 added to the Net Cash Distribution and distributed as set forth in this Agreement. All costs
 11 associated with settlement administration as approved by the Court shall come out of the Cash
 12 Payment Amount. The Settlement Administrator's actions shall be governed by the terms of this
 13 Agreement.

14 67. The Parties agree that the QSF is intended to be a "Qualified Settlement Fund"
 15 under Section 468B of the Internal Revenue Code and Treasury Regulation § 1.468B-1 (26 C.F.R.
 16 § 1.468B-1 *et seq.*) and will be administered by the Settlement Administrator as such. With respect
 17 to the QSF, the Settlement Administrator shall: 1) open and administer a settlement account in such
 18 a manner as to qualify and maintain the qualification of the QSF as a "Qualified Settlement Fund"
 19 under Section 468B of the Internal Revenue Code and Treasury Regulation § 1.468B-1; (2)
 20 calculate, withhold, remit and report each Settlement Class Member's share of applicable payroll
 21 taxes (including, without limitation, federal, state and local income tax withholding, FICA,
 22 Medicare and any state or local employment taxes), and indemnify MSSB for any penalty arising
 23 out of any error or incorrect calculation and/or interest (if applicable) with respect to any late
 24 deposit of the same; (3) satisfy all federal, state and local income and other tax reporting, return,
 25 and filing requirements with respect to the QSF; and (4) satisfy out of the QSF all fees, expenses
 26 and costs incurred in connection with the opening and administration of the QSF and the
 27 performance of its duties and functions as described in this Agreement. The aforementioned taxes,
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1 fees, expenses and costs shall be treated as and included in the costs of administering the QSF and
2 as Administration Costs. The Parties and the Settlement Administrator shall treat the QSF as
3 coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in
4 26 C.F.R. § 1.468B-1(j)(2)(i), and such election statement shall be attached to the appropriate
5 returns as required by 26 C.F.R. § 1.468B-1(j)(2)(ii). The Parties agree to cooperate with the
6 Settlement Administrator and one another to the extent reasonably necessary to carry out the
7 provisions of this section of the Agreement.

8 68. Within thirty (30) calendar days after entry of the order granting Preliminary
9 Approval, Defendant shall provide to the Settlement Administrator a list of all Class Members
10 and Aggrieved Employees, including their last known address, telephone number, social security
11 number, Individual Class Pay Periods, and Individual PAGA Pay Periods for the Tier 1 PAGA
12 Payment and for the Tier 2 PAGA Payment.

13 69. Within fourteen (14) calendar days after receiving the Class Member/Aggrieved
14 Employee list from Defendant, the Settlement Administrator shall send the Notice via first class
15 mail to all Class Members ~~and Aggrieved Employees~~. Prior to the initial mailing, the Settlement
16 Administrator will check the addresses provided by Defendant through the National Change of
17 Address System.

18 70. If an original mailed Notice is returned as undeliverable with a forwarding address
19 provided by the United States Postal Service, the Settlement Administrator will promptly resend
20 a Notice to that forwarding address along with a brief letter stating that the recipient of the Notice
21 has until the original deadline set forth on the Notice or fifteen (15) days after the re-mailing of
22 the Notice (whichever is later) to object or submit an Exclusion Request. If an original Notice is
23 returned as undeliverable without a forwarding address, the Settlement Administrator will make
24 reasonable efforts to locate forwarding addresses, including a skip trace, and if it obtains a more
25 recent address, will resend a Notice along with a brief letter stating that the recipient of the
26 Notice has until the original deadline set forth on the Notice or fifteen (15) days after the
27 re-mailing of the Notice (whichever is later) to object or submit an Exclusion Request.
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1 71. At least ten (10) calendar days prior to the Final Approval hearing, the Settlement
2 Administrator will provide a declaration of due diligence and proof of mailing with regard to the
3 mailing of the Notice to counsel for all Parties.

4 72. To the extent a Class Member or Aggrieved Employee disputes the Individual
5 Class Pay Periods shown in his or her Notice, the Class Member or Aggrieved Employee may
6 produce evidence to the Settlement Administrator establishing the dates he or she contends to
7 have worked as an FA during the Class Period and/or PAGA Period. Defendant's records will be
8 presumed determinative. The Settlement Administrator shall notify counsel for the Parties of any
9 disputes. Defendant shall review their records and provide further information to the Settlement
10 Administrator, as necessary. The Settlement Administrator shall resolve any disputes and notify
11 counsel for the Parties of its decision.

12 73. The Settlement Administrator's determination of eligibility for any Individual
13 Class Settlement Payment and Individual PAGA Settlement Payment under the terms of this
14 Settlement Agreement shall be conclusive, final and binding on all Parties, Aggrieved
15 Employees, and all Class Members, so long as the Settlement Administrator has first consulted
16 with the Parties regarding any disputes or questions as to eligibility.

17 **G. EXCLUSIONS AND OBJECTIONS**

18 74. The Notice shall provide that Class Members who wish to exclude themselves
19 from the non-PAGA portion of the Settlement must submit an Exclusion Request. Any Class
20 Member who properly requests exclusion using this procedure will not be entitled to any
21 Individual Class Settlement Payment under the Settlement and will not be bound by the Class
22 Released Claims under this Settlement Agreement or have any right to object, appeal or comment
23 thereon; however, the excluding Class Member will remain bound by the PAGA portion of the
24 Settlement, including the PAGA Released Claims, to the extent the Class Member also is an
25 Aggrieved Employee. Class Members who fail to submit a valid and timely Exclusion Request
26 shall be bound by all terms of the Settlement Agreement and any judgment entered in the Action
27 if the Settlement is approved by the Court.
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75. If three percent (3%) or more of the Class Members submit a timely and valid Exclusion Request, Defendant shall have the option of canceling the Settlement and all actions taken in its furtherance will be null and void, as set forth in paragraph 84. Defendant must exercise this right within ten (10) calendar days after the Settlement Administrator notifies the Parties of the number of valid Exclusion Requests received, which the Settlement Administrator must do within seven (7) calendar days after the Objection/Exclusion Deadline, or within seven (7) calendar days after the fifteen (15) calendar days following a re-mailing of the Notice, whichever is later.

76. In order to object to the Settlement, a Class Member must file his or her objection with the Court and serve it on all Parties no later than the Objection/Exclusion Deadline, or fifteen (15) calendar days after the re-mailing of the Notice to that Class Member, whichever is later.

77. After the Court grants Final Approval of the Settlement, and the Payment Obligation and Release Date has passed, the Settlement Administrator shall prepare a final list of all Settlement Class Members. For each Settlement Class Member on this list, the Settlement Administrator will calculate the amounts of each Individual Class Settlement Payment as set forth herein (excluding any individuals who effectively and timely requested exclusion from the Settlement) and the Individual PAGA Settlement Payment, plus any owed Employer Payroll Taxes and provide that calculation to Class Counsel and Defendant's Counsel within (5) calendar days after the Payment Obligation and Release Date.

78. No later than ten (10) calendar days after the Court issues the Final Approval Order and Judgment, the Settlement Administrator shall provide a copy of the Final Approval Order and Judgment to the LWDA in accordance with Labor Code section 2699(l)(3).

H. DISTRIBUTION OF FUNDS

79. No later than ten (10) business days after the date of the entry of Final Approval Order and Judgment has passed, Defendant will provide the Settlement Administrator with the Cash Payment Amount, plus any owed Employer Payroll Taxes as estimated by the Settlement

1 Administrator. MSSB will wire the funds into the QSF set up and controlled by the Settlement
2 Administrator. The QSF shall be held at a federally-insured banking institution and shall accrue
3 interest payable by Defendant at the rate of 5% of the Cash Payment Amount from the date that
4 any notice of appeal is filed until the Payment Obligation and Release Date. This Accrued
5 Interest earned shall inure to the benefit of the Class and Class Counsel. If, for any reason, the
6 Settlement does not become final, the QSF and all interest earned shall be promptly paid to
7 Defendant. The PAGA Notice shall accompany all checks for Individual PAGA Settlement
8 Payments.

9 The Settlement Administrator will mail or wire all required payments no later than seven
10 (7) calendar days after the Payment Obligation and Release Date. The Settlement Administrator
11 will send settlement checks to all Settlement Class Members and Aggrieved Employees. If a
12 Settlement Class Member and/or Aggrieved Employee's check is returned to the Settlement
13 Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the
14 Settlement Class Member and/or Aggrieved Employee at his or her correct address. It is
15 expressly understood and agreed that the checks for the Individual Class Settlement Payments and
16 Individual PAGA Settlement Payments shall become void and no longer available if not cashed
17 within one hundred eighty days (180) days after their initial mailing. Ninety (90) days after the
18 initial mailing, the Settlement Administrator shall mail a reminder postcard to all Class Members
19 and Aggrieved Employees who have not cashed their checks by that date that they must do so by
20 the check stale date or the check will be void and no longer negotiable. The funds associated with
21 any Individual Class Settlement Payment and Individual PAGA Settlement Payment checks
22 which are not timely negotiated will be paid to the following entities and in the following
23 percentages pursuant to the *cy pres* doctrine within two hundred (200) calendar days from the date
24 of mailing the Settlement Payment checks: 25% to the California Trial Court Improvement and
25 Modernization Fund and 25% to the California Equal Access Fund; and 50% to Bay Area Legal
26 Aid. No later than two hundred ten (210) calendar days from the date of mailing of the Individual
27 Class Settlement Payment and Individual PAGA Settlement Payment checks (or, if that date falls
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1 on a weekend or holiday, the next business day thereafter), the Settlement Administrator shall
2 provide Class Counsel and Defendant's Counsel with a declaration as to the total amount of any
3 uncashed settlement checks and the *cy pres* payments.

4 80. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff,
5 the Class, Class Counsel or the Settlement Administrator based on mailings, distributions and
6 payments made in accordance with this Settlement Agreement.

7 **I. MOTION FOR FINAL APPROVAL**

8 81. Plaintiff shall timely file the motion for final approval and request entry of the
9 Final Approval Order and Judgment. Class Counsel shall provide a draft of the motion to
10 Defendant's Counsel for review at least five (5) calendar days prior to filing the motion for final
11 approval of the Settlement. Within 21 days after the distribution of the settlement funds and
12 payment of attorneys' fees, the Parties should file a Post-Distribution Accounting in accordance
13 with the Northern District Procedural Guidance for Class Action Settlements.

14 **J. NO EFFECT ON EMPLOYEE BENEFITS**

15 82. The Individual Class Settlement Payments, Individual PAGA Settlement
16 Payments, and the Named Plaintiff Award shall not have any effect on the eligibility for, or
17 calculation of, any employee benefits (e.g., vacation, retirement plans, etc.) of Settlement Class
18 Members, Aggrieved Employees or Plaintiff. No benefit, including but not limited to 401K
19 benefits, shall increase or accrue as a result of any payment made as a result of this Settlement.

20 **K. PUBLICITY**

21 83. Plaintiff and Class Counsel will not issue any press release, or engage in any
22 press. Nothing in this paragraph shall preclude Plaintiff or Class Counsel from responding to
23 press inquiries or inquiries from Class Members or from posting publicly available documents on
24 their firm websites.

25 **L. PRIVACY OF DOCUMENTS AND INFORMATION**

26 84. Plaintiff and Class Counsel agree they will destroy all confidential documents and
27 information provided to them by Defendant in the Action within 30 days of the Payment
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Obligation and Release Date, except for documents that must be saved for malpractice purposes. Plaintiff and Class Counsel further agree that none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution of this Action or the defense or prosecution of a malpractice action.

M. VOIDING THE AGREEMENT

85. In the event of any of the following: (i) 3% or more of the Class Members submit an Exclusion Request (i.e., opt-out of the Settlement); (ii) the Court does not approve the scope of the Class Released Claims and/or PAGA Released Claims, or there is a Court-ordered change to the scope of the Class Released Claims and/or PAGA Released Claims (including, but not limited to, the release of PAGA claims for the period April 23, 2013 through May 14, 2014); (iii) the Court finds the Maximum Settlement Amount is insufficient to warrant approval; or (iv) there is a change to the structure of the Settlement (such as a denial of the Parties' stipulation to a Second Amended Complaint), then the Parties will meet and confer in good faith, engaging the Mediators if appropriate, for the purpose of determining whether the Settlement should be amended and resubmitted to the Court. If that meet and confer is unsuccessful, either Party may elect to reject this Settlement and, in the event either party elects to reject this Settlement, the Stipulation of Settlement shall be null and void *ab initio* and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In such case, the Class Members and Defendant shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement. The Party electing to withdraw from the Settlement pursuant to this paragraph shall be responsible for all of the Settlement Administrator's fees and costs incurred to date. In the event an appeal is filed from the Final Approval Order and Judgment, or any other appellate review is sought prior to the Payment Obligation and Release Date, administration of the Settlement related to the disbursement of funds shall be stayed pending final resolution of the appeal or other appellate review; however, the Settlement Administrator shall continue to monitor and manage the QSF and respond to all Class Member inquiries until such time as the Settlement is final.

1 **N. PARTIES' AUTHORITY**

2 86. The signatories hereto represent that they are fully authorized to enter into this
3 Agreement and bind the Parties to the terms and conditions hereof.

4 **O. MUTUAL FULL COOPERATION**

5 87. The Parties and their counsel agree to fully cooperate with each other to
6 accomplish the terms of this Agreement, including but not limited to, execution of such
7 documents and to take such other action as may reasonably be necessary to implement the terms
8 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
9 contemplated by this Agreement and any other efforts that may become necessary by order of the
10 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. In the event the
11 Parties are unable to reach agreement on the form or content of any document needed to
12 implement the Settlement, or on any supplemental provisions or actions that may become
13 necessary to effectuate the terms of this Agreement, the Parties shall seek the assistance of the
14 Mediators to resolve such disagreement.

15 **P. NO PRIOR ASSIGNMENTS**

16 88. The Parties hereto represent, covenant and warrant that they have not directly or
17 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
18 person or entity any portion of any liability, claim, demand, action, cause of action or rights
19 released and discharged by this Agreement.

20 **Q. NO ADMISSION**

21 89. Nothing contained herein, nor the consummation of this Agreement, is to be
22 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
23 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
24 Agreement with the intention of avoiding further disputes and litigation with the attendant risk,
25 inconvenience and expenses. This Agreement is a settlement document and shall, pursuant to
26 California Evidence Code Section 1152 and/or Federal Rule of Evidence 408 and/or any other
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1 similar law, be inadmissible as evidence in any proceeding, except an action or proceeding to
2 approve the settlement, and/or interpret or enforce this Agreement.

3 **R. CONSTRUCTION**

4 90. The Parties hereto agree that the terms and conditions of this Agreement are the
5 result of lengthy, intensive arm's-length negotiations between the Parties and that this Agreement
6 shall not be construed in favor of or against any of the Parties by reason of the extent to which
7 any Party or his or its counsel participated in the drafting of this Agreement.

8 **S. JURISDICTION OF THE COURT**

9 91. Except for those matters to be resolved by the Mediators or the Settlement
10 Administrator as expressly stated, any dispute regarding the interpretation or validity of or
11 otherwise arising out of this Agreement, or relating to the Action or the Class Released Claims,
12 shall be subject to the exclusive jurisdiction of the Court, and the Plaintiff, Class Members,
13 Aggrieved Employees and Defendant agree to submit to the personal and exclusive jurisdiction
14 of the Court. The Parties agree to first try and resolve such disputes with the Mediators. The
15 Court shall retain jurisdiction solely with respect to the interpretation, implementation and
16 enforcement of the terms of this Agreement and all orders and judgments entered in connection
17 therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of
18 interpreting, implementing and enforcing the settlement embodied in this Agreement and all
19 orders and judgments entered in connection therewith.

20 **T. CALIFORNIA LAW GOVERNS**

21 92. All terms of this Agreement and the exhibits hereto shall be governed by and
22 interpreted according to the laws of the State of California, regardless of its conflict of laws.

23 **U. INVALIDITY OF ANY PROVISION**

24 93. The Parties request that before declaring any provision of this Agreement invalid,
25 the Court shall first attempt to construe all provisions valid to the fullest extent possible
26 consistent with applicable precedents.

27 **V. HEADINGS**

1 94. The headings contained herein are inserted as a matter of convenience and for
2 reference, and in no way define, limit, extend or describe the scope of this Agreement or any
3 provision hereof.

4 **W. EXHIBITS**

5 95. All terms of this Agreement include the terms set forth herein and the attached
6 Exhibits 1, 2 and 3, which are incorporated by this reference as though fully set forth herein. Any
7 exhibits to this Agreement are an integral part of the Settlement.

8 **X. AMENDMENT OR MODIFICATION**

9 96. This Agreement may be amended or modified only by a written instrument signed
10 by counsel for all Parties or their successors-in-interest.

11 **Y. ENTIRE AGREEMENT**

12 97. This Agreement including Exhibits 1-3 attached hereto, contains the entire
13 agreement between Plaintiff and Defendant relating to the Settlement and transactions
14 contemplated hereby, and all prior or contemporaneous agreements, understandings,
15 representations, and statements, whether oral or written and whether by a Party or such Party's
16 legal counsel, are merged herein. No rights hereunder may be waived except in writing.

17 **Z. BINDING ON ASSIGNS**

18 98. This Agreement shall be binding upon and inure to the benefit of the Parties
19 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

20 **AA. NO SOLICITATION RE: OBJECTIONS, EXCLUSIONS, OR APPEALS**

21 99. The Parties agree to leave the choice of whether to participate in the Settlement up
22 to the Class Members. At no time shall any of the Parties or their counsel discourage Class
23 Members from participating. The Parties and their counsel shall not solicit or otherwise
24 encourage Class Members to submit written objections to the Settlement, to request exclusion or
25 to appeal from the Court's Final Approval Order and Judgment.

26 **BB. INTERIM STAY OF PROCEEDINGS**

1 100. The Parties agree to hold in abeyance all proceedings in the Action, except such
2 proceedings necessary to implement and complete the Settlement, pending the final approval
3 hearing to be conducted by the Court.

4 **CC. NO TAX REPRESENTATIONS**

5 101. The Parties agree that all tax obligations, if any, which may arise from the
6 payments set forth above shall be the sole obligation of Plaintiff, the Class and Aggrieved
7 Employees. Defendants make no representations or warranties with respect to any tax
8 consequences or characterization of the nature of any payment under this Settlement Agreement.

9 **DD. COUNTERPARTS**

10 102. This Agreement may be executed in counterparts, and when each of the Parties
11 has signed and delivered at least one such counterpart, each counterpart shall be deemed an
12 original, and, when taken together with other signed counterparts, shall constitute one
13 fully-signed Stipulation of Settlement, which shall be binding upon and effective as to all Parties.

IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the foregoing terms and conditions by executing this Agreement as of the date indicated below.

APPROVED AND AGREED:

Dated: April ___, 2019

Brandon Harvey, Plaintiff

Dated: April ___, 2019

MORGAN STANLEY SMITH BARNEY LLC

By:
Its:

APPROVED AS TO FORM AND CONTENT:

Dated: April ___, 2019

EDWARD J. WYNNE
Wynne Law Firm

By: _____
EDWARD J. WYNNE
Attorneys for Plaintiff

Dated: April ___, 2019

LYNNE C. HERMLE
ANDREW R. LIVINGSTON
Orrick, Herrington & Sutcliffe LLP

By: _____
ANDREW R. LIVINGSTON
Attorneys for Defendant

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