

PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO MONEY FROM A COLLECTIVE ACTION SETTLEMENT.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

If you worked for Advantage Sales & Marketing LLC and held a position titled exempt Customer Development Manager-Retail (“CDMR”) for any period of time between January 1, 2017 and December 31, 2018, a collective action lawsuit may affect your rights.

A court ordered this notice. This is not a solicitation from a lawyer.

Plaintiffs Wilma Foster, Adam Thimons, and Kimberley Schmidt, current and former Pepsi CDMs, sued Advantage Sales & Marketing LLC d/b/a Advantage Solutions (“Advantage” or “Defendant”) alleging that Defendant failed to pay overtime wages to exempt CDMRs in violation of the federal Fair Labor Standards Act. The lawsuit is known as *Foster, et al. v. Advantage Sales and Marketing*, Civil Action No. 3:18-cv-07205-LB.

- The purpose of this Notice is to inform you of a proposed settlement (the “Settlement”) of the case. The Settlement is on behalf of two groups of CDMRs. One group consists of exempt CDMRs who worked in any state other than California at any time between January 1, 2017 and December 31, 2018 (“Non-California Opt-In Eligible Plaintiffs.”) The other group consists of exempt CDMRs who worked in California at any time between January 1, 2017 and December 31, 2018 (“California Class”).
- Because the Advantage’s records show that you qualify as a Non-California Opt-In Eligible Plaintiff, you will receive a check from the Settlement if the Court grants final approval of the Settlement in an approximate amount stated on Attachment A to this Notice.
- Your legal rights may be affected. Read this notice carefully. If you have questions, you can contact the lawyers for the Plaintiffs (listed at the end of this Notice).
- Notwithstanding the terms of this settlement, Advantage denies any wrongdoing.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DEPOSIT THE CHECK	You WILL be mailed a Settlement payment in the approximate amount stated on <u>Attachment A</u> to this Notice, unless the Court decides not to grant “final approval” of the Settlement. By depositing the Settlement payment, you will be bound by the terms of the Settlement.
DO NOT DEPOSIT THE CHECK	If you do not wish to participate in the Settlement, you will not be bound by the terms of the Settlement if you do not deposit the Settlement payment check.

This Notice explains your rights and options in detail. **YOUR ESTIMATED SETTLEMENT AMOUNT:** Enclosed with this Notice is an individualized Statement of Weeks Worked Form (“Attachment A”), which will state your estimated settlement amount. The amount is calculated based on the number of weeks you worked as an exempt CDMR in a state other than California during the period from January 1, 2017 to December 31, 2018. If there are errors on the form, you can follow the steps on the form to submit corrections. Any corrections must be submitted no later than February 6, 2020.

* * *

MORE DETAILED INFORMATION

I. WHAT IS THIS CASE ABOUT?

The purpose of this Notice is to inform you that your rights may be affected by the proceedings in a class and collective action lawsuit pending in the United States District Court for the Northern District of California (the “Court”) entitled *Wilma Foster, individually and on behalf of all those similarly situated v. Advantage Sales and Marketing, LLC d/b/a Advantage Solutions*, Case No. 3:18-cv-07205-LB. This Notice is given by Order of the Court.

Wilma Foster, Adam Thimons, and Kimberley Schmidt (“Plaintiffs”) bring this case on behalf of all California Class Members (exempt CDMRs who worked in California at any time between January 1, 2017 and December 31, 2018) and Non-California Opt-In Eligible Plaintiffs (exempt CDMRs who worked in any state other than California at any time between January 1, 2017 and December 31, 2018).

The case alleges that Defendant failed to pay overtime wages to the Non-California Opt-In Eligible Plaintiffs and the California Class Members in violation of the federal Fair Labor Standards Act. The case also alleges violations of California laws with respect to the California Class Members only, which are that Defendant (1) failed to pay overtime wages due for overtime hours worked under California law; (2) failed to provide legally required meal periods or pay premium pay due for such failure; (3) failed to provide legally required rest periods or pay premium pay due for such failure; (4) failed to furnish accurate itemized wage statements or failed to maintain adequate payroll records; (5) failed to timely pay wages or pay all wages due upon termination of employment; (6) violated the unfair competition laws (Business & Professions Code §§17200, *et seq.*); and (7) violated the California Labor Code Private Attorney’s General Act (“PAGA”).

Advantage denies engaging in any unlawful conduct as alleged in this case and continues to deny the claims and charges of wrongdoing and liability.

II. WHAT ARE THE TERMS OF THE SETTLEMENT?

Advantage denies that it owes money related to any of the allegations listed above. Advantage is settling the matter as a compromise and to avoid incurring unnecessary legal expense defending the matter. Advantage reserves the right to object to any claim if for any reason the Settlement is not approved.

The determination of how much each Non-California Opt-In Eligible Plaintiff can receive as part of this Settlement depends on the number of weeks worked within the Non-California FLSA Period during which the Non-California Opt-In Eligible Plaintiff worked as an exempt CDMR (“Qualifying Work Weeks”).

The parties reached a Settlement in which Advantage’s total maximum liability will not exceed \$1,200,000.00 (“Settlement Fund”) plus the employer’s share of payroll taxes. The Settlement Fund allocates \$600,000.00 for California Class Members and \$600,000.00 for Non-California Opt-In Eligible Plaintiffs. All amounts to be paid by Advantage from the Settlement Fund shall be paid to a qualified settlement fund (“Qualified Settlement Fund”), which shall be administered by Atticus, the Settlement Administrator.

Non-California Opt-In Eligible Plaintiffs may participate in the Settlement. Non-California Opt-In Eligible Plaintiffs will not pay any out-of-pocket costs.

There was a hearing on December 5, 2019 in the United States District Court for the Northern District of California. On December 9, 2019, the Court conditionally granted preliminary approval of the California class action settlement and nationwide FLSA settlement and directed that you receive this Notice.

A. Additional Payments from the Maximum Settlement Amount

The “Net Settlement Fund” is the portion of the Settlement Fund eligible for distribution to California Class Members who do not timely submit an Opt Out Letter plus the amounts allocable to Non-California Opt-In Eligible Plaintiffs minus the payments below, which are subject to final approval from the Court.

1. Fee and Cost Award for Class Counsel

Class Counsel filed the case on behalf of Plaintiffs and all other similarly situated individuals. Class Counsel conducted informal discovery and negotiated the settlement of this matter. Class Counsel will request attorneys’ fees in an amount of up to \$400,000.00 which represents 33 1/3% of the Settlement Fund. Class Counsel will also request reimbursement of litigation costs and expenses in the amount of up to \$20,000.00. If approved by the Court, this amount will be paid from the Settlement Fund. These attorneys’ fees and costs shall compensate Class Counsel for the work they have performed and will perform, and the expenses they have incurred and will incur, through any approved distribution of the Settlement Fund. Neither Non-California Opt-In Eligible Plaintiffs nor California Class Members are personally responsible for any of Class Counsel’s attorneys’ fees and costs.

2. Service Award to the Class Representative

Class Counsel will also seek an enhanced recovery of no more than \$10,000.00 for Wilma Foster and no more than \$3,000.00 each for Adam Thimons and Kimberley Schmidt (“Service Awards”) for serving as representative plaintiffs on behalf of the Settlement Class. Ms. Foster was the first person to step forward on behalf of the exempt CDMRs in the Settlement, and Mr. Thimons and Ms. Schmidt joined Ms. Foster to represent the exempt CDMRs later in the case. This will be in addition to whatever payment they are otherwise entitled to as a class member. If approved by the Court, this amount will be paid from the Settlement Fund.

3. Settlement Administration Costs

Settlement Administration Costs, estimated at no more than \$20,000, will be paid to the Settlement Administrator, Atticus, for its services, including but not limited to distributing Class Notices to Non-California Opt-In Eligible Plaintiffs and California Class Members (collectively “Settlement Class Members”), processing Opt Out Letters, calculating Settlement payments, and distributing Settlement payments to the Settlement Class Members.

4. Employer and Employee Tax Obligations

Once the amount of payment for each Settlement Class Member is determined, the Settlement Administrator will calculate the total amount of employee withholding taxes for the portion of the Settlement payment designated as wages as required by law. This total amount will be deducted from the Settlement Fund. Advantage will separately pay the employer withholding taxes on the Settlement payment designated as wages.

III. Release of Claims

By signing the settlement check that will be mailed to you by the Settlement Administrator, you shall be deemed to have opted-in for purposes of the Fair Labor Standards Act claims referred to in the Released Claims and release any claim, demand, right, liability, and/or cause of action during the FLSA Collective Period and based on federal or state law that relates to claims which were asserted or could have been asserted at any time in the case based on the facts alleged in the complaint that Defendant (1) improperly failed to pay overtime or any other wages due for hours worked; (2) engaged in conduct subjecting them to statutory or civil penalties under any federal statute regarding compensation and hours; (3) violated any federal or state laws, including under the FLSA, based on any facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act which were asserted or could have been asserted at any time in the case based on the facts alleged in the case.

IV. IF I CHOOSE TO PARTICIPATE AND DEPOSIT MY CHECK, HOW IS MY SHARE OF THE SETTLEMENT CALCULATED?

To determine the value for each Qualifying Work Week, the Settlement Administrator will divide the Net Settlement Fund allocable to Non-California Opt-In Eligible Plaintiffs by the total number of Qualifying Work Weeks worked by all Non-California Opt-In Eligible Plaintiffs. That dollar amount equals the weekly recovery value (“Weekly Recovery”) for each Qualifying Work Week. Next, for each Non-California Opt-In Eligible Plaintiff, the Settlement Administrator shall compute the Non-California Opt-In Eligible Plaintiff’s Individual Payment Amount by multiplying the Non-California Opt-In Eligible Plaintiff’s total Qualifying Work Weeks by the Weekly Recovery.

Your estimated Individual Settlement Class Member payment is included on Attachment A.

V. TAXABLE PORTION OF SETTLEMENT PAYMENTS

For purposes of tax payment obligations, one-third of each Individual Payment Amount to each Non-California Opt-In Eligible Plaintiff shall be allocated as wages (which shall be subject to required withholdings and deductions and reported as wage income), and the remaining two-thirds shall be allocated as liquidated damages, interest and other non-wage recovery (which shall not be subject to withholdings or deductions and shall be reported as non-wage income).

An IRS Tax Form W-2 will be issued to each Non-California Opt-In Eligible Plaintiff with regard to the portion of the Settlement payments attributable to wages and any required IRS Tax Form 1099 will be issued with regard to the remaining portion of the Settlement payments. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payments that they receive under the Settlement.

VI. WHAT ARE MY RIGHTS AND OPTIONS AS A SETTLEMENT CLASS MEMBER?

You have two options under this Settlement, discussed below: (A) deposit the Settlement payment, or (B) do not deposit the Settlement payment.

A. If You Choose to Deposit The Settlement Payment

If the Court finally approves the class and collective action settlement, you will be mailed a check for your Settlement payment. If you choose to deposit the Settlement payment, then you are bound by the terms of the Settlement.

B. If You Choose Not to Deposit the Settlement Payment

If the Court finally approves the class and collective action settlement, you will be mailed a check for your Settlement payment. If you choose not to deposit the Settlement payment, then you are not bound by the terms of the Settlement.

C. What if the Statement of Weeks Worked is incorrect?

If the weeks worked information or contact information on the Statement of Weeks Worked Form is incorrect, you should correct this information by completing and signing the enclosed Statement of Weeks Worked Form under penalty of perjury and mail it to the Settlement Administrator, with any supporting documents, no later than **February 6, 2020**. If the information is correct you do not need to do anything with the form. If you lose, misplace, or need another Statement of Weeks Worked Form, you should contact the Settlement Administrator.

VII. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will conduct a Final Fairness and Approval Hearing on March 12, 2020 in Courtroom B on the 15th Floor of the United States District Court for the Northern District of California located at 450 Golden Gate Ave., San Francisco, CA 94102. At that hearing, the Court will determine whether the Settlement should be finally approved. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, and the Service Award to be paid to the Class Representative, and other payments discussed above. The date of the Final Fairness and Approval Hearing may be changed without further notice to the class. Class members should

check the settlement website or the Court's PACER site to confirm that the date has not been changed.

VIII. WHAT IF I NEED MORE INFORMATION?

The foregoing is only a summary of the case and the proposed Settlement and does not purport to be comprehensive. You can find a copy of this Notice, the Complaint, the Settlement Agreement, the Motion for Preliminary Approval, the Order Granting Preliminary Approval, and when available, the Motion for Final Approval, the Motion for Service Awards and Attorneys' Fees and Costs, and, the Order Granting Final Approval at the following website <https://gbdhlegal.com/cases/advantage-sales-marketing-llc/>.

If you have any questions, you can call the Settlement Administrator at 1-888-207-0052, toll free. You may also contact Class Counsel to ask about the Class Action Settlement. Class Counsel's contact information is as follows:

Laura L. Ho
Byron Goldstein
GOLDSTEIN, BORGAN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
advantagesettlement@gbdhlegal.com
Tel: (510) 763-9800
Fax: (510) 835-1417

Bruce C. Fox
Andrew J. Horowitz
OBERMAYER REBMANN MAXWELL
& HIPPEL LLP
500 Grant Street, Suite 5240
Pittsburgh, PA 15219
Tel: (412) 566-1500

In addition, the pleadings and other records in this case, including the Settlement Agreement, may be examined online on by accessing the Court docket in this case, for a fee, through the 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, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH
INQUIRIES ABOUT THE SETTLEMENT**

STATEMENT OF WEEKS WORKED FORM

Wilma Foster, et al., individually and on behalf of all those similarly situated v. Advantage Sales & Marketing LLC d/b/a Advantage Solutions,
District Court for the Northern District of California
Case No. 3:18-cv-07205-LB

THIS FORM IS FOR YOUR INFORMATION ABOUT YOUR ESTIMATED SETTLEMENT SHARE. YOU DO NOT NEED TO DO ANYTHING WITH THIS FORM UNLESS THE INFORMATION ABOUT YOU ON THE FORM IS INCORRECT.

This Statement of Weeks Worked Form includes information based on the records of Advantage Sales & Marketing, LLC d/b/a Advantage Solutions (“Advantage”). IT IS IMPORTANT THAT YOU CAREFULLY CHECK THE INFORMATION PERTAINING TO YOUR CONTACT INFORMATION IN PART I BELOW AND CORRECT ANY INACCURACIES. NOTE: If you wish to make any corrections, this Statement of Weeks Worked Form must be postmarked no later than **February 6, 2020** and received by the Settlement Administrator to be processed.

INSTRUCTIONS

This Statement of Weeks Worked Form is to provide you with an opportunity to verify your name and contact information and to correct any information regarding the timeframe you worked for Advantage in a state other than California as an exempt “Customer Development Manager-Retail” (hereinafter “CDMR”).

YOU DO NOT NEED TO COMPLETE THIS FORM TO SHARE IN AND RECEIVE THE SETTLEMENT PROCEEDS IN THIS LAWSUIT. IF YOU WANT TO CORRECT THE INFORMATION ON THIS FORM, YOUR COMPLETED AND SIGNED STATEMENT OF WEEKS WORKED FORM MUST BE POSTMARKED ON OR BEFORE FEBRUARY 6, 2020. YOU MUST SEND IT BY FIRST-CLASS UNITED STATES MAIL, OR THE EQUIVALENT, TO THE FOLLOWING ADDRESS:

Foster v Advantage Settlement
c/o Atticus Administration
PO Box 64053
Saint Paul, MN 55164

You should keep a copy of the completed Statement of Weeks Worked Form and record the date on which you mailed it for your records. If you would like an acknowledgment of receipt for these documents, please send them certified mail, return receipt requested. If you move, please send your new address to the Settlement Administrator at the address listed above.

Only Settlement Class Members or their legal representatives may submit a Statement of Weeks Worked Form. Any executor, administrator, guardian, conservator, or trustee who submits a Statement of Weeks Worked Form on behalf of a Settlement Class Member or his or her estate must (1) sign the Statement of Weeks Worked Form on the Settlement Class Member’s behalf; (2) indicate his or her title as representative (i.e., executor, trustee, etc.); and (3) submit proof of his or her authority to act on the Settlement Class Member’s behalf.

If you have questions about your claim or how to complete this Statement of Weeks Worked Form, you may call the Settlement Administrator at **1-888-207-0052**.

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.**

PART I: CLAIMANT IDENTIFICATION

**BRYN BRIDLEY
2200 VALLEY DRIVE
NORTHFIELD, MN 55057**

If any of the above contact information is inaccurate, please provide the correct information below:

Name (First, Middle, Last)

Name Used While Employed by Advantage [if different from current name - First, Middle, Last]

Street Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: home: (____) ____ - _____ Telephone: work/cell: (____) ____ - _____

PART II: EMPLOYMENT

Section A: Claim Based on Advantage’s Records

Advantage’s records indicate that between January 1, 2017 and December 31, 2018, you were employed in a state other than California by Advantage as an exempt CDMR.

From to

Based on the number of weeks worked above, your estimated Individual Payment Amount is \$0.00.

This Individual Payment Amount is based on the number of weeks worked by you as an exempt CDMR in a state other than California and the Weekly Recovery Value of those weeks as described in the attached Notice.

Section B: Claim Based on Information Provided by Settlement Class Member.

Complete this section only if you believe that the information set forth in Section A above is not accurate. When you return this Statement of Weeks Worked Form to the Settlement Administrator, you must also send any documentation that supports or relates to the information that you provide in this Section B. Please *do not* include any time periods (1) before January 1, 2017 or (2) after December 31, 2018.

These are the dates I was employed as an exempt CDMR in a state other than California:

From ___/___/___ to ___/___/___

From ___/___/___ to ___/___/___ (If employed more than once)

Please attach any records which document or support the dates you were employed as an exempt CDMR in a state other than California.

DECLARATION AND SIGNATURE

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing information is true and correct to the best of my knowledge.

DATED: ___/___/_____

SIGNATURE

PRINT NAME