

WYNNE LAW FIRM



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September 9, 2021

VIA ONLINE SUBMISSION

www.dir.ca.gov

California Labor & Workforce Development
Agency ATTN: PAGA Administrator

Re: *Steven Kern v. Morgan Stanley Smith Barney*

Dear PAGA Administrator:

This office represents Steven Kern in connection with his claims under the California Labor Code discussed below. This letter is sent in accordance with the notice requirements of the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Mr. Kern is an "aggrieved employee" in that he is employed by Morgan Stanley Smith Barney LLC ("MSSB") in California and the Labor Code violations described below were committed against him during his employment and within the applicable statute of limitations.

Mr. Kern intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under PAGA. He seeks relief on behalf of himself, the State of California, and other "aggrieved employees" defined as follows: All employees of MSSB in California who incurred reasonable and necessary business expenses as a result their performance of duties for MSSB during the applicable statute of limitations, including without limitation employees who incurred such expenses while working from home during the COVID-19 pandemic.

MSSB is a financial institution that serves retail, commercial, and institutional customers in California and throughout the United States. MSSB financial advice and products to its customers.

In March 2020, in compliance with state and local shelter at home orders, many MSSB employees, including Mr. Kern, were told to work from home. Since that time Mr. Kern and other aggrieved employees have been required to bear the cost of their home office equipment, phones, internet service, cellphone and landline service, office supplies, office furniture, utilities, home office space, mileage, as well as other business-related expenses, without being fully reimbursed by MSSB. MSSB's expense reimbursement policy is uniform and applies to all employees throughout California.

Steven Kern's Employment at MSSB

Steven Kern has been employed by MSSB in California as a Financial Advisor since July 2010. In March 2020, due to coronavirus concerns and stay at home orders, MSSB required Mr. Kern to work from home and incur reasonable and necessary business expenses without reimbursement. MSSB requires him to use his personal cell phone to make many calls throughout the workday. He is also required to communicate via email and to create and maintain electronic and paper files and records. All this requires computer and telecommunications equipment, office equipment and supplies, as well as internet and cellphone service. He has incurred additional utility expenses as a result of working from home. Also, a significant portion of his home is now dedicated for use as his home office, which prevents him from using that space for other purposes. Mr. Kern has not been reimbursed for these expenses.

Violation of California Labor Code § 2802

California Labor Code § 2802(a) requires employers to indemnify their employees for all necessary business expenses incurred in direct consequence of the discharge of their duties. (Cal. Lab. Code § 2802(a).) The purpose of the statute is to prevent employers from passing their operating expenses on to their employees. (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.) An employer has a duty to pay for the business-related use of personal property or services even if the employee did not incur additional out-of-pocket expense due to the business use. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1141.) The right to reimbursement under Section 2802 is unwaivable. (Labor Code § 2804; *Gattuso*, 42 Cal.4th at 561.)

MSSB's conduct described herein violates Labor Code § 2802. As a result, MSSB is liable for civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, attorney's fees, costs, and interest thereon, pursuant to Labor Code §§ 2699(a), (f)-(g). Moreover, pursuant to Labor Code § 2802(d), Mr. Kern and the aggrieved employees are entitled to additional recovery equal to the amount of their unreimbursed expenses.

Pursuant to Labor Code section 2699.3(a)(2), a copy of this letter is being sent via certified mail to the following:

Morgan Stanley Smith Barney LLC
c/o CT Corporation Services
818 W. Seventh Street, Suite 930
Los Angeles, CA 90017

Please contact the undersigned if you need any additional information.

WYNNE LAW FIRM



Edward J. Wynne

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