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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **MARIN COUNTY**

15 STEVEN KERN, individually and on behalf of
16 all others similarly situated,

17 Plaintiff,

18 v.

19 MORGAN STANLEY SMITH BARNEY
20 LLC, and DOES 1 through 10, inclusive,

21 Defendants.
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FILED

MAY 11 2022

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

CASE NO. *div* **2201383**

CLASS ACTION COMPLAINT FOR:

**1. FAILURE TO INDEMNIFY FOR ALL
NECESSARY BUSINESS EXPENSES
(CAL. LAB. CODE § 2802)**

**2. VIOLATION OF CAL. BUS & PROF.
CODE § 17200**

**3. LABOR CODE PRIVATE
ATTORNEY GENERAL ACT (CAL.
LAB. CODE § 2698, ET SEQ.)**

Jury Trial Demanded

1 Plaintiff, Steven Kern, on behalf of himself and all others similarly situated complains
2 and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking
5 reimbursement of all unreimbursed business expenses, interest, attorney's fees and costs on
6 behalf of current and former employees of Defendant Morgan Stanley Smith Barney LLC and
7 DOES 1-10, inclusive, who were not reimbursed for necessary business expenses as a result of
8 Defendants' violations of California Labor Code § 2802 in the last four years preceding the filing
9 of this action.

10 2. The "Class Period" is the period from the date four years prior to filing of this
11 Complaint through the date notice is mailed to the Class. The violations have been ongoing prior
12 to the filing of this action, are continuing at present, and will continue unless enjoined by the
13 Court.

14 **JURISDICTION AND VENUE**

15 3. This Court has jurisdiction over claims brought under the California Labor Code.

16 4. Venue is proper in this Court because Defendants operate offices and branches
17 within Marin County, and some of the harms complained of herein occurred within this County.

18 **PARTIES**

19 5. During the Class Period, Plaintiff Steven Kern has been employed by Defendants
20 as a Financial Advisor within the State of California.

21 6. During the Class Period, Defendant Morgan Stanley Smith Barney LLC is a
22 Delaware Corporation with its principal place of business in New York.

23 7. The true names and capacities of persons or entities, whether individual, corporate,
24 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to
25 Plaintiff, and who therefore sues Defendants by such fictitious names under Code of Civil
26 Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
27 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
28 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the

1 true names and capacities of the Defendants designated hereinafter as DOES when such identities
2 become known.

3 8. All of Plaintiff's claims stated herein are asserted against Defendants and any of
4 their owners, predecessors, successors, subsidiaries, and/or assigns.

5 **FACTUAL BACKGROUND**

6 9. Plaintiff and similarly situated employees of Defendants were subject to common
7 policies, practices and/or procedures regarding reimbursement of reasonable and necessary
8 expenses, including expenses incurred while employees worked from home, among other times,
9 during the COVID-19 pandemic.

10 10. Plaintiff and similarly situated employees incurred reasonable and necessary
11 business expenses, including expenses incurred while working from home during the COVID-19
12 pandemic, including without limitation: fees and charges for internet service, cellphone and/or
13 telephone service, telecommunications equipment, cost of home office equipment (e.g.,
14 computers, printers, scanners, monitors, cameras, and headsets), office supplies, increased
15 electricity and other utility bills.

16 11. Defendants knew or reasonably should have known that Plaintiff and the Class
17 were incurring such expenses but have failed to indemnify or reimburse Plaintiff and similarly
18 situated employees for these expenditures.

19 **CLASS ACTION ALLEGATIONS**

20 12. Plaintiff brings this action, on behalf of himself and all others similarly situated,
21 as a class action pursuant to Code of Civil Procedure § 382. The "Class" that Plaintiff seeks to
22 represent is composed of and defined as follows:

23 All exempt and non-exempt employees of Morgan Stanley Smith Barney LLC in
24 California who at any time from four years prior to the filing of this complaint until
25 the case is certified as a class action, incurred reasonable and necessary business
26 expenses as a result of their performance of duties for Morgan Stanley Smith Barney
27 LLC while working from home. Excluded from this class are all Morgan Stanley
28 Smith Barney LLC internal counsel working on or otherwise assisting with the
defense of this case and all personnel actively assisting or otherwise consulting with
Morgan Stanley Smith Barney LLC internal and external counsel on this litigation,
as well as all Morgan Stanley Smith Barney LLC officers and directors as well as

1 other executives with authority for making decisions related to this litigation or the
2 policies at issue in this litigation.

3 13. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation, the proposed Class is easily ascertainable, and Plaintiff is a proper representative of the
6 Class.

7 14. Numerosity: The potential members of the proposed Class as defined are
8 numerous and therefore joinder of all the members of the Class is impracticable.

9 15. Ascertainability: The Class is ascertainable in that its members can be identified
10 and located using information contained in Defendants' payroll and personnel records.

11 16. Commonality: There are questions of law and fact common to Plaintiff and to the
12 Class that predominate over any questions affecting only individual members of the Class. These
13 common questions of law and fact include, but are not limited to, the following: (a) Defendants'
14 policies and practices for reimbursing business expenses incurred by employees, including those
15 expenses incurred while employees are working from home; and (b) whether Plaintiff and
16 similarly situated employees incurred reasonable and necessary expenses as a consequence of
17 performing duties for Defendants, including duties performed while working from home.

18 17. Typicality: Plaintiff's claims are typical of the claims of the Class members.
19 Plaintiff and the proposed Class members incurred unreimbursed business expenses arising out
20 of and caused by Defendants' common course of conduct and policies in violation of the law as
21 alleged herein, in similar ways and for the same types of expenses.

22 18. Adequacy of Representation: Plaintiff is a member of the proposed Class and will
23 fairly and adequately protect the interests of the proposed Class members. Plaintiff's interests do
24 not conflict with those of the proposed Class members. Plaintiff's counsel are competent and
25 experienced in litigating wage and hour class actions and will devote sufficient time and resources
26 to the case and otherwise adequately represent the proposed Class.

27 19. Superiority of Class Action: A class action is superior to other available means
28 for the fair and efficient adjudication of this controversy, since individual joinder of all members

1 of the proposed Class is impractical. Class action treatment will permit a large number of
2 similarly situated persons to prosecute their common claims in a single forum simultaneously,
3 efficiently and without unnecessary duplication of effort and expense that numerous individual
4 actions would engender. Furthermore, the amounts suffered by each individual member of the
5 proposed Class may be relatively small, the expenses and burden of individualized litigation
6 would make it difficult or impossible for individuals of the Class to redress the wrongs done to
7 them while an important public interest will be served by addressing the manner as a class action.
8 The cost to the court system of adjudication of such individualized litigation would be substantial.
9 Individualized litigation would also present the potential for inconsistent or contradictory
10 judgments.

11 **FIRST CAUSE OF ACTION**
12 **Cal. Labor Code § 2802**
13 **(Failure to Reimburse Business Expenses)**

14 20. Plaintiff incorporates by reference the preceding paragraphs as fully set forth
15 herein.

16 21. Labor Code § 2802(a) provides: “An employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct consequence
18 of the discharge of his or her duties.”

19 22. While discharging their duties for Defendants, Plaintiff and similarly situated
20 employees have incurred reasonable and necessary work-related expenses. Such expenses
21 include, but are not limited to, work-from-home expenses such as internet service charges,
22 telephone service and equipment, cellphone service and equipment, home office equipment,
23 office supplies, mileage for work related errands or travel, increased electric or other utility bills.

24 23. Defendants knew or reasonably should have known that Plaintiff and the Class
25 were incurring such expenses but have failed to indemnify or reimburse Plaintiff and similarly
26 situated employees for these expenditures. By requiring those employees to pay expenses they
27 incurred in direct consequence of the discharge of their duties, Defendants have violated and
28 continue to violate Labor Code § 2802.

1 24. By unlawfully failing to indemnify Plaintiff and similarly situated employees,
2 Defendants are liable for reasonable attorneys' fees and costs under Labor Code § 2802(c).

3 **SECOND CAUSE OF ACTION**
4 **Cal. Business & Professions Code § 17200**
5 **(Violation of the Unfair Competition Law)**

6 25. Plaintiff incorporates by reference the preceding paragraphs as fully set forth
7 herein.

8 26. Business & Professions Code § 17200, California's Unfair Competition Law
9 ("UCL"), prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business
10 act of practice. Business & Professions Code § 17204 allows "any person who has suffered injury
11 in fact and has lost money or property" to prosecute a civil action for violation of the UCL.

12 27. During the Class Period, Defendants have committed unlawful, unfair, and/or
13 fraudulent business acts and practices as defined by Business & Professions Code § 17200 by
14 causing Plaintiff and similarly situated employees to not be reimbursed for reasonable and
15 necessary business expenses in violation of Labor Code § 2802.

16 28. As a direct and proximate result of Defendants' unlawful business practices,
17 Plaintiff and similarly situated employees have suffered economic injuries including, but not
18 limited to, unreimbursed business expenses and interest accrued thereon.

19 29. Injunctive relief is necessary and appropriate to prevent Defendants from
20 continuing and repeating their unlawful, unfair and fraudulent business acts and practices alleged
21 above.

22 30. Plaintiff's success in this action will enforce important rights affecting the public
23 interest. Plaintiff will incur a financial burden in pursuing this action in the public interest.
24 Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of
25 Civil Procedure § 1021.5.

26 **THIRD CAUSE OF ACTION**
27 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
28 **(Cal. Labor Code § 2698, et seq.)**

31. Plaintiff incorporates by reference the preceding paragraphs as fully set forth

1 herein.

2 32. As alleged above, Defendants failed to comply with the California Labor Code.
3 As such, Plaintiff is an “aggrieved employee” as defined in Labor Code § 2699(a). Pursuant to
4 Labor Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiff brings this
5 action on behalf of himself and other current and former exempt and non-exempt employees of
6 Morgan Stanley Smith Barney LLC in California who incurred reasonable and necessary business
7 expenses as a result of their performance of duties for Wells Fargo and seeks recovery of
8 applicable civil penalties in accordance with Cal. Lab. Code § 2699 and § 2802.

9 33. On September 9, 2021, Plaintiff served written notice via electronic submission to
10 the Labor and Workforce Development Agency (“LWDA”) and via certified mail to Defendant
11 Morgan Stanley Smith Barney LLC of his intent to bring a complaint alleging a cause of action
12 pursuant to Labor Code § 2699, et seq.

13 34. The LWDA did not respond to the notice or amended notice within the time
14 provided by Labor Code § 2699.3.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

17 1. For an order certifying the proposed Class and designating this action as a class
18 action pursuant to Code Civ. Proc. § 382;

19 2. For an order appointing Plaintiff and his counsel to represent the proposed Class
20 as defined herein;

21 3. For compensatory damages according to proof;

22 4. For an Order requiring Defendant to make restitution of all unreimbursed
23 business-related expenses that Plaintiff and the Class incurred;

24 5. For penalties alleged herein;

25 6. For interest according to proof;

26 7. For reasonable attorneys’ fees and costs; and,

27 8. For such other relief the Court deems just and proper.
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1 Dated: May 10, 2022

2 CLAPP & LAUINGER LLP
3 WYNNE LAW FIRM

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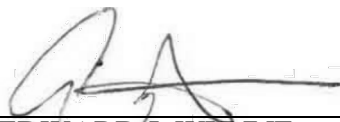
5 EDWARD J. WYNNE
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7 Attorneys for Plaintiff
8 Steven Kern

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial.

11 Dated: May 10, 2022

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13 WYNNE LAW FIRM

14 

15 EDWARD J. WYNNE
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17 Attorneys for Plaintiff
18 Steven Kern