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15 *Attorneys for Plaintiffs and Aggrieved Employees*

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

18
19 TRACY CHEN, and MATTHEW LUCADANO, as
20 aggrieved employees,

21 Plaintiffs,

22 vs.

23 MORGAN STANLEY SMITH BARNEY, LLC. and
24 DOES 1 through 20, inclusive,

25 Defendants

Case No. 30-2014-00724866-CU-OE-CXC

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES PURSUANT TO
PRIVATE ATTORNEY GENERAL ACT,
CAL. LAB. CODE §2699 ET SEQ.**

DEMAND FOR JURY TRIAL

CX-102

1 Plaintiffs Tracy Chen and Matthew Lucadano, for their sole cause of action under the Private
2 Attorneys General Act of 2004, Labor Code §2699, *et al.*, and in their capacity as aggrieved employees
3 under Cal. Lab. Code §2699(c), allege as follows:

4 INTRODUCTION

5 1. This case arises from Defendants' misuse of expense reimbursement policies and practices to
6 require their employees improperly to pay their reasonable and necessary business expenses, their improper
7 deductions and confiscation of their employees' wages designated for expenses, their violations of the law
8 pertaining to employee bonds and required use of third-party vendors, and Defendants' failure to pay
9 accrued wages upon separation of employment.

10 PARTIES

11 2. Chen is a resident of Orange County, California, and a financial advisor formerly employed
12 by Defendant Morgan Stanley Smith Barney LLC at its office located in Brea, California. Chen brings this
13 action as a representative of the general public to enforce and uphold California's labor laws as a private
14 attorney general pursuant to the Private Attorneys General Act of 2004, Labor Code §2699, *et al.* (PAGA).
15 Chen has complied with the applicable notice provisions and is entitled to recover all penalties and damages
16 that are otherwise reserved for the California Division of Labor Standards Enforcement, the California
17 Department of Industrial Relations, or the Labor Commissioner of the State of California. On or about
18 April 23, 2014, Chen gave written notice of Defendants' Labor Code violations to the Defendants and the
19 California Labor & Workforce Development Agency (LWDA) by certified mail. Chen waited 33 days for
20 Defendants to take remedial action or for the LWDA to intervene consistent with Labor Code §2699.3(c).
21 LWDA took no steps to intervene within the applicable time period and Defendants took no corrective
22 action to remedy the allegations included herein. On or around November 21, 2014, Chen sent an amended
23 notice of Defendants' Labor Code violations to the LWDA and Defendants by certified mail. Accurate
24 copies of Chen's certified letters are attached hereto as Exhibits 1 and 2, with proof of mailing. Chen seeks
25 to recover all penalties authorized by the PAGA on behalf of the State of California and all of Defendants'
26 current and former California employees who were aggrieved within the applicable limitations period,
27 including Chen.
28

1 3. Lucadano is a resident of Ventura County, California, and a financial advisor formerly
2 employed by Defendant Morgan Stanley Smith Barney LLC at its office located in Oxnard, California.
3 Lucadano brings this action as a representative of the general public to enforce and uphold California’s
4 labor laws as a private attorney general pursuant to the Private Attorneys General Act of 2004, Labor Code
5 §2699, et al. (PAGA). Lucadano seeks to recover all penalties authorized by the PAGA on behalf of the
6 State of California and all of Defendants’ current and former California employees who were aggrieved
7 within the applicable limitations period, including Lucadano.

8 4. Defendant Morgan Stanley Smith Barney LLC (MSSB), a global financial brokerage firm, is
9 a Delaware limited liability company doing business in California. MSSB employs thousands of financial
10 advisors and other employees in California.

11 5. At all times mentioned herein, each Defendant was acting in an individual, corporate,
12 affiliate, employer, employee, supervisor, agency, associate, aider and abettor, and/or alter ego of each
13 remaining Defendant, and acting with the permission and consent of each other, and within the course and
14 scope of said agency and/or employment.

15 6. Does 1 through 20 are sued in their fictitious names because their true names and capacities
16 are currently unknown. Plaintiffs reserve the right to amend this Complaint to properly name these
17 unknown parties.

18 **JURISDICTION AND VENUE**

19 7. Venue is proper in this Court under California statutory, decisional, and regulatory law.
20 Venue is proper because MSSB maintains offices and transacts business in this County, part of the claim
21 arose in this County, and Defendants’ obligations arose in this County.

22 8. Chen arbitrated individual claims against Defendants before the Financial Industry
23 Regulatory Authority (FINRA), pursuant to an arbitration agreement in her employment agreement calling
24 for FINRA arbitration of individual claims. The PAGA claim asserted herein is not subject to the parties’
25 arbitration agreement, and Chen did not include a claim for violation of the PAGA in her FINRA statement
26 of claim and demand for arbitration.
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28

1 **FACTUAL ALLEGATIONS**

2 9. MSSB at all relevant times was a California employer subject to the California Labor Code.

3 10. Chen worked for MSSB and its predecessors for about 15 years before her employment was
4 terminated on or about May 6, 2013.

5 11. Chen worked with a “team” partner at MSSB, William Yuen. Chen and Yuen shared a book
6 of business of about \$130,000,000 when Chen was terminated, generating about \$150,000 in revenues per
7 month for MSSB. Chen was responsible for trades and sales of investment products, monthly client reviews
8 for over 350 household accounts, and for conducting seminars for actual and prospective clients and other
9 client events. Two assistants worked for Chen and Yuen and reported to Chen.

10 12. Chen was compensated through commissions, a monthly salary, MSSB stock, and bonus
11 compensation.

12 13. Lucadano worked for MSSB and its predecessors for approximately six years before he
13 resigned on or about October 16, 2014.

14 14. Lucadano was compensated through commissions and a monthly salary.

15 **Expense Reimbursement and Non-Reimbursement**

16 15. The California Labor Code is designed to prevent employers from passing their operating
17 expenses on to their employees. However, during all relevant times, MSSB maintained various business
18 expense practices and policies that required its employees (including but not limited to financial advisors,
19 private wealth advisors, producing branch managers, resident managers, producing business development
20 officers, and financial advisor associates/trainees) to fund MSSB’s routine business expenses, constituting a
21 deliberate failure to pay wages and illegal deductions from pay in violation of Labor Code §§204, 204.2,
22 221, 2802 and 2804.

23 16. MSSB provided its employees with a “Business Development Allowance” (BDA), which
24 was funded by MSSB and covered a small portion of their necessary and reasonable business expenses.
25 However, the amount of funds in the BDA, which was based on the employees’ prior year’s production, was
26 deliberately inadequate to cover the majority of the advisors’ necessary and reasonable business expenses.
27 As well, MSSB funded its financial advisors and private wealth advisors with a “Discretionary Fee Waiver
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1 Allowance” (DFWA) for their waivers of certain MSSB fees to retain or maintain client accounts. This
2 allowance was also deliberately underfunded. The employees were expected and encouraged to waive
3 additional client fees exceeding their DFWA and required to indemnify MSSB for the difference.

4 17. For business expenses that exceeded the employees’ BDAs, MSSB created another expense
5 account known as the “Automated Flexible Grid” (AFG), which was improperly funded by the employees’
6 wages. Employees were expected and encouraged to direct a portion of their gross pay (pre-tax) to their
7 AFG accounts. AFG accounts were then used to pay for office expenses including but not limited to staff
8 compensation and marketing, client-related expenses including fee waivers, mileage and meals, and state
9 registrations. MSSB’s practices and policies concerning AFG was a systemic and intentional violation of
10 Lab. Code §2802, which requires every California employer to indemnify its employees for all necessary
11 expenditures or losses incurred by the employees in direct consequence of the discharge of his or her duties,
12 or of his or her obedience to the directions of the employer, as well as Lab. Code §2804, which invalidates
13 attempted waivers of the protection of §2802.

14 18. MSSB through its AFG policies and practices required Chen, Lucadano, and MSSB’s other
15 aggrieved employees to put up their wages to contribute to MSSB’s costs of doing business, constituting a
16 cash bond pursuant to Lab. Code §406, subject to Lab. Code §§400-410. MSSB violated §§402, 403,
17 404(b), and 405 in extracting cash bonds from its aggrieved employees without providing or advancing
18 property of equivalent value, failing to deposit the funds in an escrow account, failing to reimburse the
19 employees with interest, and mingling the funds with MSSB’s property.

20 19. In violation of Lab. Code §450, providing that “[n]o employer ... may compel or coerce any
21 employee, or applicant for employment, to patronize his ... employer, or any other person, in the purchase
22 of any thing of value,” MSSB required its employees to use services and/or purchase products of certain
23 third-party vendors and MSSB, at the employees’ cost, including but not limited to the financial advisors’
24 office website vendors and other marketing materials.

25 20. When MSSB’s financial advisors did not use all the wages placed in their AFG accounts to
26 cover their business expenses by year-end, the wages were not paid to the advisors or carried over to the
27 following year, but rather confiscated by MSSB. MSSB also withheld the AFG wages of employees who
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1 took leaves of absence until the end of the calendar year, at which point the wages were taken permanently.
2 MSSB also confiscated the AFG wages of employees who were terminated or resigned. Additionally,
3 MSSB took as its own the office equipment purchased by its employees directly or through their AFG
4 accounts, including computers, fax machines, copiers, printers, software, and blackberry devices.

5 21. During all relevant times, MSSB through its written policies refused to reimburse some of its
6 employees' necessary and reasonably business expenses entirely, whether through their BDA or AFG
7 accounts, including monthly parking fees and office furniture. MSSB management encouraged the
8 employees to get reimbursed for these technically non-reimbursable items by generating ostensible receipts
9 for expenses that were covered by MSSB's written policies, and submitting them for reimbursement.

10 22. In violation of 8 Cal. Code Regs. §11040(8), which provides that no employer shall make
11 any deduction from the wage or require any reimbursement from an employee for any cash shortage,
12 breakage, or loss of equipment, unless it can be shown that the shortage breakage, or loss is caused by a
13 dishonest or willful act or gross negligence by the employee, MSSB by policy refused to reimburse its
14 employees for breakage or loss of equipment without regard to the employee's fault.

15 23. In violation of Labor Code §226(a), which requires an employer to furnish its employees
16 with an accurate itemized statement in writing showing, among other things, all gross wages, all deductions,
17 and net wages earned, during all relevant times MSSB intentionally provided pay stubs to its employees that
18 inaccurately under-reported their wages by characterizing them as expense reimbursement, including AFG
19 funds.

20 24. For years, Chen paid office expenses through her AFG. She supplemented her client service
21 associate's salary by \$400 per month, paid her interns' salaries, paid for client meals and entertainment, and
22 for remote computing software/service fees. Chen paid the fees incurred for her MSSB office website,
23 using the vendor required by MSSB. As well, Chen personally paid business expenses that she was not
24 permitted to pass through her AFG, including wifi fees, laptops, computer consulting fees, printers and ink,
25 office furniture and decorations, and client gifts.

26 25. For years, Lucadano paid MSSB's overhead expenses through his AFG. For example, he
27 supplemented his assistant's salary by approximately \$500 per year.
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1 and all penalties allowed under Cal. Lab. Code §2699 for each and every violation shown to exist or to have
2 occurred during the applicable limitations period, in an amount according to proof. Said funds recovered
3 will be distributed in accordance with the PAGA, with at least 75% of the PAGA penalty recovery being
4 reimbursed to the State of California.

5 32. Plaintiffs, on their own behalf and on behalf of all aggrieved employees and the State of
6 California, have incurred and continue to incur legal expenses and attorneys' fees, in an amount according
7 to proof.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs, on behalf of the State of California and all of Defendants' current and
10 former employees against whom one or more of the actions alleged herein were committed, prays for
11 judgment against Defendants as follows:

- 12 1. for penalties as provided, per violation, under the Private Attorney General Act, Labor
13 Code §2698, et al.;
- 14 2. for reasonable attorneys' fees;
- 15 3. for prejudgment interest;
- 16 4. for costs incurred herein;
- 17 5. and for such other and further relief as this Court deems just and proper.

18
19
20 DATED: 11/17/17



21 LAURA SULLIVAN
22 Attorney for Plaintiff
23 423 South Estate Drive
24 Orange, CA 92869
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26 Facsimile: (714) 744-1524
27 Email: laurasullivan@laurasullivanlaw.com
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Relic Sun (State Bar No. 306701)
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*Attorneys for Plaintiffs and Aggrieved
Employees*

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: 11/17/17



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Attorney for Plaintiff
423 South Estate Drive
Orange, CA 92869
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Email: laurasullivan@laurasullivanlaw.com

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Jahan C. Sagafi (State Bar No. 224887)
Relic Sun (State Bar No. 306701)
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*Attorneys for Plaintiffs and Aggrieved
Employees*

Exhibit 1

LAW OFFICE OF LAURA SULLIVAN

12481 Circula Panorama
Santa Ana, CA 92705

Phone: 714-744-1522
Fax: 714-744-1524
laurasullivan@laurasullivanlaw.com

April 23, 2014

SENT VIA CERTIFIED MAIL

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Notice of Alleged Violations of California Labor Code §§201, 202, 203, 221, 226(a), 2802, and 2804 in re Tracy Chen and Morgan Stanley Smith Barney LLC, et al.

Dear Sir/Madam:

I represent Tracy Chen, who provides this notice as an aggrieved employee on behalf of all current and former California employees of Morgan Stanley Smith Barney, LLC.

FACTUAL BACKGROUND

Chen is a financial advisor who was employed by Morgan Stanley Smith Barney LLC, its predecessors, and/or affiliates (hereafter referenced collectively as MSSB) for about 15 years before her employment was terminated on or about May 6, 2013. MSSB is a Delaware limited liability company doing business in California and a retail financial brokerage firm.

Chen worked with a "team" partner at MSSB, William Yuen. Chen and Yuen shared a book of business of about \$130,000,000 when Chen was terminated, generating about \$150,000 in revenues per month for MSSB. Chen was responsible for trades and sales of investment products, monthly client reviews for over 350 household accounts, conducting seminars for clients and prospective clients and other client events. Two assistants worked for Chen and Yuen and reported to Chen. Chen was compensated through commissions and MSSB stock compensation.

EXPENSE REIMBURSEMENT AND NON-REIMBURSEMENT

EXHIBIT 1

MSSB maintains different expense accounts for its financial advisors, like Chen, as well as its managers.¹ For advisors, the Firm funds a “Business Development Allowance” (BDA) for each advisor to cover some business expenses. However, the amount of funds in the BDA, which is based on the advisor’s prior year’s production, is deliberately inadequate to cover the majority of the advisor’s necessary and reasonable business expenses. Advisors are expected and required to make up the difference through another expense account known as the “Automated Flexible Grid” (AFG), which is funded by the advisors’ wages. Financial advisors are encouraged to direct a portion of their gross pay (pre-tax) to their AFG accounts. AFG accounts are then used to pay for office expenses, including staff compensation, and client-related expenses including mileage and meals. If a financial advisor does not use all of the wages placed in his or her AFG account by year-end, they are not paid to the advisor or carried over to the next year; instead, these wages are taken back by MSSB.

For years, Chen paid office expenses through her AFG. She supplemented her assistant’s salary by \$400 per month, paid her interns’ salaries, and paid for client meals and entertainment, and remote computing software/service fees.

MSSB provides pay stubs to its employees that inaccurately state the employees’ wages as expense reimbursement, including AFG funds. Thus, Chen’s AFG expenses (which were funded by her wages) were combined with her BDA-covered expenses (funded by MSSB) on her pay stub and shown as “expense reimbursement.”

Finally, MSSB refuses to reimburse some business expenses entirely, whether through the BDA or AFG. Chen personally paid business expenses that she could not pass through her AFG, including wifi fees, laptops, computer consulting fees, printers and ink, office furniture and decorations, and client gifts.

FAILURE TO PAY WAGES UPON DISCHARGE

MSSB has a practice of not paying accrued and unpaid wages to its employees when they separate from the firm. These include wages in the employees’ AFG accounts, as well as stock paid in exchange for past services.

Chen was terminated on or around May 6, 2013. MSSB failed to pay her accrued and unpaid wages, including more than \$23,000 in wages held in her AFG account. As well, MSSB took back approximately \$181,000 worth of stock that Chen had earned

¹ The specifics of the expense arrangements for managers is unknown at this time, but, upon information and belief, involved unreimbursed expenses and other Labor Code violations comparable to those alleged herein regarding advisors.

● Page 3

April 23, 2014

in exchange for past services, but which was designated as “unvested” and therefore subject to forfeiture.

LABOR CODE VIOLATIONS

Chen alleges that MSSB has violated, and continues to violate, the following sections of the Labor Code: 201, 202, and 203 (failure to pay wages upon discharge/voluntary separation, and waiting time penalties), 221 (improper wage deductions), 226(a) (inaccurate wage statements), 2802 (failure to reimburse business expenses) and 2804 (attempted waiver of Labor Code protections).

Chen asks that the Agency investigate the California Labor Code violations alleged herein. Or, if the Agency declines to investigate, please notify me so Chen may proceed with a civil suit under the Private Attorney General Act, Cal. Lab. Code §2699, *et al.*

Thank you for your attention.

Very truly yours,



Laura Sullivan

C: Morgan Stanley Smith Barney, LLC
1585 Broadway
New York, NY 10036
Via certified mail

CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017
Via certified mail

Cal Gonzales
Morgan Stanley Smith Barney, LLC
Legal and Compliance
101 California Street, 2d Floor
San Francisco, CA 94111
Via certified mail

Law Office of Laura Sullivan

● Page 4

April 23, 2014

Tracy Gerber, via email: gerbert@gtlaw.com

Law Office of Laura Sullivan

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Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 33.30	92781-9998 2014

Sent To: Morgan Stanley Smith Barney LLC
 Street, Apt. No., or PO Box No.: 1585 Broadway
 City, State, ZIP+4: NEW YORK, NY 10036

PS Form 3800, August 2006 See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 33.30	92781-9998 2014

Sent To: California LWDA; Attn: PAGA Admin.
 Street, Apt. No., or PO Box No.: 455 Golden Gate Ave, 9th Fl.
 City, State, ZIP+4: SAN FRANCISCO, CA 94102

PS Form 3800, August 2006 See Reverse for Instructions

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Total Postage & Fees	\$ 33.30	92781-9998 2014

Sent To: CT Corporation System
 Street, Apt. No., or PO Box No.: 818 West Seventh Street
 City, State, ZIP+4: LOS ANGELES, CA 90017

PS Form 3800, August 2006 See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 33.30	92781-9998 2014

Sent To: Cal. Gonzales, Morgan Stanley Smith Barney
 Street, Apt. No., or PO Box No.: 101 California Street, 2d Fl.
 City, State, ZIP+4: SAN FRANCISCO, CA 94111

PS Form 3800, August 2006 See Reverse for Instructions

Exhibit 2

November 21, 2014

SENT VIA CERTIFIED MAIL

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Amended Notice of Alleged Violations of California Labor Code §§201, 202, 203, 204, 204.2, 221, 226(a), 226(b), 226(c), 402, 403, 404(b), 405, 450, 2802, and 2804, and 8 Cal. Code Regs. §11040(8) in re Tracy Chen and Morgan Stanley Smith Barney LLC, et al.

Dear Sir/Madam:

Tracy Chen, in her capacity as an aggrieved employee, notified this agency of alleged California Labor Code violations by Morgan Stanley Smith Barney LLC (MSSB) on April 23, 2014, pursuant to Lab. Code § 2699.3(a)(1) (PAGA Notice). Ms. Chen hereby amends her PAGA Notice to include additional alleged violations of the Labor Code, including §§201, 202, 203, 204, 204.2, 221, 226(a), 226(b), 226(c), 402, 403, 404(b), 405, 450, 2802, and 2804, and 8 Cal. Code Regs. §11040(8). The facts and theories supporting the alleged violations are set forth in Ms. Chen's attached Complaint filed in the case known as *Chen v. Morgan Stanley Smith Barney LLC*, Orange County Superior Court No. 30-2014-00724866-CU-OE-CJC.

Very truly yours,



Laura Sullivan

Enc.: Complaint

C: Morgan Stanley Smith Barney, LLC

1585 Broadway
New York, NY 10036
Via certified mail

Trish Higgins
Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814-4497

Via certified mail

05/27/2014 at 08:00:00 AM

Clerk of the Superior Court
By Valerie Kintz, Deputy Clerk

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8 Attorney for Plaintiff Tracy Chen

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 TRACY CHEN, as an aggrieved employee,

12 Plaintiff,

13 vs.

14 MORGAN STANLEY SMITH BARNEY, LLC.
15 and DOES 1 through 20, inclusive,

16 Defendants

Case No. 30-2014-00724866-CU-DE-CJC

**COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO PRIVATE ATTORNEY
GENERAL ACT, CAL. LAB. CODE §2699
ET SEQ.**

DEMAND FOR JURY TRIAL

1 Plaintiff Tracy Chen, for her sole cause of action under the Private Attorneys General Act of
2 2004, Labor Code §2699, *et al.*, and in her capacity as an aggrieved employee under Cal. Lab. Code
3 §2699(c), alleges as follows:

4 INTRODUCTION

5 1. This case arises from Defendants' misuse of expense reimbursement policies and
6 practices to require their employees improperly to pay their reasonable and necessary business
7 expenses, their improper deductions and confiscation of their employees' wages designated for
8 expenses, their violations of the law pertaining to employee bonds and required use of third-party
9 vendors, and Defendants' failure to pay accrued wages upon separation of employment.

10 PARTIES

11 2. Chen is a resident of Orange County, California, and a financial advisor formerly
12 employed by Defendant Morgan Stanley Smith Barney LLC at its office located in Brea, California.
13 Chen brings this action as a representative of the general public to enforce and uphold California's
14 labor laws as a private attorney general pursuant to the Private Attorneys General Act of 2004,
15 Labor Code §2699, *et al.* (PAGA). Chen has complied with the applicable notice provisions and is
16 entitled to recover all penalties and damages that are otherwise reserved for the California Division
17 of Labor Standards Enforcement, the California Department of Industrial Relations, or the Labor
18 Commissioner of the State of California. On or about April 23, 2014, Chen gave written notice of
19 Defendants' Labor Code violations to the Defendants and the California Labor & Workforce
20 Development Agency (LWDA) by certified mail. Chen waited 33 days for Defendants to take
21 remedial action or for the LWDA to intervene consistent with Labor Code §2699.3(c). LWDA took
22 no steps to intervene within the applicable time period and Defendants took no corrective action to
23 remedy the allegations included herein. An accurate copy of Chen's certified letter is attached
24 hereto as Exhibit 1, with proof of mailing. Chen seeks to recover all penalties authorized by the
25 PAGA on behalf of the State of California and all of Defendants' current and former California
26 employees who were aggrieved within the applicable limitations period, including Chen.

27 3. Defendant Morgan Stanley Smith Barney LLC (MSSB), a global financial brokerage
28 firm, is a Delaware limited liability company doing business in California. MSSB employs

1 thousands of financial advisors and other employees in California.

2 4. At all times mentioned herein, each Defendant was acting in an individual, corporate,
3 affiliate, employer, employee, supervisor, agency, associate, aider and abettor, and/or alter ego of
4 each remaining Defendant, and acting with the permission and consent of each other, and within the
5 course and scope of said agency and/or employment.

6 5. Does 1 through 20 are sued in their fictitious names because their true names and
7 capacities are currently unknown. Chen reserves the right to amend this Complaint to properly
8 name these unknown parties.

9 JURISDICTION AND VENUE

10 6. Venue is proper in this Court under California statutory, decisional, and regulatory
11 law. Venue is proper because MSSB maintains offices and transacts business in this County, part
12 of the claim arose in this County, and Defendants' obligations arose in this County.

13 7. Chen is currently arbitrating individual claims against Defendants before the
14 Financial Industry Regulatory Authority (FINRA), pursuant to an arbitration agreement in her
15 employment agreement calling for FINRA arbitration of individual claims. The PAGA claim
16 asserted herein is not subject to the parties' arbitration agreement, and Chen did not include a claim
17 for violation of the PAGA in her FINRA statement of claim and demand for arbitration.

18 FACTUAL ALLEGATIONS

19 8. MSSB at all relevant times was a California employer subject to the California Labor
20 Code.

21 9. Chen worked for MSSB and its predecessors for about 15 years before her
22 employment was terminated on or about May 6, 2013.

23 10. Chen worked with a "team" partner at MSSB, William Yuen. Chen and Yuen shared
24 a book of business of about \$130,000,000 when Chen was terminated, generating about \$150,000 in
25 revenues per month for MSSB. Chen was responsible for trades and sales of investment products,
26 monthly client reviews for over 350 household accounts, and for conducting seminars for actual and
27 prospective clients and other client events. Two assistants worked for Chen and Yuen and reported
28 to Chen.

1 11. Chen was compensated through commissions and MSSB stock compensation.

2 **Expense Reimbursement and Non-Reimbursement**

3 12. The California Labor Code is designed to prevent employers from passing their
4 operating expenses on to their employees. However, during all relevant times, MSSB maintained
5 various business expense practices and policies that required its employees (including but not
6 limited to financial advisors, private wealth advisors, producing branch managers, resident
7 managers, producing business development officers, and financial advisor associates/trainees) to
8 fund MSSB's routine business expenses, constituting a deliberate failure to pay wages and illegal
9 deductions from pay in violation of Labor Code §§204, 204.2, 221, 2802 and 2804.

10 13. MSSB provided its employees with a "Business Development Allowance" (BDA),
11 which was funded by MSSB and covered a small portion of their necessary and reasonable business
12 expenses. However, the amount of funds in the BDA, which was based on the employees' prior
13 year's production, was deliberately inadequate to cover the majority of the advisors' necessary and
14 reasonable business expenses. As well, MSSB funded its financial advisors and private wealth
15 advisors with a "Discretionary Fee Waiver Allowance" (DFWA) for their waivers of certain MSSB
16 fees to retain or maintain client accounts. This allowance was also deliberately underfunded. The
17 employees were expected and encouraged to waive additional client fees exceeding their DFWA
18 and required to indemnify MSSB for the difference.

19 14. For business expenses that exceeded the employees' BDAs, MSSB created another
20 expense account known as the "Automated Flexible Grid" (AFG), which was improperly funded by
21 the employees' wages. Employees were expected and encouraged to direct a portion of their gross
22 pay (pre-tax) to their AFG accounts. AFG accounts were then used to pay for office expenses
23 including but not limited to staff compensation and marketing, client-related expenses including fee
24 waivers, mileage and meals, and state registrations. MSSB's practices and policies concerning
25 AFG was a systemic and intentional violation of Lab. Code §2802, which requires every California
26 employer to indemnify its employees for all necessary expenditures or losses incurred by the
27 employees in direct consequence of the discharge of his or her duties, or of his or her obedience to
28 the directions of the employer, as well as Lab. Code §2804, which invalidates attempted waivers of

1 the protection of §2802.

2 15. MSSB through its AFG policies and practices required Chen and its other aggrieved
3 employees to put up their wages to contribute to MSSB's costs of doing business, constituting a
4 cash bond pursuant to Lab. Code §406, subject to Lab. Code §§400-410. MSSB violated §§402,
5 403, 404(b), and 405 in extracting cash bonds from its aggrieved employees without providing or
6 advancing property of equivalent value, failing to deposit the funds in an escrow account, failing to
7 reimburse the employees with interest, and mingling the funds with MSSB's property.

8 16. In violation of Lab. Code §450, providing that "[n]o employer ... may compel or
9 coerce any employee, or applicant for employment, to patronize his ... employer, or any other
10 person, in the purchase of any thing of value," MSSB required its employees to use services and/or
11 purchase products of certain third-party vendors and MSSB, at the employees' cost, including but
12 not limited to the financial advisors' office website vendors and other marketing materials.

13 17. When MSSB's financial advisors did not use all the wages placed in their AFG
14 accounts to cover their business expenses by year-end, the wages were not paid to the advisors or
15 carried over to the following year, but rather confiscated by MSSB. MSSB also withheld the AFG
16 wages of employees who took leaves of absence until the end of the calendar year, at which point
17 the wages were taken permanently. MSSB also confiscated the AFG wages of employees who
18 were terminated or resigned. Additionally, MSSB took as its own the office equipment purchased
19 by its employees directly or through their AFG accounts, including computers, fax machines,
20 copiers, printers, software, and blackberry devices.

21 18. During all relevant times, MSSB through its written policies refused to reimburse
22 some of its employees' necessary and reasonably business expenses entirely, whether through their
23 BDA or AFG accounts, including monthly parking fees and office furniture. MSSB management
24 encouraged the employees to get reimbursed for these technically non-reimbursable items by
25 generating ostensible receipts for expenses that were covered by MSSB's written policies, and
26 submitting them for reimbursement.

27 19. In violation of 8 Cal. Code Regs. §11040(8), which provides that no employer shall
28 make any deduction from the wage or require any reimbursement from an employee for any cash

1 expense reimbursement. As well, MSSB took back approximately \$181,000 worth of stock that
2 Chen had earned in exchange for past services, but which was designated as “unvested” and
3 therefore subject to forfeiture.

4 25. Pursuant to Lab. Code §226(b), on April 24, 2014, Chen demanded that MSSB make
5 available her payroll records. MSSB failed to produce the records within the 21-day deadline
6 provided in Cal. Lab. Code §226(c), subjecting MSSB to penalties under §226(f).

7 **Labor Code Violations**

8 26. MSSB has violated, and continues to violate, Cal. Labor Code §§201, 202, and 203
9 (failure to pay wages upon discharge/voluntary separation, and waiting time penalties), 204 and
10 204.2 (failure to pay wages timely), 221 (improper wage deductions), 226(a) (inaccurate wage
11 statements), 226(b) (failure to provide payroll records), 402, 403, 404, and 405 (extracting cash
12 bonds without providing equivalent value, failing to deposit cash bonds in escrow account, failing
13 to reimburse cash bonds with interest, and comingling), 2802 (failure to reimburse business
14 expenses), 2804 (attempted waiver of Labor Code protections), 450 (coercion of purchase of
15 employer’s/third-party’s goods/services), and 8 Cal. Code Regs. §11040(8) (deductions from wages
16 for loss/breakage).

17 27. Chen, as a personal representative of the general public, will and does seek to recover
18 any and all penalties allowed under Cal. Lab. Code §2699 for each and every violation shown to
19 exist or to have occurred during the applicable limitations period, in an amount according to proof.
20 Said funds recovered will be distributed in accordance with the PAGA, with at least 75% of the
21 PAGA penalty recovery being reimbursed to the State of California.

22 28. Chen, on her own behalf and on behalf of all aggrieved employees and the State of
23 California, has incurred and continues to incur legal expenses and attorneys’ fees, in an amount
24 according to proof.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of the State of California and all of Defendants’ current
27 and former employees against whom one or more of the actions alleged herein were committed,
28 prays for judgment against Defendants as follows:

1. for penalties as provided, per violation, under the Private Attorney General Act, Labor Code §2698, et al.;
2. for reasonable attorneys' fees;
3. for prejudgment interest;
3. for costs incurred herein;
4. and for such other and further relief as this Court deems just and proper.

8 DATED: 5/26/14



LAURA SULLIVAN
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

14 Plaintiff hereby demands a trial by jury.

16 DATED: 5/26/14



LAURA SULLIVAN
Attorney for Plaintiff

April 23, 2014

SENT VIA CERTIFIED MAIL

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

***Re: Notice of Alleged Violations of California Labor Code §§201, 202,
203, 221, 226(a), 2802, and 2804 in re Tracy Chen and Morgan
Stanley Smith Barney LLC, et al.***

Dear Sir/Madam:

I represent Tracy Chen, who provides this notice as an aggrieved employee on behalf of all current and former California employees of Morgan Stanley Smith Barney, LLC.

FACTUAL BACKGROUND

Chen is a financial advisor who was employed by Morgan Stanley Smith Barney LLC, its predecessors, and/or affiliates (hereafter referenced collectively as MSSB) for about 15 years before her employment was terminated on or about May 6, 2013. MSSB is a Delaware limited liability company doing business in California and a retail financial brokerage firm.

Chen worked with a “team” partner at MSSB, William Yuen. Chen and Yuen shared a book of business of about \$130,000,000 when Chen was terminated, generating about \$150,000 in revenues per month for MSSB. Chen was responsible for trades and sales of investment products, monthly client reviews for over 350 household accounts, conducting seminars for clients and prospective clients and other client events. Two assistants worked for Chen and Yuen and reported to Chen. Chen was compensated through commissions and MSSB stock compensation.

EXPENSE REIMBURSEMENT AND NON-REIMBURSEMENT

MSSB maintains different expense accounts for its financial advisors, like Chen, as well as its managers.¹ For advisors, the Firm funds a “Business Development Allowance” (BDA) for each advisor to cover some business expenses. However, the amount of funds in the BDA, which is based on the advisor’s prior year’s production, is deliberately inadequate to cover the majority of the advisor’s necessary and reasonable business expenses. Advisors are expected and required to make up the difference through another expense account known as the “Automated Flexible Grid” (AFG), which is funded by the advisors’ wages. Financial advisors are encouraged to direct a portion of their gross pay (pre-tax) to their AFG accounts. AFG accounts are then used to pay for office expenses, including staff compensation, and client-related expenses including mileage and meals. If a financial advisor does not use all of the wages placed in his or her AFG account by year-end, they are not paid to the advisor or carried over to the next year; instead, these wages are taken back by MSSB.

For years, Chen paid office expenses through her AFG. She supplemented her assistant’s salary by \$400 per month, paid her interns’ salaries, and paid for client meals and entertainment, and remote computing software/service fees.

MSSB provides pay stubs to its employees that inaccurately state the employees’ wages as expense reimbursement, including AFG funds. Thus, Chen’s AFG expenses (which were funded by her wages) were combined with her BDA-covered expenses (funded by MSSB) on her pay stub and shown as “expense reimbursement.”

Finally, MSSB refuses to reimburse some business expenses entirely, whether through the BDA or AFG. Chen personally paid business expenses that she could not pass through her AFG, including wifi fees, laptops, computer consulting fees, printers and ink, office furniture and decorations, and client gifts.

FAILURE TO PAY WAGES UPON DISCHARGE

MSSB has a practice of not paying accrued and unpaid wages to its employees when they separate from the firm. These include wages in the employees’ AFG accounts, as well as stock paid in exchange for past services.

Chen was terminated on or around May 6, 2013. MSSB failed to pay her accrued and unpaid wages, including more than \$23,000 in wages held in her AFG account. As well, MSSB took back approximately \$181,000 worth of stock that Chen had earned

¹ The specifics of the expense arrangements for managers is unknown at this time, but, upon information and belief, involved unreimbursed expenses and other Labor Code violations comparable to those alleged herein regarding advisors.

in exchange for past services, but which was designated as “unvested” and therefore subject to forfeiture.

LABOR CODE VIOLATIONS

Chen alleges that MSSB has violated, and continues to violate, the following sections of the Labor Code: 201, 202, and 203 (failure to pay wages upon discharge/voluntary separation, and waiting time penalties), 221 (improper wage deductions), 226(a) (inaccurate wage statements), 2802 (failure to reimburse business expenses) and 2804 (attempted waiver of Labor Code protections).

Chen asks that the Agency investigate the California Labor Code violations alleged herein. Or, if the Agency declines to investigate, please notify me so Chen may proceed with a civil suit under the Private Attorney General Act, Cal. Lab. Code §2699, *et al.*

Thank you for your attention.

Very truly yours,



Laura Sullivan

C: Morgan Stanley Smith Barney, LLC
1585 Broadway
New York, NY 10036
Via certified mail

CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017
Via certified mail

Cal Gonzales
Morgan Stanley Smith Barney, LLC
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101 California Street, 2d Floor
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Tracy Gerber, via email: gerbert@gtlaw.com

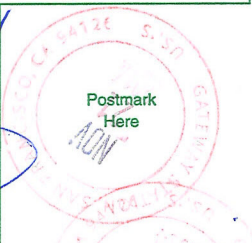
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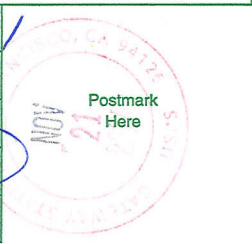
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