

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

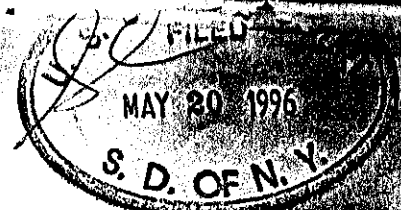
PAMELA K. MARTENS, JUDITH P.  
MIONE, ROBERTA O'BRIEN  
THOMANN, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

SMITH BARNEY, INC.,  
a/k/a SHEARSON/AMERICAN EXPRESS  
a/k/a SHEARSON LEHMAN BROTHERS  
a/k/a SHEARSON LEHMAN BROTHERS  
HOLDINGS, INC., SHEARSON  
LEHMAN HUTTON a/k/a SHEARSON  
LEHMAN BROTHERS, SMITH  
BARNEY/SHEARSON, INC., JAMES  
DIMON, NICHOLAS CUNEO,  
THE NEW YORK STOCK EXCHANGE  
and THE NATIONAL ASSOCIATION OF  
SECURITIES DEALERS,

Defendants.



96 CIV. 3779  
Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, Pamela K. Martens, Judith P. Mione and Roberta O'Brien Thomann, on behalf of themselves and all others similarly situated, by and through their attorneys, Leng Stowell Friedman & Vernon, for their Complaint against Defendants, Smith Barney, Inc., a/k/a Shearson/American Express a/k/a Shearson Lehman Brothers a/k/a Shearson Lehman Brothers Holdings, Inc., Shearson Lehman Hutton a/k/a Shearson Lehman Brothers, Smith Barney/Shearson, Inc., (collectively "Smith Barney"), James Dimon, Nicholas Cuneo, the New York Stock Exchange and the National Association of Securities Dealers, state as follows:

**JURISDICTION**

1. Jurisdiction is based on 28 U.S.C. §1331, §1343 and principles of pendent and supplemental jurisdiction.

## PARTIES

2. Plaintiffs Pamela K. Martens ("Martens") and Roberta O'Brien Thomann ("Thomann") are former employees of Smith Barney. Judith P. Mione ("Mione") is a current employee of Smith Barney. During their employment with Smith Barney, Martens, Thomann and Mione discharged all duties assigned to them competently and enjoyed excellent reputations with regard to the high quality of their work and with regard to their conscientious devotion to their jobs.

3. Defendant Smith Barney is a national securities brokerage firm which has been in existence in some form since at least 1873. Today, Smith Barney employs in excess of 11,000 brokers nationwide and is among the country's largest providers of brokerage and brokerage-related services, investment banking and asset management. At all times relevant to the Complaint, Plaintiffs were employed by Smith Barney or were former employees of Smith Barney.<sup>1</sup>

4. Defendant James Dimon ("Dimon") at all times relevant to the Complaint was the Chairman and Chief Executive Officer of Smith Barney.

5. Defendant Nicholas Cuneo ("Cuneo") at all times relevant to the Complaint was a Vice President of Smith Barney. From approximately 1970 to 1995, Cuneo was the Branch Manager for Smith Barney's Garden City, Long Island, New York Office.

6. The New York Stock Exchange ("NYSE") is a corporation which maintains and provides facilities and services for its members to purchase and sell securities. The NYSE is a self-regulatory organization ("SRO") subject to review by the Securities Exchange Commission. As an SRO, the NYSE has been delegated primary regulatory responsibility to adopt and enforce standards of conduct for its member securities firms and to administer securities arbitration activities. The Securities Exchange Commission ("SEC") regulates and oversees the activities of

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<sup>1</sup> From 1873 to the present, Smith Barney has merged with or acquired different firms and has undergone many name changes. Some of Smith Barney's affiliated or related entities are listed as "a/k/a" in the caption.

the NYSE by reviewing and approving its rule filings and inspecting its arbitration programs.

7. The National Association of Securities Dealers ("NASD") is a corporation which operates and regulates the Nasdaq Stock Market and the over-the-counter securities market. The NASD is an SRO, subject to review by the SEC. As an SRO, the NASD has been delegated primary regulatory responsibility to adopt and enforce standards of conduct for its member securities firms and to administer securities arbitration activities. The SEC regulates and oversees the activities of the NASD by reviewing and approving its rule filings and inspecting its arbitration programs.

## FACTUAL ALLEGATIONS

### **Smith Barney Systematically Excludes Women From Employment Opportunities**

8. Notwithstanding the number of brokers Smith Barney employs nationwide, its workforce is not diversified by sex or race. Upon information and belief, less than five percent of Smith Barney's 11,000 brokers are female and less still are minorities. Upon information and belief, although Smith Barney has approximately 440 branch offices, fewer than 10 branch managers are female. Indeed, the substantial majority of Smith Barney's employees are white males. As explained below, the composition of Smith Barney's workforce is not the result of chance but is the result of intentional discrimination.

### **Pattern Allegations**

9. During Plaintiffs' employment and before, Smith Barney engaged in a pattern and practice of discriminatory conduct including, but not limited to:

- a. excluding qualified women from Smith Barney's training program and failing to hire women as laterals;
- b. failing to promote women;

- c. underutilizing women;
- d. engaging in occupational segregation including, but not limited to, hiring women only as sales assistants and other clerical or non-producing roles;
- e. taking into consideration sex, pregnancy, marital and parental status when making employment decisions such as hiring, training, promoting, transferring and assigning customer accounts;
- f. using as the basis for employment decisions female employees' refusal of or submission to unwelcome sexual conduct;
- g. failing to credit women for their experience on the same basis as men and failing to consider women for timely promotions or title changes on the same basis as men;
- h. systematically paying women lower wages and/or denying women opportunities to increase their earnings, including commissions;
- i. systematically transferring or demoting women or otherwise altering the terms and conditions of their employment with the intent of adversely affecting their earnings;
- j. requiring women to meet licensing requirements and to perform the duties of higher paid positions but denying them the salary, title and authority of the positions which they performed;
- k. taking adverse actions against women, such as removal or reassignment of their customer accounts, demotions, transfers, constructive discharges and discharges on account of their sex and/or their rejection of or unwillingness to tolerate unwelcome sexual conduct;
- l. humiliating, intimidating, and demeaning women including frequently and inappropriately remarking about their sex, marital and parental status, bodies and clothing and otherwise creating a hostile and offensive work environment;

- m. negligently hiring and/or retaining men with known propensities to discriminate against or sexually harass women;
- n. retaliating against women who complain of discrimination including subjecting them to further discrimination, harassment, retaliation, physical and verbal attacks, reassigning their clients to male brokers and constructively discharging or discharging them;
- o. making significant employment decisions based on sex stereotypes;
- p. penalizing women for taking maternity leaves of absence;
- q. refusing to take adverse actions against male co-workers and managers who engage in sexual harassment and sexual discrimination;
- r. forcing women to sign the Form U-4 and using that form to compel women to arbitrate their discrimination claims before the male dominated NYSE or the NASD; and
- s. defaming women on their Form U-5s but issuing clean Form U-5s to men who were charged with disciplinary violations or sexual harassment or discrimination.

**The Pattern of Discrimination and Retaliation  
Transcends All Aspects of Employment**

10. Smith Barney recruits its potential brokers from an applicant pool that includes no less than 50 percent females. Smith Barney has no requirement that an applicant have industry experience in order to be hired. Further, Smith Barney has no educational requirements for entry into its broker training program. Notwithstanding the fact that women have increased their presence during the past 10 years in virtually every segment of the business world, the percentage of women employed by Smith Barney as brokers has not, upon information and belief, increased to any significant degree. Further, upon information and belief, in 1993, Smith Barney employed only 13 women as branch managers out of approximately 440 branches. Upon information and belief, by 1996, the number of branches had increased to 460 but the number of

women managers decreased to seven, a drop of almost 50 percent. Smith Barney's hiring and promotional statistics have a zero probability of occurrence in a gender neutral or random sampling.

11. Indeed, rather than hiring females as brokers, Smith Barney deliberately steers female applicants into the position of sales assistant. Many of these women are led to believe that the position of sales assistant is a stepping stone to the position of broker. In practice, however, Smith Barney's sales assistants are rarely promoted to broker. Upon information and belief, Smith Barney does not regularly or rarely employ men as sales assistants.

12. The duties of a sales assistant are those which are stereotypically assigned to women. Sales assistants routinely transmit facsimiles, cover the switchboard, photocopy, collate documents, run personal errands for the brokers and perform other clerical work. Many sales assistants, however, have the same qualifications as brokers. They have passed the Series 7 examination and some have experience as brokers in other firms. Smith Barney relies on these qualifications when it allows licensed sales assistants to take client orders and enter trades. Yet, Smith Barney does not compensate these licensed sales assistants as brokers. Worse yet, when broker vacancies exist, Smith Barney does not hire from its sales assistants pool. Rather, Smith Barney hires from blind ads or through referrals from its male brokers. For example, Smith Barney has hired males as brokers whose only work experience or most immediate work experience has been as a professional athlete, construction worker, restaurant worker, and carpenter. Smith Barney would rather hire an inexperienced stranger as a broker than offer career advancement to its female sales assistants.

13. Further, the few women who are employed by Smith Barney as brokers are treated less favorably than Smith Barney's male brokers. For example, female brokers rarely receive the assistance of "cold callers." Rather, they must generate their own leads and accounts. Moreover, when brokers leave Smith Barney, the branch managers first offer the books of the departing brokers to male brokers. Only after the male brokers have selected the most desirable accounts

from the departing brokers' books and have had those accounts reassigned to them are female brokers offered the remaining less desirable customers. Finally, customers immediately notice that Smith Barney employs few female brokers. The clear message to customers from the absence of female brokers is that Smith Barney prefers male brokers and that the customers should exercise a similar preference. Notwithstanding the fact that customers need assurances from Smith Barney that it values its female brokers and female brokers need Smith Barney's support to establish their credibility with customers, Smith Barney regularly denies female brokers prestigious titles or other perks that would assist them in overcoming customer bias against them. For these and other reasons, most of which are set forth in more detail in this Complaint, Smith Barney's female employees generally fall into one of two categories: 1) those who never rise above the sales assistant's position or if they do, are steered into traditionally female, non-producing, roles; or 2) those few who are brokers but earn substantially less than male brokers and must work under more onerous conditions. In fact, while established male brokers regularly earn in excess of \$200,000, successful women brokers typically reach a "glass ceiling" of no more than \$150,000.

14. Smith Barney's lack of respect for women is further evidenced by its fostering a work environment that is hostile and offensive to women. First, Smith Barney tolerates sexual harassment by its branch managers, male brokers and other male employees. Second, Smith Barney's "locker-room" environment attracts prospective male employees who have a propensity to engage in sexual harassment. Finally, Smith Barney's Human Resource Department and Legal Department vigorously defend discriminators and harassers and otherwise encourage Smith Barney's standard operating procedure of retaliating against female employees who file complaints.

15. As a result of the lack of opportunity for career advancement and hostile work environment, Smith Barney's female employees frequently resign their employment.

16. Smith Barney's decision to retain Defendant Cuneo, for 25 years a known

discriminator and harasser, as Branch Manager of Smith Barney's Garden City Branch Office is indicative of Smith Barney's tolerance and encouragement of sexual discrimination, sexual harassment and retaliation.

**The Treatment of the Plaintiffs is Consistent  
With Smith Barney's Discriminatory and Retaliatory Practices**

***Pamela K. Martens***

17. Martens applied for a position with Smith Barney in 1985 in response to a newspaper advertisement for Smith Barney's broker training class. Martens was required to submit to four personal interviews and a personality profile test. Martens' final interview was with Defendant Cuneo, who reluctantly agreed to sponsor Martens for a slot in Smith Barney's broker training program.

18. During her interview, Cuneo tried to dissuade Martens from seeking a broker position. Cuneo told Martens that she would not receive the same training stipend as the male trainees and that she could "try to sue him but that many before her had tried and failed." Martens took the job with Smith Barney notwithstanding Cuneo's open bias in favor of male brokers because she believed that Cuneo's attitude would change once she proved herself as a broker. Much later Martens learned that other women were told by Cuneo that they would not be paid as much as the male employees because they were not the "head of their households." She also learned that Cuneo had a history of making sexually inappropriate remarks to female employees and otherwise discriminating and retaliating against them.

19. As evidence of his discriminatory animus toward Martens and other female employees, Cuneo frequently intimidated women. For example, on more than one occasion, Cuneo, in an attempt to intimidate Martens, opened the top drawer of his desk and pulled out a gun. Cuneo also referred to women in vulgar terms and used sexually offensive language. On a daily basis he openly displayed his contempt for the civil rights laws and his lack of concern that



Smith Barney would discipline him for violating its written anti-discrimination policies. Several examples illustrate Cueno's disdain for the civil rights laws.

- a. At one of Smith Barney's Christmas parties, Cuneo boasted to the attendees, "[w]e achieved the status as the biggest whorehouse in Garden City."
- b. In 1994, Cuneo left a female broker in tears after commenting to her, "[t]here must be a lot of pressure on you to spread your legs."
- c. Cuneo once paraded a female sales assistant around the office who had worn culottes to work that day and told her to spread her legs at each male broker's desk so that the male broker could vote on whether the culottes violated Cuneo's females-only dress code.
- d. On another occasion, after hiring an attractive female as a trainee, Cuneo openly boasted that he had "just hired a playboy bunny." Likewise, he referred to attractive females as "slits and tits."
- e. Cuneo told a male broker that they should all give the sales assistants a few bucks for Christmas and that the women would sit on the male brokers' faces and give them "blow jobs."
- f. Cuneo yelled that an employee should "eat his dick."
- g. During the Anita Hill/Clarence Thomas hearings, Cuneo shouted throughout the workplace, "I left a pubic hair on my coke can."
- h. Cuneo said in reference to a female broker who was to receive a plaque for "Broker of the Month" that, "I'd rather give it to that broker that . . . shot his in-laws in the head than give it to that bitch."
- i. Cuneo referred to a female broker as a "jewish bitch" and told her that she "should be hit by a bus and [he] will clean off the jewish blood."
- j. Cuneo questioned his secretary, "[w]hy the fuck should I let her get a massage", after the secretary had scheduled an appointment for a female broker with the

masseuse whom Cuneo had hired for the male brokers.

20. As branch manager at Garden City, Cuneo's conduct set the tone for the office, which was one of disrespect for women. In addition to the examples of conduct described in paragraph 19, in Martens' early years, Cuneo set the tone by constructing a room in the basement of the Garden City Branch Office which he named the "Boom Boom Room." Cuneo decorated the "Boom Boom Room" in a fraternity house style, including hanging a toilet bowl from the ceiling. From an oversized garbage can, Cuneo served bloody mary's to male brokers who were summoned to the "Boom Boom Room" over the PA system. There they would joke amongst themselves that female employees who did not behave would be "dealt with" in the "Boom Boom Room" or that sexual harassment charges would be "deliberated" in the "Boom Boom Room." During Martens' only visit to the "Boom Boom Room," Cuneo grabbed her and kissed her on the lips.

21. The disrespect for women that was cultivated, nurtured and manifested in the "Boom Boom Room" infected the entire work environment. For example, male brokers regularly and openly referred to women co-workers in their presence as "cunts" or "bitches." So out of control were the male brokers that one female broker reported to the "bullpen," the trainees' board room, to find written on the black board, that she "gives good head." During sales meetings, male brokers routinely insulted female brokers, interrupted them when they were stating opinions and called them "stupid" or other derogatory names. Male brokers knew that Cuneo respected men who abused or belittled women and that they would gain his approval if they engaged in such conduct.

22. As one of the few female brokers hired by Smith Barney whose career visibly prospered notwithstanding the environment, Martens was frequently and increasingly targeted for other kinds of discrimination. For example, in a year when Martens was headed toward reaching the \$100,000 income level, having earned approximately \$80,000 the prior year, Cuneo strongly suggested that Martens relinquish the commission part of her pay and accept a flat

salary of \$40,000 per year. When Martens declined the offer, Cuneo escalated his harassment of Martens. Thereafter, he rarely referred to Martens by name. Instead, he referred to her as "the Stepford Wife" or "Peppy Henin II," a derogatory reference to a former Smith Barney female broker whom Cuneo disliked and stereotypically regarded as overly aggressive for a female. Cuneo also denied Martens the vice president's title which was routinely given to men with lower production and fewer customer assets.

23. Martens and others frequently voiced their concerns over Cuneo's treatment of female employees to Cuneo directly and to upper management at Smith Barney, however, Smith Barney took no action to assist Martens or other female employees. For example, Cuneo once extended to the brokers at the office written invitations to a golf outing and dinner at his country club. When Martens and the three other female brokers responded to the invitation, they were told that the outing was only for male brokers. After expressing their objections to the males-only golf outing, Cuneo's sexually offensive language at sales meetings and Cuneo's discriminatory treatment of female brokers to Smith Barney's Human Resource Department, Martens and the other female brokers were told to "try and get along" with Cuneo. Following these complaints, the males-only golf outings continued and Smith Barney took no action to require Cuneo to include the female employees or to cease engaging in unlawful conduct. Cuneo did, however, offer an aerobics class to the females as a substitute for the golf outing. Thereafter, Cuneo moved the annual Business Plan meeting to the Garden City Hotel. Martens was required to wait in a hotel room with a rumpled bed and Cuneo's clothing strewn about. She complained to Human Resources about this treatment, to no avail.

24. Cuneo also engaged in quid pro quo harassment. At an all-female sales assistants meeting, Cuneo told the women that they were required to work at his charity golf tournament and dress in short skirts to serve coffee to male brokers. Cuneo threatened the women that if they refused this request or his request that they do volunteer work for his charity, they would be denied raises, bonuses, or time off with pay. Cuneo also threatened to dock their pay if they took

breaks to smoke. Cuneo acknowledged to the women that he knew what he was demanding was illegal but told them that they should let the door "hit them in the ass" if they did not like it. So confident was Cuneo that Smith Barney condoned his conduct that he made these remarks in front of approximately 24 Smith Barney employees, including a vice president from Human Resources. Martens complained about this latest abuse of power first to Cuneo who responded that she would be "tossed out of the office and the brokers would throw a party to celebrate as they had when Peppy Henin was drummed out." The next morning in response to employees' complaints about his conduct, Cuneo, rather than apologizing, told the sales assistants, "well before now I've been an easy lay." The sales assistants understood this comment to mean that Cuneo would punish them for their complaints.

25. Following this incident and after enduring the hostile work environment for almost 10 years, Martens wrote a letter to Dimon in October of 1994, concerning Smith Barney's discriminatory practices. Although Smith Barney claimed that it was conducting an investigation as a result of Martens' letter, two months passed and Martens was not provided with any information. Thus, she wrote a second letter to Dimon. Only after and on the same day that Smith Barney learned that Martens hired an attorney was Cuneo placed on a leave of absence that coincided with his yearly vacation. That same day Smith Barney provided Martens with a written response to her complaint. That response proposed no disciplinary action against Cuneo and contained no definitive ruling on whether Cuneo would return to Smith Barney or whether he or anyone else would be disciplined as a result of Martens' charges.

26. Smith Barney was quick, however, to notify Cuneo of Martens' charges in October of 1994. Between October of 1994 when Martens first wrote Dimon to the date Cuneo was placed on the "leave of absence," Cuneo rallied the support of his male brokers. Within days of Martens' October letter, Cuneo scheduled another males-only golf outing. The day following the golf outing, Martens was asked by male brokers to rescind her charges. Later, two male brokers called Martens a "cunt" for having filed the charges and another male broker told her that

she was "a silly little girl." Cuneo was more aggressive in his campaign. He told at least one of Martens' co-workers that Cuneo should "fuck her [Martens] where she bleeds." Cuneo also told Martens' co-workers that "if anything happened to [him], [he] would snap Martens' neck." These remarks were repeated to Martens, causing her great fear and concern. Martens complained in writing to Smith Barney about the campaign of harassment, retaliation and bodily threats. She was told that she "sounded like a hysterical woman" and "should leave Smith Barney."

27. In October of 1995, Cuneo's retirement was announced. Upon information and belief, Cuneo left Smith Barney with substantial retirement benefits and with his Form U-5 reflecting that he left Smith Barney in good standing on a voluntary basis. With the approval of Smith Barney's upper management, Cuneo's supporters hosted a party for his retirement. The party was held on October 19, 1995. As of that date, Smith Barney had not, to Martens' knowledge, taken any disciplinary action against any individual in connection with her charges of discrimination, harassment and retaliation. Smith Barney, however, had long since concluded its investigation of the matter and had obtained confirmation of the hostile and offensive work environment. Rather than hiring a person to replace Cuneo who was committed to changing the work environment, Smith Barney promoted one of Cuneo's staunch supporters who was a product of Cuneo's unlawful environment. This decision sent a message to Smith Barney's employees that "business" would continue as usual, notwithstanding Cuneo's retirement.

28. Two business days after Cuneo retired, Martens was terminated. The pretextual reason for Martens' termination was that she did not attend a compliance meeting. However, at least 19 male brokers did not attend the same meeting and were not fired. Further, unlike the male brokers, Martens had advised Smith Barney that she was afraid to attend the meeting with approximately 50 male brokers due to the persistent harassment and retaliation perpetuated by some of her co-workers and managers, both before and after Cuneo's retirement. She also wrote several letters to Smith Barney to complain about the continuing unlawful conduct following

Cuneo's departure. Smith Barney offered no assurance of safety to Martens or any promise that the environment would change. Smith Barney told Martens that she could transfer to another branch office and that she could have until October 30, 1995 to notify Smith Barney of her desire to do so. She was fired, however, before that date.

29. At the time of her discharge, Martens managed an asset base of \$187,000,000.00 and had over 1,000 clients. Martens had not signed a non-compete agreement with Smith Barney and was free to transfer Smith Barney clients who desired to follow her to another firm. Rather than allowing Martens an opportunity to reestablish herself in the industry, Smith Barney began a campaign of discrediting Martens and defaming her to prospective employers. Specifically, Smith Barney provided adverse information about Martens to prospective employers including but not limited to, the fact that Martens was terminated from Smith Barney. The information provided to prospective employers about Martens was defamatory and cost Martens valuable employment opportunities and otherwise damaged her reputation. Smith Barney also placed a permanent mark on Martens' unblemished disciplinary record when it falsely reported to the NASD through the Form U-5 that she was terminated for "incompatibility with local management (unrelated to customer matters or sales practices) culminating in her refusal to attend a required meeting." Indeed, if Martens was incompatible with local management, it was because she would not tolerate discrimination, sexual harassment and retaliation. Remarkably, even in its final act of terminating Martens, Smith Barney discriminated against her. Upon information and belief, male brokers who were terminated by Smith Barney for cause were given the option to resign with a clean Form U-5. However, Smith Barney would not allow Martens to resign with a clean Form U-5 unless she agreed not to sue Smith Barney for retaliation. Male brokers were not required to sign releases to preserve their reputations.

*Judith P. Mione*

30. Mione has worked in the brokerage industry since 1957 and has successfully

completed the Series 7 (Registered Representative), Series 63 (Uniform State Securities), and Series 8 (Branch Office Manager) licensing examinations. Throughout her career, Mione has worked on the managerial side of the industry performing a wide range of activities and holding positions such as Operations Manager and Assistant Operations Manager for prestigious securities firms. At various times, Mione also worked as a broker and generated commissions. Through these jobs, Mione developed considerable industry experience and, in particular, expertise in compliance and other managerial issues.

31. In or around 1990, Mione was contacted by Smith Barney's Human Resource Department which was seeking to fill the position of Senior Compliance Officer for the Firm. After Mione interviewed with Smith Barney's Human Resource Department, Mione was sent to meet with Nick Marinello ("Marinello"), Manager of the Compliance Department. Marinello quickly told Mione that she would neither like the job nor be able to perform it. He said that the job caused many "family problems" because of the extensive travel requirements and that the job was not for her because she would have to "lock horns" with managers. Marinello also told Mione that if he did hire her, some of his staff would quit. When Mione finally asked him exactly what he was looking for in an applicant, Marinello told her that he wanted "some guy with brass balls from Merrill Lynch." Marinello concluded the "interview" by telling Mione that he was not going to hire her for the position.

32. Following her meeting with Marinello, Mione wrote a letter to the Human Resource Department outlining her meeting and complaining about Marinello's failure to consider her excellent qualifications. In response to this letter, the Human Resource Department told Mione that Smith Barney might have a comparable position for her in approximately two weeks. Eventually, Mione was offered a position as a sales assistant ("CSA") at a starting salary of approximately \$25,000 per year. Mione accepted the position with the understanding that she would quickly advance into management. She began working at Cuneo's Garden City Branch Office.

33. Mione was subjected to the pervasive discrimination and sexual harassment which is described elsewhere in this Complaint. The discrimination and sexual harassment altered Mione's working conditions and affected her state of mind and was intended to affect Mione's performance of her job.

34. After Mione accepted the CSA position, Smith Barney engaged in conduct designed to humiliate and degrade her. For example, despite being told that her salary as a CSA would be \$25,000 annually, Smith Barney authorized a yearly salary of only \$19,000. Thereafter, Smith Barney continued to advertise for persons to fill the position for which Mione had originally interviewed. When Mione again expressed her interest in the position and again applied for it, she was told the job posting was a "mistake."

35. After working as a CSA for approximately 18 months, the position of Control Administrator became available at the Garden City Branch Office. Only after Mione complained about Smith Barney's failure to take seriously her application for this position was Mione granted an interview for this position. Mione was informed two weeks after the interview that she was the most qualified applicant and she was selected for the position. However, Mione was denied proper compensation for the position and, upon information and belief, was paid substantially less than males who were performing the same job. Worse yet, shortly after receiving her new position, Smith Barney notified Mione that she would be transferred to the Forest Hills Branch Office, a transfer she neither requested nor desired as the transfer would involve a daily commute of over three hours. Cuneo told Mione that Smith Barney wanted her to switch places with another Smith Barney employee from the Forest Hills Office who purportedly had more experience than Mione. To the contrary, the other employee, a young attractive female, not only had less experience than Mione but also held a position, Operations Manager, that was lower in status than Mione's position of Control Administrator. Further, the position of Operations Manager, unlike the Control Administrator's position, is one that is typically held by females at Smith Barney.



36. After expressing her objections to the proposed transfer, Mione was informed that she could continue working at the Garden City Branch Office, but only if she agreed to work as a senior sales assistant, a position she neither wanted nor for which she had applied. Due to financial considerations, Mione had no alternative but to accept the senior sales assistant's position. Cuneo pressed forward with his plans to transfer the less-experienced, young, attractive female Operations Manager who, when she arrived at the Garden City Office was promoted to the position of Control Administrator. Mione has consistently attempted to seek out other managerial positions in Smith Barney, expressing interest in no fewer than 15 positions for which she is qualified. Despite her credentials and excellent qualifications, Smith Barney consistently refuses to consider her for these positions. Smith Barney's males are not denied career opportunities because of their appearance or sex.

37. While working as a senior sales assistant, Mione was subjected to further discrimination and demeaning conduct. For example, Mione was not given an appropriate work area and instead was told to sit wherever she could find a vacancy. She was also required to perform clerical tasks, such as operating the switchboard. Further, when Mione stated that she was overdue for a review and a raise, Smith Barney selected none other than the employee who had replaced her as the Control Administrator to conduct the evaluation. Despite receiving a good rating, Mione was denied a salary increase.

38. Mione complained to management about the unlawful discrimination and harassment. As a result of her complaints, Mione has suffered retaliation in the form of further discrimination, false accusations of misconduct, and threats of reprisal.

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***Roberta O'Brien Thomann***

39. Thomann began her employment with Smith Barney in 1992 as a sales assistant in Cuneo's Garden City Branch Office.

40. Thomann was subjected to the pervasive discrimination and sexual harassment

which is described elsewhere in this Complaint. The sexual harassment and discrimination altered Thomann's working conditions and affected her state of mind and were intended to affect Thomann's performance of her job.

41. The broker for whom Thomann worked, a protégé of Cuneo's, openly flaunted his sexist attitude. For example, he regularly made vulgar comments concerning female employees and engaged in inappropriate conduct, such as sending condoms through the office's wiring tube system to female wire operators at the other end. He wrote and circulated a memo to the sales assistants in which he ridiculed claims of sexual harassment and promised that any charges of sexual harassment would be deliberated after hours in the "Boom Boom Room." He was no less hostile to pregnant women. On one occasion, for instance, he bragged to others that he had rejected a female applicant telling her that Smith Barney would not hire her because she was pregnant.

42. In early 1994, Thomann, who was at that time a senior sales assistant, went on an eight week maternity leave. Thomann was scheduled to return to work in mid-June. Just days before she was to return to work, Thomann was told that she could not return to her job and would, in fact, be demoted. Smith Barney offered Thomann the choice of being either the cashier in the Operations Department or a sales assistant in the "bullpen" for approximately 11 trainees. Having no other options, Thomann chose the "bullpen" sales assistant position. Needless to say, as the "bullpen" sales assistant, Thomann experienced additional discrimination and sexual harassment. Thomann eventually was transferred to a sales assistant position which was less desirable than the one she had before her maternity leave of absence. In contrast to Smith Barney's treatment of Thomann, male employees who took medical leaves of absence did not face demotions or dislocations upon their return.

43. Thomann verbally and in writing complained about Smith Barney's discriminatory treatment which resulted in further acts of discrimination, harassment and retaliation. For example, following her demotion after her pregnancy, Thomann wrote a letter to

the Smith Barney's Human Resource Department complaining of the unlawful conduct. Afterwards, Cuneo began walking past Thomann's desk approximately every 15 minutes singing, "I don't care."

44. Although Smith Barney promised that it would conduct a "thorough investigation" of her allegations, fewer than two weeks after giving Thomann this assurance, Smith Barney told Thomann that her allegations of discrimination were without merit and would be dismissed. The Human Resource Department issued Thomann a letter to this effect which contained false information. The letter confirmed to Thomann that the Human Resource Department's only intent in conducting the so-called investigation was to protect Smith Barney from liability and build a pretextual defense to her charges.

45. Based on all of the above conduct, Thomann was forced to resign her employment with Smith Barney in October of 1994.

**Smith Barney was Aware of the Conduct of its Employees and Failed to Prevent Sexual Discrimination, Sexual Harassment and Retaliation**

46. Smith Barney's management directed, encouraged and participated in the above described unlawful conduct. Further, Smith Barney allowed the discrimination and retaliation to go unremedied for so long that it amounts to a policy or practice and constitutes Smith Barney's standard operating procedure. Finally, Smith Barney's Human Resource and Legal Departments failed to take appropriate remedial action and, in effect, aided and abetted in the unlawful conduct.

**The Discrimination and Retaliation Are Ongoing**

47. The discrimination and retaliation described above are ongoing as a continuing violation of the civil rights laws.

**Plaintiffs Timely Filed Representative Charges  
of Sexual Discrimination, Sexual Harassment and Unlawful Retaliation**

48. Plaintiffs timely filed representative charges of sexual discrimination, sexual harassment and unlawful retaliation with the Equal Employment Opportunity Commission ("EEOC"). The EEOC has issued to Plaintiffs Notices of Right to Sue.

**The Industry Perpetuates Discrimination**

49. The SEC requires employees who work in certain positions in the Securities Industries, including brokers or traders, to register with a securities exchange. Therefore, as a condition of employment, Smith Barney requires its employees to register with a securities exchange, such as the NYSE or NASD. To register with the Securities Industry, Smith Barney's licensed employees must sign the Uniform Application for Securities Industry Registration ("Form U-4"). Representatives have no choice about whether to sign the Form U-4; if they wish to work in the industry, they must sign and file the Form U-4 with a securities exchange. The Form U-4 contains a provision that requires all persons registering with a securities exchange to agree to abide by all rules and regulations of the exchange, including the rules of the NYSE and NASD which purport to require final and binding arbitration of certain employment disputes, including employment discrimination claims. These employment discrimination claims are arbitrated before the various securities exchanges, including the NYSE and the NASD, in accordance with the rules and regulations of each such exchange and with the approval of the SEC. Upon information and belief, no exchange permits negotiation over the mandatory arbitration provision contained in the Form U-4.

50. Mandatory arbitration of employment claims in the Securities Industry serves no public function and provides no public benefit. Rather, mandating arbitration of employment discrimination claims is intended primarily to limit the liability of securities industry employers by allowing them to choose an employer-friendly forum where their success is more likely and

where awards tend to be smaller than in civil courts.

51. Mandatory arbitration of employment discrimination claims deprives plaintiffs in the Securities Industry of their procedural and substantive due process rights that otherwise would be protected in the civil courts. The following are examples of deprivations of rights resulting from mandatory arbitration.

- a. Securities Industry discrimination plaintiffs are deprived of their rights to a jury trial under the Seventh Amendment and their rights to a jury trial under the 1991 Civil Rights Act.
- b. Securities Industry discrimination plaintiffs are deprived of their rights to have Article III Courts, comprised of appointed judges with lifetime tenure and salary protection, adjudicate their claims of discrimination.
- c. Although NYSE and NASD rules on their face permit arbitrators to issue written findings of fact and conclusions of law, upon information and belief, the NYSE and NASD actively discourage arbitrators from issuing such written findings and conclusions in order to render any meaningful judicial review of those decisions difficult or impossible, thus denying plaintiffs any meaningful right to appeal arbitration decisions.
- d. Upon information and belief, the NYSE and NASD arbitration procedures do not provide for the selection of truly neutral arbitrators. Rather, arbitrators are selected by the exchanges themselves which are governed and controlled by the representatives of the employers in the Securities Industry. James Dimon, a named Defendant in this action, is on the NASD Board of Governors. Dimon and Smith Barney, like other employers, have a direct interest in selecting arbitrators who will be biased in favor of the employer and against the employees.
- e. Historically, the demographic characteristics of the NYSE and NASD arbitration panels do not represent the community of arbitrators qualified to decide

employment disputes, but are overwhelmingly comprised of older, white males.

These panels, on the whole, likely will be more hostile to discrimination claims brought by women than demographically representative panels. Further, the NYSE and NASD use internal referral procedures to select arbitrators, keep secret the identities of the pools of the arbitrators who may hear disputes, and employ secret and subjective criteria in determining whom to recruit for those pools, all of which serve to perpetuate the imbalance of arbitration panels. These selection devices also serve to deprive female plaintiffs of their equal protection rights to be free from gender discrimination in the selection of the finders of fact.

- f. Securities Industry discrimination plaintiffs are deprived of their rights to have a panel with legal expertise or knowledge of civil rights laws hear their claims because the NYSE and NASD often fail to assign arbitrators to employment disputes on the basis of training or experience in the area. Upon information and belief, the NYSE and NASD do not provide adequate training in the area of employment discrimination to their arbitrators.
- g. Securities Industry arbitrators are expressly instructed in training manuals that they are not required to follow "case precedent or statutory law", which includes the complex legal framework of Title VII, including concepts such as disparate impact and disparate treatment, mixed motive factors, hostile working environment, shifting burdens of proof, after-acquired evidence, and fee-shifting provisions, to name only a few. Moreover, arbitrators' decisions are not judicially reviewable for statutory error.
- h. Historically, the NYSE and NASD arbitration panels have been reluctant to find employers guilty of employment discrimination. Even where arbitration panels find unlawful conduct, they often award inadequate damages to the plaintiffs. Furthermore, upon information and belief, the NASD requires all arbitration

awards which include an award of punitive damages to be reviewed secretly by NASD staff before being released to the parties in an attempt to intimidate and discourage arbitrators from awarding such damages. Moreover, the NASD has actively lobbied against the award of punitive damages to successful plaintiffs, a potential remedy extended to plaintiffs under the 1991 Civil Rights Act which serves as a major deterrent to future unlawful conduct by employers.

- i. Upon information and belief, the NYSE and NASD often impose onerous and exorbitant "forum fees" on Securities Industry discrimination plaintiffs, even those who prevail, for pursuing their claims and often fail to award attorneys' fees as provided for under Title VII.

#### **Plaintiffs Suffered Extreme Emotional Distress**

52. By the acts and conduct described above, Smith Barney, Cuneo and Dimon intended to cause Plaintiffs severe emotional distress, or acted in reckless disregard that their actions had caused and would cause Plaintiffs such injury.

53. Plaintiffs suffered severe emotional and mental distress as a direct and proximate result of the conduct of Smith Barney, Cuneo and Dimon.

54. The acts and conduct of Smith Barney, Cuneo and Dimon constitute extreme and outrageous conduct beyond the bounds of common decency.

#### **Plaintiffs were Injured as a Consequence of Defendants' Unlawful Conduct**

55. Plaintiffs lost wages and other benefits, suffered embarrassment and humiliation and their careers were irreparably damaged as a result of Smith Barney's, Cuneo's and Dimon's conduct. Plaintiffs suffered loss of enjoyment of life, inconvenience and other nonpecuniary losses as a direct result of Smith Barney's, Cuneo's and Dimon's conduct.

## CLASS ALLEGATIONS

56. The class of female applicants, employees, and former employees who have been subject to discrimination by Defendants due to their sex and have been subject to retaliation due to their opposition to discrimination is so numerous that joinder of all members is impracticable.
57. There are questions of law and fact common to the class.
58. The claims of the representative parties are typical of the claims of the class.
59. The representative parties will fairly and adequately protect the interests of the class.
60. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

## COUNT I

### SEXUAL DISCRIMINATION AND SEXUAL HARASSMENT IN VIOLATION OF TITLE VII (AGAINST SMITH BARNEY)

61. Plaintiffs and all others similarly situated reallege paragraphs 1 to 60 and incorporate them by reference as paragraphs 1 to 60 of Count I of this Complaint.
62. Title VII of the Civil Rights of 1964, 42 U.S.C. Section 2000e et seq., as amended by the Civil Rights Act of 1991, ("Title VII") makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of sex.
63. Smith Barney is liable for the discrimination alleged herein under the doctrine of respondeat superior.
64. Sexual harassment that creates an abusive and hostile work environment, such that the conditions of employment are altered, is actionable under Title VII.
65. With respect to allegations of sexual harassment, Smith Barney is strictly liable for the acts of its supervisory employees including its officers or branch managers.



Alternatively, with respect to allegations of sexual harassment, Smith Barney is liable for the acts alleged herein through agency principles for the acts of its supervisory employees because the harassers used their actual or apparent authority to further the unlawful conduct and were otherwise aided in accomplishing the unlawful conduct by the existence of an agency relationship. Further, Smith Barney is liable for the acts of co-workers because Smith Barney provided no reasonable avenue of complaint or knew of the harassment but did nothing about it.

66. Finally, Smith Barney is liable for the acts alleged herein because Smith Barney's top echelon established the corporate culture at Smith Barney which encouraged sexual harassment. Smith Barney has allowed the discrimination and harassment alleged herein to go unremedied for so long that it amounts to a policy or practice and constitutes Smith Barney's standard operating procedure.

67. Smith Barney subjected Plaintiffs and all others similarly situated to sexual discrimination and sexual harassment in violation of Title VII.

## COUNT II

### WAGE CLAIMS IN VIOLATION OF THE EQUAL PAY ACT AND TITLE VII (AGAINST SMITH BARNEY)

68. Plaintiffs and all others similarly situated reallege paragraphs 1 to 67 and incorporate them by reference as paragraphs 1 to 67 of Count II of this Complaint.

69. The Equal Pay Act of the Fair Labor Standards Act, 29 U.S.C. Section 206 and 207, makes it unlawful for an employer on the basis of sex to pay lower wages or fringe benefits to employees of one sex than it does to similarly situated employees of the other sex. Title VII also makes it unlawful to discriminate in the payment of wages on the basis of sex.

70. Plaintiffs and all others similarly situated were paid lower wages than male employees in substantially equal jobs even though Plaintiffs and all others similarly situated

performed similar duties requiring the same skill, effort, and responsibility of male employees.

71. The differential in pay between sexes was not pursuant to seniority, merit, quantity or quality of production, but was due to sex.

72. Smith Barney intentionally paid Plaintiffs and all others similarly situated less than it paid male employees who were performing substantially equal work.

73. By its conduct as alleged herein, Smith Barney discriminated against Plaintiffs and all others similarly situated with respect to their wages in violation of the Equal Pay Act and Title VII.

**COUNT III**  
**PREGNANCY DISCRIMINATION**  
**IN VIOLATION OF**  
**TITLE VII**  
**(AGAINST SMITH BARNEY)**

74. Plaintiff Thomann and all others similarly situated reallege paragraphs 1 to 73 and incorporate them by reference as paragraphs 1 to 73 of Count III of this Complaint.

75. Title VII, specifically 42 U.S.C. Section 2000e(k), makes it unlawful to discriminate against any individual because of sex including on the basis of pregnancy, childbirth, or related medical conditions.

76. Smith Barney discriminated against Thomann and all others similarly situated on the basis of pregnancy, childbirth and/or related medical conditions in violation of Title VII.

**COUNT IV**  
**RETALIATION**  
**IN VIOLATION OF**  
**TITLE VII**  
**(AGAINST SMITH BARNEY)**

77. Plaintiffs and all others similarly situated reallege paragraphs 1 to 76 and incorporate them by reference as paragraphs 1 to 76 of Count IV of this Complaint.

78. Title VII, specifically 42 U.S.C. Section 2000e-3, makes it unlawful for an

employer to discriminate against an employee who has opposed an unlawful employment practice or has assisted or participated in another employee's claim of discrimination.

79. Smith Barney is liable for the retaliatory conduct alleged herein under the doctrine of respondent superior.

80. Smith Barney retaliated against Plaintiffs and all others similarly situated for their complaints of sex discrimination. By its conduct, Smith Barney subjected Plaintiffs and all others similarly situated to unlawful retaliation in violation of Title VII.

## **COUNT V**

### **RETALIATION IN VIOLATION OF THE EQUAL PAY ACT AND TITLE VII (AGAINST SMITH BARNEY)**

81. Plaintiffs and all others similarly situated reallege paragraphs 1 to 80 and incorporate them by reference as paragraphs 1 to 80 of Count V of this Complaint.

82. The Equal Pay Act and Fair Labor Standards Act, 29 U.S.C. Section 215(a)(3), make it unlawful for any person to discharge or in any manner discriminate against any employee because she complained of wage discrimination. Similarly, Title VII, specifically 42 U.S.C. 2000e-3, also makes it unlawful for an employer to discriminate against an employee who has opposed an unlawful employment practice or has assisted or participated in another employee's claim of discrimination.

83. Plaintiffs and all others similarly situated complained of sex discrimination and unfair wage practices.

84. Smith Barney retaliated against Plaintiffs and all others similarly situated for their complaints in violation of the anti-retaliation provisions of the Fair Labor Standards Act and Title VII. By their conduct, Defendants subjected Plaintiffs and all others similarly situated to unlawful retaliation in violation of the Equal Pay Act and Title VII.

## COUNT VI

### THE PRACTICE OF REQUIRING FEMALES TO EXECUTE THE FORM U-4 CONSTITUTES SEXUAL DISCRIMINATION IN VIOLATION OF TITLE VII (AGAINST SMITH BARNEY)

85. Plaintiffs and all others similarly reallege paragraphs 1 to 84 and incorporate them by reference as paragraphs 1 to 84 of Count VI of this Complaint.

86. Title VII makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of sex.

87. Smith Barney and the Securities Industry has a practice of requiring employees to sign the Form U-4 which Smith Barney claims requires arbitration of employment discrimination claims before the NYSE and/or the NASD. The contracts do not reference Title VII claims or any other civil rights law. Plaintiffs and all others similarly situated did not knowingly and intelligently waive the rights accorded to plaintiffs to bring the civil rights claims, as set forth in this Complaint. Thus, the arbitration clause in the Form U-4 is violative of Title VII and other civil rights laws.

88. Further, for the reasons alleged above, the practice of requiring female employees to arbitrate employment disputes before the NYSE or the NASD is discriminatory in effect and violative of their civil rights laws. While male employees have a fair opportunity to have their claims heard before the NYSE and NASD, female employees are not accorded the same treatment.

89. By requiring female employees to execute the Form U-4, Smith Barney subjected Plaintiffs and all others similarly situated to sexual discrimination in violation of Title VII.

## COUNT VII

### DECLARATORY JUDGMENT MANDATORY ARBITRATION OF DISCRIMINATION CLAIMS DEPRIVES PLAINTIFFS OF DUE PROCESS OF LAW (AGAINST SMITH BARNEY, NYSE AND NASD)

90. Plaintiffs and all others similarly situated reallege paragraphs 1 to 89 and incorporate them by reference as paragraphs 1 to 89 of Count VII of this Complaint.

91. The Fifth Amendment to the United States Constitution, applicable to actions of the federal government, guarantees due process of law to the Plaintiffs and all others similarly situated.

92. The system of mandating arbitration of employment discrimination claims constitutes action of the federal government because of: (1) the plenary regulation of the exchanges by the Federal Securities Acts; (2) the extensive delegation of regulatory power by the SEC to the exchanges as self-regulatory organizations; (3) the encouragement given by the SEC to the exchanges to require employees in the securities industry to arbitrate their employment disputes with their employers; (4) the permission granted by the SEC to the exchanges to modify their rules and regulations to require arbitration of all employment disputes; (5) the approval given by the SEC to the specific arbitration procedure utilized by the exchanges; (6) the exercise of the judicial power by arbitrators in hearing and deciding statutory and common law disputes in the Securities Industry, which power has traditionally been an exclusive function of federal and state courts, (7) the action of the courts in enforcing contracts of adhesion by compelling arbitration of employment disputes in the Securities Industry against the will of Securities Industry employees; and (8) the action of the courts in confirming arbitration awards in employment disputes where the dispute was arbitrated against the will of Securities Industry employees.

93. Compelling mandatory arbitration in the present case would be unconstitutional because it would deprive Plaintiffs and all others similarly situated of their rights to a jury trial

under the Seventh Amendment and under the 1991 Civil Rights Act.

94. Requiring employees to waive their constitutional and statutory rights to a jury trial as a condition of employment imposes an unconstitutional condition on employment, in violation of the due process guarantees of the Fifth Amendment to the United States Constitution, and violates the 1991 Civil Rights Act.

95. Compelling mandatory arbitration in the present action would be unconstitutional because it would deprive Plaintiffs and all others similarly situated of their rights to adjudicate their claims before an Article III court under the Constitution and the 1991 Civil Rights Act.

96. Requiring employees to agree to waive their constitutional rights to have their claims adjudicated by an Article III court as a condition of employment imposes an unconstitutional condition on employment, in violation of the due process guarantees of the Fifth Amendment, and violates the 1991 Civil Rights Act.

97. Compelling mandatory arbitration in the present action would be unconstitutional because the procedures employed in arbitrations under the rules of the NYSE and NASD, as described above, would deprive Plaintiffs and all others similarly situated of their rights to due process under the Fifth Amendment, including but not limited to their rights to have the civil rights and employment laws enforced as written.

98. Requiring employees to agree to waive their constitutional rights to due process, including but not limited to their rights to have the civil rights and employment laws enforced as written, as a condition of employment imposes an unconstitutional condition on employment, in violation of the due process guarantees of the Fifth Amendment.

99. Compelling mandatory arbitration in the present case would be unlawful because the arbitration procedures employed by the NYSE and NASD operate as a de facto forfeiture of statutorily-mandated rights or benefits afforded by Title VII and other employment laws, including, but not limited to, the right to a jury trial, the right to punitive damages, and the right

to attorneys' fees, in violation of the due process guarantees of the Fifth Amendment.

100. Requiring employees to agree to forfeit their important statutorily-mandated rights or benefits afforded by Title VII and other employment laws, including but not limited to the right to a jury trial, punitive damages, and attorneys' fees, as a condition of employment imposes an unconstitutional condition on employment, in violation of the due process guarantees of the Fifth Amendment.

101. Plaintiffs and all others similarly situated were deprived of their rights to substantive and procedural due process of law.

### **COUNT VIII**

#### **UNLAWFUL CONDUCT IN VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT**

#### **(PLAINTIFF THOMANN AGAINST SMITH BARNEY, CUNEO AND DIMON)**

102. Plaintiff Thomann realleges paragraphs 1 to 101 and incorporates them by reference as paragraphs 1 to 101 of Count VIII of this Complaint.

103. The Family and Medical Leave Act, 29 U.S.C. Sections 2601 et seq. ("The Family and Medical Leave Act"), entitles employees to a 12-week leave during any 12-month period because of the birth of a child. The Family and Medical Leave Act also entitles any employee who takes such a leave to be restored to her former position or to be restored to an equivalent position with equivalent terms and conditions of employment as her former position.

104. By its conduct as alleged herein, including their actions in denying Thomann her former position or equivalent position after returning from her leave, Smith Barney violated the Family and Medical Act.

105. Smith Barney's actions toward Thomann constitute willful violations of the Family and Medical Leave Act.

## **COUNT IX**

### **UNLAWFUL RETALIATION IN VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT**

#### **(PLAINTIFF THOMANN AGAINST SMITH BARNEY)**

106. Plaintiff Thomann realleges paragraphs 1 to 105 and incorporates them by reference as paragraphs 1 to 105 of Count IX of this Complaint.

107. The Family and Medical Leave Act, specifically 29 U.S.C. Section 2615(a)(2), makes it unlawful for any employer to discharge or in any other manner discriminate against any employee who has opposed any practice made unlawful by the Act.

108. By its conduct as alleged herein, including further acts of discrimination, harassment, and retaliation against Thomann, Smith Barney violated the Family and Medical Leave Act.

109. Smith Barney's actions toward Thomann constitute willful violations of the Family and Medical Leave Act.

## **COUNT X**

### **VOIDANCE OR RESCISSION OF FORM U-4 ARBITRATION CLAUSE UNDER CONTRACT LAW AND EQUITABLE THEORIES (AGAINST SMITH BARNEY)**

110. Plaintiff Mione and all others similarly situated reallege paragraphs 1 to 109 and incorporate them by reference as paragraphs 1 to 109 of Count X of this Complaint.

111. Plaintiff Mione signed a Form U-4 which contained a mandatory arbitration clause. Plaintiff Mione and all others similarly situated seek to have the Court declare null and void the arbitration clause in the Form U-4 based on the following legal theories.

- a. Plaintiff Mione and all others similarly situated did not knowingly and intelligently submit to arbitration.
- b. Assuming arguendo that they understood what arbitration meant and that by



signing the Form U-4 that they were agreeing to arbitrate discrimination claims between them and their employer, Plaintiff Mione and all others similarly situated were not aware of the certain facts which render the NASD and NYSE not suitable to arbitrate claims involving Smith Barney. Had Mione and all others similarly situated known of the following facts, they would not have consented to arbitrate their claims before the NYSE or NASD:

- i. Defendant Dimon sits on the Board of Governors of the NASD.
  - ii. Smith Barney is a voting member of the NYSE.
  - iii. Smith Barney provides substantial revenues to the NASD and NYSE.
- c. The arbitration clause in the Form U-4 is unenforceable for lack of consideration.
- d. Assuming arguendo that Plaintiffs knowingly waived their rights and that the Form U-4 is supported by adequate consideration, Smith Barney, through its conduct materially breached an implied covenant of good faith and fair dealing implicit in the employment relationship of Plaintiff Mione and all others similarly situated and is equitably estopped from seeking enforcement of the pre-dispute arbitration clause.
- e. Smith Barney breached an implied covenant of good faith and fair dealing through its conduct as alleged herein and rendered the Form U-4 null and void or unenforceable by Smith Barney.
- f. The Form U-4 is otherwise void as against public policy and is a contract of adhesion and is unconscionable.

112. Based on the factual circumstances and for the legal reasons alleged herein, justice requires this Court to find that the contracts signed by Plaintiffs and all others similarly situated are void and/or unenforceable by Smith Barney under contract law.

113. Alternatively, justice demands that Plaintiffs and all others similarly situated be

allowed to rescind the arbitration clause of the Form U-4 under equitable principles.

**COUNT XI**

**SEXUAL DISCRIMINATION  
AND SEXUAL HARASSMENT  
IN VIOLATION OF  
NEW YORK HUMAN RIGHTS LAW  
(AGAINST SMITH BARNEY, CUNEO AND DIMON)**

114. Plaintiffs and all others similarly situated reallege paragraphs 1 to 113 and incorporate them by reference as paragraphs 1 to 113 of Count XI of this Complaint.

115. The State of New York's Human Rights Law, New York State Executive Law Section 296 et seq., ("Human Rights Law"), makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of sex. The Human Rights Law also makes unlawful sexual harassment that creates an abusive and hostile work environment, such that the conditions of employment are altered. The same legal standards that apply to Title VII claims apply to claims brought under the Human Rights Law.

116. Cunco is liable in his individual capacity under the Human Rights Law because he aided and abetted the unlawful conduct as alleged herein and because he actually participated in the conduct giving rise to the discrimination claims.

117. Dimon is liable in his individual capacity under the Human Rights Law because he had the power to hire and fire Smith Barney employees and aided and abetted the discriminatory acts as alleged herein.

118. Defendants Smith Barney, Cunco and Dimon subjected Plaintiffs and all others similarly situated to sexual discrimination in violation of the Human Rights Law.

## **COUNT XII**

### **PREGNANCY DISCRIMINATION IN VIOLATION OF NEW YORK HUMAN RIGHTS LAW (AGAINST SMITH BARNEY, CUNEO AND DIMON)**

119. Plaintiff Thomann and all others similarly situated reallege paragraphs 1 to 118 and incorporate them by reference as paragraphs 1 to 118 of Count XII of this Complaint.

120. The Human Rights Law makes it unlawful to discriminate against an individual on the basis of pregnancy.

121. Cuneo is liable in his individual capacity under the Human Rights Law because he aided and abetted the unlawful conduct as alleged herein and because he actually participated in the conduct giving rise to the discrimination claims.

122. Dimon is liable in his individual capacity under the Human Rights Law because he had the power to hire and fire Smith Barney employees and aided and abetted the discriminatory acts as alleged herein.

123. Defendants Smith Barney, Cuneo and Dimon subjected Plaintiff Thomann and all others similarly situated to pregnancy discrimination in violation of the Human Rights Law.

## **COUNT XIII**

### **RETALIATION IN VIOLATION OF NEW YORK HUMAN RIGHTS LAW (AGAINST DEFENDANTS SMITH BARNEY, CUNEO AND DIMON)**

124. Plaintiffs and all others similarly situated reallege paragraphs 1 to 123 and incorporate them by reference as paragraphs 1 to 123 of Count XIII of this Complaint.

125. The Human Rights Law, specifically New York State Executive Law Section 296(e), makes it unlawful for an employer to discriminate against an employee who has opposed an unlawful employment practice or has assisted or participated in another employee's claim of discrimination.

126. Plaintiffs and all others similarly situated complained of sex discrimination.

127. Defendants retaliated against Plaintiffs and all others similarly situated for their complaints of sex discrimination. By the conduct as alleged herein, Defendants Smith Barney, Cuneo and Dimon subjected Plaintiffs and all others similarly situated to unlawful retaliation in violation of the Human Rights Law.

#### **COUNT XIV**

##### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN VIOLATION OF NEW YORK COMMON LAW (AGAINST SMITH BARNEY, CUNEO AND DIMON)**

128. Plaintiffs and all others similarly situated reallege paragraphs 1 to 127 and incorporate them by reference as paragraphs 1 to 127 of Count XIV of the Complaint.

129. New York law recognizes a cause of action for intentional infliction of emotional distress, which makes unlawful certain extreme and outrageous conduct, including sexual harassment, that results in severe emotional distress and was intended or committed with a disregard or a substantial probability of causing such distress.

130. Defendants intentionally caused Plaintiffs and all others similarly situated severe emotional distress in violation of New York law.

131. Smith Barney directed, encouraged, and participated in the wrongful conduct alleged herein.

#### **COUNT XV**

##### **LIBEL PER SE (PLAINTIFF MARTENS AGAINST SMITH BARNEY)**

132. Plaintiff Martens and all others similarly situated reallege paragraphs 1 to 131 and incorporate them by reference as paragraphs 1 to 131 of Count XV of this Complaint.

133. The statements identified in paragraph 29 made by employees of Smith Barney, under the direction and with the assistance of Smith Barney's managers, are all false, misleading

and defamatory. Each such statement accuses Martens and all others similarly situated of want of ability and want of integrity in their professions, and are libel per se.

134. The statements were made with knowledge that they were false and with actual and common law malice for the purpose of destroying Martens' exemplary reputation.

135. Although damages are presumed, Martens has suffered monetary loss as a result of the defamatory statements.

136. Smith Barney is liable under the theory of respondeat superior.

#### COUNT XVI

#### SEXUAL DISCRIMINATION AND SEXUAL HARASSMENT IN VIOLATION OF CITY ADMINISTRATIVE CODE (AGAINST SMITH BARNEY, CUNEO AND DIMON)

137. Plaintiffs and all others similarly situated reallege paragraphs 1 to 136 and incorporate them by reference as paragraphs 1 to 136 of Count XVI of this Complaint.

138. The Administrative Code of the City of New York, Section 8-107 et seq., ("Administrative Code"), makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of sex. The Administrative Code also makes unlawful sexual harassment that creates an abusive and hostile work environment, such that the conditions of employment are altered.

139. Cuneo is liable in his individual capacity under the Administrative Code on the ground that he aided and abetted the unlawful conduct as alleged herein and because he actually participated in the conduct giving rise to the discrimination claims.

140. Dimon is liable in his individual capacity under the Administrative Code because he had the power to hire and fire Smith Barney employees and aided and abetted the discriminatory acts as alleged herein.

141. By the conduct as alleged herein, Defendants Smith Barney, Cuneo and Dimon

subjected Plaintiffs and all others similarly situated to sexual discrimination in violation of the Administrative Code.

142. Plaintiffs served the City Commission on Human Rights and Corporation Counsel with this Complaint prior to filing it.

#### **COUNT XVII**

##### **PREGNANCY DISCRIMINATION IN VIOLATION OF THE ADMINISTRATIVE CODE (AGAINST SMITH BARNEY, CUNEO AND DIMON)**

143. Plaintiff Thomann and all others similarly situated reallege paragraphs 1 to 142 and incorporate them by reference as paragraphs 1 to 142 of Count XVII of this Complaint.

144. The Administrative Code makes it unlawful to discriminate against an individual on the basis of pregnancy.

145. Cuneo is liable in his individual capacity under the Administrative Code because he aided and abetted the unlawful conduct as alleged herein and because he actually participated in the conduct giving rise to the discrimination claims.

146. Dimon is liable in his individual capacity under the Administrative Code because he had the power to hire and fire Smith Barney employees and aided and abetted the discriminatory acts as alleged herein.

147. By the conduct as alleged herein, Defendants Smith Barney, Cuneo and Dimon subjected Plaintiff Thomann and all others similarly situated to pregnancy discrimination in violation of the Administrative Code.

#### **COUNT XVIII**

##### **RETALIATION IN VIOLATION OF THE ADMINISTRATIVE CODE (AGAINST SMITH BARNEY, CUNEO AND DIMON)**

148. Plaintiffs and all others similarly situated reallege paragraphs 1 to 147 and incorporate them by reference as paragraphs 1 to 147 of Count XVIII of this Complaint.

149. The Administrative Code, specifically Section 8-107(e), makes it unlawful for an employer to discriminate against any person who has opposed an unlawful employment practice or has assisted or participated in another employee's claim of discrimination.

150. Plaintiffs and all others similarly situated complained of sex discrimination.

151. Pursuant to standard operating procedure, Defendants retaliated against Plaintiffs and all others similarly situated for their complaints of sex discrimination. By the conduct as alleged herein, Defendants Smith Barney, Cuneo and Dimon subjected Plaintiffs and all others similarly situated to unlawful retaliation in violation of the Administrative Code.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs and all others similarly situated request that this Court find in their favor and against Defendants as follows:

- a. Declare that Smith Barney's acts and conduct violate Title VII of the Civil Rights Act of 1964 and 1991, the Equal Pay Act, the Family and Medical Leave Act, the Human Rights Law, the Administrative Code, and the anti-retaliation provisions of those laws and that the individual Defendants violated the New York State Human Rights Law and the Administrative Code and the anti-retaliation provisions of those laws;
- b. Declare that the acts and conduct of Smith Barney, Cuneo and Dimon violate New York common law;
- c. Declare that the practice of Smith Barney, NYSE and NASD of requiring employees in the Securities Industry to arbitrate employment disputes involving employment discrimination as a condition of employment and as a condition of registering with the NYSE and NASD is unconstitutional under the Fifth Amendment to the United States Constitution and that this cause is not subject to the mandatory arbitration rules of the NYSE or NASD;
- d. Declare that the Form U-4 executed by Plaintiffs and all others similarly situated are null and void or unenforceable by any of the Defendants or that equity requires rescission of

the arbitration clauses in the Form U-4;

e. Award Plaintiffs and all others similarly situated the value of all compensation and benefits lost as a result of Smith Barney's, Dimon's and Cuneo's unlawful conduct;

f. Award Plaintiffs and all others similarly situated the value of all compensation and benefits they will lose in the future as a result of Smith Barney's, Dimon's and Cuneo's unlawful conduct under Title VII, the Equal Pay Act, the Human Rights Act, the Administrative Code, and New York common law;

g. In the alternative to paragraph (f), reinstate Plaintiffs and all others similarly situated with appropriate promotions and seniority and otherwise make Plaintiffs and all others similarly situated whole;

h. Award Plaintiffs and all others similarly situated compensatory damages under Title VII, the Human Rights Law, the Administrative Code, and New York common law;

i. Award Plaintiffs and all others similarly situated punitive damages under Title VII, the Administrative Code, and New York common law;

j. Award Plaintiffs and all others similarly situated liquidated damages under the Equal Pay Act and the Family and Medical Leave Act;

k. Award Plaintiff Martens presumed damages for defamation;

l. Award Plaintiffs and all others similarly situated prejudgment interest;

m. Award Plaintiffs and all others similarly situated reasonable attorneys' fees, costs and disbursements; and