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Maria Ibanez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

Maria Ibanez, individually, and on
behalf of other aggrieved employees
pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

Morningstar Senior Management, LLC,
a Colorado limited liability company;
and DOES 1-50, inclusive,

Defendants.

Case No.:

RG 21106917

**COMPLAINT FOR CIVIL PENALTIES
AND ENFORCEMENT UNDER THE
PRIVATE ATTORNEYS GENERAL ACT**

**(1) VIOLATION OF CALIFORNIA
LABOR CODE § 2698, ET SEQ.
(CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT OF
2004)**

DEMAND FOR JURY TRIAL

ENDORSED
FILED
ALAMEDA COUNTY
JUL 29 2021

CLERK OF THE SUPERIOR COURT
By Alex R. Kosenko Jr, Deputy

Filed By Fax

1 Plaintiff Maria Ibanez ("Plaintiff"), individually, and on behalf of other aggrieved
2 employee pursuant to the California Private Attorneys General Act, hereby brings this complaint,
3 demanding a trial by jury, against the above-named Defendants and states and alleges as follows:

4 **THE PARTIES**

5 1. At all times mentioned herein, Plaintiff was an individual and a resident of the State
6 of California.

7 2. At all times mentioned herein, Defendant Morningstar Senior Management, LLC
8 ("Defendant") was, upon information and belief, a Colorado limited liability company, doing
9 business in the State of California, County of Alameda, at 1200 Russell Way, Hayward, California
10 94541. At the time the causes of action arose, Defendants Morningstar Senior Management, LLC
11 and DOES 1 through 50 were Plaintiff's employers (collectively referred to as "Defendants").

12 3. The true names and capacities, whether individual, corporate, associate or otherwise
13 of DOES 1 through 50 are unknown to Plaintiff who therefore sues these defendants under
14 fictitious names. Plaintiff is informed and believes that each of the Doe defendants are legally
15 responsible in some manner for the events referred to in this Complaint, and are/were the agents,
16 partners, joint venturers, joint employers, representatives, servants, employees, successors-in-
17 interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were
18 acting within the course and scope of their authority as such agents, partners, joint venturers, joint
19 employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and
20 all acts or omissions alleged herein were duly committed with the ratification, knowledge,
21 permission, encouragement, authorization and/or consent of each defendant designated as a DOE
22 herein. Plaintiff will in the future seek leave of this court to show the true names and capacities
23 of these Doe defendants when it has been ascertained.

24 4. Plaintiff further alleges that Defendants directly or indirectly controlled or affected
25 the working conditions, wages, working hours, and conditions of employment of Plaintiff and the
26 other aggrieved employees so as to make each of said Defendants employers liable under the
27 statutory provisions set forth herein.

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5. This representative action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution Plaintiff seeks exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

GENERAL ALLEGATIONS

10. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee from approximately May 2019 to approximately November 2020 in the State of California, County of Alameda.

11. Defendants paid wages and benefits to Plaintiff and the other aggrieved employees, had the authority to hire and terminate them, set the rules and conditions governing their employment, and supervised their daily employment activities. Defendants exercised sufficient

1 authority over the terms and conditions of Plaintiff's and the other aggrieved employees'
2 employment for them to be their joint employers.

3 12. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged
4 in a pattern and practice of wage abuse of, *inter alia*, failing to pay against their hourly-paid and/or
5 non-exempt employees within the State of California all regular and/or overtime wages earned
6 and premiums owed due to missed meal periods and rest breaks in violation of California law.

7 13. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
8 or should have known that Plaintiff and the other aggrieved employees were required to work
9 over eight (8) hours in a day, forty (40) hours in a week, and/or more than eight (8) hours on their
10 seventh day of work and were entitled to receive certain wages for overtime compensation and
11 that they did not receive such overtime wages for all overtime hours worked.

12 14. During the relevant time period, Defendants failed to pay properly pay all overtime
13 wages to Plaintiff and the other aggrieved employees for all overtime hours worked.

14 15. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
15 or should have known that Plaintiff and the other aggrieved employees were entitled to receive at
16 least minimum wages as compensation for all hours worked and that they did not receiving at
17 least minimum wages for all hours they worked.

18 16. During the relevant time period, Defendants failed to pay Plaintiff and the other
19 aggrieved employees at least minimum wages for all hours worked.

20 17. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
21 to provide Plaintiff and the other aggrieved employees with compliant meal and rest periods
22 during the relevant time period as required under the Industrial Welfare Commission Wage
23 Orders and thus they are entitled to any and all applicable premium payments.

24 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
25 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
26 compliant meal and rest periods or a premium payment in the amount of one additional hour of
27 pay at Plaintiff's and the other aggrieved employee's regular rate of pay when a meal or rest
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1 period was missed, short, late, or interrupted (i.e., noncompliant), and they did not receive all
2 required meal and rest periods or premium payments in lieu thereof.

3 19. During the relevant time period, Defendants failed to provide Plaintiff and the other
4 aggrieved employees with every compliant, timely, and uninterrupted meal and rest periods they
5 were entitled to and/or premiums in lieu thereof.

6 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
7 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
8 all wages owed to them upon discharge or resignation, including overtime and minimum wages
9 and meal and rest period premiums, and they did not receive all such wages and compensation
10 owed to them at the time of the termination of their employment with Defendants.

11 21. During the relevant time period, Defendants failed to pay Plaintiff and the other
12 aggrieved employees all wages within any time permissible under California law, including, *inter*
13 *alia*, California Labor Code section 204.

14 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
15 or should have known that Plaintiff and the other aggrieved employees were entitled to timely
16 receive all wages owed to them during their employment. Plaintiff and the other aggrieved
17 employees did not receive payment of all wages, including overtime and minimum wages and
18 meal and rest period premiums, within any time permissible under California Labor Code section
19 204.

20 23. During the relevant time period, Defendants failed to pay Plaintiff and the other
21 aggrieved employees all wages and compensation owed to them upon discharge or resignation.

22 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
23 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
24 complete and accurate wage statements in accordance with California law, but, in fact, they did
25 not receive complete and accurate wage statements from Defendants. The deficiencies included,
26 *inter alia*, the failure to include the legal entity of the employer, the total number of hours worked
27 by Plaintiff, and the other aggrieved employees.

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25. During the relevant time period, Defendants failed to provide compliant wage statements to Plaintiff and the other aggrieved employees.

26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Defendants were required to keep complete and accurate payroll records for Plaintiff and the other aggrieved employees in accordance with California law, but failed to maintain complete and accurate payroll records.

27. During the relevant time period, Defendants failed to keep complete and/or accurate payroll records for Plaintiff and the other aggrieved employees.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to reimbursement for necessary business-related expenses they incurred in accordance with California law, but knowingly failed to provide reimbursement to them.

29. During the relevant time period, Defendants failed to reimburse Plaintiff and the other aggrieved employees for all necessary business-related expenses and costs.

PAGA ALLEGATIONS

30. At all relevant times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

31. At all relevant times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

32. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

33. Plaintiff was employed by Defendants and the alleged violations were committed against her during her employment with Defendants and she is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code

1 section 2699(c) in that they are current or former employees of Defendants, and one or more of
2 the alleged violations were committed against them.

3 34. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
4 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
5 requirements have been met:

6 35. The aggrieved employee shall give written notice by certified mail (hereinafter
7 "Employee's Notice") to the LWDA and the employer of the specific provisions of the California
8 Labor Code alleged to have been violated, including the facts and theories to support the alleged
9 violations.

10 36. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and
11 the aggrieved employer by certified mail that it does not intend to investigate the alleged violation
12 within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of
13 the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days
14 of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil
15 action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any
16 other penalties to which the employee may be entitled.

17 37. On May 12, 2021, Plaintiff provided written notice by online submission and certified
18 mail respectively to the LWDA and to Defendants of the specific provisions of the California
19 Labor Code alleged to have been violated, including the facts and theories to support the alleged
20 violations. Therefore, the administrative prerequisites under California Labor Code section
21 2699.3(a) to recover civil penalties, in addition to other remedies, for violations of California
22 Labor Code sections 201, 202, 203, 204, 218, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194,
23 1194.2, 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA LABOR CODE § 2698, ET SEQ.**

26 **(Against ALL Defendants)**

27 38. Plaintiff restates and incorporates by this reference as if fully set forth herein
28 paragraphs 1 through 37 of this Complaint.

40. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

41. Plaintiff and the other hourly-paid and/or non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

42. Defendants' failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Pay Minimum Wage

43. Defendants' failure to pay minimum wage in violation of the Wage Orders and California Labor Code sections 1194, 1197, 1197.1, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1194, 1197, 1197.1.

Failing to Provide Meal Periods

44. Defendants' failure to provide compliant, legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

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Failure to Provide Rest Periods

45. Defendants' failure to provide compliant, legally required rest periods in violation of the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226.7.

Failure to Timely Pay Wages Upon Termination

46. Defendants' failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

47. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Compliant Wage Statements

48. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete or Accurate Payroll Records

49. Defendants' failure to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

50. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

51. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys'

1 fees and costs pursuant to California Labor Code section 218.5, as well as all penalties against
2 Defendants, and each of them, including but not limited to:

- 3 a. Penalties under California Labor Code section 2699 in the amount of a hundred
4 dollars (\$100) for each aggrieved employee per pay period for the initial violation,
5 and two hundred dollars (\$200) for each aggrieved employee per pay period for
6 each subsequent violation;
- 7 b. Penalties under California Code of Regulations Title 8 section 11010, *et seq.* in
8 the amount of fifty dollars (\$50) for each aggrieved employee per pay period for
9 the initial violation, and one hundred dollars (\$100) for each aggrieved employee
10 per pay period for each subsequent violation;
- 11 c. Penalties under California Labor Code section 210 in addition to, and entirely
12 independent and apart from, any other penalty provided in the California Labor
13 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per
14 pay period for the initial violation, and two hundred dollars (\$200) for each
15 aggrieved employee per pay period for each subsequent violation; and
- 16 d. Any and all additional penalties and sums as provided by the California Labor
17 Code and/or other statutes.

18 52. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
19 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
20 Workforce Development Agency for the enforcement of labor laws and education of employers
21 and employees about their rights and responsibilities and twenty-five percent (25%) to the
22 aggrieved employees.

23 53. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
24 pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

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**BROCK &
GONZALES**

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