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MARIA IBANEZ

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

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

Plaintiff,

v.

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

Defendants.

Case No. RG21106917
The Honorable Tara Desautels

**[PROPOSED] ORDER AND JUDGMENT
GRANTING APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND AWARD
OF ATTORNEY'S FEES AND LITIGATION
COSTS, PLAINTIFF'S RELEASE
PAYMENT, AND ADMINISTRATION
EXPENSES PAYMENT**

[Notice of Motion and Motion for Approval of
Private Attorneys General Act (Cal. Labor Code §
2698, *Et Seq.*) Settlement Agreement and Award
of Attorneys' Fees and Litigation Costs, Plaintiff's
Release Payment, and Administration Expenses
Payment; Declaration of Plaintiff's Counsel; and
Declaration of Plaintiffs filed concurrently
herewith.]

Reservation No.: 813501811930

Date: April 26, 2023

Time: 2:30 p.m.

Dept: 16

Complaint Filed: July 29, 2022

Trial Date: None Set

1
2 This matter has come before the Honorable Tara Desautels in Department 16 of the above-
3 entitled Court, for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612, on
4 Plaintiff Maria Ibanez's ("Plaintiff") Motion for Approval of Private Attorneys General Act Settlement
5 Agreement, and Award of Attorneys' Fees and Litigation Costs, Plaintiff's Release Payment, and
6 Administration Expenses Payment. Brock & Gonzales, LLP ("PAGA Counsel") appeared for Plaintiff,
7 and Gordon Rees Scully Mansukhani, LLP appeared for Defendant Morningstar Senior Management,
8 LLC ("Defendant").

9 On March 29, 2023, Plaintiff and Defendant (together, the "Parties") executed the PAGA
10 Settlement Agreement and Release of Claims ("Settlement," "Settlement Agreement," or "Agreement").

11 The Court has reviewed and considered (1) the Notice of Motion and Motion for Approval of
12 Private Attorneys General Act Settlement Agreement and Award of Attorneys' Fees and Litigation
13 Costs, Plaintiff's Release Payment, and Administration Expenses Payment ("Motion for Approval"), (2)
14 the Declaration of Plaintiff's Counsel, (3) the Declaration of Plaintiff, and (4) the Settlement Agreement.

15 Having duly considered the Parties' papers and oral argument, and good cause appearing,

16 **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

- 17 1. Plaintiff's Motion for Approval is granted.
- 18 2. All terms used herein shall have the same meaning defined in the Settlement Agreement.
- 19 3. The Court finds that Plaintiff has satisfied the prerequisites under the California Private
20 Attorneys General Act (Cal. Labor Code § 2698, *et seq.*) ("PAGA"), including, and not limited to,
21 providing the Labor and Workforce Development Agency ("LWDA") and Defendant with notice of the
22 specific provisions of the California Labor Code alleged to have been violated, including, and not limited
23 to, the facts and theories to support the alleged violations, in conformity with California Labor Code §
24 2699.3(a).
- 25 4. The Court also finds that the Settlement Agreement has been submitted to the LWDA in
26 conformity with California Labor Code § 2699(1)(2) and that the LWDA has not sought to intervene or
27 appear in the above-captioned action ("Action").

1 5. The Court hereby grants Plaintiff leave to file the First Amended Complaint for Damages
2 and Enforcement Under the Private Attorneys General Act (“FAC”) which is attached hereto as
3 **“EXHIBIT A.”** The FAC shall be deemed filed as of the date of the entry of this Order and shall be the
4 operative complaint in the Action for purpose of Settlement, including the release claims. In the event
5 that the Settlement does not become final for any reason, the FAC shall be *void ab initio* and the
6 Complaint for Damages and Enforcement Under the Private Attorneys General Act shall be the operative
7 complaint for all purposes unless otherwise ordered by the Court.

8 6. The Aggrieved Employees covered under the Settlement consist of the following
9 individuals:

10 All persons employed by Defendant as hourly-paid or non-exempt employees at any time during
11 the period from July 29, 2020 to January 28, 2023 (“PAGA Period”).

12 7. The Court finds that the Parties reached the Settlement as a result of arm’s-length
13 negotiations.

14 8. Pursuant to California Labor Code § 2699(1)(2), the Court has reviewed and hereby
15 approves the sum allocated for payment of penalties under PAGA (the “Net Settlement Amount”), and
16 determines that it is fair, just, reasonable, and adequate. The Net Settlement Amount shall be the Gross
17 Settlement Amount less the approved PAGA Counsel Fees Payment and PAGA Counsel Litigation
18 Expenses Payment to PAGA Counsel, Administration Expenses Payment to Simpluris, Inc. (the
19 “Settlement Administrator”), and Plaintiff’s Release Payment to Plaintiff. Seventy-five percent (75%)
20 of the Net Settlement Amount shall be distributed to the LWDA (“LWDA PAGA Payment”) and twenty-
21 five percent (25%) shall be distributed to the Aggrieved Employees (“Individual PAGA Payments”) in
22 accordance with this Order and Judgment and the Settlement Agreement.

23 9. The Court has considered the settlement, and the monetary allocations provided thereby,
24 and finds that they are fair, just, reasonable, and adequate. The Court hereby directs the Settlement
25 Administrator to administer the settlement and to make the payments as provided for by, and consistent
26 with, this Order and Judgment and the Settlement Agreement.

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28 ///

10. The Court approves the payment of \$50,000.00 to PAGA Counsel for attorneys' fees. This amount shall be paid from the Gross Settlement Amount and shall be disbursed in accordance with this Order and Judgment and the Settlement Agreement.

11. The Court approves the payment of PAGA Counsel's actual litigation costs and expenses to PAGA Counsel for reimbursement of litigation costs and expenses incurred in the Action. This amount shall be paid from the Gross Settlement Amount and shall be disbursed in accordance with this Order and Judgment and the Settlement Agreement.

12. The Court approves the payment of \$8,500.00 each to Plaintiff Maria Ibanez for Plaintiff's Release Payment. This amount shall be paid from the Gross Settlement Amount and shall be disbursed in accordance with this Order and Judgment and the Settlement Agreement.

13. The Court approves payment not to exceed \$7,000 to the Settlement Administrator for the Administration Expenses Payment. This amount shall be paid from the Gross Settlement Amount and shall be disbursed in accordance with this Order and Judgment and the Settlement Agreement.

14. The Parties are directed to perform in accordance with the terms set forth in this Order and Judgment and the Settlement Agreement.

15. The Court further finds that notice of the settlement need not be provided to Aggrieved Employees; however, the Court approves the Cover Letter, attached hereto as "**EXHIBIT B**," and the Settlement Administrator shall distribute the Cover Letter to Aggrieved Employees at the same time that it distributes Individual PAGA Payment checks to Aggrieved Employees.

16. Within thirty (30) calendar days of entry of this Order, Defendant shall provide the Settlement Administrator with a list containing the following information regarding each Aggrieved Employees: full name, last known mailing address, Social Security number, and the number of PAGA Pay Periods attributed to him or her (collectively referred to as the "Aggrieved Employee Data"), in accordance with this Order and Judgment and the Settlement Agreement. Within thirty (30) calendar days after the Effective Date, Defendant shall fund the Gross Settlement Amount by transmitting the funds to the Settlement Administrator. Within thirty (30) calendar days of funding, the Settlement Administrator shall distribute the Individual PAGA Payments to Aggrieved Employees, LWDA PAGA Payment to the LWDA, Plaintiff's Release Payment to Plaintiff, PAGA Counsel Fees Payment and

1 PAGA Counsel Fees to PAGA Counsel, and Administration Expenses Payment to itself, as provided for
2 by this Order and Judgment and the Settlement Agreement

3 17. All Individual PAGA Payment checks that are issued to Aggrieved Employees shall be
4 valid and negotiable up to one hundred eighty (120) calendar days after their initial mailing, and
5 thereafter, shall be cancelled. The funds associated with cancelled Individual PAGA Payment checks
6 will be transmitted to the State Controller's Unclaimed Property Fund in the name of each Aggrieved
7 Employee whose check is voided.

8 18. Aggrieved Employees shall not have the right to opt out of or object to the Settlement.
9 By way of and upon the entry of this Order and Judgment, Plaintiff and each Aggrieved Employee is
10 deemed to fully release and forever discharge Released Parties from the Released PAGA Claims.

11 19. Upon the date Defendant fully funds the Gross Settlement Amount, all Aggrieved
12 Employees are deemed to release, on behalf of themselves and their respective former and present
13 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties
14 from PAGA civil penalties alleged in the operative complaint, Plaintiff's PAGA Notices, or could have
15 been alleged based on the claims alleged pertaining to Plaintiff and the Aggrieved Employees alleged
16 in the operative complaint or PAGA Notices. This includes, but is not limited to claims for PAGA civil
17 penalties based on alleged violations of California Labor Code sections 201-204, 206.5, 210, 212, 213,
18 218, 221, 223, 224, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1,
19 1198, 2800, 2802, 2810.5 and the California Industrial Welfare Commission Wage Orders.

20 20. No individualized notice of this Order and Judgment is required to be provided to
21 Aggrieved Employees. This Order and Judgment shall be submitted to the LWDA through the online
22 system established for the filing of notices and documents, in conformity with California Labor Code §
23 2699(l)(3).

24
25 Date: _____

Honorable Tara Desautels
Judge of the Superior Court

EXHIBIT A

BROCK & GONZALES, LLP

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DANIELLE L. GRUPPCHANG, STATE BAR NO. 313881

Attorneys for Plaintiff

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.: RG21106917

The Honorable Tara Desautels

**FIRST AMENDED 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

Plaintiff Maria Ibanez ("Plaintiff"), individually, and on behalf of other aggrieved
employee pursuant to the California Private Attorneys General Act, hereby brings this amended

1 complaint, demanding a trial by jury, against the above-named Defendants and states and alleges
2 as follows:

3 **THE PARTIES**

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

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

28 ///

5. This representative action is brought pursuant to the California Labor Code 2698. The penalties 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.

8. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Alameda. The majority of acts and omissions alleged herein relating to Plaintiff and the other aggrieved employees took place in the State of California, including the County of Alameda. At all relevant times, Defendant maintained its headquarters within the State of California, County of Alameda.

9. At all times mentioned herein, Defendants employed Plaintiff and other aggrieved employees as hourly-paid or non-exempt employees within the State of California, including the 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

1 employment, and supervised their daily employment activities. Defendants exercised sufficient
2 authority over the terms and conditions of Plaintiff's and the other aggrieved employees'
3 employment for them to be their joint employers.

4 12. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged
5 in a pattern and practice of wage abuse of, *inter alia*, failing to pay against their hourly-paid and/or
6 non-exempt employees within the State of California all regular and/or overtime wages earned
7 and premiums owed due to missed meal periods and rest breaks in violation of California law.
8 Among other things, Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 required aggrieved employees to perform work off-the-clock before and after clocking in for their
10 scheduled shifts and during their meal and rest breaks, and as a result, Defendants failed to
11 properly compensate aggrieved employees for all time worked.

12 13. Plaintiff is informed and believes, and based thereon alleges, Defendants
13 required aggrieved employees to perform work-related tasks (including but not limited to check
14 out work equipment) prior to and after clocking in and out of their shifts. Aggrieved employees
15 were also regularly on-call and interrupted during their meal and rest periods to respond to work-
16 related calls, to perform work tasks (including but not limited to taking mandatory Covid-19 tests
17 and related activities before and after clocking in), and by their managers to answer work
18 questions which resulted in short and/or interrupted meal periods.

19 14. Plaintiff is informed and believes, and based thereon alleges, Aggrieved
20 employees also often experienced short, late, or completely missed rest periods due to chronic
21 understaffing in order to accommodate Defendants' business and in order to manage their
22 unreasonable workloads. In addition, aggrieved employees regularly incurred necessary
23 business-related expenses which were not reimbursed by Defendants, including but not limited to
24 the costs associated with the regular use of personal cell phones for work-related phone calls and
25 text messages and the use of their home internet to complete required work training. Finally,
26 Defendants. provided non-compliant wage statements that did not contain all required
27 information, specifically the identification of the legal employer.
28

1 15. Plaintiff is further informed and believes, and based thereon alleges, Defendants
2 failed to pay all wages (including minimum, regular and overtime wages) and premium penalties
3 owed to employees, including because time was adjusted or rounded or because non-discretionary
4 pay was not calculated into the regular rate of pay.

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

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

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

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

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

22 18. 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 compliant meal and rest periods or a premium payment in the amount of one additional hour of
25 pay at Plaintiff's and the other aggrieved employee's regular rate of pay when a meal or rest
26 period was missed, short, late, or interrupted (i.e., noncompliant), and they did not receive all
27 required meal and rest periods or premium payments in lieu thereof.
28

1 19. During the relevant time period, Defendants failed to provide Plaintiff and the other
2 aggrieved employees with every compliant, timely, and uninterrupted meal and rest periods they
3 were entitled to and/or premiums in lieu thereof and when Defendants did provide a meal period
4 premium, they did so at Plaintiff and the other aggrieved employee's hourly rate of pay rather
5 than their regular rate of pay.

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 identification of the legal entity of the employer, the total number
27 of hours worked by Plaintiff, and the other aggrieved employees.

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

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

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

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

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

15 **PAGA ALLEGATIONS**

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

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

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

26 33. Plaintiff was employed by Defendants and the alleged violations were committed
27 against her during her employment with Defendants and she is, therefore, an aggrieved employee.
28 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 and [-], Plaintiff provided written notice by online submission and
18 certified mail respectively to the LWDA and to Defendants of the specific provisions of the
19 California Labor Code alleged to have been violated, including the facts and theories to support
20 the alleged violations. Therefore, the administrative prerequisites under California Labor Code
21 section 2699.3(a) to recover civil penalties, in addition to other remedies, for violations of
22 California Labor Code sections 201, 202, 203, 204, 206.5, 210, 212, 213, 218, 221, 223, 224,
23 226(a), 226.3, 226.7, 510, 512, 558, 551, 552, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
24 2800, 2802, 2810.5 have been satisfied.

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FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE § 2698, ET SEQ.

(Against ALL Defendants)

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

39. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

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.

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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).

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).

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

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

52. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers

1 and employees about their rights and responsibilities and twenty-five percent (25%) to the
2 aggrieved employees.

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

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff individually, and on behalf of other members of the general
7 public similarly situated, prays for relief and judgment against Defendants, jointly and severally,
8 as follows:

9 **AS TO THE FIRST CAUSE OF ACTION**

- 10 1. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f),
11 and (g) plus costs and attorneys' fees for violation of California Labor Code sections
12 201, 202, 203, 204, 206.5, 210, 212, 213, 218, 221, 223, 224, 226(a), 226.3, 226.7,
13 510, 512, 558, 551, 552, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
14 2802, 2810.5.
- 15 2. For such other and further relief as the Court may deem just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff, individually, and on behalf of other members of the general public similarly
18 situated, hereby demands a trial by jury

19
20 DATED: April 20, 2023

BROCK & GONZALES, LLP

21
22
23 By:



24 DANIELLE L. GRUPPCHANG

25 Attorneys for Plaintiff
26
27
28

EXHIBIT B

Date: / /2023

To: <<First Name>><<Last Name>>
 <<Address>>
 <<City>> <<State>> <<Zip>>

**Re: Individual PAGA Payment from Ibanez v. Morningstar Senior Management, LLC
Superior Court of California for the County of Alameda, Case No. RG21106917**

Dear .

Please find enclosed a check in the amount of ("Individual PAGA Payment"). This check comprises your payment from the settlement of a lawsuit entitled Ibanez v. Morningstar Senior Management, LLC, Case No. RG21106917 ("Lawsuit"), pending in the Superior Court of California for the County of Alameda ("Court").

Maria Ibanez ("Plaintiff") filed a Complaint under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* ("PAGA") on July 29, 2021, thereby commencing the Lawsuit. In the Lawsuit, Plaintiff alleged that Defendant Morningstar Senior Management, LLC ("Morningstar") violated wage and hour requirements with respect to its hourly-paid, non-exempt employees employed in California from July 29, 2020 to January 28, 2023 ("PAGA Period"). Morningstar denies these claims. By entering into the settlement, Morningstar is not admitting any violation or liability of any kind, and the Court has not made any rulings on the merits of the Lawsuit.

The other alleged aggrieved employees on whose behalf the case was brought are any hourly-paid or non-exempt employees who worked for Morningstar in California at any time during the PAGA Period ("Aggrieved Employee(s)"). You have been identified as an Aggrieved Employee.

On , the settlement was approved by the Court with a portion being paid to the State of California and a portion being paid to the Aggrieved Employees. You are receiving a portion of the settlement based on the number of pay periods you worked for Morningstar during the PAGA Period in California as an hourly-paid or non-exempt employee. You are responsible for payment of any and all taxes that are due as a result of any payment issued to you under the settlement, and should consult a tax advisor regarding the tax consequences of such payment.

This settlement resolves the claims in the Complaint, including all claims for PAGA penalties for alleged a) unpaid overtime, b) failure to provide meal and rest periods, c) unpaid meal period premiums, d) unpaid rest period premiums, e) unpaid minimum wages, f) final wages not timely paid, g) wages not timely paid during employment, h) non-compliant wage statements, i) failure to keep requisite payroll records, and j) unreimbursed business expenses, and any and all claims for penalties which were or could have been asserted in the Complaint in the Lawsuit.

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.

"Released PAGA Claims" means: PAGA civil penalties alleged in the Complaint, Plaintiff's PAGA Notices, or could have been alleged based on the claims alleged pertaining to Plaintiff and the Aggrieved Employees alleged in the operative complaint or PAGA Notices. This includes, but is not limited to claims for PAGA civil penalties based on alleged violations of California Labor Code sections 201-204, 206.5, 210, 212, 213, 218, 221, 223, 224, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 2800, 2802, 2810.5 and the California Industrial Welfare Commission Wage Orders.

"Released Parties" means: Morningstar and their past, present, and future subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries.

Please note, no claims for unpaid or underpaid wages have been settled or are included in the Released PAGA Claims and this settlement is without prejudice to the pursuit of any claims for unpaid or underpaid wages. Your Individual PAGA Payment check will expire on . All checks not cashed by that date will be cancelled. You will still be deemed to release the Released PAGA Claims even if you do not timely cash your check.

Do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement. If you have any questions, you may call the Third Party Administrator: .