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**Attorneys for Plaintiff**  
MARIA IBANEZ

**FILED**  
Superior Court of California  
County of Alameda

05/25/2023

Clad Filer, Executive Officer / Clerk of the Court  
By: *R. Tumonong* Deputy

**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

**[REVISED 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**

[Supplement Declaration of Plaintiff's Counsel  
filed concurrently herewith.]

Reservation No.: 813501811930  
Date: May 24, 2023  
Time: 2:30 p.m.  
Dept: 16

Complaint Filed: July 29, 2022  
Trial Date: None Set

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

8 On March 29, 2023, Plaintiff and Defendant (together, the "Parties") executed the PAGA  
9 Settlement Agreement and Release of Claims and Amendment No. 1 to PAGA Settlement Agreement  
10 and Release of Claims (collectively "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 and Supplemental Declaration of Plaintiff's Counsel, (3) the Declaration of Plaintiff,  
15 and (4) the Settlement Agreement.

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

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

- 18 1. Plaintiff's Motion for Approval is granted.
- 19 2. All terms used herein shall have the same meaning defined in the Settlement Agreement.
- 20 3. The Court finds that Plaintiff has satisfied the prerequisites under the California Private  
21 Attorneys General Act (Cal. Labor Code § 2698, *et seq.*) ("PAGA"), including, and not limited to,  
22 providing the Labor and Workforce Development Agency ("LWDA") and Defendant with notice of the  
23 specific provisions of the California Labor Code alleged to have been violated, including, and not limited  
24 to, the facts and theories to support the alleged violations, in conformity with California Labor Code §  
25 2699.3(a).
- 26 4. The Court also finds that the Settlement Agreement has been submitted to the LWDA in  
27 conformity with California Labor Code § 2699(l)(2) and that the LWDA has not sought to intervene or  
28 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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1           10.     The Court approves the payment of \$50,000.00 to PAGA Counsel for attorneys' fees.  
2 This amount shall be paid from the Gross Settlement Amount and shall be disbursed in accordance with  
3 this Order and Judgment and the Settlement Agreement.

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

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

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

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

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

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

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

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

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

19. Upon the date Defendant fully funds the Gross Settlement Amount, the State of California, including the California Labor Workforce Development Agency, is deemed to release, the Released Parties from PAGA civil penalties alleged in the operative 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.

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

Date: 05/25/2023



Honorable Tara Desautels  
Judge of the Superior Court  
**Tara Desautels / Judge**

# **EXHIBIT A**

**BROCK & GONZALES, LLP**

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**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.

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

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 [First Name] [Last Name]:

Please find enclosed a check in the amount of [amount of payment] (“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 [approval date], 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.

Plaintiff, on behalf of herself and her respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, and The State of California, including the California Labor Workforce Development Agency is deemed to release, the Released Parties from the Released PAGA Claims. You are bound by this judgment and/or barred from bringing claims seeking civil penalties arising from the Released PAGA Claims against any of the Released Parties

“Released PAGA Claims” means: PAGA civil penalties alleged in the operative 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 [180 days after mailing]. All checks not cashed by that date will be cancelled. You will still be effected by the release of 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: [telephone number].**

**PROOF OF SERVICE**

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6701 Center Drive West, Ste. 610, Los Angeles, CA 90045.

On May 4, 2023, I served the foregoing documents described as: **[REVISED 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** on the interested parties in this action, addressed as follows:

Dina S. Glucksman, Esq.

Peter Choi, Esq.

Alexa Halloran, Esq.

**GORDON REES SCULLY MANSUKHANI, LLP**

633 West Fifth Street, 52nd floor

Los Angeles, CA 90071

[dglucksman@grsm.com](mailto:dglucksman@grsm.com)[pchoi@grsm.com](mailto:pchoi@grsm.com)[ahalloran@grsm.com](mailto:ahalloran@grsm.com)***Attorney for Defendant MORNINGSTAR SENIOR MANAGEMENT, LLC***

☐ **By U.S. Mail**, I deposited such envelope(s) in the mail at Los Angeles, California, with postage thereon fully prepaid.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ **By Facsimile**, I transmitted such documents from Los Angeles, California, to the offices of the addressee(s).

☒ **By E-Mail**, I transmitted the document to the e-mail address of the addressee(s).

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 4, 2023, at Los Angeles, California.



Jessica Sanchez