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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 01 2020

BY Alma Vallejo Garcia
ALMA VALLEJO GARCIA, DEPUTY

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN BERNARDINO**

CIV DS 2016835

13 LAVEDA SCOTT, as an individual and on behalf
14 of all others similarly situated, and as a private
15 attorney general,

16 Plaintiffs,

17 vs.

18 HUMANGOOD, a California corporation;
19 HUMANGOOD NORCAL, a California
20 corporation; HUMANGOOD SOCAL, a
21 California corporation; HUMANGOOD FRESNO,
22 a California corporation; and DOES 1 through 50,
23 inclusive,

24 Defendants.

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LAB. CODE § 226.7;
- (2) VIOLATION OF LAB. CODE § 226(a);
- (3) VIOLATION OF BUS. & PROF. CODE
§§ 17200 *ET SEQ.*; AND
- (4) VIOLATION OF LAB. CODE §§ 2698 *ET
SEQ.*

DEMAND OVER \$25,000.00

1 On behalf of herself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, LaVeda Scott, submits this Class and
3 Representative Action Complaint against Defendants HumanGood, HumanGood NorCal, HumanGood
4 SoCal, HumanGood Fresno, and Does 1 through 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who worked for Defendants.
8 The Complaint seeks penalties, damages, and other relief for Defendants’ violations of Labor Code
9 sections 201-204, 226(a), and 226.7.¹

10 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
12 failing to authorize and permit duty-free rest periods, failing to pay any premiums for such missed
13 breaks, failing to timely pay all due wages during employment or upon the separation of employment,
14 and failing to provide accurate itemized wage statements.

15 3. Defendants routinely fail to authorize and permit duty-free rest periods. Specifically,
16 Defendants do not permit Plaintiff and other employees to leave the work premises during their rest
17 breaks. Rather, Defendants require Plaintiff and other employees to stay on the work premises and to
18 respond to any of the residents’ needs during rest breaks. Despite not being provided with off-duty rest
19 breaks, Defendants also routinely fail to pay any premiums for such missed breaks and thus also fail to
20 timely pay all due wages during employment or upon the separation of employment.

21 4. Defendants also routinely fail to provide accurate itemized wage statements.
22 Specifically, whenever Defendants pay overtime wages to Plaintiff and other employees, Defendants
23 issue wage statements that fail to list the accurate overtime rate of pay, which should be 1.5 times the
24 regular rate of pay. Instead, Defendants issue wage statements that show overtime wages being paid at
25 two different rates—one at a “base” rate and another at a “premium” rate, neither of which is 1.5 times
26 the regular rate of pay. Moreover, because of Defendants’ rest break violations, Defendants also
27 routinely fail to provide wage statements that show the accurate amount of gross and net wages earned.

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¹ Except as otherwise noted, all “Section” references are to the Labor Code.

5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

6. The policies, practices, and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Labor Code.

JURISDICTION AND VENUE

7. The Complaint seeks relief in excess of \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 226(a), and 226.7, and of the Unfair Competition Law, codified at Business and Professions Code sections 17200 *et seq.* (the "UCL").

8. Venue is proper. Defendants are in San Bernardino County. Plaintiff worked for Defendants at Plymouth Village, located at 900 Salem Drive, Redlands, California 92373.

PARTIES

9. Plaintiff began working for Defendants in or about November of 2019. Throughout her employment as a certified nursing assistant, Plaintiff was paid on an hourly basis as a non-exempt employee. During her employment, Defendants did not permit Plaintiff to leave the work premises during her rest breaks. Rather, Defendants required Plaintiff to stay on the work premises and to respond to any of the residents' needs during her rest breaks. Despite not being provided with off-duty rest breaks, Defendants did not timely pay or ever pay any premiums for such missed breaks to Plaintiff during her employment or upon the separation of employment in or about April of 2020. Because of these failures, Defendants also did not provide Plaintiff with wage statements that show the accurate amount of gross and net wages earned. Moreover, whenever Defendants paid overtime wages to Plaintiff, she was issued wage statements that failed to list the accurate overtime rate of pay of 1.5 times the regular rate of pay. Instead, Defendants issued wage statements that show overtime wages being paid at two different rates—one at a "base" rate and another at a "premium" rate, neither of which is 1.5 times the regular rate of pay. Plaintiff is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by the Labor Code and the UCL.

1 10. Plaintiff is informed and believes that Defendants HumanGood, HumanGood NorCal,
2 HumanGood SoCal, and HumanGood Fresno were and are California corporations. Plaintiff is
3 informed and believes that at all times herein mentioned Defendant and Does 1 through 50, are and
4 were corporations, business entities, individuals, or partnerships that are and were licensed to do
5 business and actually doing business in the State of California. Based upon all the facts and
6 circumstances incident to Defendants' business, Defendants are subject to Sections 201-204, 226(a),
7 and 226.7, and the UCL.

8 11. Plaintiff does not know the true names or capacities of the defendants sued herein as
9 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
10 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true
11 names and capacities are known. Plaintiff is informed and believes that each of said fictitious
12 defendants was responsible in some way for the matters alleged herein and proximately caused the
13 illegal employment practices, wrongs, and injuries complained of herein.

14 12. At all times herein mentioned, each of said Defendants participated in the doing of the
15 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
16 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
17 scope of said agency and employment.

18 13. Under California law, Defendants are jointly and severally liable as employers for the
19 violations alleged herein because they have each exercised sufficient control over the wages, hours,
20 working conditions, and employment status of Plaintiff and the Class. Each Defendant had the power to
21 hire and fire Plaintiff and the Class, supervised and controlled their work schedule and conditions of
22 employment, determined their rates of pay, and maintained their employment records. Defendants
23 suffered or permitted Plaintiff and the Class to work or engaged them as to create a common law
24 employment relationship. As joint employers of Plaintiff and the Class, Defendants are jointly and
25 severally liable for the relief available to Plaintiff and the Class under the law.

26 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
27 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and the Class
28 because Defendants have jointly required that Plaintiff and the Class perform work which is an integral

1 part of Defendants' businesses and jointly exercised meaningful control over (i) the work performed by
2 Plaintiff and the Class, (ii) their wages, hours, and working conditions, including the quantity, quality
3 standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and the Class;
4 and (iii) Plaintiff and the Class in general as a matter of economic reality in that Plaintiff and the Class
5 were dependent on Defendants, who jointly reaped the benefits from noncompliance with statutory
6 provisions governing their employments.

7 15. Plaintiff is informed and believes that at all times material hereto, each of said
8 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
9 each of the other Defendants and was acting within the course and scope of such agency, employment,
10 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
11 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
12 omissions of the acting Defendants. Plaintiff is further informed and believes that Defendants
13 HumanGood, HumanGood NorCal, HumanGood SoCal, and HumanGood Fresno are alter egos of each
14 other for the following additional reasons:

- 15 (a) Each shares the same principal place of business address of 6023 Stoneridge Mall Road
16 #100, Pleasanton, California 94588;
- 17 (b) Each shares the same Chief Executive Officer, John Cochrane;
- 18 (c) Each shares the same other officers—including, for example, Secretary, Declan Brown,
19 and Chief Financial Officer, Pamela Claassen—who also have the same mailing address;
20 and
- 21 (d) Each shares the same employee handbook, which specifies that the policies stated
22 therein equally apply to HumanGood, HumanGood NorCal, HumanGood SoCal, and
23 HumanGood Fresno.

24 16. Plaintiff is informed and believes that at all times material hereto each of the Defendants
25 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the
26 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in
27 pursuance of, a joint venture, partnership, or common enterprise.
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CLASS ACTION ALLEGATIONS

17. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who worked at least 3.5 hours in any work shift at any time since April 6, 2016 (the “Rest Break Class”), and (ii) all current and former non-exempt employees of Defendants in the State of California who were paid overtime at any time since April 6, 2019 (the “Wage Statement Class”). The Rest Break Class and Wage Statement Class are collectively referred to as the “Class.”

18. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-204, 226(a), and 226.7 by failing to authorize and permit duty-free rest periods, failing to pay any premiums for such missed breaks, failing to timely pay all due wages during employment or upon the separation of employment, and failing to provide accurate itemized wage statements.

19. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

20. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of (i) routinely failing to permit Plaintiff and other employees to leave the work premises or be duty free during their rest breaks; (ii) routinely failing to pay any premiums for such missed breaks (or timely pay all due wages during employment or upon the separation of employment); (iii) routinely failing to list the accurate gross and net wages earned on wage statements; and (iv) routinely failing to list the accurate overtime rate of pay on wage statements.

1 21. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
2 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
3 Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis. During her
4 employment, Defendants routinely did not permit Plaintiff to leave the work premises during her rest
5 breaks. Rather, Defendants required Plaintiff to stay on the work premises and to respond to any of the
6 residents’ needs during her rest breaks. Despite not being provided with off-duty rest breaks,
7 Defendants did not timely pay or ever pay any premiums for such missed breaks to Plaintiff during her
8 employment or upon the separation of employment. Because of these failures, Defendants also did not
9 provide Plaintiff with wage statements that show the accurate amount of gross and net wages earned.
10 Moreover, whenever Defendants paid overtime wages to Plaintiff, she was issued wage statements that
11 failed to list the accurate overtime rate of pay of 1.5 times the regular rate of pay. Instead, Defendants
12 issued wage statements that show overtime wages being paid at two different rates—one at a “base”
13 rate and another at a “premium” rate, neither of which is 1.5 times the regular rate of pay. Plaintiff thus
14 is a member of the Class and has suffered the alleged violations of the Labor Code.

15 22. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
16 in establishing minimum working conditions and requirements in California. These labor standards
17 protect employees from onerous terms and conditions of employment or exploitation by employers who
18 have superior economic and bargaining power.

19 23. The nature of this action and the format of laws available to Plaintiff and members of the
20 Class make the class action format a particularly efficient and appropriate procedure to redress the
21 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
22 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit
23 and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
24 legal resources. Requiring each member of the Class to pursue an individual remedy would also
25 discourage the assertion of lawful claims by employees who would be disinclined to file an action
26 against their former or current employer for real and justifiable fear of retaliation and permanent
27 damage to their careers at their current or subsequent employment.
28

1 24. The prosecution of separate actions by individual members of the Class, even if
2 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
3 individual members of the Class that would establish potentially incompatible standards of conduct for
4 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
5 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
6 of other members of the Class not parties to the adjudications. Further, the claims of the individual
7 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
8 the concomitant costs and expenses.

9 25. Defendants' pattern, practice, and uniform administration of corporate policy in
10 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will
11 establish the rights of Plaintiff and the Class under Sections 201-204, 226(a), and 226.7, and applicable
12 IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover unpaid premium
13 wages, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

14 26. This action is brought for the benefit of the Class, which is commonly entitled to a
15 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class
16 is commonly entitled to restitution of those funds being improperly withheld by Defendant.

17 **FIRST CAUSE OF ACTION**

18 **Violation of Labor Code § 226.7**

19 **(By Plaintiff and the Rest Break Class Against All Defendants)**

20 27. The preceding paragraphs are re-alleged and incorporated by this reference.

21 28. Because Plaintiff and the Class were non-exempt employees, Defendants were required
22 to comply with Section 226.7 and the applicable IWC Wage Order. The applicable IWC Wage Order
23 generally requires an employer to provide a duty-free, 10-minute rest period for every four hours
24 worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not require an
25 employee to work during a rest period. Section 226.7(c) states that "the employer shall pay the
26 employee one additional hour of pay at the employee's regular rate of compensation for each workday
27 that the meal or rest or recovery period is not provided."
28

1 29. As a matter of policy and practice, Defendants regularly fail to permit off-duty rest
2 periods to Plaintiff and the Class. As a matter of policy and practice, Defendants also regularly fail to
3 pay rest period premiums at the regular rate of compensation for each rest period missed by Plaintiff
4 and the Class. Specifically, Defendants do not permit Plaintiff and the Class to leave the work premises
5 during their rest breaks. Rather, Defendants require Plaintiff and the Class to stay on the work premises
6 and to respond to any of the residents' needs during rest breaks. Despite not being provided with off-
7 duty rest breaks, Defendants do not pay any premiums for such missed breaks and thus also fail to
8 timely pay all due wages during employment or upon the separation of employment. As such, Plaintiff
9 and the Class are owed rest period premiums.

10 30. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
11 entitles Plaintiff and the Rest Break Class to recover the unpaid balance of unpaid premium wages
12 pursuant to Section 226.7 and the applicable IWC Wage Order, including interest thereon, attorneys'
13 fees, and costs of suit.

14 31. Defendants thus fail to timely pay all due wages during employment and fail to timely
15 pay all due wages upon separation of employment. Plaintiff is informed and believes that Defendants'
16 failure to timely pay or ever pay rest period premium wages due and owing to Plaintiff and the Rest
17 Break Class is willful. The failure to pay the rest period premium wages upon separation from
18 employment results in a continued payment of wages up to thirty (30) days from the time the wages
19 were due. Therefore, the members of the Rest Break Class who have separated from employment are
20 entitled to compensation pursuant to Section 203.

21 32. Such a pattern, practice, and uniform administration of corporate policy is unlawful
22 under Sections 201-204 and the applicable IWC Wage Order, and entitles Plaintiff and the Rest Break
23 Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

24 **SECOND CAUSE OF ACTION**

25 **Violation of Labor Code § 226(a)**

26 **(By Plaintiff, the Rest Break Class, and the Wage Statement Class Against All Defendants)**

27 33. The preceding paragraphs are re-alleged and incorporated by this reference.
28

1 34. Section 226(a) requires employers to provide itemized wage statements to its employees
2 that show accurate information, including without limitation, gross wages earned, net wages earned,
3 and all applicable hourly rates in effect during the pay period. Defendants fail to provide accurate
4 itemized wage statements to Plaintiff and the Class in violation of Section 226(a).

5 35. As a matter of policy and practice, Defendants failed to provide accurate itemized wage
6 statements to Plaintiff, the Rest Break Class, and the Wage Statement Class. Specifically, because of
7 Defendants' rest break violations, Plaintiff and the Class were routinely provided wage statements that
8 fail to show the accurate amount of gross and net wages earned. Moreover, whenever Defendants pay
9 overtime wages, Plaintiff and the Class were routinely provided wage statements that fail to list the
10 accurate overtime rate of pay, which should be 1.5 times the regular rate of pay. Instead, as a matter of
11 policy and practice, Defendants issue wage statements that show overtime wages being paid at two
12 different rates—one at a "base" rate and another at a "premium" rate, neither of which is 1.5 times the
13 regular rate of pay.

14 36. Such a pattern, practice, and uniform administration of corporate policy is unlawful
15 under Section 226 and entitles Plaintiff, the Rest Break Class, and the Wage Statement Class to recover
16 applicable penalties, attorneys' fees, and costs of suit.

17 **THIRD CAUSE OF ACTION**

18 **Violation of Business and Professions Code §§ 17200 *Et Seq.***

19 **(By Plaintiff and the Rest Break Class Against All Defendants)**

20 37. The preceding paragraphs are re-alleged and incorporated by this reference.

21 38. Plaintiff is informed and believes that at Defendants have engaged and continue to
22 engage in unfair and unlawful business practices in California by utilizing the employment policies and
23 practices alleged herein in violation of Section 226.7.

24 39. As alleged herein, Defendants uniformly administer a corporate policy and practice of
25 routinely failing to permit Plaintiff and the Class to leave the work premises or be duty free during their
26 rest breaks. As alleged herein, Defendants also uniformly administer a corporate policy and practice of
27 routinely failing to pay any premiums for such missed breaks. Defendants' utilization of such unfair
28 and unlawful business practices constitutes unfair and unlawful competition and provides an unfair

1 advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff
2 and the Class the minimum working condition standards and conditions due to them under the Labor
3 Code and applicable IWC Wage Orders.

4 40. Such a pattern, practice, and uniform administration of corporate policy regarding illegal
5 employee compensation as described herein is unlawful and creates an entitlement to recovery by
6 Plaintiff and the Rest Break Class to full restitution of all monies withheld, acquired, or converted by
7 Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys'
8 fees, and costs of suit.

9 **FOURTH CAUSE OF ACTION**

10 **Violation of Labor Code §§ 2698 *Et Seq.***

11 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

12 41. The preceding paragraphs are re-alleged and incorporated by this reference.

13 42. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
14 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
15 capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226(a), and 226.7
16 committed since April 6, 2019, against all aggrieved employees. Under Section 2699(c), Plaintiff is an
17 "aggrieved employee," as one or more of the alleged violations was committed against Plaintiff as an
18 employee of Defendants.

19 43. As stated herein, Defendants violate Sections 201-204, 226(a), and 226.7 by (i) routinely
20 failing to permit Plaintiff and other employees to leave the work premises or be duty free during their
21 rest breaks; (ii) routinely failing to pay any premiums for such missed breaks (or timely pay all due
22 wages during employment or upon the separation of employment); (iii) routinely failing to list the
23 accurate gross and net wages earned on wage statements; and (iv) routinely failing to list the accurate
24 overtime rate of pay on wage statements.

25 44. On or about August 21, 2020, Plaintiff sent written notice to the Labor & Workforce
26 Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Sections
27 201-204, 226(a), and 226.7. Plaintiff simultaneously sent written notice to Defendants via certified
28

1 mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that
2 it intends to investigate the allegations in the written notice.

3 45. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable
4 civil penalties for Defendants' violations of Sections 201-204, 226(a), and 226.7 against all aggrieved
5 employees for the alleged period.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit
8 is brought against Defendants, jointly and severally, as follows:

- 9 1. For an order certifying the proposed Class;
10 2. For an order appointing Plaintiff as the representative of the Class;
11 3. For an order appointing Counsel for Plaintiff as Class Counsel;
12 4. Upon the First Cause of Action for unpaid premium wages, including interest thereon,
13 and applicable penalties pursuant to Sections 201-204 and 226.7, and for costs and attorneys' fees;
14 5. Upon the Second Cause of Action for penalties according to proof pursuant to Section
15 226, and for costs and attorneys' fees;
16 6. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by
17 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
18 and for costs and attorneys' fees;
19 7. Upon the Fourth Cause of Action for penalties according to proof pursuant to Sections
20 201-203, 210, 226.3, and 2698 *et seq.*, and for costs and attorneys' fees;
21 8. Upon each cause of action for attorneys' fees and costs as provided by Sections 226 and
22 2699, and Code of Civil Procedure section 1021.5; and
23 9. For such other and further relief that the Court may deem just and proper.

24 DATED: August 31, 2020

DIVERSITY LAW GROUP, P.C.

25 By: 

26 Larry W. Lee
27 Simon L. Yang
28 Attorneys for Plaintiff