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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiffs,

vs.

HUMANGOOD, a California corporation;
HUMANGOOD NORCAL, a California
corporation; HUMANGOOD SOCAL, a
California corporation; HUMANGOOD
FRESNO, a California corporation;
HUMANGOOD AFFORDABLE HOUSING, a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVDS2016835

[Hon. David Cohn, Department S26]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of LaVeda Scott; [Proposed] Order]*

Date: October 12, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: September 1, 2020

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 12, 2022, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard in Department S26 of the above-entitled court located at 247 West Third Street,
4 San Bernardino, California 92415, Plaintiff, LaVeda Scott, will and hereby does move for an Order:

- 5 1. approving the Class Action Settlement Agreement (the “Agreement”) attached as Exhibit 1 to
6 the concurrently filed Declaration of Simon L. Yang;
- 7 2. conditionally certifying the following Class for settlement purposes only: all current and
8 former non-exempt employees of Defendants HumanGood, HumanGood NorCal,
9 HumanGood SoCal, HumanGood Fresno, and HumanGood Affordable Housing in the State
10 of California at any time from April 6, 2016, through June 2, 2022 (the “Class Period”),
11 except for *Haji* Settlement Class Members¹ who did not perform work for any of the
12 Defendants after September 28, 2018;
- 13 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
14 Diversity Law Group, P.C. as Class Counsel;
- 15 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
16 Settlement Amount in the amount of \$3,750,000.00, the amounts requested for the Settlement
17 Administration Costs, Attorneys’ Fees and Costs Award, Service Award, PAGA Penalty
18 Fund, and the allocation of payments to Class Members appear to be within the range of
19 reasonableness for a settlement that could ultimately be given final approval;
- 20 5. appointing Phoenix Settlement Administrators as the Administrator;
- 21 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
22 the Agreement; and
- 23 7. scheduling a Final Approval Hearing.

24 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
25 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.
26 The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and the
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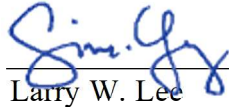
28 ¹ “*Haji* Settlement Class Members” are individuals who were members of the settlement class in *Haji v. BE Group*, San Diego County Superior Court Case No. 37-2017-00025918-CU-OE-CTL.

1 procedures proposed by the Parties are adequate to ensure class members are able to participate in, opt
2 out of, or object to the settlement.

3 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
4 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.
5 Yang, and LaVeda Scott, all pleadings and papers on file herein, and any further oral and documentary
6 evidence as may be presented before or at the hearing of this matter.

7 DATED: September 19, 2022

DIVERSITY LAW GROUP, P.C.

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9 By: 

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, LaVeda Scott, sues Defendants HumanGood, HumanGood NorCal, HumanGood SoCal, HumanGood Fresno, and HumanGood Affordable Housing for alleged violations of the California Labor Code. In investigating and litigating alleged meal and rest break failures and wage statement deficiencies, Plaintiff also uncovered alleged underpayments of various wages based on Defendants’ failures to pay wages at the regular rate of pay.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Class Action Settlement Agreement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendants to pay at least \$3,750,000.00 for the classwide settlement of claims through June 2, 2022. Plaintiff and her counsel believe the settlement is an exceptional result for the Class; **the settlement requires Defendants to pay approximately \$510.20, on average, per Class Member**. Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiff and her counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. The Parties and their counsel are of the opinion that the settlement on the terms set forth in the Agreement would be fair, reasonable, and adequate.

As the settlement would be in the best interests of the Class, Plaintiff respectfully requests that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

RELEVANT BACKGROUND

On September 1, 2020, Plaintiff initiated this class and private attorney general action. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. Upon the initiation of the Action, Plaintiff and Defendants met and conferred about the alleged claims. *Id.* On or about July 2, 2021, Plaintiff served initial written discovery. *Id.* On or about August 24, 2021, Defendants served responses to the written discovery. *Id.* On October 19, 2021, Defendants served written discovery on Plaintiff. Defendants also provided Plaintiff with information about various defenses, including those based on a class action

1 settlement in *Haji v. BE Group*, San Diego County Superior Court Case No. 37-2017-00025918-CU-
2 OE-CTL *Id.*

3 Class Counsel continued investigating the alleged claims and also analyzed any defenses raised
4 by Defendants. Yang Decl. ¶ 3. The Parties supplemented formal discovery by continuing to exchange
5 information and documentation pursuant to informal methods to assist them in exploring the possibility
6 of a mediated resolution. *Id.* Defendants’ willingness to supplement formal discovery with informal
7 discovery enabled Plaintiff to evaluate the full scope of Defendants’ potential liability. *Id.* Ultimately,
8 the Parties agreed to schedule a mediation. *Id.*

9 On June 2, 2022, the Parties attended mediation with Michael Loeb, an experienced mediator
10 knowledgeable of both the wage and hour laws and class and representative action claims at issue. Yang
11 Decl. ¶ 4. With the mediator’s assistance and based on a mediator’s proposal, the Parties were able to
12 negotiate the settlement terms in the Class Action Settlement Agreement. *Id.* Ex. 1 (the “Agreement”).

13 SUMMARY OF PROPOSED SETTLEMENT

14 I. Class Definition

15 The proposed settlement class of “Class Members” includes all current and former non-exempt
16 employees of Defendants HumanGood, HumanGood NorCal, HumanGood SoCal, HumanGood Fresno,
17 and HumanGood Affordable Housing in the State of California at any time during the Settlement Period,
18 except for *Haji* Settlement Class Members¹ who did not perform work for any of the Defendants after
19 September 28, 2018. Agreement §§ 1.2, 1.12. The Settlement Period or Class Period is from April 6,
20 2016, through June 2, 2022. *Id.* § 1.5.² There are approximately 7,350 Class Members. Yang Decl. ¶ 5.

21 II. Settlement Payments

22 The Agreement requires Defendants to pay a non-reversionary Gross Settlement Amount of
23 \$3,750,000.00. Agreement § 1.11. From the Gross Settlement Amount, the Parties will request that the
24 Court approve a PAGA Penalty Fund, Settlement Administration Costs, Attorneys’ Fees and Costs
25 Award, and Service Award. *Id.* § 1.13. Except for these allocations requiring Court approval, the

26 ¹ “*Haji* Settlement Class Members” are individuals who were members of the settlement class in *Haji v.*
27 *BE Group*, San Diego County Superior Court Case No. 37-2017-00025918-CU-OE-CTL.

28 ² All Class Members employed during the PAGA Period are also PAGA Members. Agreement § 1.14.
The PAGA Period is from April 6, 2019, through June 2, 2022. *Id.* § 1.16.

entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* §§ 1.11, 1.13. *After* all requested payments from the Gross Settlement Amount, it is expected that, on average, each Class Member would be allocated \$268.03 in Settlement Payments and employee shares of PAGA Penalties. Yang Decl. ¶ 7.

III. Released Claims

Only Plaintiff is subject to a general release. Agreement § 16.2. Settlement Class Members release only “claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action which are alleged, or reasonably could have been alleged based on the facts and claims asserted in the operative complaint filed in this action” *Id.* § 16.1.

LEGAL STANDARD

Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to class members for their comment or objections. As the Manual for Complex Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation”:

If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

Manual for Complex Litigation (Third) § 30.41.

A preliminary approval by the trial court thus is a conditional finding that the settlement does not appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

1 The parties also may, at the preliminary approval stage, request that the court provisionally
2 approve certification of the class—conditioned upon final approval of the settlement. As further
3 explained by Professor Newberg:

4 The strength of the findings made by a judge at a preliminary hearing or conference concerning a
5 tentative settlement proposal ... may be set out in conditional orders granting tentative approval
6 to the various items submitted to the court. Three basic rulings are often conditionally entered at
this preliminary hearing. These conditional rulings may approve a temporary settlement class,
the proposed settlement, and the class counsel’s application for fees and expenses.

7 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
8 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
9 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
10 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
11 and reasonable”).

12 DISCUSSION

13 I. The Proposed Settlement Is Fair, Adequate, and Reasonable.

14 A. The Settlement Is Entitled to a Presumption of Fairness.

15 A trial court must determine and approve a class action settlement is fair to “prevent fraud,
16 collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer*
17 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the
18 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
19 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l*
20 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
21 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
22 through arm’s length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
23 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
24 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

25 While the recommendations of counsel proposing the settlement are not conclusive, the Court
26 can properly take them into account, particularly where, as here, they have been involved in thorough
27 investigation, are experienced with this type of litigation, and agreed to a resolution through arm’s
28 length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*,

221 F.R.D. at 528 (“So long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement ... and ‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.”) (citations omitted). In such circumstances, as here, courts do not substitute their judgment for that of the proponents. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

Here, both Plaintiff’s counsel and Defendants’ counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13. Each side has apprised the other of their respective factual contentions and legal theories, and each side has considered the other’s contentions and theories. Defendants provided the relevant numbers of individuals, workweeks, shifts of varying lengths, and premiums paid, for example, among other things—enabling Plaintiff to assess the full value of Class Members’ claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶ 3. As further discussed below, the settlement is the result of extensive arm’s length negotiations between the Parties and their counsel. *Id.* ¶ 9.

B. The Settlement Obtains an Excellent Result for Class Members.

1. The Settlement Amount Is Reasonable.

The Agreement requires Defendants to pay \$3,750,000.00—or approximately \$510.20, on average, per Class Member. Yang Decl. ¶ 5. Plaintiff contends that this is an excellent result for Class Members. Although actual underpayments of sick pay, overtime, holiday pay, or missed meal and rest break premiums amounted to comparatively smaller sums, Plaintiff argued that underpaid wages resulted in Labor Code section 203 penalties of up to 30 days wages. Lab. Code § 203.³ With respect to meal and rest break violations, Plaintiff contended that Defendants were liable for an additional hour of

³ Except as otherwise noted, all “Section” references are to the Labor Code.

1 regular rate wages. With respect to wage statement violations, Plaintiff contended that Defendants were
2 liable for up to \$100 in penalties per wage statement under Section 226(e). Under PAGA, Plaintiff
3 contended that Defendants also would be liable for an additional \$50 per pay period under Section 558
4 and \$100 per pay period under Sections 210 and 2699(f). *Id.*

5 Defendants contested the merits and denied they were liable at all. Yang Decl. ¶ 6. Moreover,
6 even if Plaintiff prevailed on the merits, Defendants contested the extent of liability. *Id.* For example,
7 with respect to wage statement liability, Defendants contended that (i) liability under Section 226(e)
8 would be subject to additional defenses requiring proof of injuries resulting from knowing and
9 intentional violations. *Id.* Likewise, with respect to PAGA liability, Defendants contended that PAGA
10 penalties would be subject to discretionary reductions. *Id.* With respect to meal and rest break violations,
11 Defendants contended that (i) there were no violations, (ii) if there were, they were individualized issues
12 not amenable to a representative proceeding, and (iii) employees in any event were already paid
13 premiums. *Id.* With respect to liability from underpaid wages, Defendants contended that they would not
14 be subject to Section 203 penalties, based on a good faith defense. *Id.*

15 While the Parties disagree on the application of the law to the facts, each Party recognized in
16 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
17 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
18 Ultimately, based on data through May 2, 2022, available at mediation on June 2, 2022, Plaintiff argued
19 that a representative trial would result in total potential class recovery of at least \$39,421,942.65—which
20 included \$20,942,668.80 in penalties under Section 203. Under PAGA, Plaintiff argued that the potential
21 total PAGA recovery amounted to approximately \$18,480,00.00 in additional liability. *Id.* Plaintiff
22 contends that the Gross Settlement Amount of \$3,750,000.00—or 9.51% of the potential class recovery
23 or 6.48% of the total potential class and PAGA recovery—is an excellent result. *Id.*

24 Numerous courts have held that gross settlement amounts in these ranges of a defendant’s
25 potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454,
26 459 (9th Cir. 2000) (“It is well-settled law that a cash settlement amounting to only a fraction of the
27 potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the
28 adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment.”);

1 *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that
2 class action settlement recovering between 8.5% and 25% of the defendant’s potential exposure was
3 fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014)
4 (acknowledging risks of continued litigation and granting preliminary approval of wage and hour class
5 action settlement obtaining 9.1% of projected damages).

6 Although Plaintiff and her counsel are confident that litigation of the claims would result in a
7 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
8 specific risks that class certification could be denied, liability could not be established at trial, or the
9 applicable law could change. Yang Decl. ¶ 8. The settlement for each participating Class Member is fair,
10 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
11 the costs of pursuing litigation. *Id.*

12 Class Members would not need to do anything to receive their share of settlement funds. This
13 eliminates any burden to Class Members who wish to participate in the class action settlement. Despite
14 the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the
15 claims proposed to be settled and released, each Class Member has the right to object or to submit a
16 request for exclusion (i.e., opt out) from the settlement.

17 **2. The Settlement Releases Are Appropriate.**

18 As discussed above, only Plaintiff is subject to a general release. Agreement § 16.2. Settlement
19 Class Members are only subject to a release of claims during the Class Period expressly pleaded in the
20 Action and all other claims that could have been pleaded based on the facts pleaded in the Action. *Id.* §
21 16.1. Plaintiff alleged limited claims based on discovery in the Action, and any settlement releases also
22 are specifically tailored to the facts alleged and investigated. The settlement releases are thus
23 appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general
24 release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action
25 settlements.”). Moreover, the settlement releases apply to claims arising during the Class Period only.
26 *Id.*

1 **3. The Class Notice Is Adequate.**

2 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
3 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendants to
4 provide to the Administrator each Class Member’s last known address, among other information (the
5 “Class Data”), within seven days of a Preliminary Approval Order. Agreement § 10.1.1. Within 28 days
6 of a Preliminary Approval Order, the Administrator would mail the Notice of Proposed Class Action
7 Settlement (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S.
8 Mail, using the last known address for each Class Member, based on the Class List, or an updated
9 address based on the National Change of Address Database. *Id.* §§ 10.1.2, 10.1.3. Any Class Notice
10 returned to the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the
11 forwarding address affixed thereto. *Id.* 10.1.4. If no forwarding address is provided, the Administrator
12 would promptly attempt to determine the correct address using a single skip-trace search and then
13 promptly send a single re-mailing. *Id.*

14 The Class Notice accurately informs Class Members of the settlement and their rights.
15 Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The
16 Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the
17 settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v.*
18 *Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

19 **C. The Requested Payments and Allocations Are Reasonable.**

20 The Agreement provides for a Gross Settlement Amount of \$3,750,000.00. Agreement § 1.11.
21 From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement
22 Amount (or \$1,250,000.00) and litigation costs are not expected to exceed \$25,000.00. *Id.* § 6; Yang
23 Decl. ¶ 7. The Service Award will be no more than \$10,000.00. Agreement § 7. Settlement
24 Administration Costs will be no more than \$45,000.00. *Id.* § 9. The PAGA Penalty Fund will be
25 \$600,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$450,000.00) would constitute
26 the LWDA Payment, and 25% of the PAGA Penalty Fund shall be payable to PAGA Members based on
27
28

1 the number of weeks worked by the PAGA Member as a percentage of the weeks worked by all PAGA
2 Members during the PAGA Period. *Id.* § 8.⁴

3 **1. Each Class Member, on Average, Would Receive Around \$268.**

4 It is expected that, on average, each Class Member would be allocated approximately \$268.03 in
5 Settlement Payments and employee shares of PAGA Penalties (*after* all requested payments from the
6 Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on average to each Class Member may
7 increase, depending on how many Class Members opt out of the class action settlement. *Id.* The amount
8 actually paid to any Class Member may increase or decrease depending on his or her number of relevant
9 pay periods during the Class Period. *Id.* After deducting any approved payments for an Attorneys' Fees
10 and Costs Award, Service Award, Settlement Administration Costs, and PAGA Penalty Fund from the
11 Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members.

12 The Net Settlement Amount shall be paid pro rata to each Settlement Class Member based on the
13 number of weeks worked by the Settlement Class Member as a percentage of the weeks worked by all
14 Class Members during the Class Period (but excluding any workweeks before September 28, 2018, for
15 any *Haji* Settlement Class Members). Agreement § 5.1.1. 20% of these allocations shall be classified for
16 tax reporting purposes as wages. *Id.* § 5.1.2.

17 None of the settlement funds will revert to Defendant. Agreement § 4. The principal for any
18 uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property
19 Fund in the name of the Class Member. *Id.* § 14.2.

20 **2. The Requested Attorneys' Fees and Costs Award Is Reasonable.**

21 California state and federal courts have recognized that an appropriate method for determining
22 award of attorneys' fees is based on a percentage of the total value of settlement benefits to Class
23 Members. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba*, 91 Cal. App. 4th at 254; *Boeing*
24 *Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th
25 Cir. 1997). The purpose of the equitable doctrine is to "spread litigation costs proportionally among all
26 the beneficiaries so that the active beneficiary does not bear the entire burden alone" so as to avoid
27 unjust enrichment. *Vincent*, 557 F. 2d at 769.

28 ⁴ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 Under California law, the award of attorneys' fees in common fund wage and hour class action
2 settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503
3 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action
4 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its
5 equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a
6 reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the
7 fund method, a court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v.*
8 *Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) ("When a fee is set by a court rather than by
9 contract, the object is to set it at a level that will approximate what the market will set The judge, in
10 other words, is trying to mimic the market in legal services.").

11 Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal
12 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
13 Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
14 "[m]ost fee awards were between 25 percent and 35 percent"). An attorneys' fees award of 35% of the
15 fund mimics the market and "is supported by the fact that typical contingency fee agreements provide
16 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried."
17 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008)
18 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
19 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys' fees award of 35%
20 of the fund is consistent with "empirical studies [that] show that ... fee awards in class actions average
21 around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

22 Here, Plaintiff will request an attorneys' fees award of 33⅓% of the Gross Settlement Amount.
23 Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs. Class Counsel
24 have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation
25 fees, and payment of other litigation related costs.

26 **3. The Proposed Service Award Is Reasonable.**

27 Plaintiff and proposed Class Representative LaVeda Scott requests a modest Service Award of
28 \$10,000.00. The request is reasonable in light of the general release that the Agreement requires of

1 Plaintiff but not of any other Class Member. Independently, the request is appropriate in recognition of
2 Plaintiff's efforts on behalf of the Class. Declaration of LaVeda Scott ("Scott Decl.") ¶¶ 2-3.

3 As part of her duties as the Class Representative, Plaintiff provided all necessary information and
4 evidence that resulted in this settlement. Scott Decl. ¶¶ 2-3. Plaintiff met and conferred with Class
5 Counsel on a number of occasions to discuss the case. *Id.* ¶ 3. She provided information and documents
6 to Class Counsel and made herself available to answer any questions during litigation. *Id.* Ultimately,
7 Plaintiff's efforts secured an exceptional result for the Class.

8 In addition to the invaluable services that Plaintiff provided, she also took a significant risk, both
9 professionally and monetarily. Scott Decl. ¶ 4. Because the alleged claims involve the payment of costs
10 to the prevailing party, Plaintiff could have possibly faced paying Defendants' costs had Defendants
11 prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other potential
12 employers that may be less willing to hire an individual who has filed suit against a prior employer.
13 Plaintiff took this risk upon herself and the whole class benefited. Class Members did not have to file
14 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to
15 face potential prejudice in future employment.

16 **4. The Settlement Administration Costs Are Reasonable.**

17 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
18 quoted Settlement Administration Costs not to exceed \$45,000.00 to send notices and administer the
19 settlement. Agreement §§ 1.23, 1.24. The Settlement Administration Costs are reasonable and should be
20 approved.

21 **II. The Class Meets All Requirements for Certification.⁵**

22 For purposes of settlement approval, a detailed analysis of the elements required for class
23 certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial
24 court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement
25 class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal.

27 ⁵ Defendants expressly reserve their objections and do not agree that class certification of any of the
28 claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the
inherent risk of class certification motion practice.

App. 4th at 240 (explaining there is no “ironclad requirement” to conduct an evidentiary hearing to satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when considering whether to certify a settlement class, the court is not faced with the case management issues present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003) (“[I]t is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.”) (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

Even under the standard applicable to litigation classes, the allegations in this lawsuit present paradigmatic class action claims that satisfy the elements of class certification.

A. The Class Is Ascertainable and Sufficiently Numerous.

Class Members are identifiable from Defendants’ records. The class definition “is precise, objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). Indeed, there are approximately 7,350 Class Members. Yang Decl. ¶ 5. Numerosity thus is sufficiently established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set number is required as a matter of law for the maintenance of a class action” and citing examples in which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v. Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

B. The Class Establishes a Community of Interest.

“The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000).

1. Plaintiff’s Claims Are Typical of Those of the Class.

Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure, underpaid various wages based on Defendants’ failures to pay the regular rate of pay, failed to provide meal and rest breaks, and failed to furnish lawful wage statements. With respect to typicality, Plaintiff—exactly like other members of the Class—was compensated based on Defendants’ common payroll

1 practices, worked under Defendants’ common break practices, and was provided Defendants’ uniform
2 wage statements. Scott Decl. ¶ 2.

3 **2. Plaintiff’s Claims Raise Common Questions of Law and Fact.**

4 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*
5 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual
6 predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within
7 the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs
8 need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d
9 462, 473 (1981). Defendants’ conduct is central to the commonality inquiry. *See City of San Jose v.*
10 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
11 Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide
12 impact of the Defendants’ policies satisfies the commonality requirement. *See Stephens v. Montgomery*
13 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987). For example, Plaintiff alleges Defendants’ common
14 payroll practices and calculations resulted in regular rate of pay miscalculations. Common proof of those
15 practices predominate on a classwide basis.

16 **3. Plaintiff and Her Counsel Adequately Represent the Class.**

17 With respect to adequate representation, Plaintiff does not have any interests adverse to the
18 Class, and no such issues have been raised or presented. Scott Decl. ¶ 3. Plaintiff has taken all necessary
19 steps to represent the interests of the Class, including by providing information and documents to Class
20 Counsel, making herself available to discuss the claims, providing wage statements that she was issued,
21 and answering questions about how she was paid or what her wage statements show or meant. *Id.*
22 Plaintiff understands that she is responsible to the Class with respect to trying the case, appearing in
23 court, and working with Class Counsel. *Id.* She is willing to act as a fiduciary for the Class and remains
24 willing to devote her time to this lawsuit for the benefit of the Class. *Id.* For such reasons, Plaintiff has
25 adequately represented the Class Members.

26 From the inception of the case, Class Counsel has zealously represented the interests of the
27 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
28 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have

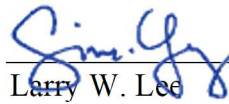
1 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9;
2 Yang Decl. ¶¶ 9-13.

3 CONCLUSION

4 The proposed settlement would result in substantial monetary benefits to class members. It was
5 the result of informed, arm's length negotiations conducted by counsel experienced in wage and hour
6 class action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to
7 believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the
8 benefit of the Class, Plaintiff respectfully requests that the Court (i) grant preliminary approval of the
9 settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii) schedule a Final
10 Approval Hearing.

11 DATED: September 19, 2022

DIVERSITY LAW GROUP, P.C.

12 By: 
13 Larry W. Lee
14 Simon L. Yang
15 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On September 19, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**
13 **POINTS AND AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
15 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
16 **SETTLEMENT**
- 17 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
18 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 19 **4. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL**
20 **OF CLASS ACTION SETTLEMENT**
- 21 **5. DECLARATION OF LAVEDA SCOTT IN SUPPORT OF PLAINTIFF'S**
22 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
23 **SETTLEMENT**

24 on the interested parties in this action as follows:

25 Aaron A. Buckley
26 Aaron J. Schu
27 Paul, Plevin, Sullivan & Connaughton LLP
28 101 West Broadway, Ninth Floor
San Diego, California 92101
abuckley@paulplevin.com
aschu@paulplevin.com
eoconnell@paulplevin.com

*Attorneys for Defendants HumanGood, HumanGood NorCal, HumanGood SoCal, and
HumanGood Fresno*

29 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
of the above-described document(s) to the party(ies) listed above or on the attached mailing list

1 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
2 indicated above or on the attached mailing list. I certify that said electronic transmission was
3 completed and that all pages were received by the party(ies) identified herein or on the attached
4 mailing list.

5 I declare under penalty of perjury under the laws of the State of California that the
6 above is true and correct. Executed on September 19, 2022, at Los Angeles, California.

7 
8 _____
9 Erika Mejia
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