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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 FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of LaVeda Scott; Declaration of
Kevin Lee; [Proposed] Order and Final
Judgment]*

Date: February 14, 2023
Time: 10:00 a.m.
Department: S26

Complaint Filed: September 1, 2020

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

2 **PLEASE TAKE NOTICE** that on February 14, 2023, 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 seek an Order:

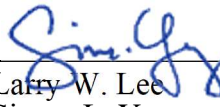
- 5 1. granting final approval to the Class Action Settlement Agreement (the “Agreement”) in this
6 action;
- 7 2. approving distribution of the settlement funds to Settlement Class Members pursuant to the
8 terms of the Agreement;
- 9 3. approving Plaintiff’s request for a service award of \$10,000.00 to the Class Representative
10 pursuant to the terms of the Agreement;
- 11 4. approving Class Counsel’s request for an award of attorneys’ fees of 33⅓% of the
12 \$3,750,000.00 Gross Settlement Amount, or \$1,250,000.00, and reimbursement of litigation
13 costs of \$11,845.75, pursuant to the terms of the Agreement;
- 14 5. approving Plaintiff’s request for payment of the settlement administration costs to Phoenix
15 Settlement Administrators in the amount of \$42,000.00, pursuant to the terms of the
16 Agreement;
- 17 6. approving Plaintiff’s request for payment to the Labor & Workforce Development Agency of
18 \$450,000.00, pursuant to the terms of the Agreement; and
- 19 7. entering final judgment as to all members of the Settlement Class, the PAGA Members, and
20 the State of California (including the Labor and Workforce Development Agency) in this
21 action.

22 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
23 Court approval of the settlement of a purported class action and allows the Court to grant final
24 certification of a class for settlement purposes. The overwhelmingly positive Class response, as shown
25 by the lack of objections to the settlement and the fact that only one Class Member opted out, supports
26 that the settlement is fair, reasonable, and adequate, including in light of PAGA’s purposes to remediate
27 present labor law violations, deter future ones, and to maximize enforcement of state labor laws—and
28 should be granted final approval.

1 This motion will be based on the attached Memorandum of Points and Authorities, the
2 supporting Declarations of Larry W. Lee, LaVeda Scott, and Kevin Lee of Phoenix Settlement
3 Administrators, upon the oral arguments of counsel (should there be any), and on the complete records
4 and file herein.

5 DATED: January 20, 2023

DIVERSITY LAW GROUP, P.C.

6 By: 
7 Larry W. Lee
8 Simon L. Yang
9 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

On September 1, 2020, Plaintiff, LaVeda Scott, filed this class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against Defendants HumanGood, HumanGood NorCal, HumanGood SoCal, HumanGood Fresno, and HumanGood Affordable Housing. The operative second amended complaint (the “Complaint”) alleges seven causes of action for: (i) Failure to Provide Rest Periods (Lab. Code § 226.7); (ii) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512); (iii) Unpaid and Untimely Earned Wages (Lab. Code §§ 201-204, 223, 510, 1182.12, 1197, 1198); (iv) Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 246); (v) Inaccurate Itemized Wage Statements (Lab. Code § 226(a)); (vi) Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.); and (vii) Violation of California Labor Code (Lab. Code §§ 2698 et seq.).

Plaintiff now seeks the Court’s final approval of the Class Action Settlement Agreement (the “Agreement”). The Agreement provides for a \$3,750,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, a service award to the Class Representative, payment to the California Labor and Workforce Development Agency (“LWDA”), and costs of settlement administration are to be paid. The net settlement fund after these deductions will be paid to Class Members and PAGA Members.

The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. On October 12, 2022, the Court preliminarily approved this settlement. It directed distribution of the Notice of Proposed Class Action Settlement (“Class Notice”) and scheduled the hearing for final approval of settlement (the “Preliminary Approval Order”).

As directed by the Court, the Administrator, Phoenix Settlement Administrators, distributed the Class Notice to 7,338 Class Members. Declaration of Kevin Lee on behalf of Phoenix Settlement Administrators (“Admin Decl.”) ¶ 5. Only seven requests for exclusion have been received. *Id.* ¶ 8. As such, there is a 99.9% participation rate. *Id.* ¶ 12. Zero objections have been filed. *Id.* ¶¶ 8, 9. Based on the results of notice process, an inference can be made that the Class supports the Court’s Preliminary Approval Order finding that the Agreement is fair and reasonable.

In addition to the results of the notice process, the points discussed in Plaintiff’s Preliminary Approval Motion also support final approval of the settlement:

- 1 ▪ The settlement provides a total settlement sum of \$3,750,000.00;
- 2 ▪ The settlement is fair given that Settlement Class Members will receive (*after* deductions
- 3 for fees, costs, etc.) a substantial amount of money (on average, each Settlement Class
- 4 Member will receive approximately \$250.46, and each PAGA Member will additionally
- 5 receive approximately \$26.87, *see* Admin Decl. ¶¶ 13, 15);
- 6 ▪ Class Members did not need to submit claim forms to participate in the settlement, but
- 7 are being paid automatically;
- 8 ▪ The allocation reflects that payment of claims will be paid to all Class Members in
- 9 proportion to the number of workweeks worked by each Class Member during the Class
- 10 Period;
- 11 ▪ Plaintiff conducted significant investigation in this case, including formal and informal
- 12 discovery and exchanges of information by Plaintiff and Defendants of class data for the
- 13 entire class necessary for Plaintiff to fully evaluate this case;
- 14 ▪ A highly regarded administrator, Phoenix Settlement Administrators, was retained for
- 15 costs of \$42,000.00 only—less than the preliminarily approved \$45,000.00 in such costs;
- 16 and
- 17 ▪ California’s LWDA will also be the beneficiary of this settlement as it will receive
- 18 \$450,000.00, should this settlement be granted final approval.

19 Accordingly, the Court should grant Final Approval consistent with the Preliminary Approval Order.

20 DISCUSSION

21 I. Class Members Were Provided Notice of the Settlement.

22 The notice procedures required by the Preliminary Approval Order, have been followed and

23 satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that the

24 Class Notice, as approved in the Preliminary Approval Order, be sent to all Class Members by first class

25 mail, as specified in the Agreement. Furthermore, the Preliminary Approval Order contemplated that

26 Phoenix Settlement Administrators would serve as the Administrator.

27 As stated in the Admin Declaration, notice was provided to Class Members, as required by the

28 Preliminary Approval Order. On October 25, 2022, the Administrator received a Class Member mailing

list from Defendants’ counsel that included 7,338 Class Members. Admin Decl. ¶ 3. On November 8,

2022, each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.*

¶ 5. From the date of mailing, 360 Class Notices were returned due to an incorrect address, and 319

Class Notices were then re-mailed to an updated address after performing an address trace. *Id.* ¶¶ 4-6.

As of the date of this filing, only 73 Class Notice (or 0.99%) remained undeliverable because an updated

1 address could not be located despite skip tracing efforts. *Id.* ¶ 7. Further, the Class Notice provided Class
2 Members with Class Counsel’s contact information, where they could further seek information
3 regarding the settlement, leave questions for the Administrator, and update their address.

4 Plaintiff provided the “best notice practicable” in this case as necessary to protect the due
5 process rights of class members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)
6 (providing “best notice practicable” with description of the litigation and explanation of opt-out rights
7 satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (explaining individual
8 notice must be sent to class members who can be identified through reasonable means); *Mullane v.*
9 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (stating best practicable notice is that
10 which is “reasonably calculated, under all the circumstances, to apprise interested parties of the
11 pendency of the action and afford them an opportunity to present their objections”).

12 Here, Class Members were mailed a notice that explained the settlement and allowed Class
13 Members to seek information, ask questions, and object, if so desired. As such, proper notice has been
14 given to the Class Members. Thus, the Court may determine the fairness and adequacy of the settlement
15 and enter its Order granting final approval, secure in the knowledge that all absent Class Members have
16 been given the opportunity to participate fully in the claims, exclusion, and the approval process.

17 **II. The Fair, Adequate, and Reasonable Settlement Should Be Given Final Approval.**

18 **A. The Strength of the Case and Likelihood of Class Certification Support Approval.**

19 The Court already addressed the requirements for certifying a class for settlement purposes in its
20 Order granting preliminary approval. Plaintiff briefly addresses the requirements again here.

21 **1. The Class Is Ascertainable.**

22 “Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size
23 of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County*
24 *Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987); *see also* Code Civ. Proc. § 382.

25 Here, the Class is defined as: all current and former non-exempt employees of Defendants
26 HumanGood, HumanGood NorCal, HumanGood SoCal, HumanGood Fresno, and HumanGood
27 Affordable Housing in the State of California at any time from April 6, 2016, through June 2, 2022 (the
28

1 “Class Period”), except for *Haji* Settlement Class Members¹ who did not perform work for any of the
2 Defendants after September 28, 2018. There are 7,338 individuals that comprise the Class. Admin Decl.
3 ¶ 3. This is more than the minimum required to certify a class. Within the context of manageability, the
4 issue is whether there exists sufficient means for identifying class members at the remedial stage. *Reyes*,
5 196 Cal. App. 3d at 1274-75. Class Members already have been identified by Defendants, and notice
6 was already provided to the Class Members.

7 **2. There Is a Community of Interest.**

8 The “community of interest” requirement embodies three separate factors: (1) predominant
9 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
10 class representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29 Cal.
11 3d 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

12 **a. There Are Predominant Common Questions of Law and Fact.**

13 “The ultimate question in every case of this type [i.e., class actions] is whether ... the issues
14 which may be jointly tried, when compared with those requiring separate adjudication, are so numerous
15 and substantial that the maintenance of a class action would be advantageous to the judicial process and
16 to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096, 1104-05 (2003).

17 Plaintiff alleges that Defendants, as a matter of its corporate policy, practice, or procedure,
18 violated the Labor Code by its failures to comply with its meal and rest break obligations, to furnish
19 compliant wage statements, and to pay wages based on the regular rate of pay. Defendants deny that
20 liability could be established on a class-wide basis and contends instead that liability and damages
21 would need to be conducted on a case-by-case basis.

22 **b. Plaintiff’s Claims Are Typical of the Class Claims.**

23 A class representative’s claim must be “typical” but not necessarily identical to the claims of
24 other class members; it is sufficient that the representative is similarly situated so that he or she will
25 have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983).
26 Courts look to “whether the action is based on conduct which is not unique to the named Plaintiff” and
27

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 whether other class members were injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d
2 497, 508 (9th Cir. 1992). The purpose of the typicality requirement “is to assure that the interest of the
3 named representative aligns with the interests of the class.” *Id.* at 508.

4 Plaintiff was employed by Defendants and alleges that she was subjected to the same payroll
5 policies and employment practices as all other Class Members. Specifically, like other members of the
6 Class, Plaintiff was not provided all meal and rest breaks—and was not paid all premiums for missed
7 rest breaks and meal periods. Declaration of LaVeda Scott (“Scott Decl.”) ¶ 2. Similarly, Plaintiff also
8 was not paid based on the regular rate of pay for other wages, including overtime and holiday pay. *Id.*
9 Finally, like other Class Members, Plaintiff was not provided with lawful wage statements. *Id.* In sum,
10 Plaintiff alleges she was subjected to the same policies and practices as other Class Members. Plaintiff’s
11 claims thus are typical to those of Class Members.

12 **c. Plaintiff Adequately Represented the Class.**

13 The class representative, through qualified counsel, must be capable of “vigorously and
14 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
15 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
16 been raised or presented. Plaintiff has taken all necessary steps to represent the interests of the Class,
17 including providing information and documents to her counsel and reviewing pleadings in this case.
18 Scott Decl. ¶¶ 3-5. For such reasons, Plaintiff has adequately represented Class Members.

19 **B. Defendants’ Allegations and Position on Class Certification Support Approval.**

20 Defendants assert that even assuming that a class could have been certified, Plaintiff would not
21 have prevailed on the merits. For example, Defendants contend Plaintiff would be unable to establish a
22 “knowing and intentional” violation of Section 226(a) and further contended that employees suffered no
23 injuries from its wage statement practices. With respect to meal and rest break violations, Defendants
24 contend that (i) there were no violations and (ii) employees in any event were already paid premiums.
25 Similarly, with respect to liability from underpaid wages, Defendants contend that they would not be
26 subject to Section 203 penalties, based on a good faith defense. Based thereon, Defendants continue to
27 maintain that it is not liable for the allegations made by the Plaintiff.
28

1 **C. Risks, Expenses, and Complexity of Further Litigation Support Approval.**

2 Plaintiff believes that a class can be certified. However, Plaintiff also believes in the fairness of
3 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
4 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the
5 possibility of non-certification, and potential for appeals.

6 There is always a risk that the court will not grant certification of the class. As Defendants allege
7 that a class could not have been certified, there was at least a substantial risk that Plaintiff would not
8 have obtained the total amount of damages alleged, and a substantial number of complex issues that
9 would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses,
10 and complexity of further litigation warrant granting of this motion.

11 **D. The Settlement Terms and Negotiation—as Well as the Class Member Response—**
12 **All Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable.**

13 Without reiterating the details in the Preliminary Approval Motion showing that the Agreement
14 (and the negotiation process that led up to it) is fair and adequate, Plaintiff highlights the following facts.
15 The Agreement was the product of negotiation between highly able and experienced attorneys on both
16 sides who possessed the relevant data and extensive legal research which they had carefully analyzed.
17 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-5.

18 Since preliminary approval, only seven requests for exclusion (or less than 1.00% of the Class)
19 and zero objections to the settlement have been received since the Class Notice was mailed. Admin
20 Decl. ¶¶ 8-9. The Class Member response suggests the Court’s preliminary approval of the settlement
21 should now be granted final approval. The Court may appropriately infer that the class action settlement
22 is fair, adequate, and reasonable, given that not a single Class Member has submitted an objection. *See*
23 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

24 **III. Well-Established Legal Principles Support Final Approval of the Settlement.**

25 On a motion for final approval of a class action settlement under Code of Civil Procedure section
26 382 and Rule 3.769 of the California Rules of Court, a court’s inquiry is whether the settlement is “fair,
27 adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).
28 A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the interests of

1 the class are better served by the settlement than by further litigation.” *See Manual for Complex*
2 *Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law favors settlement,
3 particularly in class actions and other complex cases, where substantial resources can be conserved by
4 avoiding the time, cost, and rigors of formal litigation. *See* 4 Alba Conte & Herbert B. Newberg,
5 *Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
6 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

7 Although the Court possesses “broad discretion” in determining that a proposed class action
8 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment
9 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
10 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See*
11 *Officers for Justice*, 688 F.2d at 625. Accordingly, the Court should give due regard to what is otherwise
12 a “private consensual agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways,*
13 *Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp.
14 1379 (D. Ariz. 1989), *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial
15 role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement,
16 disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).

17 As the Court of Appeal has cautioned:

18 It cannot be overemphasized that neither the trial court in approving the settlement nor
19 this Court in reviewing that approval have the right or duty to reach any ultimate
20 conclusions on the issues of fact and law which underlie the merits of the dispute. It is
21 well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge
does not try out or attempt to decide the merits of the controversy,’ [citation] and the
appellate court ‘need not and should not reach any dispositive conclusions on the
admittedly unsettled legal issue.

22 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

23 A court’s review and approval of a PAGA settlement is subject to a similar standard as that for
24 class action settlement approval. A court should evaluate a PAGA settlement to determine whether it is
25 fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
26 deter future ones, and to maximize enforcement of state labor laws. *Moniz v. Adecco USA, Inc.*, 72 Cal.
27 App. 5th 56, 77 (2021).

1 **A. The Settlement is Presumed to Be Fair**

2 The Court should begin with the presumption that the settlement is fair and should be approved:

3 [A] presumption of fairness exists where: (1) the settlement is reached through arm's-
4 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
5 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
6 percentage of objectors is small.

7 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996); *accord*, *Ellis v. Naval Air Rework*
8 *Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

9 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
10 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
11 arm's length. Lee Decl. ¶¶ 4-5. Class Counsel engaged in extensive factual investigation before settling,
12 including the exchange of formal and informal discovery and class data enabling Class Counsel to
13 evaluate the full extent of Defendants' potential liability. *Id.* ¶ 4. Further, Class Counsel is highly
14 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has
15 significant experience in class actions and employment wage and hour matters. *Id.* ¶¶ 6-8.

16 **B. Two-Way Costs and Other Risks Inherent in Litigation Favor Final Approval.**

17 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
18 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
19 continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) ("present
20 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk
21 of not prevailing, should be compared with the amount of the proposed settlement"); *Girsh v. Jepson*,
22 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

23 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been
24 potentially responsible for Defendants' costs. As such, should any current or former employees of
25 Defendants bring individual claims on the same causes of action, they would each face the uncertainty
26 of prevailing and the possibility of paying costs to Defendants. Accordingly, such claims likely would
27 not be brought by many of these current and former employees—thus, this lawsuit achieves a true
28 benefit for the Class that they might not otherwise get or seek as individuals. Here, given that a fair and

1 reasonable settlement has been reached, neither Plaintiff nor any of the Class Members will be required
2 to pay for Defendants' litigation costs.

3 The risks of this case were weighed by Class Counsel and should be considered a significant
4 factor by the Court in its determination of final approval. Class Counsel obtained a significant settlement
5 for the Class that resulted in a fair recovery which at the same time provides for finality and no risk of
6 costs by the Class Members or Class Representative.

7 The Agreement also affords the Class prompt, fair relief while avoiding significant legal and
8 factual battles that otherwise may have prevented the Class from obtaining any recovery at all. While
9 Class Counsel believe the Class Members' claims are meritorious and can be successfully litigated, they
10 are experienced and fully understand the inherent risks and uncertainty involved with such matters as the
11 resolution of class certification, the outcome of a potential trial, and the outcome of any appeals that
12 would inevitably follow should the Class prevail at trial. Class Counsel has also assessed the same risks
13 in connection with the current settlement. Because the settlement provides immediate and substantial
14 relief, without the attendant risks and delay of continued litigation—not to mention the threat of
15 litigation fees and costs—Class Counsel believe that the settlement warrants the Court's final approval.

16 **C. The Complexity, Expense, and Likely Duration of Continued Litigation Against**
17 **Defendants Favor Final Approval.**

18 Another factor considered by courts in approving a settlement is the complexity, expense, and
19 likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In
20 applying this factor, courts weigh the benefits of settlement against the expense and delay involved in
21 achieving a favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

22 As noted above, continued litigation could have led to appeals on several issues. On the other
23 hand, the settlement that was reached provides to all Class Members—regardless of their means—fair
24 relief in a prompt and efficient manner. Were the Court to deny final approval, the Class Members
25 would be left without a remedy as a practical matter and courts across the State would have to address
26 the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case
27 is therefore consistent with the “overriding public interest in settling and quieting litigation” that is
28

1 “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at 950; *see also 4 Newberg* §
2 11.41. Here, litigation of this case through trial would have required years of litigation.

3 **D. The Opinion of Experienced Counsel Favors Final Approval.**

4 Class Counsel supports the settlement as fair, reasonable, and adequate, as in the best interest of
5 the Class Members as a whole, and fair, reasonable, and adequate in view of PAGA's purposes. Lee
6 Decl. ¶ 5. Similarly, counsel for Defendants is in favor of this settlement. The endorsement of qualified
7 and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant
8 weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*,
9 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th
10 Cir. 1998).

11 **IV. The Proposed Payments and Procedures Should Be Approved.**

12 **A. The Proposed Procedure for Uncashed Settlement Checks Should Be Approved.**

13 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement
14 funds remain after 180 days, the Parties have agreed that the funds (upon the expiration date) would
15 escheat to the State Controller Unclaimed Property Fund in the name of the Settlement Class Member.
16 None of the settlement funds will revert to Defendants or be diverted to a *cy pres* recipient.

17 **B. The Requested Class Representative Service Award Should Be Approved.**

18 Class Representative LaVeda Scott requests a service award of \$10,000.00. Plaintiff met with
19 Class Counsel to provide substantive information regarding Defendants’ practices. Scott Decl. ¶ 3.
20 Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

21 In addition to the invaluable services that she provided, Plaintiff took significant risks, both
22 professionally and monetarily, in acting as Class Representative to seek benefits for the Class. Because
23 the claims alleged by the Class Representative involved the payment of costs to the prevailing party,
24 Plaintiff could have possibly faced paying the costs of Defendants had she not prevailed in this action.
25 Moreover, Plaintiff understood that an individual case would have resolved much faster than a class
26 action and involved much less financial risk than a class action. Despite this, however, Plaintiff agreed
27 to pursue this case on behalf of the Class. Scott Decl. ¶ 8.

1 Also, given that future employers are much less likely to hire individuals who have filed
2 employment-related lawsuits, particularly cases of this nature, the Class Representative also faces
3 significant risk in not being able to find suitable employment, all as a result of filing of this case against
4 Defendants. Plaintiff took these risks upon herself to the benefit of the Class. Scott Decl. ¶ 8. Class
5 Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not
6 prevail, nor did they have to face the potential for retaliation and not getting future employment had they
7 filed a lawsuit which is a public record. These are significant benefits that weigh in favor of granting the
8 requested award. Moreover, this litigation has resulted in a significantly valuable benefit to the Class,
9 and Plaintiff took on substantial risks in helping to get this financial benefit to the Class. As such, the
10 award should be granted to Plaintiff for her commitment, dedication, and risks taken for this litigation.

11 Equally important, Plaintiff provided a general release and waiver of the protections of Civil
12 Code section 1542. Scott Decl. ¶ 9. This is a more extensive release than that provided by the Class at
13 large and also supports the request for the award.²

14 **C. The Requested Attorneys' Fees Should Be Approved.**

15 Class Counsel seeks a fee award calculated at 33⅓% of the total value of the settlement for the
16 successful prosecution and resolution of this action. California state and federal courts have recognized
17 that an appropriate method for determining award of attorneys' fees is based on a percentage of the total
18 value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
19 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ; *Boeing Co. v. Van Gemert*, 444 U.S. 472,
20 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
21 equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
22
23

24 ² Courts have routinely granted approval of settlements containing such incentive awards. *See Van*
25 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
26 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)
27 (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141
28 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v.*
Columbia Gas Transmission Corp., 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each
class representative); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.
27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*,
142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative).

1 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
2 alone.” *Vincent*, 557 F.2d at 769.

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

14 First, the fee award representing 33⅓% of the fund clearly falls within that range and is
15 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
16 fee awards. Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in
17 legal services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7
18 *J. Empirical Leg. Stud.* 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
19 “[m]ost fee awards were between 25 percent and 35 percent”).³

20 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
21 Here, Plaintiff and her counsel secured a \$3,750,000.00 settlement and only seven of the Class Members
22 chose to opt out. Zero chose to object.

24 ³ Such an attorneys’ fees award of the fund mimics the market and “is supported by the fact that typical
25 contingency fee agreements provide that class counsel will recover 33% if the case is resolved before
26 trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16
27 n.59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers:*
28 *Competing Data and Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an
attorneys’ fees award of 35% of the fund is consistent with “empirical studies [that] show that . . . fee
awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App.
4th 43, 66 n.11 (2008).

1 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
2 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
3 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
4 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
5 Class Counsel would be seeking \$1,250,000.00 in attorneys’ fees. Again, there were no objections.

6 Fourth, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
7 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

8 No one expects a lawyer whose compensation is contingent upon his success to charge,
9 when successful, as little as he would charge a client who had agreed to pay for his
10 services, regardless of success. Nor, particularly in complicated cases producing large
recoveries, is it just to make a fee depend solely on the reasonable amount of time
expended.

11 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$3,750,000.00 has been
12 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
13 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action
14 litigation, as well as a long battle with a corporate Defendants who had retained a premier and highly
15 experienced defense firm.

16 For such reasons, Class Counsel’s request for attorneys’ fees in the amount of \$1,250,000.00 is
17 fair, reasonable, and adequate.

18 **D. The Court Should Approve the Request for Reimbursement of Costs.**

19 The request for reimbursement of costs, in the amount of \$11,845.75 is fair and reasonable. As
20 set forth in Plaintiff’s counsel’s declaration, the costs were all directly incurred in the prosecution of this
21 action. Lee Decl. ¶ 9, Ex. A. As such, this request should be approved.

22 **E. The Administrator’s Fees and Costs Should Be Approved.**

23 Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix
24 Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Kevin
25 Lee, the settlement administration fees expended in this matter amount to a total of \$42,000.00, which is
26 less than the amount that was agreed upon by the Parties. Admin Decl. ¶ 18. For such reasons, it is
27 requested that the Administrator’s fees be approved.

1 **V. Notice to the LWDA Has Been Provided.**

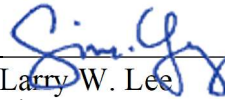
2 On October 19, 2022, Plaintiff uploaded the Order Granting Plaintiff's Motion for Preliminary
3 Approval of Class Action Settlement to the LWDA's website. Lee Decl. ¶ 10. Concurrent with the filing
4 of this motion, Plaintiff also has uploaded the final approval motion to the LWDA. *Id.*

5 **CONCLUSION**

6 Plaintiff respectfully submits that the standards for final approval have been met and the terms of
7 the Agreement are fair, adequate, and reasonable. Accordingly, Plaintiff respectfully requests that the
8 Court enter an Order in the form proposed and submitted.

9 DATED: January 20, 2023

DIVERSITY LAW GROUP, P.C.

10 By: 
11 Larry W. Lee
12 Simon L. Yang
13 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 January 20, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF KEVIN LEE WITH RESPECT TO NOTICE AND**
SETTLEMENT ADMINISTRATION
- 13 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 14 **4. DECLARATION OF LAVEDA SCOTT IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 15 **5. [PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF**
16 **CLASS ACTION SETTLEMENT AND FINAL JUDGMENT**

17 on the interested parties in this action as follows:

18
19 Aaron A. Buckley
20 Aaron J. Schu
21 Paul, Plevin, Sullivan & Connaughton LLP
22 101 West Broadway, Ninth Floor
23 San Diego, California 92101
24 abuckley@paulplevin.com
25 aschu@paulplevin.com
26 eoconnell@paulplevin.com

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

29 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
30 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
31 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
32 indicated above or on the attached mailing list. I certify that said electronic transmission was

1 completed and that all pages were received by the party(ies) identified herein or on the attached
2 mailing list.

3 I declare under penalty of perjury under the laws of the State of California that the
4 above is true and correct. Executed on January 20, 2023, at Los Angeles, California.

5 
6 Erika Mejia