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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF YOLO

Coordination Proceeding
Special Title (Rule 3.550)

HUMANO WAGE AND HOUR CASES

Included actions:

Hines v. Humano LLC

Emmens v. Humano LLC

Thurman v. Humano LLC

JUDICIAL COUNCIL COORDINATION
PROCEEDING
No. 5240

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
No. 34-2022-00313411

SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO
No. CV2021-2225

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
No. CIVSB2227784

*[Assigned for all purposes to Hon. Daniel M.
Wolk, Dept. 8]*

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 19, 2024
Time: 10:30 a.m.
Dept.: 8

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TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 19, 2024 at 10:30 a.m. in Department 8 of the above-entitled Court, located at 1000 Main Street, Woodland, California 95695, Plaintiffs Michael Emmens, Jermaine Hines, and Doris Thurman (“Plaintiffs”) individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

All current and former non-exempt employees who worked for Defendant Humano LLC in the State of California at any time from December 21, 2017, through October 5, 2023 (the “Class Period”).
3. Preliminary appointment of Plaintiffs as Class Representatives;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC; Larry W. Lee and Kristen M. Agnew of Diversity Law Group, P.C.; and James R. Hawkins of James Hawkins, APLC, collectively as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Enhancement Payments to Plaintiffs, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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1 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
2 Authorities; the supporting declarations of Sean M. Blakely, Paul K. Haines, Larry W. Lee,
3 Kristen M. Agnew, James R. Hawkins, Plaintiffs Michael Emmens, Jermaine Hines, and Doris J.
4 Thurman, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the
5 exhibits attached thereto; the pleadings, and other papers filed in this Action; and on any further
6 oral or documentary evidence or argument presented at the time of the hearing.

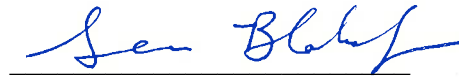
7 Defendant does not intend to oppose this Motion, and given the multiplicity of issues
8 addressed in this Motion, has indicated its approval of Plaintiffs' expressed need to exceed the
9 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, Plaintiffs request the
10 Court's consideration of Plaintiffs' memorandum of points and authorities, which is 26 pages in
11 length.

12
13 Respectfully submitted,

14 Dated: June 26, 2024

HAINES LAW GROUP, APC

15
16 By:



Paul K. Haines
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Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Michael Emmens, Jermaine Hines, and Doris J. Thurman (hereinafter
4 “Plaintiffs”) brought these class and representative actions for various wage and hour violations
5 on behalf of current and former non-exempt employees who worked for Defendant Humano LLC
6 (“Humano”) in the State of California from December 21, 2017, through October 5, 2023 (the
7 “Class Period”). Plaintiffs’ primary allegations are that Humano: (1) failed to pay all minimum
8 and overtime wages; (2) failed to provide all legally required meal periods; and (3) failed to
9 authorize and permit all legally required rest periods. As a result of these alleged violations,
10 Plaintiffs allege that Humano is liable for waiting time penalties, wage statement penalties, and
11 is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004
12 (“PAGA”).

13 Plaintiffs now respectfully request that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,¹ in which Humano has agreed to pay One
15 Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00) to the following
16 Settlement Class:

17 All current and former non-exempt employees who worked for Defendant
18 Humano LLC in the State of California at any time from December 21,
2017, through October 5, 2023 (the “Class Period”).

19 If the Settlement is approved, Humano will pay a non-reversionary Gross Settlement
20 Amount (“GSA”) of \$1,500,000.00. After deducting administration costs, Plaintiffs’ requested
21 Class Representative Enhancement Payments, the amount set aside as PAGA civil penalties, and
22 requested attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately
23 \$775,000.00 will be distributed to all Class Members who do not opt out of the Settlement based
24 on the proportionate number of workweeks worked by each Class Member during the Class
25 Period.

26
27 ¹ The Joint Stipulation of Class Action Settlement and Release (“Settlement”) is attached to the
28 Declaration of Sean M. Blakely as **Exhibit 1**. The proposed Class Notice is attached to the
Settlement as **Exhibit A**. All defined terms in this motion have the same definition as that in the
Settlement.

1 Significantly, Class Members do not need to file a claim to reap the financial benefits of
2 the Settlement, as all Class Members will automatically receive a payment unless they
3 affirmatively opt-out. There are approximately 7,227 Class Members, and the average payment
4 to participating Class Members is projected to be approximately \$107.24.

5 The proposed Settlement is within the range of possible approval in light of the significant
6 legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation, and the
7 tangible monetary benefits to be received by Plaintiffs and the Settlement Class. For the reasons
8 discussed herein, Plaintiffs respectfully request that this Court grant preliminary approval of the
9 Settlement.

10 **II. SUMMARY OF THE LITIGATION**

11 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

12 Founded in 2017, Humano is a temporary services provider within the logistics industry
13 and supplies workers to warehouses and distribution facilities. *See* Declaration of Sean M.
14 Blakely (“Blakely Decl.”), ¶ 8. Humano employed Plaintiff Emmens as a non-exempt employee
15 working in West Sacramento, California, from approximately April 2021 until approximately
16 September 2021. *See* Declaration of Michael Emmens in Support of Approval of Class Action
17 Settlement (“Emmens Decl.”), ¶ 2. Plaintiff Hines worked for Humano as a non-exempt
18 “Warehouse Order Selector” from approximately September 2021 until approximately October
19 2021. *See* Declaration of Jermaine Hines in Support of Approval of Class Action Settlement
20 (“Hines Decl.”), ¶ 2. Plaintiff Thurman worked for Humano as a non-exempt employee during
21 the Class Period. *See* Declaration of Doris Thurman in Support of Approval of Class Action
22 Settlement (“Thurman Decl.”), ¶ 2.

23 On December 21, 2021, Plaintiff Emmens filed his Class Action Complaint in Yolo
24 County Superior Court, in the matter titled *Michael Emmens v. Humano LLC*, Case No. CV2021-
25 2225 (the “*Emmens* Action”), alleging that Humano: (i) failed to pay all overtime wages; (ii)
26 failed to provide all lawful meal periods; (iii) fail to provide all lawful rest periods; (iv) wage
27 statement violations; (v) waiting time penalties; and (vi) engaged in unfair competition in
28 violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. That same

day, Plaintiff Emmens sent his PAGA notice letter to the LWDA. *Id.*; Exhibit B (LWDA Letter). Subsequently, on February 25, 2022, Plaintiff Emmens filed a First Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq. Id.*

On January 3, 2022, Plaintiff Hines filed a Class Action Complaint against Humano in Sacramento County Superior Court, in the matter entitled *Jermaine Hines v. Humano LLC*, Case No. 34-2022-313411 (the “*Hines* Action”). Blakely Decl., ¶ 10. The *Hines* Action alleged the following causes of action: (i) failure to pay all overtime wages; (ii) wage statement violations; and (iii) unfair competition. *Id.* Plaintiff Hines subsequently filed a First Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq. Id.*

On or about May 12, 2022, Humano filed a Petition for coordination of the *Emmens* Action and *Hines* Action (the “Petition”). Blakely Decl., ¶ 11. On August 9, 2022, an order was entered coordinating those actions in Yolo County Superior Court, designated as the “Humano Wage and Hour Cases,” under Judicial Council Coordination Proceeding No. 5240. *Id.*

On December 13, 2022, Doris J Thurman filed a Class Action complaint against Humano in San Bernardino County Superior Court, in the matter entitled *Doris J. Thurman v. Humano LLC*, Case No. CIVSB2227784 (the “*Thurman* Action”), alleging that Humano: (i) failed to pay overtime wages; (ii) failed to provide all lawful meal periods; (iii) failed to provide all lawful rest periods; (iv) failed to timely pay wages during employment; (v) failed to timely pay earned wages at the time of separation of employment; (vi) failed to reimburse fees on use of pay cards; (vii) failed to reimburse necessary business expenses; (viii) failed to accurately record and pay sick leave; and (ix) engaged in unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 12. Given the overlap of claims between the *Thurman* action and the Humano Wage and Hour Cases, on or about July 3, 2023, Humano filed a petition to include the *Thurman* action as an add-on case to the Humano Wage and Hour Cases. *Id.* On October 13, 2023, the Court entered an order granting the petition. *Id.* Accordingly, the Humano Wage and Hour Cases (or Coordinated Action) consists of the *Emmens* Action, *Hines* Action, and

1 *Thurman* Action. *Id.*

2 **B. PLAINTIFFS' CLAIMS AND HUMANO'S DEFENSES**

3 **1. Meal Period Claims**

4 Plaintiffs allege that Humano failed to provide legally compliant first meal periods due to
5 their meal period policies/practices, which frequently resulted in late (commencing after the fifth
6 hour of work) and/or short (i.e., less than a full 30 minutes) first meal periods. Blakely Decl., ¶
7 18. Plaintiffs further allege that Class Members were not provided with second meal periods when
8 they worked shifts in excess of 10.0 hours in a workday. *Id.*, at ¶ 19.

9 In response, Humano counters that it has maintained compliant written meal period
10 policies throughout the Class Period and has always provided compliant meal periods in line with
11 those policies. Blakely Decl., ¶ 18. Humano further contends that it always provides employees
12 the opportunity to take meal periods and is not required to *ensure* they are taken. *Id.*; *see Brinker*
13 *Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus, Humano
14 argues that any non-compliant meal periods resulted from lawful employee waiver or choice,
15 rather than any policy and/or practice of Humano. Blakely Decl., ¶ 18. With respect to second
16 meal periods, Humano asserts that many employees choose to waive their second meal periods
17 on shifts over 10.0 hours and under 12.0 hours, as they may do under Labor Code § 512(a), so
18 that they do not need to stay at work for an extra unpaid 30 minutes. *Id.*, at ¶ 19. Finally, Humano
19 maintains Plaintiffs’ meal period claim is not suited for class certification since individual
20 inquiries would be needed to assess which employees, if any, took non-compliant or missed meal
21 periods, how many meal periods were non-compliant or missed, the reasons why a particular
22 employee did not take a meal period on a particular shift, and for second meal periods, whether
23 they waived the meal period. *Id.*, ¶¶ 18-19.

24 **2. Rest Period Claims**

25 Plaintiffs allege that Humano failed to authorize and permit all required off-duty rest
26 periods. Blakely Decl., ¶ 20. Specifically, Plaintiffs allege they were not authorized or permitted
27 to take any off-duty rest periods as they were restricted to the warehouses or distribution facilities
28 to which they were assigned, and were not permitted to leave the warehouses or distribution

1 facilities during off-duty rest periods. *Id.*; see *Augustus v. ABM Security Svcs., Inc.*, 2 Cal.5th
2 257, 260 (2016) (“During required rest periods, employers must relieve their employees of all
3 work duties and relinquish any control over how employees spending their break time...”).

4 Humano counters that it has maintained compliant written rest period policies throughout
5 the Class Period and has always authorized and permitted employees a 10-minute rest period for
6 each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and that
7 any failure to take rest periods was a result of employee choice, rather than any Humano policy
8 and/or practice. Blakely Decl., ¶ 20. Humano further contends that it never restricted employees
9 to the warehouses or distribution facilities, and that employees were free to leave the premises
10 during their rest periods. *Id.* Humano further contends that even if it or individual managers
11 required employees to remain on premises during off-duty rest periods, *Augustus* rejected
12 Plaintiffs’ “on-premises” theory when it observed that “one would expect that employees will
13 ordinarily have to remain onsite or nearby. This constraint, which is of course common to all rest
14 periods, is not sufficient to establish employer control.” *Id.*; see *Augustus, supra*, 2 Cal.5th at
15 270. Humano also argues that Plaintiffs’ rest period claim is not amenable to class treatment,
16 since individual inquiries would be required to determine which employees failed to take rest
17 periods, how many rest periods they failed to take, and the reasons why each employee failed to
18 take rest period(s) on a particular shift. Blakely Decl., ¶ 20. These manageability concerns are
19 especially present with respect to rest period claims, Humano argues, given that rest periods are
20 not recorded. *Id.*

21 **3. Failure to Pay for All Hours Worked**

22 Plaintiffs allege they and other non-exempt employees were required to attend pre-shift
23 meetings prior to traveling to their assigned warehouse/facility and clocking in for their shift.
24 Blakely Decl., ¶ 21. Plaintiffs allege that Humano conducted these pre-shift meetings to discuss
25 their work assignments and tasks for the day, go over their work schedule, and do stretching
26 exercises, however, were not compensated for this time as it was completed prior to employees
27 clocking in for the workday. *Id.*

28 Humano argues that its timekeeping policies/practices complied with California law and

1 that it has always properly compensated Class Members for all hours worked throughout the Class
2 Period. Blakely Decl., ¶ 21. Humano maintains that Class Members did not work off-the-clock
3 and that its policies specifically disavow such off-the-clock work. *Id.* Humano further argues that
4 Plaintiffs’ off-the-clock claim is not appropriate for class treatment. *Id.*; see, e.g., *Brinker, supra*,
5 53 Cal.4th at 1052 (affirming denial of off-the-clock subclass, “[p]roof of off-the-clock liability
6 would have had to continue in an employee-by-employee fashion, demonstrating who worked off
7 the clock, how long they worked, and whether Brinker knew or should have known their work”).

8 **4. Unpaid Overtime Due to Regular Rate Miscalculations**

9 Plaintiffs allege that Humano paid Plaintiffs and Class Members non-discretionary
10 incentive pay, including but not limited to, attendance bonuses, performance incentive payments,
11 per diem payments, and other forms of pay that are not legally excludable from an employee’s
12 “regular rate” of pay. Blakely Decl., ¶ 22. However, Plaintiffs assert that Humano failed to include
13 the value of these bonuses when calculating employees’ respective regular rates of pay, resulting
14 in underpaying employees their overtime wages. *Id.*; see e.g., *Huntington Memorial Hospital v.*
15 *Superior Court*, 131 Cal.App.4th 893, 902-903 (2005) (discussing regular rate calculation
16 requirements).

17 In response, Humano argues that it properly included all forms of remuneration into the
18 regular rate of pay and properly paid all overtime wages to Class Members. Blakely Decl., ¶ 22.
19 Humano also contends that at all relevant times the bonuses it paid to its non-exempt employees
20 were discretionary. *Id.*; see also DLSE Manual § 49.1.2.4(3) (bonuses are discretionary, and
21 therefore excludable, if “both the fact that payment is to be made and the amount of the payment
22 are determined at the sole discretion of the employer at or near the end of the period and not
23 pursuant to any prior contract, agreement, or promise causing the employee to expect such
24 payments regularly”). Humano further argues that Class Members received different types of
25 bonuses and other remuneration throughout the Class Period, creating substantive differences
26 among Class Members with respect to the incentives received, making class certification unlikely.
27 Blakely Decl., ¶ 22.

28 ///

1 **5. Failure to Reimburse for Necessary Business Expenditures**

2 Plaintiffs contend that Humano required Class Members to use their personal cellphones
3 for a variety of work activities, including but not limited to, communicating with supervisors, but
4 were not reimbursed for these business expenses. Blakely Decl., ¶ 23; *see also* Labor Code §
5 2802; *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137, 1144 (2014) (“Thus to be
6 in compliance with section 2802, the employer must pay some reasonable percentage of the
7 employee’s cell phone bill.”).

8 Humano maintains that Class Members were not required to use their personal cellular
9 phones as part of their job. Blakely Decl., ¶ 23. Humano further argues that any expenses incurred
10 by Class Members were minimal, given the wide availability of low-cost cellular phone plans. *Id.*
11 Lastly, Humano argues this claim is not suitable for class treatment, as it would require
12 individualized determinations as to whether each Class Member used a personal cellular phone
13 for work-related purposes, and if so, how much of that use was a reasonable percentage of their
14 individual monthly phone bill. *Id.*

15 **6. Waiting Time Penalties**

16 As a result of the unpaid wages and unpaid meal and rest period premium wages described
17 above, Plaintiffs allege that Humano failed to comply with their final pay obligations set forth in
18 Labor Code §§ 201-203. Blakely Decl., ¶ 24.

19 Humano argues that it possesses strong, good faith defenses to Plaintiffs’ underlying
20 claims, thus precluding recovery of waiting time penalties, which are only available for the
21 “willful” failure to pay wages. Blakely Decl., ¶ 24; *see also* 8 Cal. Code Regs. § 13520 (“[A]
22 good faith dispute that any wages are due will preclude imposition of waiting time penalties under
23 Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer presents
24 a defense, based in law or fact which, if successful, would preclude any recovery on the part of
25 the employee.”). Humano further asserts that Plaintiffs’ waiting time penalty exposure was
26 grossly inflated as not every former employee experienced the alleged Labor Code violations.
27 Blakely Decl., ¶ 24. Moreover, because the waiting time claim is derivative of Plaintiffs’
28 underlying wage claims, Humano argues that Plaintiffs would need to overcome Humano’s

1 defenses, both as to class certification and on the merits, as to their underlying claims. *Id.*

2 **7. Wage Statement Claims**

3 As a further result of the unpaid wages and unpaid meal and rest period premium wages
4 described above, Plaintiffs allege that Humano is liable for wage statement penalties. Blakely
5 Decl., ¶ 25. Humano argues any alleged wage statement violations were not “knowing and
6 intentional,” and Plaintiffs cannot show they or other employees “suffer[ed] injury” due to the
7 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
8 penalties. *Id.* Further, Humano contends its wage statements always accurately reflected hours
9 worked and amounts paid as well as all other required information, precluding liability for wage
10 statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37
11 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in that
12 they correctly reflected the hours worked and the pay received...The purpose of section 226 is to
13 document the *paid wages* to ensure the employee is fully informed regarding the calculation of
14 those wages.”) (Italics in original).

15 **8. PAGA Civil Penalties**

16 As a result of the foregoing Labor Code violations, Plaintiffs allege that Humano is liable
17 for civil penalties under the PAGA. Blakely Decl., ¶ 26. Since Plaintiffs’ PAGA claim is
18 derivative of Plaintiffs’ underlying wage claims, Humano asserts the PAGA claim would fail with
19 those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because the
20 underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Humano
21 further maintains that, given its good faith defenses, this Court would exercise its discretion to
22 substantially reduce any PAGA penalties if it were to find Humano liable for any of Plaintiffs’
23 claims. Blakely Decl., ¶ 26; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
24 *Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
25 *Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011)
26 (reducing PAGA penalties by over 82% in part because employer “not aware” of violations);
27 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
28 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

1 **C. DISCOVERY AND MEDIATION**

2 Prior to mediation, the Parties engaged in significant class certification discovery. Blakely
3 Decl., ¶ 13. Plaintiffs served formal written discovery seeking among other things, class contact
4 information for the putative class, timekeeping and payroll records for Class Members, and
5 Humano’s written wage and hour policies and procedures. *Id.* The Parties completed a *Belair-*
6 *West* opt-out notice process, and Plaintiffs’ counsel was provided with the contact information
7 for those Class Members that did not opt-out. *Id.* Thereafter, Plaintiffs’ counsel interviewed Class
8 Members regarding their work experiences at Humano. *Id.*

9 Prior to mediation, Humano produced timekeeping and payroll records for all Class
10 Members as well as a detailed Class List, which included Class Members’ hire date and
11 termination dates (if applicable). Blakely Decl., ¶ 14. Humano also provided its employee
12 handbook(s) and written wage and hour policies, as well as other information. *Id.* Plaintiffs hired
13 an expert to assist Plaintiffs in conducting a comprehensive analysis of the payroll and
14 timekeeping data produced by Humano to create a detailed exposure analysis for all claims at
15 issue. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiffs’ claims,
16 the chances of certification of Plaintiffs’ claims, and Humano’s potential defenses. *Id.*

17 On April 18, 2023, the Parties participated in a full-day mediation with Jeffrey Ross, Esq.,
18 a preeminent wage and hour class action mediator. Blakely Decl., ¶ 15. During mediation, the
19 Parties vigorously debated their opposing legal positions, the likelihood of certification of
20 Plaintiffs’ claims, the legal basis for the claims and defenses, as well as Humano’s financial
21 condition. *Id.* The Parties did not reach a settlement at mediation. *Id.* In the months following
22 mediation, Humano provided Plaintiffs’ counsel with its financial records and Plaintiffs, with the
23 help of their retained forensic accountant, reviewed the documents provided by Humano to
24 determine Humano’s ability to pay. *Id.* Following that review, the Parties continued their
25 settlement discussions with Mr. Ross. *Id.* Mr. Ross issued a mediator’s proposal for a class-wide
26 settlement, which was ultimately accepted by the Parties. *Id.* During the months that followed,
27 the Parties finalized the terms of the Settlement and executed the long-form settlement agreement
28 now before the Court. *Id.*

1 **III. THE PROPOSED SETTLEMENT**

2 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

3 If the Court preliminarily approves the Settlement, Humano will pay a Gross Settlement
4 Amount (“GSA”) of \$1,500,000.00.² See Settlement, §§ A.17; C.1. Significantly, this Settlement
5 is non-reversionary, and no Class Member will have to submit a claim form to receive an
6 Individual Settlement Payment. *Id.* Each Class Member will automatically receive an Individual
7 Settlement Payment unless they affirmatively opt out of the Settlement. *Id.* The monetary terms
8 of the Settlement are summarized below:

9

• Gross Settlement Amount (“GSA”):	\$1,500,000.00
• Minus Court-approved attorneys’ fees:	\$500,000.00
• Minus Court-approved verified costs (up to):	\$50,000.00
• Minus Court-approved Enhancement Payments:	\$30,000.00
• Minus amount set aside as PAGA penalties:	\$100,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$45,000.00</u>
Net Settlement Amount (“NSA”):	\$775,000.00
• Plus 25% “PAGA Amount” to Settlement Class:	\$25,000.00
Total Amount Paid to Class Members:	\$800,000.00

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15 **1. The Settlement Provides for Reasonable Monetary Payments**

16 After deducting amounts for the Court-approved attorneys’ fees and costs, Class
17 Representative Enhancement Payments to Plaintiffs, the amount set aside as PAGA civil
18 penalties, and settlement administration costs, the Settlement requires Humano to pay a Net
19 Settlement Amount (“NSA”) of at least \$775,000.00 to all Class Members who do not timely opt-
20 out. See Settlement, §§ A.19; C.9. All of the NSA shall be distributed to all participating Class
21 Members based on the proportionate number of workweeks each participating Class Member
22 worked during the Class Period. Settlement, § C.9. Additionally, Twenty-Five Thousand Dollars
23

24 ² Following Humano’s representation of its financial position, Humano turned over its financial
25 records to Plaintiffs’ retained expert, Keith D. Messerschmidt, who is a forensic accountant and
26 has consulted or provided expert testimony in dozens of litigation and insurance matters. Blakely
27 Decl., ¶ 15. Mr. Messerschmidt opined that Humano could not reasonably afford to pay more than
28 the Gross Settlement Amount, and that the requested payment schedule was necessary to avoid
serious disruption to Humano’s operations. *Id.* Should the Court wish to review a declaration from
Mr. Messerschmidt attesting to these facts and Humano’s financial condition, this declaration
could either be filed *in camera* or filed under seal, at the Court’s request. *Id.*

1 and Zero Cents (\$25,000.00) shall be distributed to Aggrieved Employees (regardless of whether
2 they opt-out) proportionately based on the number of workweeks worked at any time from
3 December 10, 2020 until October 5, 2023 (“PAGA Period”). *Id.*, at §§ A.21-A.22; C.8.

4 According to Humano, there are approximately 7,227 Class Members. Blakely Decl., ¶
5 17. Therefore, the average Settlement Award from the NSA is projected to be approximately
6 \$107.24. *Id.* Class Members will have forty-five (45) calendar days from the mailing of the Notice
7 Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class
8 Notice without unduly delaying the Settlement. *See* Settlement, §§ A.31; C.17; C.19. Those Class
9 Members who do not opt-out of the Settlement will be bound by its terms and will release all
10 claims against Humano included within the Settlement. *See Id.*, at §§ A.26; C.33.

11 **2. Attorneys’ Fees and Costs, Enhancement Payments, and PAGA Payment**

12 Plaintiffs will apply for Class Representative Enhancement Payments at the time of
13 seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for
14 each Plaintiff, for a total of \$30,000.00 for their services to the Settlement Class. *See* Settlement,
15 §§ A.11; C.6; Blakely Decl., ¶ 30. “[I]ncentive awards are fairly typical in class action cases . . .
16 and are intended to compensate class representatives for work done on behalf of the class [and]
17 to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone*
18 *Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the
19 time of final approval, Plaintiffs’ requested Enhancement Payments are intended to recognize the
20 time and effort Plaintiffs expended on behalf of the Settlement Class, including providing
21 substantial factual information and documents to Class Counsel, discussing the claims and
22 theories at issue in the litigation, actively participating in the prosecution of their claims, as well
23 as the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in this
24 case. *See* Blakely Decl., ¶ 30; *see also* Emmens Decl., ¶¶ 4-5; Hines Decl., ¶¶ 7-9; Thurman Decl.,
25 ¶¶ 6-7.

26 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
27 Settlement Amount, which is currently estimated to be \$500,000.00, and up to \$50,000.00 in
28 verified costs reimbursement. *See* Settlement, §§ A.6; C.5; Blakely Decl., ¶ 29. Plaintiffs submit

1 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
2 consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred substantial
3 attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal
4 research, conducting extensive informal and formal discovery, meeting and conferring with
5 Humano regarding their discovery responses, completing a *Belaire-West* notice procedure and
6 interviewing Class Members, analyzing Class Members' timekeeping and payroll records with
7 the help of a retained expert, creating a comprehensive damages model, preparing for and
8 attending mediation, reviewing Humano's financials with the help of a retained forensic
9 accountant, negotiating and preparing the long-form Settlement Agreement, preparing this
10 Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend additional attorney
11 time in attending the hearing on this Motion, overseeing the Notice process and fielding questions
12 from Settlement Class members, preparing the Final Approval papers, and attending the Final
13 Approval hearing. *Id.*

14 California courts recognize that an appropriate method for awarding attorneys' fees in
15 class actions is to award a percentage of the "common fund" created as a result of a settlement.
16 *See, e.g., Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding "the percentage of
17 fund method survives in California class action cases"). Class Counsel's request for fees of one-
18 third of the Gross Settlement Amount is well within the range of reasonableness and indeed is
19 considered the typical rate for common fund settlements. Historically, courts have awarded
20 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4
21 Newberg on Class Actions § 14.6 (4th Ed. 2013).

22 Class Counsel submit that their request for attorneys' fees is reasonable when viewed as
23 an overall percentage of the Settlement and in light of the substantial risks and significant work
24 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
25 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
26 and verified costs upon seeking final approval.

27 Additionally, the parties have agreed to designate \$100,000.00 of the Gross Settlement
28 Amount as PAGA civil penalties, of which \$75,000.00 (75%) will be paid to the LWDA, with

the remaining \$25,000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, §§ A.21; C.8. Plaintiffs submit this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the

1 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
2 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
3 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
4 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
5 reasonable in light of the overall balance of factors in this case.

6 **a. The Strength of Plaintiffs’ Case**

7 Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs
8 acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As
9 described above in section II.B., *supra*, Humano presented multiple defenses to Plaintiffs’ claims,
10 both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to
11 litigate these claims through class certification and ultimately trial, success was far from certain.

12 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

13 Although the Parties engaged in significant discovery prior to mediation, the Parties still
14 had significant formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 28.
15 This would have required the expenditure of substantial time and resources by both Parties that
16 would have very likely spanned several years. *Id.* Even if Plaintiffs were to certify the classes, the
17 Parties would incur considerably more attorneys’ fees and costs through a possible decertification
18 motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying
19 expense. *Id.*

20 **c. Risk of Maintaining Class Action Status**

21 Plaintiffs had not yet filed their class certification motion, and as such, the extent to which
22 Plaintiffs’ proposed classes were certifiable is somewhat speculative. Absent settlement, there
23 was a risk there would not be a certified class at trial, or if there were, that it would consist of a
24 significantly smaller group of employees than the proposed Settlement Class, and the expected
25 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

26 **d. Amount Offered in Settlement Given Realistic Value of Claims**

27 The Settlement provides a positive recovery for the Settlement Class in the face of
28 disputed claims and Humano’s financial issues. Plaintiffs, with the help of their retained expert,

1 conducted a detailed analysis of alleged unpaid wages, meal and rest period premium payments
2 owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary
3 of the results of Plaintiffs' exposure analysis are discussed below:

4 **First Meal Period Violations: \$85,216**

5 Plaintiffs allege that due to work demands imposed by Humano, Humano failed to provide
6 compliant first meal periods to its non-exempt employees. Blakely Decl., ¶ 18. Based on
7 Plaintiffs' expert's review of the timekeeping records Humano produced, there were
8 approximately 46,323 non-compliant first meal periods during the Class Period. *Id.* Plaintiffs'
9 expert also determined that the average hourly rate of pay was approximately \$17.52. *Id.*
10 Therefore, Plaintiffs calculated Humano's maximum exposure for first meal period violations at
11 approximately \$811,579 (46,323 non-complaint first meal periods * \$17.52 average meal period
12 premium). *Id.*

13 However, Humano contends that it maintained compliant meal period policies throughout
14 the Class Period and provided compliant meal periods in line with those policies. Blakely Decl.,
15 ¶ 18. Humano also asserts that under *Brinker* it is only required to "provide" the opportunity to
16 take meal periods, not "ensure" meal periods are taken, and that, as described above, they have
17 always done so, and that any non-complaint meal periods in the timekeeping records were the
18 result of lawful employee waiver or choice. *Id.* Humano also maintains that the meal period claim
19 is not suited for class certification, since individual inquiries would be needed to assess which
20 employees took non-compliant meal periods or missed meal periods, how many meal periods
21 were non-compliant or missed, and the reasons why a particular employee did not take a
22 compliant meal period on a particular shift. *Id.* In light of these defenses, Plaintiffs discounted
23 Humano's maximum exposure by 65% for the risk of non-certification, and an additional 70% to
24 account for Humano's defenses on the merits and/or failure to recover the maximum amount
25 sought, to arrive at an estimated total of approximately \$85,216. *Id.*

26 **Second Meal Period Violations: \$24,624**

27 Plaintiffs' analysis of the timekeeping data showed that during the Class Period there were
28 approximately 16,063 total shifts of over 10.0 hours that did not reflect a legally compliant second

meal period. Blakely Decl., ¶ 19. Therefore, Plaintiffs estimated total maximum damages for second meal period violations at approximately \$281,424 (16,063 non-compliant second meal periods * \$17.52 average meal period premium). *Id.*

However, Plaintiffs' theory of liability carried significant risks, based on Humano's arguments that they provided employees the opportunity for second meal periods and that Class Members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less than 12.0 hours, as they are entitled to do under Labor Code § 512(a). Blakely Decl., ¶ 19. Humano further argues that Plaintiffs' second meal period exposure is grossly inflated as Plaintiffs already seek a meal period premium for first meal period violations on many shifts, and Plaintiffs cannot recover more than one meal period premium for each workday. *Id.*; see *United Parcel Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011) ("[E]mployees in this case may recover up to two additional hours of pay on a single work day for meal period and rest period violations – one for failure to provide a meal period and another for failure to provide a rest period"). In addition, as with first meal periods, Humano argues this claim would not be certified as requiring individualized inquiries into both the merits and damages. Blakely Decl., ¶ 19. In light of these risks, Plaintiffs discounted the maximum exposure by 65% for risk of non-certification and an additional 75% for risk of losing on the merits or having exposure reduced to account for Humano's waiver arguments, to arrive at an estimated exposure of approximately \$24,624. *Id.*

Rest Period Violations: \$234,651

During the Class Period, Plaintiffs allege they were not authorized or permitted to take any off-duty rest period during their work shifts due to work demands imposed by Humano, and due to Humano's requirement that employees remain on premises during off-duty rest periods. Blakely Decl., ¶ 20. Based on Plaintiffs' expert's analysis of employee timekeeping records, there were approximately 214,293 shifts in excess of 3.5 hours worked by Class Members during the Class Period. *Id.* Therefore, Plaintiffs estimated Humano's maximum exposure for this claim at approximately \$3,754,413 (214,293 rest period eligible shifts * \$17.52 average premium). *Id.*

However, in response, Humano argues that it always maintained and enforced lawful rest

period policies and practices during the Class Period. Blakely Decl., ¶ 20. Humano further argues that Plaintiffs' rest period claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id.* These considerations are particularly present with respect to rest periods, Humano argues, as rest periods are not—and need not be—recorded. *Id.* In light of these defenses, Plaintiffs discounted the maximum amount that the class could potentially recover by 75% for risk of non-certification and an additional 75% for risk of being unsuccessful on the merits or failure to recover the full amount sought to arrive at a projected exposure of \$234,651. *Id.*

Unpaid Wages Due to Failure to Compensate for Pre-Shift Meetings: \$98,553

Plaintiffs allege they and other non-exempt employees were required to attend pre-shift meetings prior to traveling to their assigned warehouse/facility and clocking in for their shift. Blakely Decl., ¶ 21. Plaintiffs estimate that Humano failed to compensate each employee by 10 minutes per shift, and because employees generally worked shifts of at least eight (8) hours, Plaintiffs argue these underpaid wages should have been paid at an overtime rate of pay. *Id.* Accordingly, Plaintiffs calculate Humano's maximum exposure on this claim at approximately \$938,603 (10 minutes per shift * \$26.28 average overtime rate * 214,293 shifts). *Id.*

However, Humano argues that its timekeeping policies/practices complied with California law and that it has always properly compensated Class Members for all hours worked throughout the Class Period. Blakely Decl., ¶ 21. Humano maintains that Class Members did not work off-the-clock and that its policies specifically disavow such off-the-clock work. *Id.* Humano further argues that Plaintiffs' off-the-clock claim is not appropriate for class treatment. *Id.* Given these defenses, Plaintiff discounted this maximum amount by 65% for risk of non-certification and an additional 70% for a risk of being unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated realistic exposure of approximately \$98,553. *Id.*

Unpaid Overtime Wages Due to Regular Rate Miscalculations: \$58,320

Plaintiffs allege that non-exempt employees received non-discretionary production bonuses, and other remuneration, which were not included in the regular rate of pay when

1 calculating overtime wages. Blakely Decl., ¶ 22. Based on Plaintiffs’ review of the payroll
2 records, Plaintiffs estimate the total underpayment of overtime wages due to the alleged regular
3 rate miscalculations to be approximately \$166,628. *Id.*

4 However, Humano contends that many of the bonus payments at issue are discretionary,
5 as they are ostensibly “not guaranteed.” Blakely Decl., ¶ 22. Humano further argues that Class
6 Members received different types of bonuses throughout the Class Period, creating substantive
7 differences among the Class Members with respect to the incentives received, making class
8 certification unlikely. *Id.* In light of these defenses, Plaintiffs discounted the maximum exposure
9 by 30% for the risk of non-certification, and an additional 50% for risk of losing on the merits,
10 and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of
11 approximately \$58,320. *Id.*

12 Failure to Reimburse for Necessary Business Expenditures: \$17,446

13 Plaintiffs allege that Humano failed to reimburse Plaintiffs and other Class Members for
14 necessary business expenditures, including the use of their personal cellular phones for work
15 activities, as required under Labor Code § 2802. Blakely Decl., ¶ 23. Based on the analysis of
16 Humano’s records, Plaintiffs estimate that Class Members have worked a total of approximately
17 14,538 aggregate months during the Class Period. *Id.* Using a conservative estimate of \$10 per
18 month reimbursement for personal cellular phone use, Plaintiffs calculate Humano’s maximum
19 exposure for this claim at approximately \$145,380 (\$10 per month * 14,538 months). *Id.*

20 As noted above, Humano maintains that Class Members were not required to use their
21 personal cellular phones as part of their job. Blakely Decl., ¶ 23. Humano further argues that any
22 expenses incurred by Class Members were minimal, given the wide availability of low-cost
23 cellular phone plans. *Id.* Humano further argues that this claim would require individual inquiries
24 into whether Class Members actually used their personal cellular phones for work purposes, how
25 much expense they incurred, whether they submitted a request for reimbursement, and the
26 reasonableness of that expense, thus precluding class certification. *Id.* Based on these defenses,
27 Plaintiffs discounted the estimated maximum amount by 60% for risk of non-certification, and by
28 an additional 70% to account for risk of losing on the merits or failure to recover the maximal

amount sought, to arrive at an estimated exposure of approximately \$17,446. *Id.*

Waiting Time Penalties: \$951,486

Humano's records show approximately 6,034 Settlement Class members who separated their employment with Humano since December 21, 2017, and are therefore eligible for waiting time penalties. Blakely Decl., ¶ 24. Based on an hourly rate of \$17.52, Plaintiffs estimated the average waiting time penalty per former employee to be approximately \$4,205 ($\$17.52 * 8 \text{ hours per day} * 30 \text{ days}$). *Id.* Therefore, Plaintiffs calculated Humano's maximum exposure for potential waiting time penalties to be approximately \$25,372,970 ($6,034 \text{ former employees} * \$4,205 \text{ average penalty}$). *Id.*

Humano presented several defenses to this claim, most notably its assertion that because it possessed good-faith defenses to the underlying claims, any failure to pay wages was not "willful" as a matter of law. Blakely Decl., ¶ 24. Humano further asserts that Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of Plaintiffs' underlying wage claims, Plaintiffs would need to overcome Humano's defenses, both as to class certification and on the merits, as to their underlying claims. *Id.* To account for Humano's defenses, Plaintiffs discounted the maximum exposure by 75% for the risk of non-certification and an additional 85% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately \$951,486. *Id.*

Wage Statement Penalties: \$111,295

Plaintiffs allege that Humano is liable for wage statement penalties as a result of the unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 25. Those penalties are calculated as \$50 for each "initial" violation and \$100 for each "subsequent" violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Based on Plaintiffs' expert's review of Humano's records, Humano's potential wage statement liability was approximately \$2,225,900. *Id.*

In light of Humano's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements

1 always accurately reflected hours worked and amounts paid to employees, and the risks associated
2 with Plaintiffs' underlying claims discussed above, Plaintiffs discounted the maximum exposure
3 by 75% for risk of non-certification, and by an additional 80% for risk of being unsuccessful on
4 the merits, for an estimated realistic exposure of approximately \$111,295. Blakely Decl., ¶ 25.

5 PAGA Penalties: \$140,977

6 Plaintiffs estimated a maximum total PAGA exposure of approximately \$1,879,700
7 (18,797 pay periods * \$100 "initial" penalty). Blakely Decl., ¶ 26; *Amaral v. Cintas Corp. No. 2*,
8 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is
9 notified that it is violating a Labor Code provision). However, these penalties derive from the
10 underlying wage and hour violations discussed above, which Humano disputes vigorously.
11 Blakely Decl., ¶ 26; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D.
12 Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its
13 underlying claims). Humano also asserts that the Court would drastically reduce any award of
14 PAGA penalties as "confiscatory." Blakely Decl., ¶ 26; *see also Thurman v. Bayshore Transit*
15 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties);
16 *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL
17 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiffs
18 discounted the maximum figure by 70% for the risk of losing on the merits and/or not recovering
19 a PAGA penalty for each and every pay period, and an additional 75% to account for the
20 possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately
21 \$140,977. Blakely Decl., ¶ 26.

22 Using these estimated figures for each of the claims described above, Plaintiffs predicted
23 that the potential realistic recovery for the Settlement Class would be approximately \$1,722,568.
24 Blakely Decl., ¶ 27. The proposed Settlement of \$1,500,000.00 represents approximately 87% of
25 the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
26 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
27 which is consistent with what Plaintiffs' counsel believes could have been recovered had the case
28 proceeded through trial.

1 **e. The Experience and Views of Counsel**

2 “Parties represented by competent counsel are better positioned than courts to produce a
3 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
4 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented
5 by competent, experienced counsel who possess extensive experience prosecuting and defending
6 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
7 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines (“Haines
8 Decl.”), ¶¶ 2-8; Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-7; Declaration of Kristen M.
9 Agnew (“Agnew Decl.”) ¶¶ 6-12; Declaration of James R. Hawkins (“Hawkins Decl.”) ¶¶ 3-4.
10 Class Counsel, with the help of a retained expert, conducted an in-depth review of Humano’s
11 timekeeping and payroll records and drew on their extensive experience in similar cases to assess
12 the strengths and weaknesses of Plaintiffs’ case. The Settlement was also reached with the
13 assistance of an experienced and respected wage-and-hour class action mediator. Blakely Decl.,
14 ¶ 15. This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168
15 Cal.App.4th at 130.

16 **2. The Preliminary Approval Standard Is Met**

17 At this stage, the Court can grant preliminary approval of the Settlement and direct that
18 notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2)
19 appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no
20 obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on
21 Class Actions § 11:24-25 (4th Ed. 2013).

22 **a. The Settlement Is Within the Range of Possible Approval**

23 The proposed Settlement reflects approximately 87% of the estimated recovery the
24 Settlement Class could reasonably expect in light of the significant litigation risks and will
25 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
26 percentage of the liability exposure recovered in this case far exceeds percentages routinely
27 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
28 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential

damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Further, the average Settlement Award of approximately \$107.24 is in line with average payments achieved in other wage and hour class action settlements.³ Thus, Plaintiffs submit that the proposed settlement is within the range of possible approval, such that notice should be provided to the Class Members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As

³ See e.g., *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90...[T]he Court finds that the results achieved are good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

discussed above, Plaintiffs carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data, and conducted a detailed statistical analysis of the data with the help of a retained expert to arrive at their estimated class-wide damages figures. *See* Blakely Decl., ¶¶ 18-27. Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to Settlement Class members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment, settlement administration costs, and Plaintiffs’ Class Representative Enhancement Payments, are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs’ claims are typical of the claims of absent Settlement Class members; and (4) Plaintiffs and their counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is “ascertainable” where the members “may be readily identified without unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees who worked for Humano in California during the Class Period. *See* Settlement, § A.4. Therefore, Class Members can be identified from Humano’s personnel and employment records. Humano represents that the Settlement Class consists of approximately 7,227 current and former non-exempt employees. *See* Blakely Decl., ¶ 17. It would therefore be impracticable to bring all Class Members before the Court or for each

1 Class Member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies
2 numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10
3 beneficiaries of a trust sufficiently numerous).

4 **2. Common Issues of Law and Fact Predominate**

5 The focus in a certification dispute is not on the merits but rather on what types of
6 questions, “common or individual,” are likely to arise in the Action. *See Sav-On Drug Store, Inc.*
7 *v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are predicated on,
8 among other issues, Humano’s uniform meal and rest period policies/practices. These types of
9 claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network*
10 *Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

11 **3. The Claims of the Named Plaintiffs Are Typical**

12 The typicality requirement is satisfied where class representatives have claims that are
13 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
14 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
15 same goods as the putative class in a consumer class action). Here, Plaintiffs’ claims are typical
16 of those held by the Class Members. First, Humano employed Plaintiffs as non-exempt employees
17 during the Class Period, and Plaintiffs were subject to Humano’s wage and hour policies at issue
18 in this case. *See Emmens Decl., Hines Decl., and Thurman Decl.* Second, Plaintiffs were injured
19 by the same challenged policies/practices that allegedly injured the Settlement Class as a whole.
20 For example, Plaintiffs assert that they were deprived of all legally compliant meal and rest
21 periods. Plaintiffs further assert that they did not receive accurate and compliant wage statements
22 and did not receive all wages at the time of separation of employment. *See generally, Emmens*
23 *Decl., Hines Decl., and Thurman Decl.* Because Plaintiffs have suffered the same injuries as the
24 other members of the Settlement Class, the typicality requirement is satisfied.

25 **4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent the**
26 **Class**

27 The adequacy requirement examines conflicts of interest between named parties and the
28 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*

1 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the
2 Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class,
3 and Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v.*
4 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
5 indication that Class Counsel were not qualified and the named plaintiff had no interests
6 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
7 and hour class action litigation. *See* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8; Lee Decl., ¶¶ 4-
8 7; Agnew Decl., ¶¶ 6-12; Hawkins Decl., ¶¶ 3-4.

9 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

10 This Court should order distribution to the Settlement Class of the proposed Class Notice
11 by U.S. Mail, in English and Spanish, postage prepaid, using the last known mailing address
12 information provided by Humano. *See* Settlement, §§ C.13; C.15. This manner of giving notice
13 is the “best notice practicable” under the circumstances because it provides “individual notice to
14 all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*
15 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by
16 Pheonix Class Action Administration Solutions (“Pheonix”), an experienced class action
17 settlement administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and
18 attached exhibits. Class Members’ addresses will be ascertainable through Humano’s personnel
19 and payroll records, which Humano will provide to Pheonix within fifteen (15) business days of
20 preliminary approval of the Settlement. *See* Settlement, § C.12. Prior to the mailing, Phoenix will
21 run the names of all Class Members through the National Change of Address database to update
22 addresses and mail the Class Notice to all Class Members. *Id.*, at §§ C.13 - C.15. To the extent
23 that any notices are returned, Pheonix will perform a “skip trace” to track any Class Member’s
24 current mailing address. *Id.*, at § C.16.

25 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
26 because it advises Class Members of the nature of the claims, basic contentions and denials of the
27 parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the
28 Settlement and the procedures by which to do so, explains the recovery formula and expected

1 recovery amount for each Class Member, and advises them that they will be bound by the terms
2 of the Settlement if they do not opt-out. *See* Blakely Decl., Exh. A to Exh. 1. The proposed Class
3 Notice will also notify Class Members of the final approval hearing date and provides the
4 Settlement Class contact information for Class Counsel and advises Class Members that they may
5 enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies
6 California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class
7 Members.

8 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

9 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
10 appropriately scheduled to follow the deadline by which Class Members must file objections to
11 the Settlement or opt-out. *See* California Rule of Court 3.769.

12 **V. CONCLUSION**

13 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
14 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
15 Proposed Order submitted concurrently herewith.

16
17 Dated: June 26, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

18
19 By:



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21 Sean M. Blakely
22 Attorneys for Plaintiffs
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