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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

ANTHONY BATISTA, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 et seq.,

 Plaintiffs,

 v.

HUMANSIZE CORPORATION, a New
York corporation, and DOES 1 through 10,
inclusive,

 Defendants.

Case No. 22CV403325

ASSIGNED FOR ALL PURPOSES TO:
HON. THEODORE C. ZAYNER; DEPT. 19

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT AND
ENTERING JUDGMENT**

Date: May 17, 2023
Time: 1:30 PM
Dept.: 19

Complaint Filed: September 21, 2022
FAC Filed: January 20, 2023

[PROPOSED] ORDER AND JUDGMENT

 This matter came on for hearing on May 17, 2023 at 1:30 p.m. in Dept. 19 of the above-
captioned Court on the unopposed motion of plaintiff Anthony Batista (“Plaintiff”) for approval of
a settlement agreement pursuant to the California Labor Code Private Attorneys General Act,
codified as Labor Code § 2698, *et seq.* (“PAGA”) (the “Settlement”).

 Having received and considered the Settlement Agreement, the supporting papers filed by
Plaintiff, and the evidence and arguments received by the Court, the Court grants approval of the

1 Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING**
2 **DETERMINATIONS:**

3 1. Except as otherwise defined in this Order and Judgment (“Order”), all capitalized
4 terms have the same meaning as defined in the Settlement Agreement that is attached as **Exhibit 1**
5 to this Order.

6 2. The California Labor and Workforce Development Agency (“LWDA”) has been
7 provided notice of the Settlement in accordance with PAGA, California Labor Code
8 § 2699(l)(2), (l)(4). In particular, on the date Plaintiff filed his motion seeking approval of the
9 Settlement with the Court, he submitted to the LWDA the Settlement and a copy of his approval
10 motion papers. Plaintiff’s submission of the Settlement and his approval motion to the LWDA
11 complied with the notice requirements of PAGA.

12 3. The Court has jurisdiction over the subject matter of this litigation, over all
13 Aggrieved Employees, and over those persons undertaking affirmative obligations under the
14 Settlement.

15 4. The Settlement is approved under Labor Code § 2699(l)(2).

16 5. The PAGA Settlement Notice to Aggrieved Employees, attached as **Exhibit 2** to the
17 Settlement, fairly and adequately describes the Action, the approved Settlement, and is the best
18 notice practicable under the circumstances.

19 6. The Court finds that each Aggrieved Employee, in accordance with the Settlement,
20 releases all Released Claims against the Released Parties, as detailed in paragraph 29(a) of the
21 Settlement.

22 7. The Gross Settlement Amount, PAGA Payment Fund, and the methodology used to
23 calculate the LWDA Payment and PAGA Aggrieved Employee Payment (which is comprised of
24 the Individual PAGA Payments) in accordance with the Settlement, is approved.

25 8. The Court approves the Enhancement Award to Plaintiff in the amount of \$5,000.00.
26 The Court authorizes the Settlement Administrator to make this payment, in accordance with the
27 terms of the Settlement Agreement.

28 9. The Court approves Phoenix Settlement Administrators to act as the Settlement

1 Administrator. The Court awards the Settlement Administrator in this Action its actual fees and
2 costs in accordance with the terms of the Settlement Agreement, not to exceed \$3,000.00.

3 10. The Court approves and appoints GAINES & GAINES, APLC as PAGA Counsel.

4 11. The Court awards PAGA Counsel attorneys' fees in the amount of one-third of the
5 Gross Settlement Amount and attorneys' cost of \$1,852.70, which the Court finds to be fair and
6 reasonable. The Court authorizes the Settlement Administrator to make these payments, in
7 accordance with the terms of the Settlement Agreement.

8 12. The Court authorizes the Settlement Administrator to calculate the PAGA Payment
9 Fund, inclusive of the LWDA Payment and PAGA Aggrieved Employee Payment (which is
10 comprised of the Individual PAGA Payments), in accordance with the terms of the Settlement
11 Agreement.

12 13. The Court finds that, pursuant to PAGA, the LWDA Payment of \$42,610.47 as its
13 75% share of the settlement of civil penalties is fair and reasonable. The Court authorizes the
14 Settlement Administrator to pay the LWDA Payment, in accordance with the terms of the Settlement
15 Agreement.

16 14. The Court finds that, pursuant to PAGA, the PAGA Aggrieved Employee Payment
17 of \$14,203.49 as the Aggrieved Employees' 25% share of the settlement of civil penalties is fair and
18 reasonable. The Court authorizes the Settlement Administrator to pay the PAGA Aggrieved
19 Employee Payment, in accordance with the terms of the Settlement Agreement.

20 15. Checks for Individual PAGA Payments sent to Aggrieved Employees shall be valid
21 for 180 days after issuance. Funds remaining from any checks for Individual PAGA Payments
22 uncashed after 180 days will be dispersed to the California State Controller's Unclaimed Property
23 fund in the name(s) of the employee(s) who did not cash their checks, in accordance with the terms
24 of the Settlement Agreement.

25 ///

26 ///

27 ///

28 ///

1 16. Upon completion of the Settlement, the Settlement Administrator will provide
2 written certification of the completion of payments in accordance with the terms of the Settlement
3 Agreement and this Order, to counsel for the Parties, which shall be filed with the Court on or before
4 _____.

5 17. Without affecting the finality of this order and entry of judgment, the Court retains
6 exclusive and continuing jurisdiction over the Action for purposes of supervising, administering,
7 implementing, and enforcing this Order and the Settlement.

8 18. Nothing in this Order or the Settlement shall be construed as an admission or
9 concession by any party. The Settlement and this resulting Order and entry of judgment simply
10 represent a compromise of disputed allegations.

11 19. The Court enters final judgment in accordance with the terms of the Settlement
12 Agreement and this Order.

13 20. Plaintiff is directed to submit a copy of this Order and entry of judgment to the
14 LWDA within 10 days of the date of this Order and entry of judgment.

15 **IT IS SO ORDERED:**

16 DATED: _____, 2023

Honorable Theodore C. Zayner
Judge of the Superior Court

EXHIBIT 1

1 RUTAN & TUCKER, LLP
Maria Z. Stearns (State Bar No. 230649)
2 mstearns@rutan.com
Kimberly A. Nayagam (State Bar No. 301058)
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6 Attorneys for Defendant
HUMANSIZE CORPORATION

7 GAINES & GAINES, APLC
8 Daniel F. Gaines (State Bar No. 251488)
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11 4550 E. Thousand Oaks Boulevard, Suite 100
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12 Telephone: 818-703-8985
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13 Attorneys for Plaintiff
14 ANTHONY BATISTA

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SANTA CLARA
17

18 ANTHONY BATISTA, on behalf of himself
and all "aggrieved employees" pursuant to
19 Labor Code § 2698 et seq.,

20 Plaintiffs,

21 v.

22 HUMANSIZE CORPORATION, a New
York corporation, and DOES 1 through 10,
23 inclusive,

24 Defendants.

Case No. 22CV403325

ASSIGNED FOR ALL PURPOSES TO:
HON. PATRICIA M. LUCAS; DEPT. 3

**STIPULATION AND AGREEMENT FOR
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Date Action Filed: September 21, 2022
Trial Date: None Set

25
26 This Stipulation and Agreement for PAGA Representative Action Settlement is made and
27 entered into by and between plaintiff Anthony Batista ("**Plaintiff**") on the one hand, and defendant
28 Humansize Corporation ("**Defendant**"), on the other hand (collectively, the "**Parties**") and is made

1 in compromise of disputed claims.

2 **DEFINITIONS**

3 1. **"Action"** means and refers to *Anthony Batista v. Humanscale Corporation*, Case No.
4 22CV403325.

5 2. **"Aggrieved Employees"** means all employees who were employed by defendant
6 Humanscale Corporation as a non-exempt employee in California during the PAGA Period.

7 3. The terms **"Agreement," "Settlement,"** and **"Settlement Agreement"** mean this
8 Stipulation and Agreement for PAGA Representative Action Settlement, which the Parties
9 acknowledge sets forth all material terms and conditions of the Settlement between them, and which
10 is subject to Court approval pursuant to Section 2699(1)(2) of the California Labor Code Private
11 Attorneys General Act of 2004, Labor Code section 2698, *et seq.*

12 4. **"Court"** means the California Superior Court, County of Santa Clara.

13 5. **"Defendant"** means and refers to Humanscale Corporation.

14 6. **"Effective Date"** of this Agreement shall be the later of (i) the 61st day after service
15 of notice of entry of the Final Order and Judgment, if no appeal, review, or writ has been filed; or
16 (ii) if an appeal, review, or writ is sought from the Final Order and Judgment, the day after the Final
17 Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final
18 Order and Judgment are no longer subject to further judicial review. The Effective Date is
19 conditioned upon all of the following occurring: (a) this Agreement has been signed by the Parties,
20 PAGA Counsel, and Defendant's counsel; and (b) the Court has entered the Final Order and
21 Judgment.

22 7. **"Enhancement Award"** means the amount the Court authorizes to be paid to
23 Plaintiff in addition to his Individual PAGA Payment, in recognition of his efforts and work in
24 prosecution of the Action, up to \$5,000.00.

25 8. **"Final Order and Judgment"** means the proposed order granting approval of this
26 Settlement and entering Judgment, in the form substantially similar to that attached to this
27 Agreement as Exhibit 1.

28 9. **"Gross Settlement Amount"** means a maximum total of \$100,000.00, which

1 includes all payments owing as a result of this Agreement and includes: the PAGA Payment Fund;
2 Settlement Administration Costs; the Enhancement Award; and PAGA Counsel Attorneys' Fees
3 and Costs as awarded by the Court.

4 10. **"LWDA Payment"** means a payment to the California Labor and Workforce
5 Development Agency in an amount equal to 75% of the PAGA Payment Fund.

6 11. **"PAGA Payment Fund"** is the Gross Settlement Amount less all of the following:
7 PAGA Counsel's Attorneys' Fees and Costs, the Enhancement Award, and Settlement
8 Administration Costs. The PAGA Payment Fund is paid from the Gross Settlement Amount and is
9 comprised of the LWDA Payment and the PAGA Aggrieved Employee Payment.

10 12. **"PAGA Aggrieved Employee Payment"** means an amount equal to 25% of the
11 PAGA Payment Fund, to be distributed to the Aggrieved Employees.

12 13. **"PAGA Claim"** means the claim for civil penalties under the California Labor Code
13 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, "PAGA") alleged in
14 the Action.

15 14. **"PAGA Counsel"** means GAINES & GAINES, APLC.

16 15. **"PAGA Period"** means July 18, 2021 through January 31, 2023.

17 16. **"Plaintiff"** means Plaintiff Anthony Batista.

18 17. **"Released Claims"** means all PAGA claims arising during the PAGA Period that
19 were or could have been asserted against Defendant in the Action on behalf of the Aggrieved
20 Employees based on or arising from the facts or claims alleged in the Action and/or in Plaintiff's
21 LWDA Notice. Without limiting the foregoing, and in addition to the foregoing, the release includes
22 all claims and civil penalties under California Labor Code Sections 2699 *et seq.*, attorneys' fees and
23 costs, and interest arising out of the claims at issue, for Defendant's alleged failure to: provide meal
24 periods; provide rest breaks; pay and properly calculate meal period and rest break premiums; pay
25 minimum wages; pay and properly calculate overtime wages; provide sick time; properly calculate
26 the regular rate of pay including with respect to overtime, meal period and rest break premiums, and
27 sick time; furnish accurate itemized wage statements; properly calculate and pay wages for all hours
28 worked; timely pay all wages due during employment and upon separation; and maintain accurate

1 payroll records, pursuant to the corresponding alleged violations of California Labor Code sections
2 including, but not limited to, 201, 202, 203, 204, 226, 226.3, 226.7, 246, 248.2, 248.5, 248.6, 510,
3 512, 558, 1174, 1174.5, 1194 *et seq.*, 1197, 1197.1, 2698-2699, 2699.3, 2699.5, and the applicable
4 IWC Wage Order provisions.

5 18. **“Released Parties”** means Defendant and its respective current and former parents,
6 predecessors or successors, holding companies, affiliated companies or entities, owners, investors,
7 shareholders, members, partners, officers, directors, managers, employees, agents, attorneys,
8 insurers, assigns, and any individual or entity which could be jointly liable with Defendant.

9 19. **“Settlement Administrator”** means Phoenix Settlement Administrators or any other
10 neutral third-party administrator chosen by the Parties, subject to approval by the Court.

11 **RECITALS**

12 20. On July 13, 2022, Plaintiff submitted a PAGA notice to the LWDA (“LWDA
13 Notice”).

14 21. On September 21, 2022, Plaintiff filed a Complaint against Defendant in the Action
15 asserting claims under the California Private Attorneys General Act.

16 22. After exchanging extensive data and information, the Parties entered into direct
17 settlement negotiations. The negotiations were rigorous and at arm’s length. As a result of the
18 negotiations, the Settlement was reached. The Parties believe the Settlement is fair, reasonable, and
19 adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement
20 constitutes a compromise of the Aggrieved Employees’ PAGA Claim, and that it is the desire and
21 intention of the Parties to effect a final and complete resolution of the Released Claims.

22 23. Plaintiff will file a First Amended Complaint adding claims related to those in the
23 LWDA Notice, including claims for violation of the following Labor Code provisions: 204, 246,
24 248.2, 248.5, 248.6, 1197, and 1197.1.

25 24. The Parties enter into this Settlement Agreement on a conditional basis. In the event
26 the Court does not enter a Final Order and Judgment, substantially in the form attached as **Exhibit 1**
27 to this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and
28 will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose

1 whatsoever.

2 25. Defendant denies all of the claims in the Action, and does not waive, but rather
3 expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural,
4 and factual grounds should this Settlement Agreement not become final. This Settlement
5 Agreement reflects a compromise reached to end litigation in the Action.

6 26. The Parties stipulate and agree to the following terms of this Settlement Agreement
7 with the intent that this Settlement Agreement finally disposes of the Action, with prejudice.

8 **TERMS AND CONDITIONS**

9 27. **Settlement Payments and Calculation of Claims.** The following table summarizes
10 the allocation of the Gross Settlement Amount:

11 **Gross Settlement Amount of \$100,000.00 Is Broken Down As Follows:**

- | | | |
|----|---|---|
| 12 | • | PAGA Counsel Attorneys' Fees not to exceed \$33,333.33 |
| 13 | • | PAGA Counsel Attorneys' Costs not to exceed \$5,000.00 |
| 14 | • | Settlement Administration Costs, not to exceed \$3,000.00 |
| 15 | • | Enhancement Award, not to exceed \$5,000.00 |
| 16 | • | \$53,666.67 for the PAGA Payment Fund |
| 17 | ○ | \$40,250.00 for the LWDA Payment |
| 18 | ○ | \$13,416.67 for the PAGA Aggrieved Employee Payment |

19 28. Subject to final Court approval and the conditions specified in this Agreement, and
20 in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees
21 to pay the Gross Settlement Amount of \$100,000.00. The Gross Settlement Amount includes
22 payments to be made for PAGA Counsel's Attorneys' Fees and Costs, the PAGA Payment Fund,
23 Settlement Administration Costs, and the Enhancement Award. The Parties agree, subject to Court
24 approval, that the Gross Settlement Amount shall be apportioned as follows:

25 a. **Settlement Administration Fees And Costs:** The fees and costs associated
26 with settlement administration (*e.g.*, preparing and mailing payments to the Aggrieved Employees,
27 tax documentation, etc.) (the "**Settlement Administration Costs**") will be paid from the Gross
28 Settlement Amount and will not exceed \$3,000.00.

b. **Enhancement Award:** The Parties agree that, subject to the Court's review
and approval, an award of up to \$5,000.00 will be paid to Plaintiff as the Enhancement Award for
his services and for assuming the risks associated with this litigation, for the time spent in assisting

1 PAGA Counsel to litigate this Action, and as consideration for providing a general release.
2 Defendant will not oppose such application. The Enhancement Award is included in, and shall be
3 paid from, the Gross Settlement Amount. Plaintiff will be issued an IRS Form 1099 for the
4 Enhancement Award approved by the Court pursuant to this Paragraph. The Enhancement Award
5 shall be in addition to any Individual PAGA Payment that Plaintiff is entitled to pursuant to this
6 Agreement. If the Court awards less than the amount requested, any amount not awarded will be
7 part of the PAGA Payment Fund and shall not be a reason to invalidate/terminate this Agreement.

8 c. PAGA Counsel's Attorneys' Fees and Costs: The Parties agree that, subject
9 to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount
10 an amount that is up to 33.33% of the Gross Settlement Amount for attorneys' fees (\$33,333.33),
11 plus actual litigation costs not to exceed \$5,000.00. Defendant will not oppose such application. If
12 the Court awards less than the amount requested, any amount not awarded will be part of the PAGA
13 Payment Fund and shall not be a reason to invalidate/terminate this Agreement.

14 d. PAGA Payment Fund: After deducting PAGA Counsel's Attorneys' Fees
15 and Costs, Settlement Administration Costs, and the Enhancement Award from the Gross Settlement
16 Amount, the remaining amount will comprise the PAGA Payment Fund. The PAGA Payment Fund
17 is comprised of the LWDA Payment and the PAGA Aggrieved Employee Payment. The PAGA
18 Payment Fund of approximately \$50,166.67 shall be allocated 75% to the LWDA Payment, which
19 is estimated to total \$37,625.00 (\$50,166.67 x 75%). The remaining 25% of the PAGA Payment
20 Fund, estimated to total \$12,541.67 (\$50,166.67 x 25%), shall be allocated to the PAGA Aggrieved
21 Employee Payment to be paid to the Aggrieved Employees on a *pro rata* basis based on pay periods
22 worked in California during the PAGA Period, as set forth below, which shall be referred to as the
23 Aggrieved Employee's "**Individual PAGA Payment.**"

24 Example:

25 Aggrieved Employee A was actively employed during the PAGA Period in California for
26 25 pay periods. All Aggrieved Employees were actively employed a combined total of 3,000 pay
27 periods in California during the PAGA Period. Aggrieved Employee A's Individual PAGA
28 Payment would be calculated as follows:

- 1 ➤ 25 pay periods for Aggrieved Employee A ÷ 3,000 total pay periods for all Aggrieved
2 Employees = 0.83%.
- 3 ➤ Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that
4 is 0.83% of the PAGA Aggrieved Employee Payment.¹
- 5 e. Taxes and Reporting: The Individual PAGA Payments will be treated as non-
6 wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS
7 Form 1099, if required by law.

8 29. **Release by Aggrieved Employees and State of California.**

9 a. Terms of Release. Subject to the occurrence of the Effective Date and
10 Defendant's full payment of the Gross Settlement Amount, in exchange for the consideration recited
11 in this Settlement Agreement, Plaintiff, as a representative for the State of California and all
12 Aggrieved Employees, and on behalf of their current, former, and future heirs, executors,
13 administrators, attorneys, agents, and assigns, will forever completely release and discharge the
14 Released Parties of any and all Released Claims. The Aggrieved Employees and the State of
15 California are deemed by operation of the Final Order and Judgment to have agreed not to sue or
16 otherwise make a claim against any of the Released Parties for any Released Claims.

17 b. No Claims Based On Stipulation and Agreement. No Aggrieved Employee
18 will have any claim against any of the Released Parties, Defendant's counsel, Plaintiff, or PAGA
19 Counsel, based on errors in administering claims or performing the mailing and skip-tracing
20 requirements of the Settlement Administrator under this Agreement.

21 30. **Full Release By Plaintiff.** Subject to the occurrence of the Effective Date and
22 Defendant's full payment of the Gross Settlement Amount, Plaintiff fully releases and discharges
23 Defendant and the other Released Parties from the Released Claims and any other claims that
24 Plaintiff now has or claims to have, or has ever had or claimed to have, against the Released Parties.
25 Without limiting the generality of the foregoing, Plaintiff specifically and expressly releases to the
26 maximum extent permitted by law any claims against Defendant and the Released Parties, arising
27

28 ¹ The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded down.

1 out of or relating to Plaintiff's employment or the termination of his employment with Defendant
2 and any other Released Party. This general release by Plaintiff includes a waiver of Plaintiff's rights
3 under Civil Code Section 1542, which provides: "A general release does not extend to claims that
4 the creditor or releasing party does not know or suspect to exist in his or her favor at the time of
5 executing the release and that, if known by him or her, would have materially affected his or her
6 settlement with the debtor or released party."

7 31. **Request For Final Order and Judgment.** Upon execution of this Agreement,
8 PAGA Counsel shall promptly file an unopposed motion with the Court requesting approval of this
9 Settlement, and shall submit concurrently therewith a proposed Final Order and Judgment, in a form
10 substantially similar to Exhibit 1. Plaintiff shall not file the motion or application requesting
11 approval or final judgment with the Court until Defendant has been given no fewer than five (5)
12 business days to review and approve it, which approval will not be unreasonably withheld. Plaintiff
13 agrees to comply with all requirements to give notice of the Settlement to the LWDA, as set forth
14 in California Labor Code §2699(l).

15 32. **Settlement Funding.**

16 a. Upon the Court entering the Final Order and Judgment, and within 7 days
17 after the Effective Date, the Settlement Administrator shall send Defendant's counsel electronic
18 wiring instructions to fund the Gross Settlement Amount.

19 b. Within 21 days after the Effective Date, Defendant shall wire to the
20 Settlement Administrator the Gross Settlement Amount (the "**Funding Date**").

21 c. Within 45 days after the Effective Date, the Settlement Administrator shall
22 issue all payments required by this Agreement (the "**Payment Date**").

23 33. **PAGA List.** Within 15 days after the Effective Date, Defendant will provide a
24 PAGA List to the Settlement Administrator which will identify all Aggrieved Employees by name,
25 social security number, and last known home address ("**PAGA List**"). The PAGA List will also
26 contain the number of pay periods credited to each Aggrieved Employee during the PAGA Period
27 (i.e., pay periods employed in California).

28 34. **List Of Individual Settlement Amounts.** Within 15 days after the Settlement

1 Administrator receives the PAGA List, the Settlement Administrator will provide to PAGA Counsel
2 and Defendant's counsel a Proceeds List reflecting the Individual PAGA Payment for each
3 Aggrieved Employee ("**Proceeds List**"). The Proceeds List provided to PAGA Counsel will not
4 include the Aggrieved Employees' names, social security numbers or contact information but will
5 include pay period information.

6 35. **PAGA Payments to Aggrieved Employees.**

7 a. On the Payment Date, the Settlement Administrator will mail to each
8 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
9 Notice attached as Exhibit 2 to this Agreement and (b) their Individual PAGA Payment (collectively,
10 the "**PAGA Packet**").

11 b. Prior to mailing the PAGA Packet, the Settlement Administrator will update
12 all addresses using the National Change of Address System (NCOA). In the event that a PAGA
13 Packet is returned to the Settlement Administrator with a forwarding address, the Settlement
14 Administrator will re-send the PAGA Packet to the forwarding address identified. If no forwarding
15 address is provided, then the Settlement Administrator will promptly conduct a "standard search,"
16 sometimes called, "Skip Trace" or "Credit Header" searches, to locate a better address. If a better
17 address is found, the Settlement Administrator will promptly re-send the PAGA Packet. If a better
18 address is not found or the PAGA Packet is ultimately returned without a forwarding address, neither
19 the Settlement Administrator, Defendant, Defendant's counsel, or PAGA Counsel shall be required
20 to take further action.

21 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
22 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's
23 check is not cashed within that period, the settlement payment check will be voided and a stop-
24 payment will be issued. Neither Defendant, Defendant's counsel, Plaintiff, nor PAGA Counsel will
25 have any liability for lost or stolen settlement payment checks, forged signatures on settlement
26 payment checks, unauthorized negotiation of settlement payment checks, or failure to timely cash a
27 settlement payment check within the 180 day period.

28 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any

1 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
2 distributed to the California State Controller's Unclaimed Property Fund in the name(s) of the
3 employee(s) who did not claim the funds.

4 36. **Payments Of Attorneys' Fees And Costs, the LWDA Payment, the Settlement**
5 **Administration Costs, and the Enhancement Award.**

6 a. No later than the Payment Date, the Settlement Administrator will pay from
7 the Gross Settlement Amount to PAGA Counsel their Court-approved Attorneys' Fees and Costs.
8 Such payment is conditional upon PAGA Counsel providing the Settlement Administrator with
9 completed Form W-9s.

10 b. No later than the Payment Date, the Settlement Administrator will pay the
11 LWDA Payment from the PAGA Payment Fund by issuing a check in the approximate amount of
12 \$36,875.00 (75% of the PAGA Payment Fund) payable to "California Labor and Workforce
13 Development Agency."

14 c. No later than the Payment Date, the Settlement Administrator will pay from
15 the Gross Settlement Amount to the Settlement Administrator their Court-approved Settlement
16 Administration Costs.

17 d. No later than the Payment Date, the Settlement Administrator will pay from
18 the Gross Settlement Amount to the Plaintiff the Enhancement Award by sending the same to PAGA
19 Counsel, who will provide the Enhancement Award to Plaintiff.

20 37. **Deadlines.** If any deadline specified in this Agreement falls on a Saturday, Sunday,
21 or Court holiday, the deadline will be automatically extended to the next regular business day.
22 Unless specified otherwise, all references to "days" shall mean calendar days.

23 38. **Enforcement and Continuing Jurisdiction of the Court.** Pursuant to the Parties'
24 agreement, this Settlement Agreement will be approved by the Court and will be enforceable by the
25 Court pursuant to California Code of Civil Procedure section 664.6 and as otherwise allowed by
26 law. Even after the entry of the Final Order and Judgment, this Court will have and retain continuing
27 jurisdiction over the Action and over all Parties and the Aggrieved Employees, to the fullest extent
28 necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement

1 and all matters provided for in it, and to interpret it.

2 39. **Mutual Full Cooperation.** The Parties will fully cooperate with each other to
3 accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such
4 documents and taking such other action as may be reasonably necessary or convenient to implement
5 it.

6 40. **Non-Admission Of Liability.** The Parties enter into this Agreement to resolve the
7 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
8 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that
9 it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
10 pursuant to any statute or any other applicable laws, regulations or legal requirements; violated or
11 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
12 conduct with respect to the Action. Neither this Agreement, nor any of its terms or provisions, nor
13 any of the negotiations connected with it, shall be construed as an admission or concession by
14 Defendant of any such violations or failures to comply with any applicable law. Except as necessary
15 in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions
16 shall not be offered or received as evidence in any action or proceeding to establish any liability or
17 admission on the part of Defendant or to establish the existence of any condition constituting a
18 violation of, or a non-compliance with, federal, state, local or other applicable law.

19 41. **Effective Date Of Defendant's Obligations Under This Agreement.** Defendant's
20 obligations under this Settlement Agreement will become final and effective only upon the
21 occurrence of the Effective Date. In the event that any of the conditions specified in this Settlement
22 Agreement are not satisfied, or in the event that this Settlement does not obtain approval of the Court
23 for any reason, all matters covered by this Agreement will be null and void, and the Parties will be
24 returned to the status quo prior to entering this Agreement with respect to the Action, as if the Parties
25 had never entered into this Agreement. In such event, neither this Agreement, nor any negotiations
26 leading to this Settlement, nor any court orders and proceedings relating to this Agreement will be
27 used or construed by or against any Party as a determination, admission, or concession of any issue
28 of law or fact in the litigation. The Parties do not waive, and instead expressly reserve, their

1 respective rights regarding the prosecution and defense of the Action, including all available
2 defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never
3 existed.

4 42. **Nullification.** If: (1) the Court should for any reason fail to enter the Final Order
5 and Judgment without material modification; or (2) the Court's Final Order and Judgment is
6 reversed or modified as to any material term as defined above, or declared or rendered void as to
7 any material term as defined above, then (a) the Settlement Agreement shall become null and void;
8 and (b) the Parties will revert to their respective positions immediately prior to reaching the
9 settlement.

10 43. **Invalidation.** Invalidation of any material term of this Settlement Agreement will
11 invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the
12 remaining provisions will remain in full force and effect.

13 44. **No Publicity.** Plaintiff and his counsel agree that the terms of this Settlement
14 Agreement (including, but not limited to, the Gross Settlement Amount), the negotiations leading
15 to the execution of this Settlement Agreement, and the Settlement Agreement itself, shall not be
16 discussed with or publicized or promoted to the media (including, without limitation, legal
17 periodicals and publications such as "Jury Verdicts," or disclosure of the Settlement Agreement on
18 any website of Plaintiff's counsel), or the public at large, without the advance written consent of
19 Defendant. The Parties intend that this Paragraph shall prohibit Plaintiff and/or his counsel from
20 discussing, answering questions about, promoting or publicizing the Settlement Agreement, its
21 terms, or the negotiations leading to the Settlement Agreement with anyone other than the Court or
22 those individuals necessary to effectuate the terms of the Agreement (which include Plaintiff and
23 the Aggrieved Employees, the Court, and the LWDA, on which no publicity or communication
24 restrictions will be placed). Notwithstanding the foregoing, Plaintiff, and his counsel: (1) may tell
25 the public in general only that certain claims "have been resolved by the Parties," and (2) may
26 disclose the terms of the Settlement Agreement (a) in appropriate filings with the Court in the
27 Action; (b) where required by law (e.g., income tax returns); and (c) to accountants or other tax
28 professionals for the purpose of preparing tax returns.

1 45. **Entire Agreement.** This Settlement Agreement constitutes the entire integrated
2 agreement between the Parties relating to the Action, and no oral representations, warranties, or
3 inducements have been made to any party concerning this Settlement Agreement other than the
4 representations, warranties, and covenants contained and memorialized in this Settlement
5 Agreement.

6 46. **Authorization To Act.** PAGA Counsel warrants and represents that they are
7 authorized by Plaintiff, and counsel of record for Defendant warrants that they are authorized by
8 Defendant, to take all appropriate action required or permitted to be taken by such Parties pursuant
9 to this Settlement Agreement to effectuate its terms, and to execute any other documents required
10 to effectuate the terms of this Settlement Agreement, except for any documents, including but not
11 limited to this Settlement Agreement, that are required to be executed by the Parties.

12 47. **Modification Only In Writing.** This Settlement Agreement may be amended or
13 modified only by a written instrument signed by all Parties or their successors in interest.

14 48. **Binding On Successors.** This Settlement Agreement is binding upon and will inure
15 to the benefit of the Parties to this Agreement, as well as their respective attorneys, past, present,
16 and future predecessors, successors, shareholders, officers, directors, employees, agents, trustees,
17 representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent
18 corporations, subsidiaries, and related or affiliated entities.

19 49. **No Prior Assignments.** Plaintiff is deemed by operation of the Final Order and
20 Judgment to represent, covenant, and warrant that he has not directly or indirectly assigned,
21 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
22 portion of any liability, claim, demand, cause of action, or rights released and discharged by this
23 Agreement.

24 50. **Governing Law.** All terms of this Settlement Agreement will be governed by and
25 interpreted according to the laws of the State of California, without giving effect to conflicts of laws
26 principles.

27 51. **Counterparts.** This Settlement Agreement may be executed in one or more
28 counterparts. All executed counterparts and each of them will be deemed to be one and the same

1 instrument. Counsel for the Parties will exchange among themselves signed counterparts.

2 52. **Headings For Convenience Only.** The descriptive headings of any paragraphs or
3 sections of this Settlement Agreement are inserted for convenience of reference only and do not
4 constitute a part of this Settlement Agreement.

5 53. **Construction Of This Agreement.** The Parties agree that the terms and conditions
6 of this Settlement Agreement are the result of arms-length negotiations between the Parties and that
7 this Settlement Agreement will not be construed in favor of or against any Party by reason of the
8 extent to which any Party, or his, her, or its counsel participated in the drafting of this Agreement.
9 This Settlement Agreement constitutes the entire agreement between the Parties. Except as
10 expressly provided in this Agreement, this Settlement Agreement has not been executed in reliance
11 upon any other oral or written representations or terms and no such extrinsic oral or written
12 representations or terms will modify, vary or contradict the terms of this Settlement Agreement. In
13 entering this Settlement Agreement, the Parties explicitly recognize California Civil Code section
14 1625 and California Code of Civil Procedure section 1856(a), which provide that a written
15 agreement is to be construed according to its terms and may not be varied or contradicted by
16 extrinsic evidence. Plaintiff and Defendant had available to them the advice and assistance of
17 independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity in this
18 Settlement Agreement should be construed against the other.

19 54. **Corporate Signatories.** Any person executing this Settlement Agreement or any
20 related document on behalf of a corporate signatory warrants and promises for the benefit of all
21 Parties that such person has been duly authorized by such corporation to execute this Settlement
22 Agreement or any related document.

23 55. **Representation By Counsel.** All of the Parties to this Settlement Agreement
24 acknowledge that they have been represented by counsel throughout all negotiations which preceded
25 the execution of this Settlement Agreement and that this Agreement has been executed with the
26 consent and advice of counsel.

27 56. **Representation and Warranties.** PAGA Counsel and Plaintiff represent and
28 warrant to Defendant that they are not aware of any attorneys beyond those named as PAGA Counsel

1 who have claims for fees arising out of the Action or the Settlement contemplated by this
2 Agreement. To the extent those representations are false, PAGA Counsel and Plaintiff jointly and
3 severally agree to fully indemnify Defendant for any damages it incurs as a result of those claims,
4 including, but not limited to, all attorneys' fees and costs.

5 57. Attorneys' Fees And Costs. Except as otherwise provided in this Agreement, the
6 Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred
7 by them or arising out of the Action and will not seek reimbursement thereof from any Party to this
8 Settlement Agreement. In the event of a proven breach of this Agreement, the breaching party will
9 be required to pay the prevailing Party's reasonable attorneys' fees and costs incurred in enforcing
10 this Agreement.

11 58. Representations Regarding Number of Aggrieved Employees and Pay Periods.
12 Defendant represents and warrants that there are no more than 58 Aggrieved Employees who
13 worked no more than 1,676 pay periods in California during the PAGA Period through August 28,
14 2022. If the final Aggrieved Employees or pay periods during the PAGA Period through August
15 28, 2022 exceeds these representations by more than 10% (i.e. 64 or more Aggrieved Employees
16 and/or 1,844 or more pay periods), the Gross Settlement Amount will increase in proportion to the
17 increase in excess of the 10% grace, with the larger increase (pay periods v Aggrieved Employees)
18 controlling.

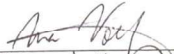
19 IT IS SO AGREED.

20 Dated: 02 / 03 / 2023, 2023


Anthony Batista

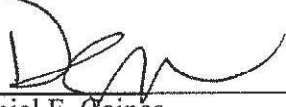
21
22 Dated: 2/9/20, 2023

Humanscale Corporation


By: Anna Volffsberg
Its: General Counsel

1 Dated: 2/3/2023, 2023

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 44:

2
3 By: 

Daniel F. Gaines
GAINES & GAINES, APLC
Attorneys for Plaintiff Anthony Batista

4
5 Dated: February 9, 2023

APPROVED AS TO FORM:

6
7 By: 

Maria Z. Stearns, Esq.
RUTAN & TUCKER, LLP
Attorneys for Defendant Humanscale Corporation

EXHIBIT 1

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA

10 ANTHONY BATISTA, on behalf of himself
11 and all “aggrieved employees” pursuant to
Labor Code § 2698 et seq.,

12 Plaintiffs,

13 v.

14 HUMANSIZE CORPORATION, a New
York corporation, and DOES 1 through 10,
15 inclusive,

16 Defendants.
17
18
19
20
21

Case No. 22CV403325

ASSIGNED FOR ALL PURPOSES TO:
HON. THEODORE C. ZAYNER; DEPT. 19

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT AND
ENTERING JUDGMENT**

Date: May 17, 2023

Time: 1:30 PM

Dept.: 19

Complaint Filed: September 21, 2022

FAC Filed: January 20, 2023

22 **[PROPOSED] ORDER AND JUDGMENT**

23 This matter came on for hearing on May 17, 2023 at 1:30 p.m. in Dept. 19 of the above-
24 captioned Court on the unopposed motion of plaintiff Anthony Batista (“Plaintiff”) for approval of
25 a settlement agreement pursuant to the California Labor Code Private Attorneys General Act,
26 codified as Labor Code § 2698, *et seq.* (“PAGA”) (the “Settlement”).

27 Having received and considered the Settlement Agreement, the supporting papers filed by
28 Plaintiff, and the evidence and arguments received by the Court, the Court grants approval of the

1 Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING**
2 **DETERMINATIONS:**

3 1. Except as otherwise defined in this Order and Judgment (“Order”), all capitalized
4 terms have the same meaning as defined in the Settlement Agreement that is attached as **Exhibit 1**
5 to this Order.

6 2. The California Labor and Workforce Development Agency (“LWDA”) has been
7 provided notice of the Settlement in accordance with PAGA, California Labor Code
8 § 2699(l)(2), (l)(4). In particular, on the date Plaintiff filed his motion seeking approval of the
9 Settlement with the Court, he submitted to the LWDA the Settlement and a copy of his approval
10 motion papers. Plaintiff’s submission of the Settlement and his approval motion to the LWDA
11 complied with the notice requirements of PAGA.

12 3. The Court has jurisdiction over the subject matter of this litigation, over all
13 Aggrieved Employees, and over those persons undertaking affirmative obligations under the
14 Settlement.

15 4. The Settlement is approved under Labor Code § 2699(l)(2).

16 5. The PAGA Settlement Notice to Aggrieved Employees, attached as **Exhibit 2** to the
17 Settlement, fairly and adequately describes the Action, the approved Settlement, and is the best
18 notice practicable under the circumstances.

19 6. The Court finds that each Aggrieved Employee, in accordance with the Settlement,
20 releases all Released Claims against the Released Parties, as detailed in paragraph 29(a) of the
21 Settlement.

22 7. The Gross Settlement Amount, PAGA Payment Fund, and the methodology used to
23 calculate the LWDA Payment and PAGA Aggrieved Employee Payment (which is comprised of
24 the Individual PAGA Payments) in accordance with the Settlement, is approved.

25 8. The Court approves the Enhancement Award to Plaintiff in the amount of \$5,000.00.
26 The Court authorizes the Settlement Administrator to make this payment, in accordance with the
27 terms of the Settlement Agreement.

28 9. The Court approves Phoenix Settlement Administrators to act as the Settlement

1 Administrator. The Court awards the Settlement Administrator in this Action its actual fees and
2 costs in accordance with the terms of the Settlement Agreement, not to exceed \$3,000.00.

3 10. The Court approves and appoints GAINES & GAINES, APLC as PAGA Counsel.

4 11. The Court awards PAGA Counsel attorneys' fees in the amount of one-third of the
5 Gross Settlement Amount and attorneys' cost of \$1,852.70, which the Court finds to be fair and
6 reasonable. The Court authorizes the Settlement Administrator to make these payments, in
7 accordance with the terms of the Settlement Agreement.

8 12. The Court authorizes the Settlement Administrator to calculate the PAGA Payment
9 Fund, inclusive of the LWDA Payment and PAGA Aggrieved Employee Payment (which is
10 comprised of the Individual PAGA Payments), in accordance with the terms of the Settlement
11 Agreement.

12 13. The Court finds that, pursuant to PAGA, the LWDA Payment of \$42,610.47 as its
13 75% share of the settlement of civil penalties is fair and reasonable. The Court authorizes the
14 Settlement Administrator to pay the LWDA Payment, in accordance with the terms of the Settlement
15 Agreement.

16 14. The Court finds that, pursuant to PAGA, the PAGA Aggrieved Employee Payment
17 of \$14,203.49 as the Aggrieved Employees' 25% share of the settlement of civil penalties is fair and
18 reasonable. The Court authorizes the Settlement Administrator to pay the PAGA Aggrieved
19 Employee Payment, in accordance with the terms of the Settlement Agreement.

20 15. Checks for Individual PAGA Payments sent to Aggrieved Employees shall be valid
21 for 180 days after issuance. Funds remaining from any checks for Individual PAGA Payments
22 uncashed after 180 days will be dispersed to the California State Controller's Unclaimed Property
23 fund in the name(s) of the employee(s) who did not cash their checks, in accordance with the terms
24 of the Settlement Agreement.

25 ///

26 ///

27 ///

28 ///

1 16. Upon completion of the Settlement, the Settlement Administrator will provide
2 written certification of the completion of payments in accordance with the terms of the Settlement
3 Agreement and this Order, to counsel for the Parties, which shall be filed with the Court on or before
4 _____.

5 17. Without affecting the finality of this order and entry of judgment, the Court retains
6 exclusive and continuing jurisdiction over the Action for purposes of supervising, administering,
7 implementing, and enforcing this Order and the Settlement.

8 18. Nothing in this Order or the Settlement shall be construed as an admission or
9 concession by any party. The Settlement and this resulting Order and entry of judgment simply
10 represent a compromise of disputed allegations.

11 19. The Court enters final judgment in accordance with the terms of the Settlement
12 Agreement and this Order.

13 20. Plaintiff is directed to submit a copy of this Order and entry of judgment to the
14 LWDA within 10 days of the date of this Order and entry of judgment.

15 **IT IS SO ORDERED:**

16 DATED: _____, 2023

Honorable Theodore C. Zayner
Judge of the Superior Court

EXHIBIT 2

Exhibit 2

[Date], 2023

[Claims Administrator Contact Information]

[Employee Name]

[Employee Street Address]

[City, State Zip]

Re: PAGA Settlement Payment

Dear Current or Former Humanscale Corporation Employee:

You have received this notice because Humanscale Corporation's ("Humanscale" or "Defendant") records indicate that you have worked for Humanscale as an hourly, non-exempt employee in California at any time between July 18, 2021 through January 31, 2023. This notice relates to the settlement of the following lawsuit: *Anthony Batista v. Humanscale Corporation*, Santa Clara Superior Court, Case No. 22CV403325 (the "Action").

In the Action, Plaintiff Anthony Batista ("Plaintiff") seeks civil penalties against Humanscale pursuant to the California Private Attorneys General Act, codified as Labor Code § 2698 *et seq.* ("PAGA"), a law that allows Plaintiff to recover penalties on behalf of the State of California and on behalf of employees who Plaintiff claims were "aggrieved" by alleged wage and hour violations on the part of Humanscale, including its alleged failure to: provide meal periods and rest breaks; properly pay and calculate wages for all hours worked, overtime, minimum wages and paid sick time; furnish accurate itemized wage statements and maintain accurate payroll records; and timely pay all wages due during employment and upon separation.

Humanscale strongly disputes Plaintiff's allegations and maintains that it has fully complied with all applicable wage and hour laws. The Court has not made any ruling regarding the merits of the Action. There has been no trial. Nonetheless, to avoid the cost and distraction of litigation, Humanscale has made a business decision to settle the Action, which settlement has been approved by the Court.

The enclosed settlement check represents your portion of the Court-approved PAGA settlement. You will not be retaliated against for cashing your check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be distributed to the California State Controller's Unclaimed Property Fund in the name of the employee who did not cash the check.

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Action.

If you have any questions about this notice, please contact the Settlement Administrator, Phoenix Settlement Administrators at () - .

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE ACTION. PLEASE DO NOT CONTACT THE COURT REGARDING THE CASE.

Title	Batista FINAL Settlement Agreement w/Exhibits
File name	FINAL Settlement ...with Exhibits.pdf
Document ID	ef9ce7cdcd78bd566ecefaf60025dc9a6e38a0c06
Audit trail date format	MM / DD / YYYY
Status	 Signed

Document History

 SENT	02 / 03 / 2023 20:43:43 UTC	Sent for signature to Anthony Batista (testaboy@rocketmail.com) from office@gaineslawfirm.com IP: 47.181.216.90
 VIEWED	02 / 03 / 2023 20:45:24 UTC	Viewed by Anthony Batista (testaboy@rocketmail.com) IP: 172.58.37.120
 SIGNED	02 / 03 / 2023 20:50:29 UTC	Signed by Anthony Batista (testaboy@rocketmail.com) IP: 172.58.38.107
 COMPLETED	02 / 03 / 2023 20:50:29 UTC	The document has been completed.