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Attorneys for Plaintiff Anthony Batista, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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.*,

Plaintiff,

v.

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

Defendants.

CASE NO: 22CV403325

*Assigned to the Honorable Patricia M. Lucas,
Dept. 3*

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 204, 226(a), 226.7, 246, 248.2,
248.5, 248.6, 510, 512, 1174, 1174.5, 1194,
1197, AND 1197.1 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

Complaint Filed: September 21, 2022

1 Plaintiff ANTHONY BATISTA (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of
3 HUMANSIZE CORPORATION, a New York corporation, and/or any subsidiaries or affiliated
4 companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly compute bonuses and other non-base hourly wages earned
15 by Plaintiff and other Aggrieved Employees into their regular rate of pay for purposes of paying them
16 sick pay, meal and rest period premiums and overtime wages at the correct rates, in violation of Labor
17 Code §§ 204, 226.7, 246, 248.2, 248.5, 248.6, 510, 512, 558, 1194, 1197, and 1197.1, and IWC Wage
18 Order No. 1-2001. Defendants fail to properly blend bonuses and other non-base hourly wages and
19 instead pay Plaintiff and other Aggrieved Employees sick pay, meal period premiums, rest period
20 premiums, and overtime wages based *only* on the base hourly rate of pay, thus depriving Plaintiff and
21 other Aggrieved Employees of all meal and rest period premiums and overtime wages earned. This
22 violates Labor Code §§ 204, 226.7, 246, 248.2, 248.5, 248.6, 510, 512, 558, 1194, 1197, and 1197.1,
23 and 1194 and IWC Wage Order No. 1-2001;

24 b. Failing to pay Plaintiff and other Aggrieved Employees all minimum and
25 overtime wages due during the course of employment, in violation of Labor Code §§ 204, 510, 558,
26 and 1194. Defendants round down the hours reflected on Plaintiff’s and other Aggrieved Employees’
27 time records to pay fewer hours than are actually worked. On a weekly basis, this rounding deprives
28

1 Plaintiff and other Aggrieved Employees of significant hours worked. This violates Labor Code §§
2 204, 510, 558, and 1194;

3 c. Failing to pay correct premium wages to Plaintiff and other Aggrieved
4 Employees who are denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order
5 No. 1-2001. Plaintiff and Aggrieved Employees are routinely unable to take a 10-minute rest period
6 for every four (4) hours of work or major fraction thereof, but are not paid premium wages of one
7 hour's pay for each missed rest period. When Plaintiff or other Aggrieved Employees are able to take
8 a rest period, they are improperly prohibited from leaving Defendants' premises while on their rest
9 periods, thereby subjecting them to Defendants' control during their rest periods. Finally, as discussed
10 above, Defendants fail to pay rest period premium wages at the correct rate of pay. This violates
11 Labor Code § 226.7 and IWC Wage Order No. 1-2001;

12 d. Failing to pay correct premium wages to Plaintiff and other Aggrieved
13 Employees who are denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558
14 and IWC Wage Order 1-2001. Plaintiff and Aggrieved Employees are routinely denied, and not
15 authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that
16 exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift
17 worked that exceeded ten hours, but are not paid premium wages of one hour's pay for each missed
18 first or second meal period. Defendants also fail to maintain accurate records indicating the start and
19 end time of each meal period (if one ever occurred). Finally, as discussed above, Defendants fail to
20 pay meal period premium wages at the correct rate of pay. These instances violate Labor Code §§
21 226.7, 512, 558, 1174, and 1174.5 and IWC Wage Order 1-2001;

22 e. Failing to provide Plaintiff and other Aggrieved Employees with wage
23 statements that fully and accurately itemize the requirements set forth in Labor Code § 226(a).
24 Plaintiff and other Aggrieved Employees are not paid all wages due, as stated above. As such, the
25 wage statements provided by Defendants failed to accurately state all gross wages earned, in violation
26 of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2)
27 and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
28

hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3; and

f. Failing to pay certain Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, certain Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of Aggrieved Employees no longer employed by Defendants.

3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose throughout California, including in Santa Clara County, California.

II.

PARTIES

A. Plaintiff

5. Plaintiff Anthony Batista was employed by Defendants for a period of his employment in Santa Clara County, California.

B. Defendant

6. Defendant HUMANSIZE CORPORATION is a New York corporation that employed Plaintiff and Aggrieved Employees throughout the State of California, including Santa Clara County, California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
2 designated hereinafter as DOES when such identities become known.

3 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
4 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
5 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
6 attributable to the other Defendants.

7 9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
8 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
9 provisions of the California Labor Code as alleged herein.

10 III.

11 CAUSES OF ACTION

12 FIRST CAUSE OF ACTION

13 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
14 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**
15 **CODE §§ 201, 202, 204, 226(a), 226.7, 246, 248.2, 248.5, 248.6, 510, 512, 1174, 1174.5, 1194,**
16 **1197, AND 1197.1 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF**
17 **LABOR CODE §§ 226.3 AND 558**

18 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
19 forth herein.

20 11. As a result of the acts alleged above, including the Labor Code violations set forth in
21 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

22 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
23 penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

- 24 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
25 each subsequent violation of Labor Code §§ 201, 202, 204, 226(a), 226.7, 246,
26 248.2, 248.5, 248.6, 510, 512, 1174, 1174.5, 1194, 1197, and 1197.1; and
27 b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code
28 §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On July 13, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of July 13, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and

4. Such other and further relief as this Court may deem just and proper.

Dated: January 20, 2023

Respectfully submitted,

GAINES & GAINES

A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the
3 within action. My business address is 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On January 20, 2023, I served the foregoing document described as **FIRST AMENDED**
6 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof
7 enclosed in sealed envelopes addressed as follows:

8 **Kimberly A. Nayagam, Esq.**
9 **Maria Z. Stearns, Esq.**
10 **RUTAN & TUCKER, LLP**
11 **18575 Jamboree Road, 9th Floor**
12 **Irvine, CA 92612**

13 On the above date:

14 X (BY x U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
15 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing
16 correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of
17 business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage
18 meter date is more that one day after date of deposit for mailing in affidavit.

19 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
20 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized
21 carrier or driver authorized by the express carrier to receive documents.

22 _____ (BY FACSIMILE TRANSMISSION) On January 20, 2023, at _____ a.m./p.m., at Ventura, California, I
23 served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008
24 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the
25 telephone number(s) of the receiving facsimile machine was (____) ____-____. A transmission report was properly
26 issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of
27 the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

28 _____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-
delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

_____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic
transmission pursuant to an agreement between counsel due to COVID-19 on the counsel of record listed above.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 20, 2023, at Westlake Village, California.

Katherine Soriano
Katherine Soriano