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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.*,

Plaintiffs,

v.

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

Defendants.

CASE NO: 22CV403325

*Assigned to the Hon. Theodore C. Zayner, Dept.
19*

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF UNOPPOSED MOTION
FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS’ FEES, COSTS,
ENHANCEMENT AWARD, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
ENTERING JUDGMENT THEREON**

Date: May 17, 2023

Time: 1:30 PM

Dept.: 19

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

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 the managing shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Anthony Batista
4 (“Plaintiff”) in this action. I have personal knowledge of the facts set forth herein and if called as
5 a witness to testify to them, I could and would do so competently.

6 **Counsel’s Experience and Recommendation:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my studies
12 on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Until his retirement, I practiced law with my partner/father, Kenneth, at Gaines &
14 Gaines, APLC. Our practice specializes in litigation, with an emphasis in employment disputes
15 like this one. Over 95% of our practice is devoted to complex employment litigation similar to the
16 instant action.

17 5. My firm has represented employees in complex employment matters such as this
18 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
19 Court-approved class and representative counsel in hundreds of class and representative action
20 matters since my admission to the Bar. Attached hereto as **Exhibit A** is a true and correct list of
21 the cases in which I have represented employees in wage and hour matters been appointed as class
22 and representative counsel.

23 **Background and Procedural History**

24 6. On July 13, 2022, pursuant to Labor Code § 2699.3, Plaintiff gave written notice by
25 online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail,
26 return receipt requested, to Defendant HUMANSIZE CORPORATION (“Defendant”) of the
27 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
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1 to support the alleged violation. On September 21, 2022, and after the LWDA declined to take
2 action within the statutorily permissible time with respect to Plaintiff's July 13, 2022 letter, Plaintiff
3 filed his representative action complaint in this Court. On January 20, 2023, as a part of the
4 Settlement, Plaintiff filed his First Amended Representative Action Complaint in this Court.

5 7. A true and correct copy of the notice letter to the LWDA is attached hereto as
6 **Exhibit B.**

7 8. Defendant is a designer and manufacturer of ergonomic products and employed
8 Plaintiff and Aggrieved Employees throughout the State of California, including in Santa Clara
9 County, where Plaintiff worked.

10 9. Defendant employed Plaintiff as a non-exempt employee from 2017 through July
11 2022. The Aggrieved Employees are all current and former non-exempt employees of Defendant
12 and were employed in California between July 18, 2021 and January 31, 2023.

13 10. Plaintiff asserts claims that Defendant failed to compute bonuses and other non-base
14 hourly wages earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for
15 purposes of paying them sick pay, meal and rest period premiums and overtime wages at the correct
16 rates, failed to provide Plaintiff and Aggrieved Employees all minimum and overtime wages due,
17 failed to provide Plaintiff and Aggrieved Employees with legally compliant rest periods, or correct
18 compensation in lieu thereof, failed to provide Plaintiff and Aggrieved Employees with legally
19 compliant meal periods, or correct compensation in lieu thereof, failed to issue accurately itemized
20 wage statements to Plaintiff and Aggrieved Employees, and failed to timely pay certain Aggrieved
21 Employees all wages due at the separation of their employment. Plaintiff asserts these claims under
22 PAGA, seeking civil penalties for the alleged Labor Code violations.

23 **Compliance with Procedural Requirements of PAGA:**

24 11. My office, on behalf of Plaintiff, submitted the Stipulation and Settlement
25 Agreement for PAGA Representative Action Settlement (the "Settlement Agreement"), together
26 with this Motion and all supporting documents, to the LWDA via online upload on March 6, 2023,
27 concurrently with the filing of this Motion.
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1 **Counsel's Diligence In Advance of, and In Connection With, Settlement Negotiations:**

2 12. My office engaged in targeted, informal discovery of Defendant's alleged Labor
3 Code violations, which specifically targeted evaluating the strength and value of the PAGA claims
4 in preparation for a resolution of this Action.

5 13. We obtained and reviewed multiple documents, including (i) Plaintiff's employee
6 file and wage statements, (ii) policy documents relating to the employment of Plaintiff and other
7 Aggrieved Employees, and (iii) the number of alleged violations and the value of the recoverable
8 penalties, including the number of Aggrieved Employees and pay periods during the PAGA Period.

9 14. Based on the information received, as well as through discussions with Defendant's
10 Counsel, my office was able to (i) determine the total number of distinct individuals falling within
11 the definition of "Aggrieved Employee" for the relevant statutory period, and (ii) construct a
12 damage model that calculated the maximum realistic amount of PAGA penalties that could be
13 levied against Defendant within the PAGA Period based on conversations with Defendant's
14 Counsel. Defendant, however, disputed Plaintiff's claims and disputed both the existence of and
15 extent of liability as alleged by Plaintiff. Based on the information received, as well as through
16 discussions with Defendant's Counsel, my office was able to ascertain (i) the size of the Aggrieved
17 Employee group, (ii) the number of affected pay periods at issue among them, and (iii) the strength
18 of Plaintiff's claims.

19 15. The Parties directly negotiated the settlement. During the course of litigation, the
20 Parties engaged in arm's-length negotiations and reached a resolution of the PAGA claims asserted
21 in this Action. The Parties jointly prepared and executed the Settlement Agreement. A true and
22 correct copy of the Settlement Agreement is attached hereto as **Exhibit C**.

23 **Settlement Terms:**

24 16. Defendant represents there are approximately 58 alleged Aggrieved Employees who
25 worked up to 1,676 aggregate pay periods during the PAGA Period.

26 17. All Aggrieved Employees will receive a pro rata share of the \$14,203.49 allocated
27 to Aggrieved Employees, which shall be distributed based on the number of pay periods each
28 Aggrieved Employee worked during the PAGA Period. Although these calculations will not be

1 made until after approval, a rough estimation of the value to the 58 individuals falling within the
2 definition of “Aggrieved Employee” may be gleaned from the fact that an equal division would
3 provide about \$244.89 to each Aggrieved Employee, net of payments to the LWDA, the Settlement
4 Administrator, attorney’s fees, and costs. The LWDA will be paid a substantial \$42,610.47.

5 18. Phoenix Settlement Administrators, a reputable settlement administration company,
6 has agreed to administer the settlement for no more than \$3,000, submitting a competitive bid.

7 19. This case addresses violations of important employee protections embodied in the
8 California Labor Code – namely, that Defendant failed to compute bonuses and other non-base
9 hourly wages earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for
10 purposes of paying them sick pay, meal and rest period premiums and overtime wages at the correct
11 rates, in violation of Labor Code §§ 204, 226.7, 246, 248.2, 248.5, 248.6, 510, 512, 558, 1194,
12 1197, and 1197.1, failed to provide Plaintiff and Aggrieved Employees all minimum and overtime
13 wages due, in violation of Labor Code §§ 204, 510, 558, and 1194, failed to provide Plaintiff and
14 Aggrieved Employees with legally compliant rest periods, or correct compensation in lieu thereof,
15 in violation of Labor Code § 226.7, failed to provide Plaintiff and Aggrieved Employees with
16 legally compliant meal periods, or correct compensation in lieu thereof, in violation of Labor Code
17 §§ 226.7, 512, 558, 1174, and 1174.5, failed to issue accurately itemized wage statements to
18 Plaintiff and Aggrieved Employees, in violation of Labor Code §§ 226(a) and 226.3, and failed to
19 timely pay certain Aggrieved Employees all wages due at the separation of their employment, in
20 violation of Labor Code §§ 201-202. Defendant’s maximum theoretical exposure in this Action,
21 without stacking penalties, totals approximately \$167,600, computed by multiplying 1,676
22 aggregate pay periods by \$100 each.

23 20. Defendant contends it acted within the requirements of California law at all times
24 as to all Aggrieved Employees. For example, Defendant contends that the company has compliant
25 meal and rest break practices. Defendant further contends that not every pay period at issue
26 involved an alleged Labor Code violation potentially subject to civil penalties. Moreover, it
27 maintained that even if the Court did award penalties, the Court could and would substantially
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1 reduce the penalties awarded based on the discretionary factors contained in Labor Code §
2 2699(e)(2). Defendant also argued that it had a valid and enforceable arbitration agreement, which
3 could preclude the litigation of PAGA claims on a representative basis altogether, given the United
4 States Supreme Court's recent ruling in *Viking River Cruises v. Moriana*, 142 S.Ct. 734 (2022).

5 21. Based on these disputes, which had the potential to completely eliminate Plaintiff's
6 recovery, the range of realistic "litigation outcomes" on the Plaintiff's PAGA claim was defined
7 by a "maximum possible liability" amount of approximately \$167,600 and a net-zero recovery
8 based on the defenses asserted by Defendant. Notwithstanding the existence of such issues, the
9 Settlement achieves a significant benefit – approximately 60% recovery of the maximum possible
10 liability. As such, this factor weighs very heavily in favor of resolution by way of the compromise
11 set forth in the Settlement.

12 **Attorneys' Fees:**

13 22. My office is submitting an attorney fee request equaling \$33,333.33. Based on a
14 projected final lodestar of \$41,707.50, this yields a "negative multiplier" of approximately 0.80
15 under the \$33,333.33 fee request. The billing rates used to compute the lodestar are reasonable in
16 view of the evidence submitted herewith. A true and correct copy of my firm's time-task chart is
17 attached hereto as **Exhibit D**.

18 23. As detailed in the first few paragraphs of this declaration, I have practiced law in
19 California since 2007 and most of that time has been dedicated exclusively to representing
20 employees in wage and hour matters, many of which have been litigated and resolved in the PAGA
21 and class action contexts. My reasonable hourly rate is \$650; this rate has been approved by judges
22 throughout California over the past year.

23 24. Mr. Katofsky is a highly skilled and experienced litigator with 23 years of
24 experience. He earned his J.D. in 1999 from the University of the Pacific McGeorge School of
25 Law. His hourly rate of \$700 reflects his extensive experience and education and comports to the
26 market rate. This rate has been approved by judges throughout California over the past year.
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1 25. Mr. Evan S. Gaines is a 2012 graduate of Michigan State University College of Law.
2 He graduated from the University of California, Santa Barbara in 2005. Evan has substantial
3 experience litigating wage and hour cases in California. His proffered hourly rate of \$575 has been
4 approved by judges throughout California over the past year.

5 26. This case was taken on a contingency basis with the real risk that my office would
6 receive no compensation whatsoever for our efforts. The potential costs which we can be required
7 to advance in wage and hour representative actions like this one are substantial. Furthermore, as
8 described above, my firm has extensive experience in representative action litigation, particularly
9 in the employment context, and as detailed herein, the Aggrieved Employees and the State of
10 California reaped significant benefits. The success achieved by the Settlement supports my firm's
11 fee request.

12 27. This Court can undoubtedly appreciate that litigating a representative action case in
13 dynamic, ever-changing areas of law is not appealing to most lawyers, particularly when the
14 plaintiff's lawyer undertakes the obligation to finance the litigation and effectively bears the risk in
15 the event of an unsuccessful outcome, at trial or otherwise. This case was taken on a contingency
16 basis with the real risk that my office would receive no compensation whatsoever for our efforts.
17 The potential costs which we can be required to advance in wage and hour actions like this one are
18 substantial.

19 28. Notwithstanding the existence of issues having the potential to eliminate recovery
20 on the PAGA claim, the Settlement Agreement not only achieves a recovery that exceeds typical
21 PAGA awards routinely approved by the courts, but it also recovers monies for Aggrieved
22 Employees which they otherwise would not receive.

23 29. Representative action work also requires specialized learning and the willingness to
24 take large risks. My office has extensive experience in wage and hour representative action
25 litigation, particularly in the employment context, as detailed herein.
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1 30. Furthermore, as described above, the Aggrieved Employees and the State of
2 California reaped significant benefits. The success achieved by the Settlement supports my firm's
3 fee request.

4 31. A small firm like ours can only properly litigate a limited number of cases at one
5 time. The requirements of this case were significant. Had we not reached a settlement with
6 Defendant, the demands of this case would have required a significant portion of our resources.
7 We were precluded from taking other employment cases due to the demands of litigating this case.

8 **Counsel's Costs:**

9 32. My firm's total costs are \$1,852.70 and include, among other expenses, filing fees,
10 service of process fees, postage fees, and other charges typical of litigation of this nature. A true
11 and correct copy of an itemized list of costs incurred by my firm in this action is attached hereto as
12 **Exhibit E**. These costs were reasonably incurred in litigating this matter.

13 **Plaintiff's General Release Payment:**

14 36. The Parties have agreed that Plaintiff will be paid an enhancement award/general
15 release payment in the amount of \$5,000. This payment is intended to recognize the time and effort
16 that Plaintiff spent on behalf of other Aggrieved Employees and the State and compensates him for
17 his general release of all claims against Defendant.

18 37. Without Plaintiff's efforts, there would be no recovery at all. The requested award
19 is appropriate to compensate Plaintiff for the risk and expense he incurred in conferring a benefit
20 on other of Defendant's employees and the State of California. As a result of the named Plaintiff's
21 efforts, Aggrieved Employees will receive monetary settlement payments, and the State of
22 California will receive \$42,610.47 to be put toward education about and enforcement of
23 California's labor laws.

24 38. Plaintiff is also entering into a full general release against Defendant and its
25 Released Parties, which is far broader than the release by other Aggrieved Employees. Specifically,
26 Aggrieved Employees are releasing only limited PAGA civil penalty claims, including Labor Code
27 §§ 201, 202, 203, 204, 226, 226.3, 226.7, 246, 248.2, 248.5, 248.6, 510, 512, 558, 1174, 1174.5,
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1 1194 et seq., 1197, 1197.1, 2698-2699, 2699.3, 2699.5 for underlying PAGA claims, while Plaintiff
2 is releasing all claims which he asserts or could assert against Defendant. The value of Plaintiff's
3 wage claims exceeds \$58,598. A true and correct copy of Plaintiff's individual damage model
4 prepared by my office is attached hereto as **Exhibit F**. No other Aggrieved Employee is subject to
5 this broad form of release.

6 39. This broad release by Plaintiff was negotiated (and necessary) to resolve the Action.
7 Plaintiff threatened to assert his individual claims and Defendant required that they be resolved in
8 connection with the resolution of the Action. Without the resolution and release of Plaintiff's
9 individual claims, litigation would continue in a piecemeal fashion. Defendant is buying peace with
10 this settlement, such that its objectives would not be achieved absent the general release.

11 I declare, under penalty of perjury, under the laws of the State of California, that the
12 foregoing is true and correct. Executed on March 6, 2023, at Westlake Village, California.

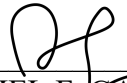
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16 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

GAINES & GAINES

A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

4550 EAST THOUSAND OAKS BOULEVARD, SUITE 100
WESTLAKE VILLAGE, CALIFORNIA 91362

PHONE (818) 703-8985
FAX (818) 703-8984

July 13, 2022

Via Certified Mail

Labor & Workforce Development Agency
By online submission

Humanscale Corporation
220 Circle Drive North
Piscataway, NJ 08854

Defendant mailed certified #70211970000187800164

Agent for Service of Process for Humanscale Corporation
Cogency Global Inc.
1325 J Street, Ste 1550
Sacramento, CA 95814

Agent mailed certified #70211970000187800157

Re: ***Labor Code Violations of Humanscale Corporation – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Anthony Batista, a current non-exempt California employee of Humanscale Corporation (“Defendant”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client is employed by Defendant in Central California. Herein, we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its non-exempt California employees (“Aggrieved Employees”).

Our client alleges that Defendant fails to properly compute bonuses and other non-base hourly wages earned by our client and other Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest period premiums and overtime wages at the correct rates, in violation of Labor Code §§ 226.7, 510, 512, 558 and 1194 and IWC Wage Order No. 1-2001. Defendant fails to properly blend bonuses and other non-base hourly wages and instead pays our client and other Aggrieved Employees meal period premiums, rest period premiums, and overtime wages based *only* on the base hourly rate of pay, thus depriving our client and other Aggrieved Employees of all meal and rest period premiums and overtime wages earned. This violates Labor Code §§ 226.7, 510, 512, 558 and 1194 and IWC Wage Order No. 1-2001.

Defendant fails to pay our client and other Aggrieved Employees all minimum and overtime wages due during the course of employment, in violation of Labor Code §§ 510, 558, and 1194. Defendant rounds down the hours reflected on our client and other Aggrieved Employees’ time records to pay fewer hours than were actually worked. On a weekly basis, this rounding deprives our client and

Labor & Workforce Development Agency
Humanscale Corporation
Cogency Global Inc.
July 13, 2022
Page 2

other Aggrieved Employees of significant hours worked. This violates Labor Code §§ 510, 558, and 1194.

Our client alleges that Defendant fails to pay correct premium wages to him and other Aggrieved Employees who are denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 1-2001. Our client and Aggrieved Employees are routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but are not paid premium wages of one hour's pay for each missed rest period. When our client or other Aggrieved Employees are able to take a rest period, they are improperly prohibited from leaving Defendant's premises while on their rest periods, thereby subjecting them to Defendant's control during their rest periods. Finally, as discussed above, Defendant fails to pay rest period premium wages at the correct rate of pay. This violates Labor Code § 226.7 and IWC Wage Order No. 1-2001.

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

Our client further alleges that Defendant fails to provide him and other Aggrieved Employees with wage statements that fully and accurately itemize the requirements set forth in Labor Code § 226(a). Our client and other Aggrieved Employees are not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable 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.

Defendant fails to pay 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, Aggrieved Employees are not paid all wages due during the course of their employment and, as a result of this failure, they are 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 Defendant.

The \$75 PAGA filing fee has been submitted to the LWDA concurrently with the transmission of this letter.

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Humanscale Corporation
Cogency Global Inc.
July 13, 2022
Page 3

We invite Defendant or its attorney to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By: Evan S. Gaines
EVAN S. GAINES

EXHIBIT C

1 RUTAN & TUCKER, LLP
Maria Z. Stearns (State Bar No. 230649)
2 mstearns@rutan.com
Kimberly A. Nayagam (State Bar No. 301058)
3 knayagam@rutan.com
18575 Jamboree Road, 9th Floor
4 Irvine, CA 92612
Telephone: 714-641-5100
5 Facsimile: 714-546-9035

6 Attorneys for Defendant
HUMANSIZE CORPORATION

7 GAINES & GAINES, APLC
8 Daniel F. Gaines (State Bar No. 251488)
daniel@gaineslawfirm.com
9 Alex P. Katofsky (State Bar No. 202754)
alex@gaineslawfirm.com
10 Evan S. Gaines (State Bar No. 287668)
evan@gaineslawfirm.com
11 4550 E. Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
12 Telephone: 818-703-8985
Facsimile: 818-703-8984

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:**

- | |
|--|
| <ul style="list-style-type: none">• PAGA Counsel Attorneys' Fees not to exceed \$33,333.33• PAGA Counsel Attorneys' Costs not to exceed \$5,000.00• Settlement Administration Costs, not to exceed \$3,000.00• Enhancement Award, not to exceed \$5,000.00• \$53,666.67 for the PAGA Payment Fund<ul style="list-style-type: none">○ \$40,250.00 for the LWDA Payment○ \$13,416.67 for the PAGA Aggrieved Employee Payment |
|--|

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

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

26 b. **Enhancement Award:** The Parties agree that, subject to the Court's review
27 and approval, an award of up to \$5,000.00 will be paid to Plaintiff as the Enhancement Award for
28 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.

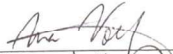
19 IT IS SO AGREED.

20 Dated: 02 / 03 / 2023, 2023


Anthony Batista

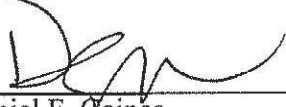
21
22 Dated: 2/9/2023, 2023

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

1
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3
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5
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7
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
15 York corporation, and DOES 1 through 10,
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.

EXHIBIT D

Walker v. Folsom Lake Ford, Inc.

Attorney Time/Task

Task	Daniel F. Gaines, Esq. \$650/hr	Alex P. Katofsky, Esq. \$700/hr	Evan S. Gaines, Esq. \$575/hr
Pre-Lawsuit interviewing, investigation and research re Defendant and claims; Research re: defenses to action		10.0	
Draft LWDA compliance Letter; Review, revise, mail, and submit LWDA Letter; Communications with Client re same	2.7		3.4
Draft and file PAGA Complaint and related research; Communications with Client re same			4.2
Review employee file and related communications with Client and Defense re same	2.5		1.5
Prepare joint case management statement; Review tentative ruling; Communications with Defense re same	0.8		1.9
Communications with Defense Counsel re defenses to claims, number of Aggrieved Employees and pay periods, and settlement negotiations; Related communications with Client	2.5	1.8	1.6
Review and revise PAGA settlement agreement, PAGA notice, and other exhibits; Further communications and discussions with Defense Counsel and Client re same	3.0	0.9	1.4
Draft and revise first amended complaint; Communications with Defense re same	1.1		2.2
Communications with Client re settlement; Drafting of motion for PAGA approval and related exhibits and documents and related communications with Defense Counsel	4.0		4.5
Estimated time required for related administration work and uploading of documents to LWDA; Prepare for and attend PAGA Approval hearing and related communications with Defense and Client	7.5	7.5	
Total Hours:	24.1	20.2	20.7
Total Lodestar Per Attorney:	\$15,665.00	\$14,140.00	\$11,902.50
Total All Attorneys:	65.0	\$41,707.50	

EXHIBIT E

**Anthony Batista v. Humanscale Corporation
Gaines Gaines, APLC Counsel's Costs**

<u>EXPENSE CATEGORY</u>	<u>EXPENSE</u>
Postage Fees	\$ 31.52
Filing fees (including related attorney service expenses)	\$ 1,592.18
Future estimated expenses -	\$ 229.00
• <i>Filing fees and One Legal Service fees for Motion for PAGA Approval (will be filed via One Legal) - \$74.00</i> • <i>Courtesy copy delivery fees to department of Motion for PAGA Approval via One Legal - \$100.00</i> • <i>Postage for mailing Motion for PAGA Approval - \$10.00</i> • <i>Filing fees and One Legal Service fees for Notice of Entry of Order once PAGA Order signed (will be filed via One Legal) - \$20.00</i> • <i>Postage for mailing Notice of Entry of Order - \$5.00</i> • <i>Filing fees for Declaration of Administrator - \$20.00</i>	
TOTAL EXPENSES	\$ 1,852.70

EXHIBIT F

Batista v. Humanscale Corporation
Anthony Batista Individual Damage Model

Assumptions

September 21, 2018 - July 7, 2022 Dates of employment during 4 Year Statute of Limitations ("SOL")

985 Total estimated number of shifts worked by Plaintiff during 4 Year SOL (197 weekly pay periods x 5 estimated shifts per weekly period)

197 Total number of weekly pay periods worked by Plaintiff during 4 Year SOL

\$24.23 Plaintiff's hourly rate during 4 Year SOL

Labor Code 226.7 - Failure to Provide Rest Periods

985 Total estimated number of shifts worked by Plaintiff during 4 Year SOL (197 weekly pay periods x 5 estimated shifts per weekly period)

\$24.23 Plaintiff's hourly rate during 4 Year SOL

100% Violation rate (estimated)

\$23,866.55 Total Rest Period Premium Wages

Labor Code 226.7/512 - Failure to Provide Meal Periods

985 Total estimated number of shifts worked by Plaintiff during 4 Year SOL (197 weekly pay periods x 5 estimated shifts per weekly period)

\$24.23 Plaintiff's hourly rate during 4 Year SOL

100% Violation rate (estimated)

\$23,866.55 Total Meal Period Premium Wages

Labor Code 203 - Waiting Time Penalties

\$193.84 average daily wage for Plaintiff (\$24.23/hr x 8 hours)

30 days x \$193.84/average daily wage

\$5,815.20 Total Waiting Time Penalties

Labor Code 226(c) - Wage Statement Penalties

51 Total number of weekly pay periods worked by Plaintiff during 1 Year SOL

\$50 per initial violation (1 x \$50) and \$100 per subsequent violation (50 x \$100)

\$5,050.00 Total Wage Statement Penalties

\$58,598.30 TOTAL PENALTIES AND WAGES, EXCLUDING ATTORNEYS' FEES & COSTS