

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
PHILLIP SONG (SBN 326572)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CHARISMA COLEMAN and KENNETH
SARGEANT, individually, and on behalf of
other members of the general public
similarly situated, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiffs,

v.

H&E EQUIPMENT SERVICES, INC., a
Delaware corporation; H&E EQUIPMENT
SERVICES (CALIFORNIA), LLC, a
California limited liability company; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: RG20069157

Assigned for All Purposes to:
Honorable Brad Seligman
Department 23

CLASS ACTION

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN
SUPPORT OF PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

[Supplemental Declaration of Proposed Class
Counsel (Douglas Han); and Amended
[Proposed] Order filed concurrently herewith]

Hearing Date: March 22, 2022
Hearing Time: 3:00 p.m.
Hearing Place: Department 23

Complaint Filed: July 27, 2020
FAC Filed: August 25, 2021
Jury Trial: None Set

1 Plaintiffs Charisma Coleman and Kenneth Sargeant (“Plaintiffs”) provide this supplemental
2 submission in response to the Court’s tentative ruling on Plaintiffs’ Motion for Preliminary Approval
3 of Class Action Settlement originally scheduled for hearing on February 15, 2022. On February 15,
4 2022, the Court continued the Motion to March 22, 2022, with instructions to address the concerns
5 outlined in the ruling.

6 The chart below lists each of the Court’s concerns from the tentative ruling and the
7 revisions/submissions made to address each concern.

8 Ruling	Revisions/Submissions
9 1) The court will not approve escheat of 10 unclaimed class funds to the Controller, as this 11 is not consistent with CCP 384. 12 13 14 15 16 17 18	The parties have agreed to designate Legal Aid At Work as the <i>cy pres</i> recipient. The parties have executed the First Amendment to the Joint Stipulation and Settlement Agreement documenting this change. The Class Notice has been updated with this change. <i>See</i> the Supplemental Declaration of Douglas Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Supp. Han Decl.”) ¶ 4.; Exhibit 1.
19 2) The court needs additional information about 20 discovery and investigation in this case: what 21 was the size and content of the sample of data 22 reviewed by class counsel? How many class 23 members were interviewed? Was formal 24 discovery responded to? 25 26 27 28	While Plaintiffs propounded formal discovery, Defendant did not provide formal discovery responses. <i>See</i> Supp. Han Decl. ¶ 6. Instead, Defendant produced necessary information and documents informally. Defendant produced a twenty percent (20%) sample of time, corresponding pay and wage statement. This information included data for sixty-five Class Members covering thirteen different job titles spanning eight locations in California.

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	Defendant also policy documents, employee handbooks, and wage statements consisting over 3,000 pages of information. The sampling data produced spanned tens of thousands of lines of data. Defendant also produced complete personnel and pay records for five Class Members. Additionally, Class Counsel conducted detailed interviews with twelve Class Members to assess the allegations in the case. Finally, Class Counsel hired Berger Consulting Group, data experts, to aid in the data collection and analysis in preparation for mediation. <i>See Supp. Han Decl. ¶6.</i>
3) The basis for assumptions in the damage analyses is not explained i.e. violation rates.	Class Counsel’s potential damages analysis included violation rates for rest periods, meal periods, off-the-clock work, and reimbursement. Han Decl. ¶¶ 53-56. Class Counsel concluded that 20% exposure on the eligible rest period shifts was reasonable. Approximately one-third of the Class Member worked in the field as Field Technicians or Drivers. These Class Members arguably had the freedom to take their rest breaks. Moreover, Drivers are technically exempt from rest periods pursuant to the Federal Motor Carrier Safety Administrations rules. Moreover, the interviews with the Class Members provided anecdotal evidence that some never received

1 meal breaks while others stated that they took
2 breaks at the same time and later had a
3 staggered schedule. Thus, a 20% violation is a
4 reasonable exposure analysis based on the facts
5 of this case. *See* Supp. Han Decl. ¶ 7.

6 Class Counsel attributed a 50% violation rates
7 for recorded late or short meals. Of the short
8 meal breaks, 62.6% were only short by 1 to 3
9 minutes. Of the late meal breaks, 9.3% were
10 late by 1 to 5 minutes. Based on this data,
11 Class Counsel concluded that short meal breaks
12 were not a significant source of violation and
13 could be attributed to individual Class
14 Member's choice rather than a uniform
15 practice. Moreover, Class Counsel attributed
16 the late-meal breaks as the greatest source of
17 the meal break violation. While not exact,
18 approximating a 50% violation rate would be
19 consistent with the data and Class Member's
20 stating that they generally received their meal
21 breaks. *See* Supp. Han Decl. ¶ 8.

22 Class Counsel also attributed one hours of off-
23 the-clock work per week. This assumption was
24 based on the information collected during the
25 Class Member interviews. Some Class
26 Members stated that their supervisors would
27 round down their time records of approximately
28 15-30 minutes per week. Other also stated that

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	they would have to conduct pre-trip inspections and post-trip inspections off-the-clock which would take approximately 10 minutes each day. Some Class Members stated that they had to don and doff their uniform, shirt, pants, and workbooks pre-shift and post-shift which would be approximately 10 minutes each day. Based on this information Class Counsel believed that an exposure analysis of one hour per week would be a good starting point to evaluate the off-the-clock exposure. <i>See Supp. Han Decl.</i> ¶ 9. Reimbursement claim was more difficult to approximate due the wide disparity in the expenses. However, Class Counsel assumed that at least one pair of decent safety shoes would have been purchased (\$150.00), at least two company shirts (\$15 x 2) and while not all Class Members brought hand tools, gloves, and other miscellaneous items we attributed approximately \$20.00 per Class Member. Moreover, Class Counsel asked Class Members approximately what percentage of their cell phone charges were attributed to work. Twenty percent was the most common answer thus because the starting point for the exposure analysis. <i>See Supp. Han Decl.</i> ¶ 10.
4) While the class notice is generally	The requested changes have been made.

appropriate, the terms of the settlement are buried in item 10, many pages in. This type of information, or at least a summary of it, should be close to the top of the notice. The class notice needs to be updated to indicate the location of this court, and access to court files, as indicated below, should be provided?

See Supp. Han Decl. ¶ 5; **Exhibit 2.**

The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website, known as 'eCourt Public Portal,' at <https://eportal.alameda.courts.ca.gov>. After arriving at the website, click the 'Search ' tab at the top of the page, then select the Document Downloads link, enter the case number and click 'Submit.' Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings

Dated: March 15, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiffs

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