

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to Final Approval by the Court, this Settlement Agreement is between Plaintiffs Charisma Coleman and Kenneth Sargeant, on behalf of the Class (as defined below), Kenneth Sargeant as a private attorney general under PAGA, (collectively, “Plaintiffs”) and Defendants H&E Equipment Services, Inc. and H&E Equipment Services (California), LLC (collectively, “Defendants”). Plaintiffs and Defendants collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. Administration Costs:** The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$15,000 and shall be paid from the Qualified Settlement Fund, subject to Court approval.
- B. Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. Attorney Fee Award:** The amount, not to exceed one-third of the Maximum Settlement Amount, or \$400,000, subject to Court approval and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendants.
- D. Class:** All non-exempt employees employed by Defendants in California at any time during the Class Period.
- E. Class Action:** The putative class action lawsuit filed by Plaintiff Charisma Coleman on July 27, 2020, entitled *Coleman v. H&E Equipment Services, Inc.*, Case Number RG20069157 in the State of California, Alameda County Superior Court and all amendments, including the First Amended Complaint filed in August 2021.
- F. Class Counsel:** Douglas Han and Shunt Tatavos-Gharajeh of Justice Law Corporation.
- G. Class Data:** The Class Data means information regarding Class Members that Defendants will compile from their available, existing, electronic records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: (i) each Class Member’s full name; (ii) each Class Member’s last-known address; (iii) each Class Member’s Social Security and Employee ID number, if any; (iv) the Class Member’s relevant dates of employment; (v) number of workweeks worked by the Class Member

during the Class Period (excluding weeks where the Class Member performed no work for Defendants). Items (i), (ii), and (iii) shall be deemed confidential and shall not be made publicly available.

- H. Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- I. Class Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- J. Class Period:** The time period between April 6, 2016, and September 5, 2021.
- K. Class Representatives or Plaintiffs:** Charisma Coleman and Kenneth Sargeant.
- L. Class Representative Enhancement Payments:** The amounts the Court awards to Plaintiffs Charisma Coleman and Kenneth Sargeant for their services as Class Representatives, which will not exceed \$10,000 to each Plaintiff. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendants. These enhancements are subject to approval of the Court.
- M. Complaint:** The First Amended Complaint filed by Plaintiffs in August 2021, Case Number RG20069157.
- N. Cost Award:** The amount that the Court awards Class Counsel for payment of actual litigation costs subject to proof, which shall not exceed \$25,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendants.
- O. Counsel for Defendants:** Attorneys Jeffrey S. Ranen and Soojin Kang of Lewis Brisbois Bisgaard & Smith.
- P. Court:** The State of California, Alameda County Superior Court.
- Q. Defendants:** H&E Equipment Services, Inc. and H&E Equipment Services (California), LLC.
- R. Effective Final Settlement Date:** The effective date of this Settlement will be the later in time of (a) thirty (30) calendar days after entry of the order of final approval and judgment, if no objections to final approval were made and there is no filing of a motion to intervene or a motion to set aside and vacate the judgment or notice of appeal; (b) if objections to final approval were made, or a motion to intervene or motion to set aside and vacate the class judgment is filed, ten (10) calendar days after the expiration of time to appeal the judgment and rulings on the foregoing motions, with no timely appeal filed; (c) if an

appeal or other effort to obtain review has been initiated, ten (10) calendar days after the date after such appeal or other review has been finally concluded, affirming final approval, and is no longer subject to review.

- S. Eligible Aggrieved Employees:**¹ The allegedly aggrieved employees eligible to recover from the PAGA Payment portion of the Settlement shall be those included in one or both of two (2) groups: (1) all non-exempt employees employed by Defendants in California at any time during the First PAGA Period; and (2) all non-exempt employees and exempt outside sales representatives employed by Defendants in California at any time during the Second PAGA Period.²
- T. Exclusion Form:** The Election Not To Participate In (Opt Out From) Class Action Settlement Form, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.
- U. First PAGA Period:** The period between May 26, 2020, and September 5, 2021.
- V. Judgment or Final Approval:** The final order entered by the Court finally approving this Agreement, in the form agreed to by the Parties.
- W. Maximum Settlement Amount (“MSA”):** The total value of the Settlement is a non-reversionary One Million Two Hundred Thousand Dollars (\$1,200,000). Except as provided under paragraph III.M.18, this is the maximum amount Defendants can be required to pay under this Settlement Agreement, which includes: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) Administration Costs paid to the Settlement Administrator, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendants’ portion of payroll taxes as the Class Members’ current or former employer is not included in the MSA and will be a separate obligation of Defendants in addition to the MSA. No portion of the Maximum Settlement Amount will revert to Defendants for any reason.
- X. Individual PAGA Payment(s):** The amount payable to each Eligible Aggrieved Employee from the portion of the PAGA Payment allocated to the Eligible Aggrieved Employees under the terms of this Settlement Agreement.

¹ The term “Aggrieved Employees” means allegedly aggrieved employees.

² If authority supporting application of Emergency Rule 9 to extend the time for filing a PAGA notice is discovered before the full length settlement agreement is executed, the start date for the First PAGA Period and Second PAGA Period shall be April 6, 2020.

Eligible Aggrieved Employees are not required to submit a claim form to receive their Individual PAGA Payment.

- Y. Individual Settlement Payment(s):** The amount payable to each Participating Class Member from the Net Settlement Amount under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Payments pursuant to this Agreement.
- Z. LWDA:** California Labor and Workforce Development Agency.
- AA. Net Settlement Amount (“NSA”):** The total amount of money available from the MSA for distribution to Participating Class Members, which is the MSA less the Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, the PAGA Payment, and Administration Costs.
- BB. PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- CC. PAGA Notices:** The PAGA Notices refer to the pre-filing notices of Labor Code violations served on the LWDA and Defendants by Plaintiff Kenneth Sargeant on May 26, 2021, June 8, 2021, and June 14, 2021.
- DD. PAGA Payment:** The PAGA Payment consists of \$100,000 of the Maximum Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Class Action. Seventy-five percent (75%) of the PAGA Payment (\$75,000) shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment (\$25,000) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as provided for in paragraph III.F.6.
- EE. PAGA Released Claims:** PAGA Released Claims means all claims, demands, rights, liabilities, and causes of action for civil penalties pursuant to PAGA based on any and all underlying claims asserted in the LWDA pre-filing notices dated May 26, 2021, June 8, 2021, and June 14, 2021 and the Class Action, including, but not limited to, alleged violations of Labor Code sections 200, 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, 2802, and 2698 *et seq.* and Code of Civil Procedure section 1021.5, and applicable IWC Wage Orders, arising during the PAGA Periods.
- FF. Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from the class action Settlement.
- GG. Parties:** Plaintiffs Charisma Coleman and Kenneth Sargeant, as individuals and as Class Representatives, Kenneth Sargeant as a private attorney general under PAGA, and Defendants H&E Equipment Services, Inc. and H&E Equipment Services (California), LLC.

- HH. Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement, in the form agreed to by the Parties.
- II. Qualified Settlement Fund or QSF:** A fund within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 *et seq.* that is established by the Settlement Administrator for the benefit of Participating Class Members, Eligible Aggrieved Employees, Plaintiffs, and Class Counsel.
- JJ. Released Claims:** All claims, demands, rights, liabilities, and causes of action for any type of relief and penalties alleged or that could have been alleged based on the facts alleged in the Class Action, including, but not be limited to, failure to pay wages/overtime, failure to provide meal periods and pay meal period premiums, failure to permit rest breaks and pay meal rest period premiums, failure to provide accurate itemized wage statements, failure to pay all wages due upon separation of employment, failure to pay timely wages during employment, failure to keep requisite payroll records, failure to reimburse necessary business expenses, failure to pay sick pay, failure to pay PTO, violation of Business and Professions Code section 17200, violations of Labor Code sections 200, 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, 2802, Code of Civil Procedure section 1021.5, and applicable IWC Wage Orders. The Released Claims cover the Class Period and the Released Parties.
- KK. Released Parties:** (a) Defendants and any direct or indirect parents, subsidiaries, divisions, affiliates, and related entities of Defendants; (b) any predecessors, successors, or assigns of any of the foregoing (a); and (c) any past, present or future employees, officers, directors, affiliates, partners, joint venturers, co-venturers, licensors, licensees, principals, members, managers, managing agents, agents, attorneys, accountants, insurers, reinsurers, shareholders, investment bankers, trusts, trustees, representatives, administrators, fiduciaries, heirs, subrogees, and executors of any of the foregoing (a)-(b) in his, her, or its capacity as such.
- LL. Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Class Notice unless otherwise extended by re-mailing of the Notice Packet or request to cure a deficient Exclusion Form.
- MM. Second PAGA Period:** The period between June 8, 2020, and September 5, 2021.
- NN. Settlement Administrator:** The third-party administrator agreed upon by the Parties to administer this Settlement is Simpluris, Inc., subject to Court approval.

II. RECITALS

- A. This Agreement was reached as a result of extensive arm's length negotiations between the Parties through their respective counsel. This included a full-day mediation on June 1, 2021 with Mark S. Rudy, Esq. and post-mediation negotiations by and between the Parties' counsel. Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law. Prior to the mediation, Defendants produced hundreds of documents relating to their policies, practices, and procedures regarding the allegations in the Class Action, including reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. As part of Defendants' production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. Plaintiffs also interviewed several Class Members who worked for Defendants during the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
- B. **Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of additional proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiffs and Class Counsel have also taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including a formal mediation on June 1, 2021. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement and is in the best interests of the Class Members.
- C. **Defendants' Reasons for Settlement.** Defendants have agreed to this Settlement Agreement to avoid the costs, disruption and distraction of further litigation. Without admitting the truth of any allegations made in the Class Action, or any liability with respect thereto, Defendants and their counsel have concluded that it is desirable that the claims against Defendants be settled on the terms reflected in this Agreement.
- D. **Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort, and contend that for any purpose other than settlement, the Class Action is not appropriate for class or representative treatment. Defendants assert a number of defenses to the claims, including but not limited to preemption, and deny any

wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiffs can serve as adequate Class Representatives or Aggrieved Employees. There has been no determination by any court as to the merits of the claims asserted by Plaintiffs against Defendants or as to whether a class or classes should be certified, other than for settlement purposes only.

- E. Plaintiffs' Claims.** Plaintiffs assert that Defendants' defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. However, in the event that this Settlement is finally approved by the Court, none of Plaintiffs, Class Members, or Class Counsel will oppose Defendants' efforts to use this Agreement to prove that Plaintiffs and Class Members have resolved and are forever barred from re-litigating the Released Claims, PAGA Released Claims, and the claims released under Plaintiffs' Release of Claims and General Release.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Maximum Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum amount, "Maximum Settlement Amount," excluding payroll taxes, that Defendants are obligated to pay under this Settlement Agreement is One Million Two Hundred Thousand Dollars (\$1,200,000).
- B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit or venue. If the Settlement does not become effective, Defendants reserve and shall retain all rights they had before agreeing to settle, including, but not limited to, the

right to contest any and all issues including those relating to class certification, liability and damages, standing and jurisdiction.

- D. Appointment of Class Representatives.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs shall be appointed as the representatives for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Settlement Disbursement.** Subject to the terms and conditions of this Agreement, and the approval of the Court, the Settlement Administrator will disburse the Maximum Settlement Amount as follows:

 - 1. To the Plaintiffs Charisma Coleman and Kenneth Sargeant.** In addition to their respective Individual Settlement Payments, and subject to the Court's approval, Plaintiffs Charisma Coleman and Kenneth Sargeant will each receive Class Representative Enhancement Payments up to Ten Thousand Dollars and Zero Cents (\$10,000). The Settlement Administrator will pay the Class Representative Enhancement Payments out of the Qualified Settlement Fund. Since it is the intent of the Parties that the Class Representative Enhancement Payments are for their service to the Class Members, and not wages, payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payments. An IRS Form 1099 will be issued to Plaintiffs with respect to their Class Representative Enhancement Payments. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payments and shall hold harmless Defendants, Class Counsel, and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payments. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payments, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiffs, the difference shall become part of the NSA and will be distributed to Participating Class Members. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payments, Plaintiffs shall not have the right to revoke the Settlement, and it will remain binding, nor will Plaintiffs seek, request, or demand an increase in the Maximum Settlement Amount on that basis or any basis.

- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendants agrees not to oppose, a total Attorney Fee Award not to exceed one-third or \$400,000 of the MSA and a Cost Award not to exceed \$25,000. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Maximum Settlement Amount. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Attorney Fee and Cost Awards. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and will be distributed to Participating Class Members. In the event that the Court reduces or does not approve the requested Attorney Fee Award, Plaintiffs shall not have the right to revoke the Settlement, and it will remain binding, nor will Plaintiffs seek, request, or demand an increase in the Maximum Settlement Amount on that basis or any basis.
- 3. To the Responsible Tax Authorities.** The Settlement Administrator will withhold the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Payment. The Settlement Administrator will calculate the amounts of the Participating Class Members' and Defendants' portions of payroll withholding taxes. The Settlement Administrator will submit Defendants' portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts along with each person's Individual Settlement Payment withholdings to the appropriate taxing authorities.
- 4. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$15,000. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and will be distributed to Participating Class Members.
- 5. To Participating Class Members.** The Settlement Administrator will pay each Participating Class Member an Individual Settlement Payment from the NSA.

- a. **Individual Settlement Payment Calculation.** The Individual Settlement Payment is calculated based on each Participating Class Member's pro rata share of the Net Settlement Amount based on workweeks during the Class Period as follows: (i) the number of weeks he or she worked as a hourly-paid or non-exempt employee during the Class Period, divided by (ii) the total number of weeks worked by all Participating Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount. The Settlement Administrator will use the Class Data for purposes of this calculation.
- b. **Tax Treatment for Individual Settlement Payments.** Each Participating Class Member's Individual Settlement Payment will be apportioned as follows: twenty percent (20%) wages and eighty percent (80%) penalties and interest. The portion paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings, to be determined by the Settlement Administrator, and shall be reported by W-2 forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages, to be determined by the Settlement Administrator, and shall be reported by IRS 1099 forms. The employees' shares of payroll tax withholdings shall be withheld from each person's Individual Settlement Payment. Participating Class Members will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Payments.

- 6. **To Eligible Aggrieved Employees.** The Settlement Administrator shall pay each Eligible Aggrieved Employee according to his or her proportional share, which will be based upon the total number of pay periods he or she worked during the PAGA Periods.

- a. **Individual PAGA Payment Calculation.** The Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata share of the PAGA Payment allocated to the Eligible Aggrieved Employees based on pay periods during the PAGA Periods as follows: (i) the number of pay periods he or she worked as a hourly-paid or non-exempt employee or exempt outside sales representatives during the PAGA Periods, divided by (ii) the total number of pay periods worked by all Eligible Aggrieved Employees collectively during the PAGA Periods, which is then multiplied by the PAGA Payment allocated to the

Eligible Aggrieved Employees. The Settlement Administrator will use the Class Data for purposes of this calculation.

- b. Tax Treatment for Individual PAGA Payments.** Each Eligible Aggrieved Employee's Individual PAGA Payment will be apportioned as one hundred percent (100%) penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Eligible Aggrieved Employees will be responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual PAGA Payments.

- G. Appointment of Settlement Administrator.** The Settlement Administrator shall be responsible for: (a) preparing, translating into Spanish, if needed, printing, and mailing the Class Notice to the Class Members; (b) keeping track of any objections or requests for exclusion from Class Members; (c) performing skip traces and remailing Class Notices and Individual Settlement Payments to Class Members; (d) calculating any and all payroll tax deductions as required by law and carrying out the tasks outlined in paragraph III.F.3. and related tasks; (e) calculating each Participating Class Member's Individual Settlement Payment and each Eligible Aggrieved Employee's Individual PAGA Payment; (f) establishing and maintaining the QSF; (g) providing weekly status reports to Defendants' Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; (h) providing a due diligence declaration for submission to the Court prior to the Final Approval Hearing; (i) mailing Individual Settlement Payments to Participating Class Members; (j) mailing Individual PAGA Payments to Eligible Aggrieved Employees; (k) mailing the portion of the PAGA Payment due to the LWDA to the LWDA; (l) distributing the Attorney Fee Award and Cost Award to Class Counsel; (m) printing and providing Participating Class Members, Eligible Aggrieved Employees and Plaintiffs with W-2s and 1099 forms as required under this Agreement and applicable law; (n) providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; (o) providing any funds remaining in the QSF as a result of uncashed checks to the California State Controller's Office in accordance with California Unclaimed Property Law so that the Participating Class Member and/or Eligible Aggrieved Employee will have his or her Individual Settlement Payment and/or Individual PAGA Payment available to him or her per the applicable claim procedure to request that money from the State of California, including the administration of related tax reimbursements; and (p) for such other tasks as the Parties mutually agree and otherwise assisting with administration of the Agreement. The Parties each represent that they do not have any financial interest in Simpluris, Inc. or otherwise have a relationship with Simpluris, Inc. that could create a conflict of interest.

H. CIRCULAR 230 DISCLAIMER. Each Party to this Agreement (for purposes of this section, the “Acknowledging Party” and each Party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges and agrees that:

- (1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);
- (2) The Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- (3) No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

I. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a. Plaintiffs will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Exclusion Form. Prior to filing the moving papers, Class Counsel shall provide defense counsel a reasonable opportunity to comment and have input on the moving papers and proposed order.
- b. At the Preliminary Approval Hearing, Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representatives,

Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval Hearing.

- c. Should the Court decline to conditionally certify the Class or to preliminarily approve all material aspects of the Settlement with prejudice, the Parties will comply with paragraph III.I.6.b. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payments shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payments shall not operate to terminate or cancel this Settlement Agreement.

2. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- a. Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendants shall deliver the Class Data to the Settlement Administrator.
- b. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. The Settlement Administrator shall maintain the Class Data as private and confidential and take reasonable and necessary precautions to maintain the confidentiality of the Class Data. The Settlement Administrator shall not distribute or use the Class Data or any information contained therein for any purpose other than to administer this Settlement. This provision is necessary to preserve the privacy rights of Class Members and will not impede Class Counsel's ability to discharge fiduciary duties, including effectuating the terms of this Settlement.
- c. Within fourteen (14) calendar days after Defendants' deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Class Notice and Exclusion Form (collectively, the "Notice Packet") to all identified Class Members via first-class regular U.S. Mail.

- d. If a Notice Packet is returned because of an incorrect address, within ten (10) calendar days from receipt of the returned Notice Packet, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Notice Packet to the Class Member. The Settlement Administrator will use the National Change of Address Database and conduct skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be re-mailed to the original address. If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip trace or forwarded mail, will have an additional ten (10) calendar days to postmark an Exclusion Form, or file and serve an objection to the Settlement or dispute the information provided in their Class Notice. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a re-mailed packet.
- e. Class Members may dispute the information provided in their Class Notice, but must do so in writing, via first-class mail, and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Payments, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible weeks that should be applied and/or the Individual Settlement Payment to which the Class Member may be entitled.
- f. If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and allow fourteen (14) calendar days from the mailing date of the deficiency notice to cure the deficiency. If, after the cure period, the Exclusion Form is not cured, it will be determined that the Class Member did not exclude

himself or herself from the Settlement and will be bound by the Settlement.

- g.** The Settlement Administrator shall provide a weekly status report to the Parties in accordance with paragraph III.G. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of Exclusion Forms received.
- h.** No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval Hearing. Before the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. Objections to Settlement.

- a. Class Notice.** The Class Notice will provide that the Class Members who wish to object to the Settlement may do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline.
- b. Format.** Any written objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing.
- c. Objector Appearances.** Participating Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. The failure to file and serve a written objection does not waive a Participating Class Member's right to appear at and make an oral objection at the Final Approval Hearing.

4. Request for Exclusion from the Settlement (“Opt Out”).

- a. **Class Notice.** The Class Notice will provide that Class Members who wish to exclude themselves from the class action Settlement must mail to the Settlement Administrator an Exclusion Form. The written request for exclusion must: (a) include the Class Member’s name and address, and the last four digits of his or her Social Security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member; and (d) be postmarked no later than the Response Deadline.
- b. **No Opt Out From PAGA.** Eligible Aggrieved Employees will not be able to exclude themselves from receiving their portion of the PAGA Payment. The Class Notice may inform Eligible Aggrieved Employees that they cannot opt out of the PAGA portion of the settlement and explain that they will not be permitted to pursue any action under PAGA against the Released Parties for any claim that arose during the PAGA Periods, even if they elect to opt out of the class action Settlement.
- c. **Validity and Effect.** Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the non-PAGA portions of the Settlement and Judgment and will not receive an Individual Settlement Payment. A Class Member who does not complete and mail a timely Exclusion Form will be included in the Settlement, will be sent an Individual Settlement Payment in accordance with paragraph III.I.8, and will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.
- d. **Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed to Class Members, the number of re-mailed Notice Packets returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion that were not subsequently cured. The Parties may request copies of the valid and invalid requests for exclusion and dispute or request that the Settlement Administrator reconsider the determination of in/validity.

- e. **Defendants' Option to Terminate.** If five percent (5%) or more of the Class Members opt out of the Settlement (i.e., timely return a valid request for exclusion), prior to the Final Fairness Hearing, Defendants shall retain the right, in their sole discretion, to nullify and terminate the Settlement within fourteen (14) days after expiration of the opt-out period.
- 5. **No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment. The names of Class Members who request exclusion from the Settlement will be deemed confidential and the Parties shall not voluntarily make the names publicly available. If the Court requires that the names of Class Members who request exclusion from the Settlement be included in a document to be filed with the Court, the Parties shall jointly request that the names be filed in a standalone document to be filed under seal.
- 6. **Motion for Final Approval.**
 - a. Class Counsel will file unopposed motions and memoranda in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) the Administration Costs; (4) the Class Representative Enhancement Payments; and (5) the PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring, as to all Released Parties, any Released Claims, PAGA Released Claims, and Plaintiffs' Release of Claims and General Release. Prior to filing the moving papers, Class Counsel shall provide defense counsel a reasonable opportunity to comment and have input on the moving papers and proposed order and judgment.
 - b. If the Court denies Preliminary or Final Approval of the Settlement with prejudice, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, Defendants shall have the option to void the Settlement, and if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Maximum Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. Notwithstanding this provision, the Parties agree to take all reasonable steps to cure any deficiencies cited by the Court as

reason for non-approval of any matter(s) filed with the Court for approval. In the event the Court or LWDA increases the amount the Parties have allocated towards the PAGA Penalties, the additional amount awarded by the Court will cause the Net Settlement Amount to be decreased. It is the intention of the Parties that any increase in PAGA Penalties will not result in Defendants having to pay additional monies and neither will such an increase result in decrease in the amount awarded to Class Counsel fees or costs and expenses, unless otherwise ordered by the Court. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Class Representative Enhancement Payments, the Attorney Fee Award, the Cost Award, and/or Administration Cost will not constitute a material modification to the Settlement within the meaning of this paragraph.

- c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.
 - d. The Settlement Administrator will create a website to notify Class Members of any change to the date or location of the Final Approval Hearing and to give Class Members notice of Final Judgement. Class Counsel shall comply with the notice and reporting requirements under Labor Code section 2699(1)(2)-(3).
7. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it, subject to Defendant's option pursuant to paragraph III.I.6.b. A material modification would include, but not necessarily be limited to, any alteration of the Maximum Settlement Amount.
8. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendants can be required to pay under this Settlement for any purpose is

the Maximum Settlement Amount. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel apprised of all distributions from the Maximum Settlement Amount. The Settlement Administrator shall respond to questions from Defendants' Counsel and Class Counsel. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- a. Funding the Settlement:** No later than seven (7) days after the Effective Final Settlement Date, Defendants shall deposit the Maximum Settlement Amount of One Million Two Hundred Thousand Dollars (\$1,200,000) by wiring the funds to the Settlement Administrator. Defendants shall also at this time provide any tax information that the Settlement Administrator needs and requests with reasonable notice to calculate each Participating Class Member's Individual Settlement Payment.
 - b. Disbursement:** Within fourteen (14) calendar days after the deadline to fund the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Payments, Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the PAGA Payment, and the Administration Costs. The Settlement Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to the LWDA for settlement of the PAGA claim. After such payment, Defendants shall have no liability for PAGA claims by or on behalf of Eligible Aggrieved Employees during the PAGA Periods, which are released under this Agreement.
 - c. QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.468B-1, 26 C.F.R. § 1.468B-1 *et seq.* and will be administered by the Settlement Administrator as such.
- 9. Uncashed Checks.** Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Payment and Individual PAGA Payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are returned as undeliverable and without a forwarding address, the Settlement Administrator will conduct a skip trace search to find the most up-to-date mailing addresses and re-mail the checks promptly. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar

days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Payment or Individual PAGA Payment (as applicable) to the State Controller Unclaimed Property Fund in accordance with California Unclaimed Property Law so that the Participating Class Member and/or Eligible Aggrieved Employee will have his or her Individual Settlement Payment and/or Individual PAGA Payment available to him or her per the applicable claim procedure to request that money from the State of California.

10. Final Report by Settlement Administrator. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

11. Defendants' Legal Fees. Defendants are responsible for paying for all of Defendants' own legal fees, costs, and expenses incurred in this Class Action outside of the Maximum Settlement Amount.

12. Plaintiffs' Legal Fees. Plaintiffs are responsible for paying for all of Plaintiffs' own legal fees, costs, and expenses incurred in this Class Action outside of the Maximum Settlement Amount. Except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendants and Released Parties arising from or related to the Class Action.

J. Release of Claims. Upon the Effective Final Settlement Date, in exchange for the consideration set forth in this Agreement, each Participating Class Member shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against all Released Parties.

K. PAGA Release. Upon the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved Employee, and their heirs, executors, administrators, representatives, attorneys, successors and assigns shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all PAGA Released Claims and hereby voluntarily and knowingly is barred from bringing any action for the PAGA Released Claims that arose during the PAGA period applicable to the Eligible Aggrieved Employee. The release of the PAGA Released Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion.

L. Plaintiffs' Release of Claims and General Release. Upon the Effective Final Settlement Date and in accordance with paragraph III.I.8.b, and in exchange for the Class Representative Enhancement Payments to each Plaintiff in amounts not to exceed Ten Thousand Dollars and No Cents (\$10,000), in recognition of their work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiffs hereby provide a general release of claims for themselves and their spouses, heirs, successors and assigns, and forever release, remise, and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendants or the remuneration for, or termination of, such employment. Plaintiffs' Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiffs' Release of Claims and General Release does not include claims for age discrimination under the Age Discrimination in Employment Act, unemployment insurance, workers' compensation benefits, state disability compensation, previously vested benefits under any Employer-sponsored benefits plans, or claims under the Employment Retirement Income Security Act of 1974.

M. Miscellaneous Terms.

1. No Admission of Liability. Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues, including but not limited to those relating to class certification, liability, damages, and jurisdiction if the Settlement is not approved. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Class Action, or that but for the Settlement, a Class should be certified in the Class Action or could proceed on a representative basis. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in

this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. The Agreement and every stipulation and term contained in it is conditioned upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, neither this Agreement nor any documents filed in connection with the approval of this Settlement shall be: (A) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by any Party of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or (B) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiffs, Defendants, any Participating Class Member, Eligible Aggrieved Employee, or Released Party, in the Action or in any other civil, criminal or administrative claim, action, or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payments, Individual Settlement Payments and/or Individual PAGA Payments paid to Plaintiffs, Participating Class Members and/or the Eligible Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiffs, Participating Class Members or Eligible Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payments, Individual Settlement Payments and/or Individual PAGA Payments paid to Plaintiffs, Participating Class Members and/or the Eligible Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiffs', Participating Class Members' or Eligible Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
- 3. Publicity.** Class Counsel and Plaintiffs agree to discuss the terms of this Settlement only in declarations submitted to the Court to establish Class Counsel's adequacy to serve as class counsel, in declarations submitted to the Court in support of motions for preliminary approval, final approval, attorneys' fees and costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiffs agree to decline to respond to any media inquiries concerning the Settlement. The Parties also agree that

no party shall issue any press release to the news media, or communicate in any way with any news media, concerning the settlement or the litigation.

- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits (A, B, and C) will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.
- 8. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors in interest.
- 9. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the

Parties, Released Parties, Participating Class Members, and Eligible Aggrieved Employees.

10. No Prior Assignment. Plaintiffs hereby represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

12. Fair, Adequate, and Reasonable Settlement. The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arm's-length negotiations, taking into account all relevant factors, current and potential.

13. No Tax or Legal Advice. The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Plaintiffs, Class Counsel, Eligible Aggrieved Employees and Participating Class Members will assume any such tax obligations or consequences that may arise from any disbursements made under this Agreement, and that Plaintiffs, Class Counsel, Eligible Aggrieved Employees and Participating Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any recipient of a disbursement under this agreement, such recipient assumes all responsibility for the payment of such taxes.

14. Jurisdiction of the Superior Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement.

15. Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be

found unenforceable, the unenforceable provision may be severed if all Parties agree.

16. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

17. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

18. Pro Rata Increase. If the number of Participating Class Members exceeds three hundred fifty (350) by more than ten percent (10%) or the number of workweeks worked by Participating Class Members during the Class Period exceeds 30,000 by more than ten percent (10%), the MSA will increase in the exact proportionate amount as any increase in Participating Class Members or additional workweeks beyond the ten percent (10%) (i.e., 12% increase = 2% proportionate increase in MSA), whichever is greater. If the number of Eligible Aggrieved Employees that are outside sales representatives exceeds forty-five (45) by more than ten percent (10%), the MSA will increase by twenty dollars (\$20.00) per additional outside sales representative beyond the ten percent (10%).

19. State v. Federal Jurisdiction and Preservation of Status Quo Pending Final Effectiveness of Settlement. The Class Action was originally filed in Alameda County Superior Court on July 27, 2020. On September 4, 2020, the Class Action was removed to federal court. Plaintiff filed a motion to remand, which was vacated without prejudice, pending the June 1, 2021 mediation. Plaintiffs have conditioned their agreement to this Settlement on Defendants' agreement to allow Plaintiffs to seek approval of this Settlement in Alameda County Superior Court. Defendants agreed on the condition that the status quo with respect to federal jurisdiction be preserved. In that regard, the Parties entered into a Status Quo Agreement, attached hereto as Exhibit C.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

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Dated: 10/29/2021, 2021

CHARISMA COLEMAN

Charisma Coleman

Dated: _____, 2021

KENNETH SARGEANT

Dated: _____, 2021

H&E EQUIPMENT SERVICES, INC

Wesley Hebert
Associate Corporate Counsel

Dated: _____, 2021

**H&E EQUIPMENT SERVICES
(CALIFORNIA), LLC**

Wesley Hebert
Associate Corporate Counsel

Dated: _____, 2021

JUSTICE LAW CORPORATION

Douglas Han, Esq.
Attorneys for Plaintiffs Charisma Coleman and
Kenneth Sargeant, on behalf of themselves and all
others similarly situated

Dated: _____, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

Jeffrey S. Ranen, Esq.
Soojin Kang, Esq.
Attorneys for Defendants H&E Equipment Services,
Inc. and H&E Equipment Services (California), LLC

Dated: _____, 2021

CHARISMA COLEMAN

Dated: 11/08/2021, 2021

KENNETH SARGEANT



Dated: _____, 2021

H&E EQUIPMENT SERVICES, INC

Wesley Hebert
Associate Corporate Counsel

Dated: _____, 2021

**H&E EQUIPMENT SERVICES
(CALIFORNIA), LLC**

Wesley Hebert
Associate Corporate Counsel

Dated: 11/7/, 2021

JUSTICE LAW CORPORATION



Douglas Han, Esq.
Attorneys for Plaintiffs Charisma Coleman and
Kenneth Sargeant, on behalf of themselves and all
others similarly situated

Dated: _____, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

Jeffrey S. Ranen, Esq.
Soojin Kang, Esq.
Attorneys for Defendants H&E Equipment Services,
Inc. and H&E Equipment Services (California), LLC

Dated: _____, 2021

CHARISMA COLEMAN

Dated: _____, 2021

KENNETH SARGEANT

Dated: October 29, 2021

H&E EQUIPMENT SERVICES, INC



Wesley Hebert
Associate Corporate Counsel

Dated: October 29, 2021

**H&E EQUIPMENT SERVICES
(CALIFORNIA), LLC**



Wesley Hebert
Associate Corporate Counsel

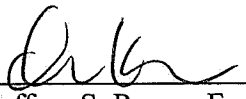
Dated: _____, 2021

JUSTICE LAW CORPORATION

Douglas Han, Esq.
Attorneys for Plaintiffs Charisma Coleman and
Kenneth Sargeant, on behalf of themselves and all
others similarly situated

Dated: 11/2, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP



Jeffrey S. Ranen, Esq.
Soojin Kang, Esq.
Attorneys for Defendants H&E Equipment Services,
Inc. and H&E Equipment Services (California), LLC

EXHIBIT “A”

CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES
Charisma Coleman and Kenneth Sargeant v. H&E Equipment Services, Inc., et. al.
Alameda County Case No. RG20069157

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you, and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

TO: All non-exempt employees employed by H&E Equipment Services, Inc. or H&E Equipment Services (California), LLC ("Defendants") within the State of California from April 6, 2016, through September 5, 2021.

The California Superior Court, County of Alameda County, has granted preliminary approval of a proposed settlement ("Settlement") of the above-captioned class and representative actions (referred to in this Notice as the "Class Action"). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class and Representative Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes ("Class" or "Class Members"):

All non-exempt employees employed by Defendants within the State of California from April 6, 2016, through September 5, 2021.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS AND REPRESENTATIVE ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

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4. How Does This Class Action Settlement Work?.....	Page 3
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Questions? Call the Settlement Administrator toll free at [phone number]

1. Why Have I Received This Notice?

Defendants' personnel records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Claims, as described below, from April 6, 2016, through September 5, 2021 (the "Class Period").

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the California Superior Court, County of Alameda. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court has determined that there is sufficient evidence to suggest that the proposed settlement may be fair, adequate, and reasonable and that any final determination of those issues will be made at the Final Approval Hearing.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [the date of final approval hearing], 2022 at [time a.m./p.m.], before the Honorable Paul D. Herbert, at the Superior Court for the County of Alameda, located at 2233 Shoreline Drive Alameda, California 94501, Department 20.

2. What Is This Case About?

Plaintiffs Charisma Coleman and Kenneth Sargeant commenced a class and representative action in the Alameda County Superior Court (Case Number RG20069157). The action is referred to in this Notice as "Class Action."

Plaintiffs Charisma Coleman and Kenneth Sargeant are referred to in this Notice as "Plaintiffs." Plaintiffs' action against Defendants sought damages, restitution, statutory penalties, civil penalties interest, costs, attorney's fees and other relief based on the following alleged causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Labor Code § 246 (Unpaid Sick Pay); (11) Violation of California Labor Code § 227.3 (Unpaid PTO); (12) Violation of California Labor Code § 2698, *et. seq.* (Private Attorneys General Act of 2004); and, (13) Violation of California Business and Professions Code §§ 17200, *et. seq.*

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. Nor has it decided whether this case could proceed as a class or representative action. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong.

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Questions? Call the Settlement Administrator toll free at [phone number]

In other words, the Court has not determined that Defendants violated any laws, nor has it decided in favor of Plaintiffs or Defendants; instead, both sides have agreed to resolve the Class Action with no decision or admission of liability.

Defendants deny all allegations made by Plaintiffs, individually, on behalf of Class Members, and on a representative basis, and deny liability for any wrongdoing with respect to the alleged facts or causes of action asserted in the Class Action. The settlement is not an admission by Defendants of any wrongdoing or an indication that any law was violated.

3. *Am I A Class Member?*

You are a Class Member if you were employed by Defendants as a non-exempt employee in California at any time from April 6, 2016, through September 5, 2021 (the “Class Period”). If you qualify as a Class Member, you could receive money from the Class Action Settlement.

If you qualify as an Eligible Aggrieved Employee, meaning you were employed as an employee at any time from May 25, 2020, through September 5, 2021, you may receive money from the PAGA Payment, discussed in section 11.

4. *How Does The Class Action Settlement Work?*

In their Class Action, Plaintiffs sued Defendants on behalf of themselves and all other similarly situated employees who were employed by Defendants as non-exempt employees in California at any time during the Class Period. Plaintiffs and other non-exempt employees of Defendants comprise a “Class” and are “Class Members.” The settlement of this Class Action resolves the Released Claims of all Class Members, except those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiffs and the Class	Attorneys for Defendants
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Questions? Call the Settlement Administrator toll free at [phone number]

JUSTICE LAW CORPORATION Douglas Han Shunt Tatavos-Gharajeh 751 N. Fair Oaks Avenue, Suite 101 Pasadena, California 91103 Telephone: (818) 230-7502 Facsimile: (818) 230-7259	LEWIS BRISBOIS BISGAARD & SMITH LLP Jeffery S. Ranen Soojin Kang Daniel D. Spencer 633 West 5th Street, Suite 4000 Los Angeles, CA 90071 Telephone: (213) 250-1800
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The Court has decided that Justice Law Corporation is qualified to represent the Class Members simultaneously for the purposes of this Settlement. If you want your own attorney, you may hire one at your own cost.

6. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed Settlement and your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: *Defendants will not retaliate against you in any way for either participating or not participating in this Settlement.*

• **DO NOTHING:** **You do not have to do anything in order to receive payment under this Settlement.**

If you do nothing and the Court grants final approval of the Settlement, you will become part of the Class Action Settlement and will receive an Individual Settlement Payment (explained below) based on the total number of workweeks you were employed by Defendants as a non-exempt employee in California during the Class Period. You will release all of the Released Claims, as defined in Section No. 9 below, and you will give up your right to pursue the Released Claims, as defined in Section No. 9 below.

• **OPT-OUT:** If you do not want to participate as a Class Member **and do not want to receive a class action settlement payment**, you may “opt-out,” and you will not be part of this Class Action Settlement. If the Court grants final approval of the Settlement, you will not receive an Individual Settlement Payment, and you will not give up the right to sue the Released Parties, including Defendants, for any of the Released Claims as defined in Section No. 9 below. Please note, if you are eligible to receive an Individual PAGA Payment (explained below) and you do “opt-out” of the Class Action Settlement you will still receive an Individual PAGA Payment. Your right to pursue a claim pursuant to PAGA will be extinguished, regardless of whether or not you opt-out.

• **OBJECT:** You can ask the Court to deny approval of this Settlement by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. You cannot both object to the Settlement and opt out of the case.

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Questions? Call the Settlement Administrator toll free at [phone number]

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt-Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. How Do I Opt Out Or Exclude Myself From This Class Action Settlement?

If you do not wish to participate in the Class Action Settlement, **and do not want to receive an Individual Settlement Payment**, you can exclude yourself from the Settlement (*i.e.*, “opt-out”) by sending an opt-out form by the date and to the address stated below. A form (“ELECTION NOT TO PARTICIPATE IN (‘OPT-OUT’ FROM) CLASS ACTION SETTLEMENT”) (the “Exclusion Form”) has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes all of the same information. If you opt-out of the Settlement, you will not be bound by the Class Action Settlement and therefore you will not release the claims set forth in Section No. 9. The Exclusion Form must be complete, signed, dated, and mailed by First-Class U.S. Mail, **postmarked no later than _____, 2021** to: ***Charisma Coleman and Kenneth Sargeant v. H&E Equipment Services, Inc., et. al. C/O Simpluris, Inc. Settlement Administrators*** [INSERT ADDRESS].

If you received a re-mailed Class Notice, whether, by skip-trace or forwarded mail, you will have an additional ten (10) days to postmark an Exclusion Form. The envelope should indicate whether the Class Notice has been forwarded or re-mailed. We encourage you to keep copies of all documents, including the envelope, in the event your compliance with the deadline is challenged.

The Court will exclude from the Class Action Settlement any Class Member who submits a complete and timely Exclusion Form as described in the paragraph above. Exclusion Forms that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Any Class Member who fails to submit a valid and timely Exclusion Form on or before the above-specified deadline shall be bound by all terms of the Settlement, release, and any Judgment entered in the Action if the Settlement receives final approval from the Court.

8. How Do I Object To The Settlement?

If you are a Class Member who does not opt-out of the Settlement, you may object to the Settlement, personally or through an attorney.

You may mail a written objection to the Settlement Administrator at [address] by [the Response Deadline]. If you received a re-mailed Class Notice, whether, by skip-trace or forwarded mail, you will have an additional ten (10) days to postmark a written objection. If you choose to object in writing your objection must state: (a) the objecting person’s full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

Class Members may appear at the Final Approval Hearing, either in person or through the objector’s own counsel even if they did not submit a written objection. Class Members’ timely and valid objections to the Settlement will be considered even if the objector does not appear at the Final Approval Hearing.

If the Court approves the settlement over objections, objecting Class Members will receive an Individual Settlement Payment and will be bound by the terms of the Settlement.

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Questions? Call the Settlement Administrator toll free at [phone number]

9. How Does This Class Action Settlement Affect My Rights? What are the Released Claims?

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt-out of the Settlement will be bound by the Court's Final Judgment and will fully release and discharge (a) Defendants and any direct or indirect parents, subsidiaries, divisions, affiliates, and related entities of Defendants; (b) any predecessors, successors, or assigns of any of the foregoing (a); and (c) any past, present or future employees, officers, directors, affiliates, partners, joint venturers, co-venturers, licensors, licensees, principals, members, managers, managing agents, agents, attorneys, accountants, insurers, reinsurers, shareholders, investment bankers, trusts, trustees, representatives, administrators, fiduciaries, heirs, subrogees, and executors of any of the foregoing (a)-(b) in his, her, or its capacity as such ("Released Parties"). The Released Claims are as follows:

A. Released Claims.

The claims that Plaintiffs and the other Participating Class Members are releasing in exchange for the consideration provided for by the Settlement are all claims, demands, rights, liabilities, and causes of action for any type of relief and penalties alleged or that could have been alleged based on the facts alleged in the Class Action, including, but not be limited to, failure to pay wages/overtime, failure to provide meal periods and pay meal period premiums, failure to permit rest breaks and pay meal rest period premiums, failure to provide accurate itemized wage statements, failure to pay all wages due upon separation of employment, failure to pay timely wages during employment, failure to keep requisite payroll records, failure to reimburse necessary business expenses, failure to pay sick pay, failure to pay PTO, violation of Business and Professions Code section 17200, violations of Labor Code sections 200, 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, 2802, Code of Civil Procedure section 1021.5, and applicable IWC Wage Orders.

Furthermore, PAGA Released Claims means all allegations and claims for civil penalties pursuant to PAGA based on any and all underlying Labor Code violations alleged in the Complaints or in the PAGA Notices that arose during the PAGA Period, which includes alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, 2802, and 2698 *et seq.* and Code of Civil Procedure section 1021.5, and applicable IWC Wage Orders.

10. How Much Can I Expect to Receive From This Settlement?

Defendants will pay, subject to Court approval, a Maximum Settlement Amount of \$1,200,000 to cover: (1) the Individual Settlement Payments to all Settlement Class Members; (2) the Class Representative Enhancement Awards to Plaintiffs in an amount up to \$20,000, total (\$10,000 for each Plaintiff); (3) the Administration Costs to the Settlement Administrator in an amount up to \$15,000; (4) the Class Counsel Award for attorneys' fees of \$400,000 and costs of up to \$25,000 supported by declaration; (5) a PAGA Payment for settlement of claims under PAGA for \$100,000, with 75% of that portion (\$75,000) to be paid to the Labor Workforce and Development Agency ("LWDA"), and the remaining 25% (\$25,000) to be distributed to Eligible Aggrieved Employees as Individual PAGA Payments.

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Questions? Call the Settlement Administrator toll free at [phone number]

After deducting the Class Representative Enhancement Awards to Plaintiffs, Administration Costs, Class Counsel Award and PAGA Payment, the remaining sum, estimated at \$640,000 is the “Net Settlement Amount”, which shall be distributed to all Participating Class Members. The Settlement Administrator will calculate the Individual Settlement Payments for Participating Class Members. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked as a non-exempt employee during the Class Period based on the Class data provided by Defendants, divided by (ii) the total number of weeks worked by all Participating Class Members during the Class Period based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member’s Individual Settlement Payment ties directly to the number of weeks that he or she worked during the Class Period.

Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on Defendants’ records, which show you worked [REDACTED] workweeks during the Class Period.

If you believe the number of eligible workweeks records are incorrect, you may provide documentation and/or an explanation to show contrary information to the Settlement Administrator at [address] on or before [the Response Deadline]. Any evidence submitted will be carefully weighed, and the Class Counsel and Defendants’ Counsel will make a final determination. If this was re-mailed to you, you have an additional ten (10) days to submit a dispute.

Twenty percent (20%) of your Individual Settlement Payment will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Payment only and reported on an IRS Form W-2. The remaining eighty percent (80%) of your Individual Settlement Payment will be treated as penalties, interest, and reimbursement and will be paid pursuant to an IRS Form 1099.

Defendants are expected to fund the Maximum Settlement Amount within seven (7) days after the settlement becomes final. Your Individual Settlement Payment will be distributed within approximately fourteen (14) days after the funding of the Maximum Settlement Amount.

It is strongly recommended that upon receipt of your Individual Settlement Payment check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to the California State Controller in accordance with California Unclaimed Property Law.

11. What is the PAGA Payment, and Am I Eligible for it?

Under the terms of the Settlement, \$100,000 has been set aside as a PAGA Payment. This portion is the total amount of civil penalties collected on behalf of the State of California. \$75,000 will be sent to the State of California. Allegedly “Aggrieved Employees” will share \$25,000 based on the number of pay periods they worked.

You are an “Eligible Aggrieved Employee” eligible to share the PAGA Payment portion of the settlement if you are a non-exempt employee who worked for Defendants within the State of California between May 25, 2020,

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Questions? Call the Settlement Administrator toll free at [phone number]

through September 5, 2021 (“PAGA Period”). From June 8, 2020, to September 5, 2021, the Eligible Aggrieved Employees also include exempt outside sales representatives.

Individual PAGA Payments will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Period (i.e., the sum of all pay periods of employment for each Eligible Aggrieved Employee) and dividing that number into the \$25,000 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual Eligible Aggrieved Employee’s total number of pay periods employed during the PAGA Period to determine that individual’s Individual PAGA Payment. Individual PAGA Payments shall be designated as 100% penalties, for which an IRS Form 1099 will issue.

Based on your total number of pay periods, your Individual PAGA Payment is \$ [REDACTED]. You are responsible for paying any federal, state, or local taxes owed as a result of this Individual PAGA Payment.

Because these penalties can only be sought by the State of California, you cannot exclude yourself from the PAGA portion of the settlement if the Court gives final approval. Even if you exclude yourself from the class action portion of the settlement, you will still be paid your portion of the civil penalties described above.

If you are not an Eligible Aggrieved Employee, this Section does not apply to you.

12. How Will the Attorneys for the Class and the Class Representative Be Paid?

Class Counsel will be paid from the Maximum Settlement Amount. Subject to Court approval, Class Counsel shall be paid an amount not to exceed one-third of the Maximum Settlement Amount (or \$400,000) for attorneys’ fees, and up to \$25,000 for litigation costs.

Defendants paid all of their own attorneys’ fees and costs.

As set forth in Section No. 10 above, the Plaintiffs will also be paid a Class Representative Enhancement Payment, subject to Court approval.

13. Final Approval Hearing and Remote Appearance

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing], 2022 at [time a.m./p.m.], before Honorable Paul D. Herbert at the Superior Court for the County of Alameda, located at 2233 Shoreline Drive Alameda, California 94501, Department 20. You are not required to appear at this hearing. Any changes to the hearing date will be available on the website [INSERT WEBSITE ADDRESS].

Please monitor the Alameda County Superior Court’s website for any updates regarding the Court’s procedures regarding the pandemic.

14. How Do I Get More Information?

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS OR WOULD LIKE ELECTRONIC COPIES OF DOCUMENTS RELATING TO THE CLASS ACTION OR THE

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Questions? Call the Settlement Administrator toll free at [phone number]

SETTLEMENT, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll-free. Please refer to the “H&E Equipment Services class action settlement.”

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 2233 Shoreline Drive Alameda, California 94501, between 8:30 a.m. and 2:30 p.m.

PLEASE DO NOT TELEPHONE THE COURT OR COURT’S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

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Questions? Call the Settlement Administrator toll free at [phone number]

EXHIBIT “B”

ELECTION NOT TO PARTICIPATE IN ("OPT OUT" FROM) CLASS ACTION SETTLEMENT

Superior Court of the State of California, County of Alameda
Charisma Coleman and Kenneth Sargeant v. H&E Equipment Services, Inc., et. al.
Alameda County Case No. RG20069157

ONLY SIGN AND MAIL THIS DOCUMENT IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS ACTION SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE A PAYMENT FROM THE CLASS ACTION SETTLEMENT.

This document must be postmarked no later than _____, 2021 and sent via U.S. Mail to:

H&E Equipment Services, Inc. Settlement Administrator, C/O Simpluris, Inc., Class Action Settlement
Administrators
[Insert Administrator Address]
[City, State ZIP]

By signing and mailing this form to exclude yourself from the class action settlement, you are agreeing to and confirming the following:

It is my decision not to participate in the class action settlement in *Charisma Coleman and Kenneth Sargeant v. H&E Equipment Services, Inc., et. al* I understand that by excluding myself from the settlement class, I will not receive a settlement payment from the class action settlement. However, if I qualify for an "Individual PAGA Payment," I will receive that payment regardless of whether or not I exclude myself from the class action settlement.

I confirm that I was employed by H&E Equipment Services, Inc. and/or H&E Equipment Services (California), LLC as a non-exempt employee in California during any part of the period of April 6, 2016 through September 5, 2021. I confirm that I have received and reviewed the Notice of Class Action Settlement in this action. I have decided to be excluded from the class, and I have decided **not** to participate in the proposed settlement.

Dated: _____

(Signature)

(Last Four Digits of Social Security Number)

(Type or print name and any former name(s) if applicable)

(Telephone Number)

(Address)

(Address continued)

EXHIBIT “C”

STATUS QUO AGREEMENT

WHEREAS Plaintiff Charisma Coleman ("Coleman"), PAGA claimant Kenneth Sargeant (who will join Charisma Coleman as a named plaintiff and putative class and PAGA representative) ("Sargeant"), Defendant H&E Equipment Services, Inc. ("Defendant 1"), and PAGA notice recipient H&E Equipment Services (California), LLC (which will be named a defendant in the Coleman/Sargeant complaint) ("Defendant 2"), collectively the "Parties," have agreed to settle a pending action, Charisma Coleman v. H&E Equipment Services, Inc., U.S.D.C. N.D. Cal., Case No. 4:20-cv-06280-JSW ("Coleman Action"), Sargeant's PAGA claims, and certain additional claims;

WHEREAS the Parties are still in the process of drafting, negotiating, and executing the long form written settlement agreement;

WHEREAS the settlement requires amending the Coleman complaint to add Sargeant and Defendant 2 as parties and certain additional claims;

WHEREAS the Parties anticipate the process of amending the complaint and finalizing and obtaining approval of the settlement will take several months;

WHEREAS Coleman and Sargeant have requested to seek approval of the settlement in the California state court from which the Coleman Action was removed, i.e., Alameda County Superior Court;

WHEREAS the Parties believe that maintaining the action in federal court during the process of obtaining approval in state court may burden the federal court and the Parties;

WHEREAS the purpose of this agreement is to maintain the status quo during the settlement approval process and put the Parties back in their original position (as of June 1, 2021) if the settlement is not finally approved for any reason.

In light of the foregoing considerations, the Parties, by and through their counsel of record, hereby stipulate and agree:

1. Coleman and Defendant 1 will stipulate to remand the Coleman Action to Alameda County Superior Court.
2. After remand, Coleman will amend the state court complaint to add Sargeant and Defendant 2 as parties and all claims referenced in the Memorandum of Understanding executed June 7, 2021 ("MOU") for purposes of settling all class action and PAGA claims in one proceeding and obtaining court approval of that settlement in state court as agreed in the MOU. Defendant 2 shall not be served with a summons or the Coleman amended complaint.
3. If the anticipated settlement is terminated or fails to become effective for any reason (including but not limited to: (a) failing to sign the long form Settlement Agreement; (b) as a result of any provision in the Settlement Agreement; (c) failing to obtain either preliminary approval or final approval in state court; or (d) reversal of the settlement approval on appeal) ("Settlement Termination"), the Parties hereby agree to take the following steps to return all Parties as close to the positions they were in as of June 1, 2021 as practicable:
 - A. If Defendant 2 remains unserved, Defendant 2 shall be served with the summons and the Coleman amended complaint. Defendant 2 may remove the Coleman action within 30 days of being served. Coleman and Sargeant may seek remand, except on the basis that removal was untimely or waived or on any basis directly or indirectly related to the original Coleman complaint or its removal/remand/dismissal.

- B. If Defendant 2 is unable to remove the Coleman action, Sargeant will dismiss without prejudice all of his claims, including class claims and PAGA claims, from the state court action and Coleman will dismiss Defendant 2, so that the state court action will once again allege only a single cause of action for violation of Business & Professions Code section 17200 by Coleman against Defendant 1.
- a. Sargeant may re-file his class action and PAGA claims in the United States District Court for the Northern District of California or in Alameda County Superior Court ("Sargeant Action");
 - b. If Sargeant re-files his class action and PAGA claims in Alameda County Superior Court, Defendants 1 and/or 2 may remove the Sargeant Action within any time limits applicable to the Sargeant Action alone, without regard for the Coleman Action or its removal/remand/dismissal, and Sargeant may seek remand, except on the basis that removal was waived or on any basis directly or indirectly related to the Coleman Action or its removal/remand/dismissal;
 - c. Within 14 days after the Sargeant Action is filed in the United States District Court for the Northern District of California or, if filed in Alameda County Superior Court, after a motion for remand, if any, has been denied, Coleman will dismiss her state court action and join the Sargeant Action;
 - d. So long as the Sargeant Action is filed within 14 days after Settlement Termination, Defendants 1 and 2 will consider all statutes of limitations applicable to the causes of action in the Sargeant Action tolled from the date they were added to the Coleman complaint to the date the Sargeant Action is filed.
- C. The Parties will cooperate with each other and take any further steps necessary to effectuate the purposes of this agreement, to return the Parties to the relevant positions they were in on June 1, 2021.

Dated: July 16, 2021

JUSTICE LAW CORPORATION



DOUGLAS HAN

Attorneys for Plaintiff and PAGA Claimant

Dated: July 16, 2021

LEWIS BRISBOIS BISGAARD & SMITH
LLP



JEFFREY S. RANEN

SOOJIN KANG

Attorneys for Defendants

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On November 12, 2021, I served the foregoing document described as

JOINT STIPULATION AND SETTLEMENT AGREEMENT

for the following case: **Coleman et al. v. H&E Equipment Services, Inc. et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 833341-21**
Court Case No.: RG20069157
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 12, 2021, at Pasadena, California.



Anna Okada