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ENDORSED
FILED
ALAMEDA COUNTY

AUG 25 2021

CLERK OF THE SUPERIOR COURT

By K. Ghee Deputy

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

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

Plaintiffs,

vs.

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

Defendants.

Case No.: RG20069157

Honorable Paul D. Hebert
Department 20

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (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, and 1197.1 (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);

- 1 (9) Violation of California Labor Code §§
2 2800 and 2802 (Unreimbursed
3 Business Expenses);
4 (10) Violation of California Labor Code §
5 246 (Unpaid Sick Pay)
6 (11) Violation of California Labor Code §
7 227.3 (Unpaid PTO);
8 (12) Violation of California Labor Code §
9 2698, *et seq.* (Private Attorneys General
10 Act of 2004)
11 (13) Violation of California Business &
12 Professions Code §§ 17200, *et seq.*
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COME NOW, Plaintiffs CHARISMA COLEMAN and KENNETH SARGEANT (collectively “Plaintiffs”) hereby submit this First Amended Class Action Complaint For Damages against Defendants H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT SERVICES (CALIFORNIA), LLC, and DOES 1 through 100, inclusive (collectively, “Defendants”), individually, on behalf of members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”) allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for each of the named Plaintiffs, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Alameda. Most of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendants employed Plaintiffs within the State of California.

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PARTIES

5. Plaintiffs are individuals residing in the State of California.

6. Plaintiffs are informed and believe and thereon allege that Defendant H&E EQUIPMENT SERVICES, INC., at all times herein mentioned, was and is, upon information and belief, a corporation organized and existing under the laws of the State of Delaware, and transacts business throughout the State of California, including the County of Alameda.

7. Plaintiffs are informed and believe and thereon allege that Defendant H&E EQUIPMENT SERVICES (CALIFORNIA), LLC, at all times herein mentioned, was and is, upon information and belief, a California limited liability company, and transacts business throughout the State of California, including the County of Alameda.

8. At all relevant times, Defendants were the “employers” of Plaintiffs within the meaning of all applicable state laws and statutes.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and based on that information and belief alleges, that each of the Defendants designated as a DOE are legally responsible for the events and happenings referred to in this First Amended Class Action Complaint For Damages, and unlawfully caused the injuries and damages to Plaintiffs as alleged in this First Amended Class Action Complaint For Damages. Plaintiffs will seek leave of court to amend this First Amended Class Action Complaint For Damages to show the true names and capacities when the same have been ascertained.

10. At all times herein relevant, Defendants were the agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

11. Plaintiffs further allege that Defendants including the unknown defendants identified as DOES, directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members so as to make each of said Defendants employers and liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiffs brings this action on their own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All non-exempt employees employed by Defendants in California at any time between April 6, 2016, and September 5, 2021 who do not timely opt-out.

14. Plaintiffs reserve the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than three hundred (300) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

b. Typicality: Plaintiffs' claims are typical of all other class members as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.

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1 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 each class member, with whom they have a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiffs have
4 no interest that is antagonistic to the other class members. Plaintiffs'
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiffs have
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;

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- b. Whether Defendants had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed meal and rest periods in violation of California law;
- c. Whether Defendants time keeping system rounded their hourly-paid or non-exempt employees time to deprive them of wages for all hours worked;
- d. Whether Defendants required Plaintiffs and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiffs and the other class members;
- e. Whether Defendants failed to include non-discretionary bonuses and incentives in Plaintiffs and the other class members' regular rates;
- f. Whether Defendants deprived Plaintiffs and the other class members of meal and/or rest periods or required Plaintiffs and the other class members to work during meal and/or rest periods without compensation;
- g. Whether Defendants failed to pay minimum wages to Plaintiffs and the other class members;
- h. Whether Defendants failed to pay all wages due to Plaintiffs and the other class members within the required time upon their discharge or resignation;
- i. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other class members during their employment;
- j. Whether Defendants complied with wage reporting as required by the California Labor Code, including, inter alia, section 226;
- k. Whether Defendants failed to keep requisite payroll records as required by California Labor Code section 1174;

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- 1 l. Whether Defendants failed to reimburse Plaintiffs and the other class
2 members for necessary business-related expenses and costs;
- 3 m. Whether Defendants failed to pay sick pay as required by California
4 Labor Code section 246;
- 5 n. Whether Defendants failed to pay PTO as required by California Labor
6 Code section 227.3;
- 7 o. Whether Defendants' conduct was willful or reckless;
- 8 p. Whether Defendants engaged in unfair business practices in violation of
9 California Business & Professions Code section 17200, *et seq.*
- 10 q. The appropriate amount of damages, restitution, and/or monetary
11 penalties resulting from Defendants' violation of California law; and
- 12 r. Whether Plaintiffs and the other class members are entitled to
13 compensatory damages pursuant to the California Labor Code.

14 **GENERAL ALLEGATIONS**

15 17. At all relevant times set forth herein, Defendants employed Plaintiffs and other
16 persons as hourly-paid or non-exempt employees within the State of California.

17 18. Defendants, jointly and severally, employed Plaintiff CHARISMA COLEMAN as
18 an hourly-paid or non-exempt employee from approximately 2015 to 2017 in the State of
19 California, County of Alameda.

20 19. Defendants, jointly and severally, employed Plaintiff KENNETH SARGEANT as
21 an hourly-paid or non-exempt employee until approximately February 2021 in the State of
22 California, County of Alameda.

23 20. Defendants had the authority to hire and terminate Plaintiffs and other class
24 members; to set work rules and conditions governing Plaintiffs' and other class members'
25 employment; and to supervise their daily employment activities.

26 21. Defendants hired Plaintiffs and other class members and classified them as non-
27 exempt employees, and failed to compensate them for all hours worked, missed meal periods
28 and/or rest breaks.

1 22. Defendants exercised sufficient authority over the terms and conditions of
2 Plaintiffs' and other class members' employment for them to be joint employers of Plaintiffs
3 and the other class members.

4 23. Defendants directly hired and paid wages and benefits to Plaintiffs and other
5 class members.

6 24. Defendants continue to employ hourly-paid or non-exempt employees within the
7 State of California.

8 25. Plaintiffs and other class members worked over eight (8) hours in a day, and/or
9 forty (40) hours in a week during their employment with Defendants.

10 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
11 engaged in a pattern and practice of wage abuse against class members within the State of
12 California. This scheme involved, inter alia, failing to pay them for all hours worked, missed
13 meal periods, and missed rest breaks in violation of California law.

14 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
15 knew or should have known that Plaintiffs and other class members were entitled to receive
16 certain wages for overtime compensation and that Plaintiffs and other class members were not
17 receiving wages for overtime compensation.

18 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 failed to provide Plaintiffs and other class members the required rest and meal periods during
20 the relevant time period as required under the Industrial Welfare Commission Wage Orders
21 and thus they are entitled to any and all applicable penalties.

22 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
23 knew or should have known that Plaintiffs and other class members were entitled to receive all
24 timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
25 the other class members' regular rate of pay when a meal period was missed, late or
26 interrupted, and that Plaintiffs and other class members did not receive all timely and proper
27 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
28 period was missed.

1 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and other class members were entitled to receive all
3 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs'
4 and the other class members' regular rate of pay when a rest period was missed, late, or
5 interrupted, and that Plaintiffs and other class members did not receive all rest periods or
6 payment of one additional hour of pay at their regular rate of pay when a rest period was
7 missed.

8 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
9 knew or should have known that Plaintiffs and other class members were entitled to receive at
10 least minimum wages for compensation and that Plaintiffs and other class members were not
11 receiving at least minimum wages for all hours worked.

12 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Plaintiffs and other class members were entitled to receive the
14 wages owed to them upon discharge or resignation, including overtime and minimum wages
15 and meal and rest period premiums, and that Plaintiffs and other class members did not, in fact,
16 receive such wages owed to them at the time of their discharge or resignation.

17 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
18 knew or should have known that Plaintiffs and the other class members were entitled to receive
19 all wages owed to them during their employment. Plaintiffs and the other class members did
20 not receive payment of all wages, including overtime and minimum wages and meal and rest
21 period premiums, within any time permissible under California Labor Code section 204.

22 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
23 knew or should have known that Plaintiffs and other class members were entitled to receive
24 complete and accurate wage statements in accordance with California law, but, in fact,
25 Plaintiffs and other class members did not receive complete and accurate wage statements from
26 Defendants. The deficiencies included, inter alia, the failure to include the total number of
27 hours worked by Plaintiffs and other class members.

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1 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and the other class and subclass members were
3 entitled to reimbursement for necessary business-related expenses.

4 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
5 knew or should have known that Defendants had to keep complete and accurate payroll records
6 for Plaintiffs and other class members in accordance with California law, but, in fact, did not
7 keep complete and accurate payroll records for Plaintiffs and other class members.

8 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants
9 knew or should have known that Plaintiffs and the other class members were entitled to receive
10 sick pay. Plaintiffs and the other class members did not receive sick pay as required under
11 California Labor Code section 246.

12 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Plaintiffs and the other class members were entitled to receive
14 vacation pay or PTO. Plaintiffs and the other class members did not receive vacation pay or
15 PTO as required under California Labor Code section 227.3.

16 39. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 knew or should have known that they had a duty to compensate Plaintiffs and other class
18 members pursuant to California law, and that Defendants had the financial ability to pay such
19 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
20 represented to Plaintiffs and other class members that they were properly denied wages, all to
21 increase Defendants' profits.

22 40. As a pattern and practice, during the relevant time period set forth herein,
23 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
24 worked. Plaintiffs and other class members were required to work more than eight (8) hours
25 per day and/or forty (40) hours per week without overtime compensation.

26 41. As a pattern and practice, during the relevant time period set forth herein,
27 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
28 Plaintiffs and other class members.

1 42. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants failed to pay Plaintiffs and other class members at least minimum wages for all
3 hours worked.

4 43. As a pattern and practice, during the relevant time period set forth herein,
5 Defendants failed to pay Plaintiffs and other class members the wages owed to them during
6 employment and upon discharge or resignation.

7 44. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class
9 members.

10 45. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class
12 members.

13 46. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants failed to reimburse Plaintiffs and the other class members for necessary business-
15 related expenses and costs.

16 47. As a pattern and practice, during the relevant time period set forth herein,
17 Defendants failed to pay the requisite sick pay and vacation/PTO pay.

18 48. As a pattern and practice, during the relevant time period set forth herein,
19 Defendants failed to properly compensate Plaintiffs and other class members pursuant to
20 California law in order to increase Defendants' profits.

21 49. California Labor Code section 218 states that nothing in Article 1 of the Labor
22 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due
23 to him [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
4 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

5 50. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
6 through 45, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 51. California Labor Code section 1198 and the applicable Industrial Welfare
9 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
10 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
11 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

12 52. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiffs and other class members employed by Defendants, who work(ed)
14 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of
15 time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty
16 (40) hours in a workweek.

17 53. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiffs and other class members overtime compensation at a rate of two times
19 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

20 54. California Labor Code section 510 codifies the right to overtime compensation at
21 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
22 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
23 work, and overtime compensation at twice the regular hourly rate for hours worked in excess of
24 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

25 55. During the relevant time period set forth herein, Plaintiffs and other class
26 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
27 week.

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1 56. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs and other
3 class members.

4 57. Defendants' pattern and practice of failing to pay Plaintiffs and other class
5 members the unpaid balance of overtime compensation, as required by California laws, violates
6 the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

7 58. Pursuant to California Labor Code section 1194, Plaintiffs and other class
8 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
9 attorneys' fees.

10 **SECOND CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 226.7 and 512(a))**

12 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
13 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

14 59. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 54, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 60. During the relevant time period set forth herein, the IWC Order and California
18 Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and other class members'
19 employment by Defendants.

20 61. During the relevant time period set forth herein, California Labor Code section
21 226.7 provides that no employer shall require an employee to work during any meal or rest
22 period mandated by an applicable order of the California IWC.

23 62. During the relevant time period set forth herein, the applicable IWC Wage Order
24 and California Labor Code section 512(a) provide that an employer may not require, cause or
25 permit an employee to work for a work period of more than five (5) hours per day without
26 providing the employee with a meal period of not less than thirty (30) minutes, except that if the
27 total work period per day of the employee is no more than six (6) hours, the meal period may be
28 waived by mutual consent of both the employer and employee.

1 63. During the relevant time period set forth herein, the applicable IWC Wage Order
2 and California Labor Code section 512(a) further provide that an employer may not require,
3 cause, or permit an employee to work for a work period of more than ten (10) hours per day
4 without providing the employee with a second uninterrupted meal period of not less than thirty
5 (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second
6 meal period may be waived by mutual consent of the employer and the employee only if the first
7 meal period was not waived.

8 64. As a pattern and practice, during the relevant time period set forth herein,
9 Plaintiffs and other class members who were scheduled to work for a period of time no longer
10 than six (6) hours, and who did not waive their legally-mandated meal periods by mutual
11 consent, were required to work for periods longer than five (5) hours without an uninterrupted
12 meal period of not less than thirty (30) minutes and/or without a rest period.

13 65. As a pattern and practice, during the relevant time period set forth herein,
14 Plaintiffs and other class members who were scheduled to work for a period of time no longer
15 than twelve (12) hours, and who did not waive their legally-mandated meal periods by mutual
16 consent, were required to work for periods longer than ten (10) hours without an uninterrupted
17 meal period of not less than thirty (30) minutes and/or without a rest period.

18 66. As a pattern and practice, during the relevant time period set forth herein,
19 Plaintiffs and other class members who were scheduled to work for a period of time in excess of
20 six (6) hours were required to work for periods longer than five (5) hours without an
21 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

22 67. As a pattern and practice, during the relevant time period set forth herein,
23 Plaintiffs and other class members who were scheduled to work for a period of time in excess of
24 twelve (12) hours were required to work for periods longer than ten (10) hours without an
25 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

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1 68. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants intentionally and willfully required Plaintiffs and other class members to work
3 during meal periods and failed to compensate Plaintiffs and the other class members the full
4 meal period premium for work performed during meal periods.

5 69. As a pattern and practice, during the relevant time period set forth herein,
6 Defendants failed to pay Plaintiffs and other class members the full meal period premium due
7 pursuant to California Labor Code section 226.7.

8 70. Defendants' conduct violates applicable IWC Wage Order and California Labor
9 Code sections 226.7 and 512(a).

10 71. Pursuant to the applicable IWC Wage Order and California Labor Code section
11 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one
12 additional hour of pay at the employee's regular rate of compensation for each workday that the
13 meal or rest period is not provided.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of California Labor Code § 226.7)**

16 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
17 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

18 72. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
19 through 67, and each and every part thereof with the same force and effect as though fully set
20 forth herein.

21 73. During the relevant time period set forth herein, the applicable IWC Wage Order
22 and California Labor Code section 226.7 were applicable to Plaintiffs' and other class members'
23 employment by Defendants.

24 74. During the relevant time period set forth herein, California Labor Code section
25 226.7 provides that no employer shall require an employee to work during any rest period
26 mandated by an applicable order of the California IWC.

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1 75. During the relevant time period set forth herein, the applicable IWC Wage Order
2 provides that “[e]very employer shall authorize and permit all employees to take rest periods,
3 which insofar as practicable shall be in the middle of each work period” and that the “rest period
4 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time
5 per four (4) hours or major fraction thereof” unless the total daily work time is less than three
6 and one-half (3 ½) hours.

7 76. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants required Plaintiffs and other class members to work four (4) or more hours without
9 authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

10 77. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants willfully required Plaintiffs and other class members to work during rest periods and
12 failed to pay Plaintiffs and the other class members the full rest period premium for work
13 performed during rest periods.

14 78. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants failed to pay Plaintiffs and other class members the full rest period premium due
16 pursuant to California Labor Code section 226.7

17 79. Defendants’ conduct violates applicable IWC Wage Orders and California Labor
18 Code section 226.7.

19 80. Pursuant to the applicable IWC Wage Orders and California Labor Code section
20 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one
21 additional hour of pay at the employees’ regular hourly rate of compensation for each workday
22 that the rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

3 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
4 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

5 81. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 76 and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 82. During the relevant time period set forth herein, California Labor Code sections
9 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a
10 lesser wage than the minimum so fixed, is unlawful.

11 83. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants failed to pay minimum wages to Plaintiffs and other class members as required,
13 pursuant to California Labor Code sections 1194, 1197.1 and 1197.

14 84. Defendants' failure to pay Plaintiffs and other class members the minimum
15 wage as required violates California Labor Code sections 1194, 1197.1 and 1197. Pursuant to
16 those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of
17 their minimum wage compensation as well as interest, costs, and attorney's fees, and
18 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

19 85. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class
20 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
21 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
22 minimum wages.

23 86. Pursuant to California Labor Code section 1194.2, Plaintiffs and other class
24 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
25 unpaid and interest thereon.

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1 **FIFTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 201, 202, and 203)**

3 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
4 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

5 87. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 82, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 88. During the relevant time period set forth herein, California Labor Code sections
9 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
10 at the time of discharge are due and payable immediately, and if an employee quits his or her
11 employment, his or her wages shall become due and payable not later than seventy-two (72)
12 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her
13 intention to quit, in which case the employee is entitled to his or her wages at the time of
14 quitting.

15 89. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants intentionally and willfully failed to pay Plaintiffs and other class members who are
17 no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72)
18 hours of their leaving Defendants' employ.

19 90. Defendants' pattern and practice of failing to pay Plaintiffs and other class
20 members who are no longer employed by Defendants their wages, earned and unpaid, within
21 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
22 Code sections 201 and 202.

23 91. California Labor Code section 203 provides that if an employer willfully fails to
24 pay wages owed, in accordance with sections 201 and 202, then the daily wages of the employee
25 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
26 is commenced; but the wages shall not continue for more than thirty (30) days.

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1 92. Plaintiffs and other class members are entitled to recover from Defendants the
2 statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as
3 provided by Labor Code section 203.

4 **SIXTH CAUSE OF ACTION**

5 **(Violation of California Labor Code § 204)**

6 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
7 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

8 93. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
9 through 92, and each and every part thereof with the same force and effect as though fully set
10 forth herein.

11 94. During the relevant time period set forth herein, California Labor Code section
12 204 provides that all wages earned by any person in any employment between the 1st and 15th
13 days, inclusive, of any calendar month, other than those wages due upon termination of an
14 employee, are due and payable between the 16th and the 26th of the month during which the
15 labor was performed; all wages earned by any person in any employment between the 16th and
16 the last day, inclusive, of any calendar month, other than those wages due upon termination of
17 an employee, are due and payable between the 1st and the 10th day of the following month,
18 and; all wages earned for labor in excess of the normal work period shall be paid no later than
19 the payday for the next regular payroll period.

20 95. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants intentionally and willfully failed to pay Plaintiffs and other class members all
22 wages due to them, within any time period permissible under California Labor Code section
23 204.

24 96. Plaintiffs and the other class members are entitled to recover all remedies
25 available for violations of California Labor Code section 204.

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1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226(a))**

3 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
4 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

5 97. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 96, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 98. During the relevant time period set forth herein, California Labor Code section
9 226(a) provides that every employer shall furnish each of his or her employees an accurate
10 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
11 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
12 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
13 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
14 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
15 employee and his or her social security number, (8) the name and address of the legal entity that
16 is the employer, and (9) all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee. The deductions
18 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
19 showing the month, day, and year, and a copy of the statement or a record of the deductions shall
20 be kept on file by the employer for at least three years at the place of employment or at a central
21 location within the State of California.

22 99. As a pattern and practice, Defendants have intentionally and willfully failed to
23 provide Plaintiffs and other class members with complete and accurate wage statements. The
24 deficiencies include but are not limited to the failure to include the total number of hours worked
25 by Plaintiffs and other class members.

26 100. As a result of Defendants' violation of California Labor Code section 226(a),
27 Plaintiffs and other class members have suffered injury and damage to their statutorily protected
28 rights.

1 101. More specifically, Plaintiffs and other class members have been injured by
2 Defendants' intentional and willful violation of California Labor Code section 226(a) because
3 they were denied both their legal right to receive, and their protected interest in receiving,
4 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

5 102. Plaintiffs and other class members are entitled to recover from Defendants the
6 greater of their actual damages caused by Defendants' failure to comply with California Labor
7 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

8 103. Plaintiffs and other class members are also entitled to injunctive relief to ensure
9 compliance with this section, pursuant to California Labor Code section 226(g).

10 **EIGHTH CAUSE OF ACTION**

11 **(Violation of California Labor Code § 1174)**

12 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
13 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

14 104. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 103, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 105. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
18 central location in the state or at the plants or establishments at which employees are employed,
19 payroll records showing the hours worked daily by and the wages paid to, and the number of
20 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
21 respective plants or establishments. These records shall be kept in accordance with rules
22 established for this purpose by the commission, but in any case shall be kept on file for not less
23 than two years.

24 106. Defendants have intentionally and willfully failed to keep accurate and complete
25 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other
26 class members.

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1 107. As a result of Defendants' violation of California Labor Code section 1174(d),
2 Plaintiffs and the other class members have suffered injury and damage to their statutorily-
3 protected rights.

4 108. More specifically, Plaintiff and the other class members have been injured by
5 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
6 they were denied both their legal right and protected interest in having available, accurate, and
7 complete payroll records pursuant to California Labor Code section 1174(d).

8 **NINTH CAUSE OF ACTION**

9 **(Violation of California Labor Code §§ 2800 and 2802)**

10 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
11 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

12 109. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
13 through 108, and each and every part thereof with the same force and effect as though fully set
14 forth herein.

15 110. Pursuant to California Labor Code sections 2800 and 2802, an employer must
16 reimburse its employee for all necessary expenditures incurred by the employee in direct
17 consequence of the discharge of his or her job duties or in direct consequence of his or her
18 obedience to the directions of the employer.

19 111. Defendants have intentionally and willfully failed to reimburse Plaintiffs and
20 other class and subclass members for all necessary business-related expenses and costs.
21 Plaintiffs and other class and subclass members are entitled to recover from Defendants their
22 business-related expenses and costs incurred during the course and scope of their employment,
23 plus interest accrued from the date on which the employee incurred the necessary expenditures at
24 the same rate as judgments in civil actions in the State of California.

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1 **TENTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 246)**

3 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
4 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

5 112. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 111, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 113. California Labor Code section 246 requires that employers provide employees
9 with paid sick leave of not less than one hour per every 30 hours worked. California Labor
10 Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's
11 regular rate of pay for the workweek in which the employee uses paid sick time or a rate
12 calculated by dividing the employee's total wages, not including overtime premium pay, by the
13 employee's total hours worked in the full pay periods of the prior 90 days of employment.
14 During the relevant time period, Defendants failed to pay employees with paid sick leave that
15 complied with California Labor Code section 246.

16 114. Pursuant to California Labor Code section 246, Plaintiffs and other class
17 members are entitled to recover unpaid sick pay, as well as interest, costs, and attorneys' fees.

18 **ELEVENTH CAUSE OF ACTION**

19 **(Violation of California Labor Code § 227.3)**

20 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
21 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

22 115. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
23 through 114, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

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1 116. California Labor Code section 227.3 states, “[W]henever a contract of
2 employment or employer policy provides for paid vacations, and an employee is terminated
3 without having taken off his vested vacation time, all vested vacation shall be paid to him as
4 wages at his final rate in accordance with such contract of employment or employer policy
5 respecting eligibility or time served”

6 117. As a pattern and practice, during the relevant time period set forth herein,
7 Defendants failed to pay Plaintiffs and other class members the unpaid value of their vested
8 vacation time upon termination pursuant to Defendants’ policies and/or employment contracts
9 with such class members.

10 118. Defendants’ pattern and practice of failing to pay Plaintiffs and other class
11 members the unpaid value of their vested vacation time upon termination pursuant to
12 Defendants’ policies and/or employment contracts with such class members, violates the
13 provisions of California Labor Code section 227.3, and is therefore unlawful.

14 119. Pursuant to California Labor Code section 227.3, Plaintiffs and other class
15 members are entitled to recover vested vacation time unpaid at termination, as well as interest,
16 costs, and attorneys’ fees.

17 **TWELFTH CAUSE OF ACTION**

18 **(Violation of Labor Code Section 2698, *et seq.* (“PAGA”))**

19 **(By Plaintiff Kenneth Sargeant Against H&E EQUIPMENT SERVICES, INC., H&E**
20 **EQUIPMENT SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

21 120. Plaintiff KENNETH SARGEANT incorporates by reference the allegations
22 contained in paragraphs 1 through 119, and each and every part thereof with the same force
23 and effect as though fully set forth herein.

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1 121. PAGA expressly establishes that any provision of the California Labor Code
2 which provides for a civil penalty to be assessed and collected by the California Labor and
3 Workforce Development Agency (“LWDA”), or any of its departments, divisions,
4 commissions, boards, agencies or employees for a violation of the California Labor Code, may
5 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
6 herself, and other current or former employees.

7 122. On May 26, 2021, Plaintiff KENNETH SARGEANT timely provided written
8 notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends
9 were violated, and the theories supporting his contentions. Attached hereto as **Exhibit 1** and
10 incorporated by reference is a copy of the May 26, 2021 written notice to the LWDA.

11 123. On June 8 and June 14, 2021, Plaintiff KENNETH SARGEANT submitted to
12 the LWDA additional amendments to his initial May 26, 2021 LWDA notice, alleging
13 additional provisions of the Labor Code he contends were violated, along with theories
14 supporting his contentions, and identifying H&E EQUIPMENT SERVICES (CALIFORNIA),
15 LLC as an additional “Employer.” Attached hereto as **Exhibits 2 and 3** and incorporated by
16 reference are copies of the June 8, 2021 and June 14, 2021 amendments to Plaintiff KENNETH
17 SARGEANT’s May 26, 2021 written notice to the LWDA respectively.

18 124. Plaintiff KENNETH SARGEANT and the other non-exempt employees are
19 “aggrieved employees” pursuant to Plaintiff KENNETH SARGEANT’s May 26, 2021 written
20 notice as defined by California Labor Code § 2699(c) in that they are all non-exempt
21 employees employed by Defendants in California at any time between May 26, 2020, and
22 September 5, 2021, and one or more of the alleged violations was committed against them.
23 With regards to Plaintiff KENNETH SARGEANT’s first amended written notice on June 8,
24 2021, the aggrieved employees are all non-exempt employees and exempt outside sales
25 representatives employed by Defendants in California at any time between June 8, 2020, and
26 September 5, 2021.

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1 **Failure to Pay Minimum and Overtime Wages**

2 125. At all times relevant herein, Defendants were required to compensate their non-
3 exempt employees minimum wages for all hours worked and overtime wages for all hours
4 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
5 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

6 126. As a pattern and practice, Defendants failed to compensate Plaintiff KENNETH
7 SARGEANT and other aggrieved current and former employees for all hours worked, resulting
8 in a failure to pay all minimum wages and overtime wages, where applicable.

9 **Failure to Provide Meal Periods and Rest Breaks**

10 127. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants
11 were required to authorize and permit their non-exempt employees to take a 10-minute rest
12 break for every four (4) hours worked or major fraction thereof, and were further required to
13 provide their non-exempt employees with a 30-minute meal period for every five (5) hours
14 worked.

15 128. As a pattern and practice, Defendants failed to provide Plaintiff KENNETH
16 SARGEANT and other aggrieved current and former employees with legally-mandated meal
17 periods and rest breaks and failed to pay proper compensation for this failure.

18 **Failure to Timely Pay Wages During Employment**

19 129. At all times relevant herein, Defendants were required to pay their employees
20 within a specified time period pursuant to the mandate of Labor Code § 204.

21 130. As a pattern and practice, Defendants failed to pay Plaintiff KENNETH
22 SARGEANT and other aggrieved current and former employees all wages due and owing them
23 within the required time period.

24 **Failure to Timely Pay Wages Upon Termination**

25 131. At all times relevant herein, Defendants were required to pay their employees all
26 wages owed in a timely fashion at the end of employment pursuant to California Labor Code
27 §§ 201 to 204.

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1 132. As a result of Defendants' Labor Code violations alleged above, Defendants
2 failed to pay Plaintiff KENNETH SARGEANT and the other aggrieved former employees
3 their final wages pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time
4 penalties pursuant to Labor Code § 203.

5 **Failure to Provide Complete and Accurate Wage Statements**

6 133. At all times relevant herein, Defendants were required to keep *accurate* records
7 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
8 1174(d).

9 134. As a result of Defendants' various Labor Code violations, Defendants failed to
10 keep accurate records regarding Plaintiff KENNETH SARGEANT and other aggrieved current
11 and former employees. For example, Defendants failed in their affirmative obligation to keep
12 accurate records regarding Plaintiffs and other aggrieved current and former employees' gross
13 wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly
14 rates and the number of hours worked at each hourly rate. Defendants also failed to provide
15 Plaintiffs and other aggrieved current and former employees complete and accurate wage
16 statements in violation of Labor Code § 226(a). The deficiencies include but are not
17 limited to the failure to include the total number of hours worked by Plaintiffs and other
18 aggrieved employees.

19 **Failure to Reimburse Business Expenses**

20 135. At all times relevant herein, Defendants were required to reimburse their
21 employees for any and all necessary expenditures or losses incurred by the employees in direct
22 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§
23 2800 and 2802.

24 136. As a pattern and practice, Defendants failed to pay Plaintiff KENNETH
25 SARGEANT and other aggrieved current and former employees all business expenses incurred
26 and owing them within the required time period.

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1 137. At all times relevant herein, Defendants were required, pursuant to
2 California Labor Code section 246, to provide employees with paid sick leave of not
3 less than one hour per every 30 hours worked and pay paid sick leave at a non-exempt
4 employee's regular rate of pay for the workweek in which the employee uses paid sick
5 time or a rate calculated by dividing the employee's total wages, not including overtime
6 premium pay, by the employee's total hours worked in the full pay periods of the prior
7 90 days of employment.

8 138. As a pattern and practice, Defendants failed to pay employees paid sick
9 leave that complied with California Labor Code section 246.

10 **Failure to Pay Earned and Unused Vacation Time**

11 139. At all times relevant herein, Defendants were required to pay their employees
12 any wages due for vested, unused vacation time provided pursuant to Defendants' policies
13 and/or contracts with employees upon termination, pursuant to the mandate of Labor Code §
14 227.3.

15 140. As a pattern and practice, Defendants failed to pay Plaintiff KENNETH
16 SARGEANT and other aggrieved current and former employees all vested, unused vacation
17 time provided pursuant to Defendant's policies and/or contracts upon termination.

18 **Failure to Provide Written Contracts for Commission-Earning Employees**

19 141. At all times relevant herein, Defendants were required to draft in writing any
20 contracts of employment involving commissions and provide a signed copy of such contract to
21 all employees paid by commission.

22 142. As a pattern and practice, Defendants failed to provide Plaintiff KENNETH
23 SARGEANT and other aggrieved current and former employees earning commissions with a
24 written contract, pursuant to the mandate of Labor Code § 2751(b).

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Penalties

143. Pursuant to California Labor Code § 2699, Plaintiff KENNETH SARGEANT, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

144. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

145. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

146. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

147. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

148. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

149. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

3 **(By Plaintiffs Against H&E EQUIPMENT SERVICES, INC., H&E EQUIPMENT**
4 **SERVICES (CALIFORNIA), LLC, and DOES 1 through 100)**

5 150. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 149, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 151. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
9 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
10 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public
11 interest within the meaning of Code of Civil Procedure section 1021.5.

12 152. Defendants' activities as alleged herein are violations of California law, and
13 constitute unlawful business acts and practices in violation of California Business &
14 Professions Code section 17200, *et seq.*

15 153. A violation of California Business & Professions Code section 17200, *et seq.*
16 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
17 pattern and practice of requiring Plaintiffs and other class members work overtime hours
18 without paying them proper compensation violate California Labor Code sections 510 and
19 1198. Additionally, Defendants' pattern and practice of requiring Plaintiffs and other class
20 members, to work through their meal and rest periods without paying them proper
21 compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants'
22 pattern and practice of failing to timely pay wages to Plaintiffs and other class members violate
23 California Labor Code sections 201 and 202. Defendants also violated California Labor Code
24 sections 204, 226(a), 227.3, 246, 1194, 1197, 2800, and 2802.

25 154. As a result of the herein described violations of California law, Defendants
26 unlawfully gained an unfair advantage over other businesses.

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1 155. Plaintiffs and other class members have been personally injured by Defendants'
2 unlawful business acts and practices as alleged herein, including but not necessarily limited to
3 the loss of money and/or property.

4 156. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
5 Plaintiffs and other class members are entitled to restitution of the wages withheld and retained
6 by Defendants during a period that commences four years prior to the filing of this First
7 Amended Class Action Complaint For Damages; an award of attorneys' fees pursuant to
8 California Code of Civil procedure section 1021.5 and other applicable laws; and an award of
9 costs.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs, individually, and on behalf of other members of the general public similarly
12 situated and on behalf of aggrieved employees pursuant to PAGA, request a trial by jury.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually, and on behalf of members of the general public
15 similarly situated, prays for relief and judgment against Defendants, jointly and severally, as
16 follows:

17 **Class Certification**

- 18 1. That this action be certified as a class action;
19 2. That Plaintiffs be appointed as the representative of the Class;
20 3. That counsel for Plaintiffs be appointed as Class Counsel; and
21 4. That Defendants provide to Class Counsel, immediately upon its appointment,
22 the names and most current contact information (names, address, telephone numbers and
23 emails) of all class members.

24 **As to the First Cause of Action**

- 25 5. For general unpaid wages at overtime wage rates and such general and special
26 damages as may be appropriate;
27 6. For prejudgment interest on any unpaid overtime compensation commencing
28 from the date such amounts were due;

1 7. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Labor Code section 1194; and

3 8. For such other and further relief as the court may deem just and proper.

4 **As to the Second Cause of Action**

5 9. That the Court make an award to Plaintiffs and the other class members of one
6 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
7 period was not provided;

8 10. For all actual, consequential, and incidental losses and damages, according to
9 proof;

10 11. For premium wages pursuant to California Labor Code section 226.7(b);

11 12. For prejudgment interest on any unpaid wages from the date such amounts were
12 due;

13 13. For reasonable attorneys' fees and costs of suit incurred herein; and

14 14. For such other and further relief as the court may deem just and proper.

15 **As to the Third Cause of Action**

16 15. That the Court make an award to Plaintiffs and the other class members of one
17 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
18 period was not provided;

19 ///

20 16. For all actual, consequential, and incidental losses and damages, according to
21 proof;

22 17. For premium wages pursuant to California Labor Code section 226.7(b);

23 18. For prejudgment interest on any unpaid wages from the date such amounts were
24 due; and

25 19. For such other and further relief as the court may deem just and proper.

26 **As to the Fourth Cause of Action**

27 20. For general unpaid wages and such general and special damages as may be
28 appropriate;

1 21. For prejudgment interest on any unpaid compensation from the date such
2 amounts were due;

3 22. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 California Labor Code section 1194(a);

5 23. For liquidated damages pursuant to California Labor Code section 1194.2; and

6 24. For such other and further relief as the court may deem just and proper.

7 **As to the Fifth Cause of Action**

8 25. For all actual, consequential, and incidental losses and damages, according to
9 proof;

10 26. For statutory wage penalties pursuant to California Labor Code section 203 for
11 the other class members who have left Defendants' employ;

12 27. For prejudgment interest on any unpaid compensation from the date such
13 amounts were due; and

14 28. For such other and further relief as the court may deem just and proper.

15 **As to the Sixth Cause of Action**

16 29. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 30. For statutory penalties and pre-judgment interest on any unpaid compensation
19 from the date such amounts were due; and

20 31. For such other and further relief as the court may deem just and proper.

21 **As to the Seventh Cause of Action**

22 32. For actual, consequential and incidental losses and damages, according to proof;

23 33. For statutory penalties pursuant to California Labor Code section 226(e);

24 34. For injunctive relief to ensure compliance with this section, pursuant to
25 California Labor Code section 226(g); and

26 35. For such other and further relief as the court may deem just and proper.

27 **As to the Eighth Cause of Action**

28 36. For actual, consequential and incidental losses and damages, according to proof;

- 1 37. For statutory penalties pursuant to California Labor Code section 1174.5; and
2 38. For such other and further relief as the court may deem just and proper.

3 **As to the Ninth Cause of Action**

- 4 39. For actual, consequential and incidental losses and damages, according to proof;
5 40. For the imposition of civil penalties and/or statutory penalties;
6 41. For punitive damages and/or exemplary damages according to proof at trial;
7 42. For reasonable attorneys' fees and costs of suit incurred herein; and
8 43. For such other and further relief as the court may deem just and proper.

9 **As to the Tenth Cause of Action**

- 10 44. For actual, consequential and incidental losses and damages, according to proof;
11 45. For pre-judgment interest on any unpaid compensation from the date such
12 amounts were due; and
13 46. For such other and further relief as the court may deem just and proper.
14 47.

15 **As to the Eleventh Cause of Action**

- 16 48. For general unpaid wages and such general and special damages as may be
17 appropriate;
18 49. For prejudgment interest on any unpaid compensation from the date such
19 amounts were due; and
20 50. For such other and further relief as the court may deem just and proper.

21 **As to the Twelfth Cause of Action**

- 22 51. For civil penalties pursuant to statute as set forth in §§ 2698, *et seq.*, the PAGA,
23 for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
24 226.7, 227.3, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.
25 52. For costs and attorneys' fees pursuant to Labor Code §§ 210, 218.5, 1194, and
26 2699, and any other applicable statute; and
27 53. For such other and further relief that the court may deem just and proper.

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1 **As to the Thirteenth Cause of Action**

2 54. For restitution of unpaid wages to Plaintiffs and other class members and all
3 prejudgment interest from the day such amounts were due and payable;

4 55. For the appointment of a receiver to receive, manage and distribute any and all
5 funds disgorged from Defendants and determined to have been wrongfully acquired by
6 Defendants as a result of violation of California Business and Professions Code sections
7 17200, *et seq.*;

8 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Code of Civil Procedure section 1021.5;

10 57. For injunctive relief to ensure compliance with this section, pursuant to
11 California Business and Professions Code sections 17200, *et seq.*; and

12 58. For such other and further relief as the court may deem just and proper.

13
14 DATED: August 24, 2021

JUSTICE LAW CORPORATION

15
16
17 By: 

Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Attorneys for Plaintiffs

EXHIBIT 1

May 26, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

RE: H&E EQUIPMENT SERVICES, INC.

Dear Representative:

We have been retained to represent Kenneth Sargeant against H&E Equipment Services, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "H&E").

Mr. Sargeant is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Sargeant may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

H&E Equipment Services, Inc. is a Delaware corporation located at 7500 Pecue Lane, Baton Rouge, Louisiana 70809.

H&E employed Mr. Sargeant as an hourly-paid non-exempt Heavy Equipment Mechanic within one year of the date of this letter (until in or about February of 2021) in the State of California. H&E directly controlled the wages, hours and working conditions of Mr. Sargeant's employment, including direction, retention, scheduling, supervision, and termination.

¹ Mr. Sargeant does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Sargeant will amend this notice when the true names and capacities are known. Mr. Sargeant is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Sargeant and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

The “aggrieved employees” that Mr. Sargeant may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of H&E within the State of California.

H&E failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Sargeant has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at H&E, regardless of their classification, job title, locations, or whether they were hired directly or through a staffing agency.

H&E has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Sargeant and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. H&E failed to compensate Mr. Sargeant and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. H&E also failed to include non-discretionary bonuses and incentives in Mr. Sargeant and other aggrieved employees’ regular rate of pay for purposes of overtime compensation. Moreover, H&E maintained an illegal rounding policy that negatively affected Mr. Sargeant and other aggrieved employees’ time and pay. Therefore, Mr. Sargeant and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, H&E failed to pay aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, H&E routinely required Mr. Sargeant and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with H&E policies and expectations. Additionally, H&E failed to provide adequate coverage to Mr. Sargeant and other aggrieved employees, so they may be relieved of all work duties and take legally mandated meal and rest breaks. H&E also assigned aggrieved employees to routes with time sensitive delivery deadlines and a high volume of stops such that it was not possible for them to complete their route in a timely manner and take all their meal and rest breaks. Lastly, H&E failed to authorize and permit Mr. Sargeant and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, H&E failed to compensate Mr. Sargeant and other aggrieved employees all the premium wages they were owed.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, H&E failed to pay Mr. Sargeant and other aggrieved employees all wages, including for uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks as explained above, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, H&E failed to pay Mr. Sargeant and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work and premium wages as explained above, within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, H&E did not provide Mr. Sargeant and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from H&E were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Sargeant and other aggrieved employees, (2) total hours worked by Mr. Sargeant and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Sargeant and other aggrieved employees (4) all deductions for Mr. Sargeant and other aggrieved employees, (5) net wages earned by Mr. Sargeant and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Sargeant and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Sargeant and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Sargeant and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, H&E failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Sargeant and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, H&E did not provide Mr. Sargeant and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Sargeant and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by H&E, including for purchasing equipment and tools they required to perform their job tasks.

We believe that Mr. Sargeant and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Sargeant will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of H&E within one year of the date of this letter, as allowed by law.

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LWDA
May 26, 2021
Page 7 of 7

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal stroke extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

C T Corporation System
c/o H&E Equipment Services, Inc.
818 West Seventh Street, Suite 930
Los Angeles, California 90017
Agent for Service of Process for H&E Equipment Services, Inc.

CC: (By Electronic Mail Only):

Jeffrey Ranen, Esq.
Jeffrey.Ranen@lewisbrisbois.com
Soojin Kang, Esq.
soojin.kang@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
Counsel of Record for H&E Equipment Services, Inc.

EXHIBIT 2

June 8, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

RE: H&E EQUIPMENT SERVICES, INC. Case No.: LWDA-CM-833341-21
AMENDED PAGA NOTICE

Dear Representative:

This letter amends the PAGA Notice provided on May 26, 2021. We have been retained to represent Kenneth Sargeant against H&E Equipment Services, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "H&E").

Mr. Sargeant is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Sargeant may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

H&E Equipment Services, Inc. is a Delaware corporation located at 7500 Pecue Lane, Baton Rouge, Louisiana 70809.

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¹ Mr. Sargeant does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Sargeant will amend this notice when the true names and capacities are known. Mr. Sargeant is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Sargeant and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

LWDA

June 8, 2021

Page 2 of 8

H&E employed Mr. Sargeant as an hourly-paid non-exempt Heavy Equipment Mechanic within one year of the date of this letter (until in or about February of 2021) in the State of California. H&E directly controlled the wages, hours and working conditions of Mr. Sargeant's employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Sargeant may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of H&E within the State of California and all current and former exempt outside sales representatives employed by H&E within the State of California.

H&E failed to properly pay its aggrieved employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, failed to properly calculate and pay Paid Time Off upon termination, and failed to provide outside sales aggrieved employees with written commission agreements thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Sargeant has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at H&E, regardless of their classification, job title, locations, or whether they were hired directly or through a staffing agency.

H&E has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 227.3, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, 2751, and the IWC Wage Orders.

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California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Sargeant and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. H&E failed to compensate Mr. Sargeant and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. H&E also failed to include non-discretionary bonuses and incentives in Mr. Sargeant and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Moreover, H&E maintained an illegal rounding policy that negatively affected Mr. Sargeant and other aggrieved employees' time and pay. Therefore, Mr. Sargeant and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, H&E failed to pay aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, H&E routinely required Mr. Sargeant and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with H&E policies and expectations. Additionally, H&E failed to provide adequate coverage to Mr. Sargeant and other aggrieved employees, so they may be relieved of all work duties and take legally mandated meal and rest breaks. H&E also assigned aggrieved employees to routes with time sensitive delivery deadlines and a high volume of stops such that it was not possible for them to complete their route in a timely manner and take all their meal and rest breaks. Lastly, H&E failed to authorize and permit Mr. Sargeant and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, H&E failed to compensate Mr. Sargeant and other aggrieved employees all the premium wages they were owed.

California Labor Code section 227.3 requires that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. During the relevant time period, H&E failed to pay Mr. Sargeant and other aggrieved employees all earned and vested vacation/Paid Time Off upon termination of their employment in violation of law.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, H&E failed to pay Mr. Sargeant and other aggrieved employees all wages, including for uncompensated off-the-clock work, overtime, PTO, and premium wages for failing to provide legally mandated meal and rest breaks as explained above, due to them within any time period specified by California Labor Code sections 201 and 202 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, H&E failed to pay Mr. Sargeant and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, overtime, and premium wages as explained above, within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, H&E did not provide Mr. Sargeant and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from H&E were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Sargeant and other aggrieved employees, (2) total hours worked by Mr. Sargeant and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Sargeant and other aggrieved employees (4) all deductions for Mr. Sargeant and other aggrieved employees, (5) net wages earned by Mr. Sargeant and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Sargeant and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Sargeant and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Sargeant and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, H&E failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Sargeant and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, H&E did not provide Mr. Sargeant and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Sargeant and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by H&E, including for purchasing equipment and tools they required to perform their job tasks.

California Labor Code section 2751 states whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid. (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. During the relevant time period H&E failed to draft, maintain and enter into written agreements for commission with its outside sales employees in violation of this section.

We believe that Mr. Sargeant and other current and former California-based hourly-paid or non-exempt and outside sales employees are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 227.3, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, 2751, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

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LWDA

June 8, 2021

Page 7 of 8

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Sargeant will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees and exempt outside sales representative employees of H&E within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a long horizontal flourish extending to the right.

Douglas Han, Esq.

LWDA

June 8, 2021

Page 8 of 8

CC: (By Certified U.S. Mail Only):

C T Corporation System

c/o H&E Equipment Services, Inc.

818 West Seventh Street, Suite 930

Los Angeles, California 90017

Agent for Service of Process for H&E Equipment Services, Inc.

CC: (By Electronic Mail Only):

Jeffrey Ranen, Esq.

Jeffrey.Ranen@lewisbrisbois.com

Soojin Kang, Esq.

soojin.kang@lewisbrisbois.com

LEWIS BRISBOIS BISGAARD & SMITH LLP

Counsel of Record for H&E Equipment Services, Inc.

EXHIBIT 3

June 14, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAFilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

RE: H&E EQUIPMENT SERVICES, INC. Case No.: LWDA-CM-833341-21
FURTHER AMENDED PAGA NOTICE

Dear Representative:

This letter further amends the PAGA Notice provided on May 26, 2021 and June 8, 2021. We have been retained to represent Kenneth Sargeant against H&E Equipment Services, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "H&E"). We have identified a DOE 1 Defendant H&E Equipment Services (California), LLC as an additional "Employer" who are responsible for the allegations in the previous notices.

Mr. Sargeant is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Sargeant may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

H&E Equipment Services (California), LLC. is a Delaware company located at 7500 Pecue Lane, Baton Rouge, Louisiana 70809.

¹ Mr. Sargeant does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Sargeant will amend this notice when the true names and capacities are known. Mr. Sargeant is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Sargeant and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

LWDA
June 14, 2021
Page 2 of 2

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal stroke extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

C T Corporation System
c/o H&E Equipment Services (California), LLC
818 West Seventh Street, Suite 930
Los Angeles, California 90017
Agent for Service of Process for H&E Equipment Services (California), LLC

CC: (By Electronic Mail Only):

Jeffrey Ranen, Esq.
Jeffrey.Ranen@lewisbrisbois.com
Soojin Kang, Esq.
soojin.kang@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
Counsel of Record for H&E Equipment Services (California), LLC

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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 jkislow@justicelawcorp.com

On August 31, 2021, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Coleman v. H&E Equipment Services, Inc.**
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 August 31, 2021, at Pasadena, California.



Jillian Kislow