

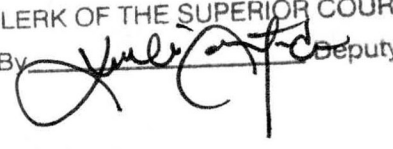
DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
PHILLIP SONG (SBN 326572)
CHANCELLOR NOBLES (SBN 330081)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Tel: (818) 230-7502
Fax: (818) 230-7259

Attorneys for Plaintiffs

FILED
ALAMEDA COUNTY

JUL 26 2022

CLERK OF THE SUPERIOR COURT

By:  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,

v.

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

Defendants.

Case No.: RG20069157

Assigned for All Purposes to:
Honorable Brad Seligman
Department 23

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

[Reservation ID: A-20069157-001]

Hearing Date: July 26, 2022
Hearing Time: 3:00 p.m.
Hearing Place: Department 23

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

1 The Court, having read the papers filed regarding Plaintiffs Charisma Coleman's and
2 Kenneth Sargeant's ("Plaintiffs") Motion for Final Approval of Class Action Settlement,
3 Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments, and after
4 considering the papers submitted in support of the motion, including the Joint Stipulation and
5 Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby FINDS
6 AND ORDERS as follows:

7 Plaintiffs and Defendants H&E Equipment Services, Inc. and H&E Equipment Services
8 (California), LLC ("Defendants") entered a Settlement Agreement on or about November 8,
9 2021 to settle this class action lawsuit.

10 The Court entered an Order dated March 22, 2022 preliminarily approving the settlement
11 of this class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
12 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
13 Members, scheduling a Fairness Hearing for July 26, 2022, and providing Class Members with
14 an opportunity to object to the settlement or exclude themselves from the Class.

15 The Court held a Fairness Hearing on July 26, 2022 to determine whether to give final
16 approval to the settlement of this class action.

17 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
18 ("Order and Judgment") incorporates the Agreement. Unless otherwise provided herein, all
19 capitalized terms in this Order and Judgment shall have the same meaning as set forth in the
20 Agreement.

21 2. Jurisdiction. Because adequate notice has been disseminated, and all Class
22 Members have been given the opportunity to request exclusion from the Class, the Court has
23 personal jurisdiction with respect to the claims of all Class Members. The Court also has subject
24 matter jurisdiction over this class action, including jurisdiction to approve the Settlement, grant
25 final certification of the Class, and dismiss this case.

26 3. Final Class Certification. The Court finds the Class satisfies all applicable
27 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
28 process. Accordingly, the Court certifies a Class consisting of all non-exempt employees

1 employed by Defendants in California at any time during the time period between April 6, 2016,
2 and September 5, 2021 ("Class," "Class Members," and "Class Period"). There are currently
3 three hundred eighty ³⁷⁸ (380) Class Members who did not submit a valid and timely request to
4 exclude themselves from the class action Settlement ("Participating Class Members").

5 4. Adequacy of Representation. As Class Counsel, Douglas Han and Shunt Tatavos-
6 Gharajeh of the Justice Law Corporation have fully and adequately represented the Class for
7 purposes of entering and implementing the Settlement and have satisfied the requirements of
8 Code of Civil Procedure section 382.

9 5. Notice Packet. The Court finds the Notice of Class Action Settlement ("Class
10 Notice") and the Election Not To Participate In (Opt Out From) Class Action Settlement Form
11 ("Exclusion Form") (collectively, known as the "Notice Packet") and its distribution to Class
12 Members have been implemented pursuant to the Agreement and this Court's Preliminary
13 Approval Order. The Court further finds the Notice Packet:

14 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
15 the pendency of this case; (ii) the material terms and provisions of and their rights under the
16 Settlement; (iii) their right to object to any aspect of the proposed Settlement (including final
17 certification of the Class, the fairness, reasonableness and adequacy of the settlement, the
18 adequacy of the Class's representation by Plaintiffs and Class Counsel, and/or the award of the
19 Class Representative Enhancement Payments, Attorney Fee Award, and Cost Award); (iv) their
20 right to exclude themselves from the Class and the Settlement; (v) their right to claim an
21 Individual Settlement Payment; (vi) their right to appear at the Settlement Fairness Hearing; and
22 (vii) the binding effect of the orders and judgment in this case on all Participating Class
23 Members;

24 b. constitutes notice that fully satisfied the requirements of Code of Civil
25 Procedure section 382, California Rule of Court 3.769, and due process;

26 c. constitutes the best practicable notice to Class Members under the
27 circumstances of this case; and
28

d. constitutes notice reasonable, adequate, and sufficient to all Class Members.

6. Final Settlement Approval. The terms and provisions of the Settlement Agreement have been entered in good faith and are the product of arm's-length negotiations by experienced counsel who have done a meaningful investigation of the claims in the dispute. The Settlement Agreement and all its terms and provisions are fully and finally approved as fair, reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions.

7. Binding Effect. The terms and provisions of the Settlement Agreement and this Order and Judgment are binding on the Participating Class Members, as well as their heirs, executors and administrators, successors, and assigns, and those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings involve matters that were or could have been raised in this case and are encompassed by the release of the Participating Class Members' Released Claims and Eligible Aggrieved Employees' Private Attorneys General Act of 2004 ("PAGA") Released Claims as set forth in the Settlement Agreement. The Settlement Agreement will have no binding effect upon, and provide no res judicata preclusion to, those Class Members who have submitted requests for exclusion.

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

a. PAGA Release. Upon the Effective Final Settlement Date, the California Labor and Workforce Development Agency ("LWDA") and each Eligible Aggrieved Employee, and their heirs, executors, administrators, representatives, attorneys, successors and assigns shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all

1 PAGA Released Claims and voluntarily and knowingly is barred from bringing
2 any action for the PAGA Released Claims that arose during the PAGA period
3 applicable to the Eligible Aggrieved Employee. The release of the PAGA
4 Released Claims is effective, regardless of whether the Eligible Aggrieved
5 Employee submits a timely and valid request for exclusion.

6 b. Plaintiffs' Release of Claims and General Release. Upon the Effective Final
7 Settlement Date and in accordance with paragraph III(I)(8)(b) of the Agreement,
8 and in exchange for the Class Representative Enhancement Payments to each
9 Plaintiff of \$10,000, in recognition of their work and efforts in obtaining the
10 benefits for the Class and undertaking the risk for the payment of costs if this
11 matter had not successfully resolved, Plaintiffs provide a general release of claims
12 for themselves and their spouses, heirs, successors, and assigns. Plaintiffs'
13 Release of Claims also includes a waiver of Civil Code section 1542.

14 c. Released Parties. The Released Parties include: (a) Defendants and any direct or
15 indirect parents, subsidiaries, divisions, affiliates, and related entities of
16 Defendants; (b) any predecessors, successors, or assigns of any of the foregoing
17 (a); and (c) any past, present or future employees, officers, directors, affiliates,
18 partners, joint venturers, co-venturers, licensors, licensees, principals, members,
19 managers, managing agents, agents, attorneys, accountants, insurers, reinsurers,
20 shareholders, investment bankers, trusts, trustees, representatives, administrators,
21 fiduciaries, heirs, subrogees, and executors of any of the foregoing (a)-(b) in his,
22 her, or its capacity as such.

23 9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
24 any action to enforce the terms and provisions of the Settlement Agreement.

25 10. Class Representative Enhancement Payments. The Court finds the Class
26 Representative Enhancement Payments of \$10,000, to be paid by Defendants to each Plaintiff
27 out of the Maximum Settlement Amount, to be reasonable and appropriate. The Class
28

1 Representative Enhancement Payments are to be paid pursuant to the terms and provisions set
2 forth in the Agreement.

3 a. The rationale for making enhancement payment is the class representative should
4 be compensated for the expense and risk she has incurred in conferring a benefit
5 on other class members. Such an enhancement payment is appropriate if it is
6 necessary to induce individuals to participate in the suit. Criteria courts may
7 consider include: (1) the risk to the class representative in commencing suit; (2)
8 the notoriety and personal difficulties encountered by the class representative; (3)
9 the amount of time and effort spent by the class representative; (4) the duration of
10 the litigation; and (5) personal benefit (or lack thereof) enjoyed by class
11 representative.

12 b. The Court has reviewed Plaintiffs' declarations outlining their involvement in the
13 lawsuit. Given the risks inherent in serving as the Class Representatives, the
14 duration of the case and time involved, and benefits created for the Class, the
15 Court approves the Class Representative Enhancement Payments of \$10,000 to
16 each Plaintiff.

17 11. Attorney Fee Award and Cost Award. The Court finds an award of an Attorney
18 Fee Award of \$400,000, to be paid out of the Maximum Settlement Amount by Defendants to
19 Class Counsel, to be reasonable and appropriate. The Court further finds an award of a Cost
20 Award for the reimbursement of actual litigation costs of \$14,982.04, to be paid by Defendants
21 to Class Counsel out of the Maximum Settlement Amount, to be reasonable and appropriate.
22 Such fees and costs are to be paid pursuant to the terms and provisions set forth in the
23 Settlement. Defendants shall not be required to pay for any other attorneys' fees and expenses,
24 costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or
25 Class Members or incurred by Plaintiffs or Class Members in connection with or related in any
26 manner to this case, the Settlement, the administration of the Settlement, and/or the Participating
27 Class Members' Released Claims and Eligible Aggrieved Employees' PAGA Released Claims.
28

1 a. The Court has an independent right and responsibility to review the requested
2 Attorney Fee Award and only award so much as it determines reasonable. (See
3 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
4 127-28.) The Attorney Fee Award requested by Class Counsel of \$400,000 is one-
5 third (1/3) of the common fund created for the benefit of the Class Members and
6 is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half*
7 *International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved
8 for the Class, the financial risk undertaken, the novel and difficult nature of this
9 litigation, the skill required to deal with these issues, percentage fees award in
10 other cases, the contingent fees charged in private marketplace, and the lodestar,
11 the Court finds the request for the Attorney Fee Award is reasonable, and is
12 approved.

13 b. The Court has reviewed the declaration of Douglas Han regarding the costs
14 expended in the prosecution of this case. Under the terms of the Settlement,
15 Plaintiffs may seek reimbursement of up to \$25,000 in litigation costs. The Court
16 finds Plaintiffs have expended \$14,982.04 in litigation costs and that such costs
17 were reasonable. Thus, the Court approves the payment of the Cost Award of
18 \$14,982.04 for the reimbursement of Class Counsel's litigation costs.

19 12. Administration Costs. The Court finds the Administration Costs of \$7,000, to be
20 paid by Defendants to the Settlement Administrator out of the Maximum Settlement Amount, to
21 be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
22 provisions set forth in the Settlement Agreement.

23 a. The Court has reviewed the declarations of Amy Lechner from Simpluris, Inc. *and Cassandra Folites*
24 ("Simpluris"), the Court-approved Settlement Administrator. The Court finds
25 notice was provided to the Class pursuant to the Preliminary Approval Order, the
26 notice constitute the best practicable notice to the Class, and the notice satisfied
27 due process. Simpluris has discharged its duties to provide notice to the Class.
28

1 Thus, the Court approves a payment for Administration Costs of \$7,000 for
2 Simpluris' services in administering this settlement.

3 13. PAGA Payment. The Court finds the PAGA Payment of \$100,000, seventy-five
4 percent (75%) of which (\$75,000) will be paid by Defendants to the LWDA out of the Maximum
5 Settlement Amount and twenty-five percent (25%) of which (\$25,000) shall be distributed to
6 Eligible Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA
7 Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

8 14. Funding of the Settlement. No later than seven (7) days after the Effective Final
9 Settlement Date, Defendants shall deposit the Maximum Settlement Amount of \$1,200,000 by
10 wiring the funds to the Settlement Administrator. Defendants shall also at this time provide any
11 tax information that the Settlement Administrator needs and requests with reasonable notice to
12 calculate each Participating Class Member's Individual Settlement Payment. Within fourteen
13 (14) calendar days after the deadline to fund the settlement, the Settlement Administrator shall
14 calculate and disburse all payments due under the Settlement Agreement.

15 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
16 Settlement is entitled to a presumption of fairness. In their moving papers, Plaintiffs contend the
17 proposed Settlement was the product of arm's-length negotiations following extensive litigation,
18 discovery, and exchange of documentation relating to Plaintiffs' claims. The negotiations were
19 facilitated with the assistance of mediator Mark Rudy, an experienced and well-respected class
20 action mediator.

21 a. There were no objections to and ²~~no~~ requests for exclusion from the Settlement.

22 This is further proof of the fairness of the Settlement.

23 b. With respect to the benefit to the Class Members, under the allocation of the
24 Settlement, the *highest* Individual Settlement Payment will be about \$5,639.97,
25 and the *average* Individual Settlement Payment will be approximately \$1,588.41.

26 16. Uncashed Checks. Participating Class Members and Eligible Aggrieved
27 Employees must cash or deposit their Individual Settlement Payment and Individual PAGA
28 Payment checks within one hundred eighty (180) calendar days after the checks are mailed to

1 them. Upon approval of an amended judgment, uncashed checks settlement checks will be paid
2 to the *cy pres* recipient Legal Aid At Work.

3 17. Final Accounting and Compliance. The Court sets a final accounting and
4 compliance date for March ²⁸24, 2023 at ^{3:00 PM}~~9:15 am~~ in Department 23. Within five (5) court days
5 before the final accounting and compliance date, Plaintiffs shall file a declaration regarding
6 compliance and a proposed amended judgment consistent with CCP 384(a)..

7 a. Holdback Provision. Ten percent (10%) of the Attorney Fee Award (\$40,000)
8 will be held in an interest-bearing account, maintained by the Settlement
9 Administrator, pending the submission and approval of a final compliance status
10 report after completion of the distribution process.

11 18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
12 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
13 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
14 and for any other necessary purpose, including, without limitation:

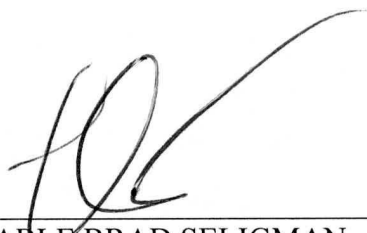
- 15 a. enforcing the terms and provisions of the Settlement Agreement and resolving
16 any disputes, claims, or causes of action in this case that, in whole or in part, are
17 related to or arise out of the Settlement Agreement or this Order and Judgment;
18 b. entering such additional orders as may be necessary or appropriate to protect or
19 effectuate this Order and Judgment approving the Agreement, and permanently
20 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure
21 the fair and orderly administration of this Settlement; and
22 c. entering any other necessary or appropriate orders to protect and effectuate this
23 Court's retention of continuing jurisdiction.

24 For the reasons set forth above, the Motion for Final Approval of Class Action
25 Settlement, Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments
26 is GRANTED. The Settlement Administrator is directed to carry out the terms of the Settlement
27 Agreement forthwith.

1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8 IT IS SO ORDERED.

9
10 DATED: 7/26/22



HONORABLE BRAD SELIGMAN
SUPERIOR COURT JUDGE

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On July 27, 2022, I served the foregoing document described as

PROOF OF SERVICE