

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement is entered into by and between Plaintiff Edgar Herrera, individually and on behalf of all others similarly situated, and Defendants Schaefer Systems, LLC (as well as Schaefer Plastics North America, LLC and Schaefer Systems International, Inc. (collectively “Schaefer”)) and The Hedy Corporation, Inc. and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

A. Definitions

1. “Action” or “Lawsuit” means and refers to the case entitled *Edgar Herrera v. Schaefer Systems, LLC, et al.*, Case No. STK-CV-UOE-2021-9954, filed in San Joaquin County Superior Court.

2. “Aggrieved Employees” include all current and former non-exempt employees directly hired by Schaefer and all employees hired by The Hedy Corporation, Inc. and assigned to work at Schaefer in Lodi, California from October 22, 2020, until November 7, 2022.

3. “Agreement,” “Settlement Agreement,” “Settlement,” or “Stipulation” shall mean this Class Action and PAGA Settlement Agreement and Release of Claims, including any attached Exhibits.

4. “Class Claims” or “Released Class Claims” will include all claims that were pled in the First Amended Complaint and all claims that could have been alleged in the First Amended Complaint based on the facts alleged therein, including, but not limited to, claims for failure to pay minimum wages, failure to pay overtime wages, meal and rest break violations, failure to provide accurate itemized wage statements, failure to timely pay all wages upon separation of employment, unfair and unlawful business practices, and all other civil and statutory penalties, based on the claims alleged in the First Amended Complaint, including but not limited to statutory, constitutional and contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys’ fees, litigation costs, restitution, and equitable relief.

5. “Class Counsel” refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C.

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2 6. “Class Data” means a complete list that Defendants will diligently and in good
3 faith compile from their records and will provide to the Settlement Administrator a spreadsheet
4 that includes Class Members’ full names; last known addresses; telephone numbers; Social
5 Security Numbers; and dates of employment and/or number of Workweeks Worked as non-
6 exempt or hourly employees of Defendants during the Class Period and the PAGA Period for
7 each Settlement Class Member. At no time during the Settlement process will any Class
8 Member’s address, Social Security number, or telephone number be filed with the Court, except
9 under seal as may be ordered.

10 7. “Class Period” and “Class Release Period” shall mean October 22, 2017, until
11 November 7, 2022.

12 8. “Class Representative” or “Plaintiff” means and refers to Edgar Herrera.

13 9. “Complaint” refers to the operative First Amended Complaint that Plaintiff filed,
14 and the Court approved, on December 16, 2022, in the San Joaquin County Superior Court action
15 entitled *Edgar Herrera v. Schaefer Systems, LLC, et al.*, Case No. STK-CV-UOE-2021-9954.

16 10. “Court” means the California Superior Court, County of San Joaquin or any Court
17 of competent jurisdiction.

18 11. “Defendants” means Schaefer Systems, LLC and its successor in interest Schaefer
19 Plastics North America, LLC, and The Hedy Corporation, Inc., collectively.

20 12. “Defendants’ Counsel” or “Defense Counsel” mean and refer to Alexander M.
21 Medina, Esq. on behalf of The Hedy Corporation and Susan W. Pangborn, Esq. on behalf of
22 Schafer Systems, LLC.

23 13. “Effective Date” means the latter of (a) The Court’s final approval of the
24 settlement if no objections by or on behalf of Class Members have been filed and not withdrawn;
25 (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or
26 withdrawn; or (c) the final resolution of any appeal that has been filed. “Final” means that the
27 Settlement has been granted “Final Approval” by the Court and the “Effective Date” has occurred.

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1 14. “Final Approval” refers to the order of the Court granting final approval of this
2 Settlement Agreement and entering a judgment approving this Settlement on substantially the
3 same terms provided herein or as may be modified by subsequent agreement of the Parties or
4 order of the Court.

5 15. “Final Settlement Class” means, collectively, all Participating Class Members and
6 all Aggrieved Employees.

7 16. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
8 48(d) below.

9 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 46(c)
10 below.

11 18. “Notice” means the notice of settlement of class action and PAGA Settlement that
12 will be sent to the Settlement Class Members.

13 19. “Notice Response Deadline” is forty-five (45) calendar days from the date the
14 Notice is mailed to the Settlement Class Members.

15 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
16 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
17 respect to the Class Claims pursuant to Paragraph 69(a) below.

18 21. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
19 of 2004, California Labor Code Sections 2698–2699.5.

20 22. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for
21 civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and that
22 were or could have been pled in the First Amended Complaint based on the facts alleged therein,
23 including claims for failure to pay minimum wages, failure to pay overtime wages, meal and rest
24 break violations, failure to provide accurate itemized wage statements, failure to timely pay all
25 wages upon separation of employment, and unfair and unlawful business practices.

26 23. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through counsel,
27 on or about December 12, 2022, to the LWDA and to Defendants, alleging that Defendants
28 engaged in violations of the California Labor Code and California Wage Order(s).

1 24. “PAGA Period” and “PAGA Release Period” shall mean October 22, 2020, until
2 November 7, 2022.

3 25. “Participating Class Member” means any and all Settlement Class Members who
4 are deemed to participate and receive an Individual Settlement Amount for the Class Claims and
5 who do not opt-out of the settlement of the Class Claims by submitting timely valid Requests for
6 Exclusion.

7 26. Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the
8 Aggrieved Employees, and Defendants, collectively.

9 27. “Preliminary Approval Date” means the date the Court preliminarily approves the
10 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

11 28. “Preliminary Approval Order” means the judicial Order to be entered by the Court,
12 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
13 providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt
14 out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of
15 this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of
16 Settlement, including approval of attorneys’ fees and costs.

17 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
18 Administrator for the benefit of the Final Settlement Class, and from which the settlement
19 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
20 Code Section 468.

21 30. “Release” shall mean the release and discharge of the Class Claims by Plaintiff
22 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
23 Plaintiff and all of the Aggrieved Employees.

24 31. “Released Parties” shall refer to Defendants, together with their current and former
25 officers, directors, members, managers, shareholders, agents, insurers, charitable organizations,
26 parents, subsidiaries, affiliates, operators, partners, attorneys, successors, and assignees.

27 32. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 69(a)
28 below.

1 33. “Service Payment” or “Service Award” means the amount approved by the Court
2 to be paid to Class Representative in addition to his Individual Settlement Amount as a
3 Participating Class Member.

4 34. “Settlement Administration Costs” means the costs payable from the Settlement
5 Amount to the Settlement Administrator for administering this Settlement, including, but not
6 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due
7 diligence, reporting and remittance obligations, distributing the Settlement Amount, and
8 providing necessary reports and declarations, as requested by the Parties. The Settlement
9 Administration Costs shall be paid from the Settlement Amount.

10 35. “Settlement Administrator” means and refers to ILYM Group, Inc., which the
11 Parties have mutually agreed will provide the Notice to the Class Members and distribute the
12 settlement amounts as described in this Agreement.

13 36. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning
14 ascribed to it in Paragraph 46(a) below.

15 37. “Settlement Class Member” or “Class Member” refers to individual members of
16 the Settlement Class.

17 38. “Settlement Class” and “Settlement Class Members” refers to all current and
18 former non-exempt employees directly hired by Schaefer and all employees temporarily hired by
19 The Hedy Corporation, Inc. and assigned to work at Schaefer in Lodi, California employed during
20 the Class Period.

21 39. “Workweeks Worked” for each Settlement Class Member and Aggrieved
22 Employee means any workweek during the Class Period and/or the PAGA Period, as applicable,
23 in which the Settlement Class Member and/or Aggrieved Employee was employed by Defendants
24 as a non-exempt employee in California and worked at least one shift during the workweek for or
25 on behalf of Defendants for which a prior release of claims has not been signed. Workweeks
26 Worked shall not include weeks where a Settlement Class Member and/or Aggrieved Employee
27 only had sick time, vacation time, was on leave, or otherwise did not record any actual work time
28 in Defendants’ timekeeping system. Workweeks Worked will be calculated based on Defendants’

business records.

B. General Terms

40. On or about October 22, 2021, Plaintiff filed a class action complaint in the Court against Defendants, including allegations of: (1–2) failure to pay minimum and overtime wages, (3) meal period violations, (4) rest period violations, (5) waiting time penalties, and (6) unfair competition. On December 16, 2022, Plaintiff filed a First Amended Complaint adding (1) factual allegations regarding Defendants’ failure to pay overtime wages based on an invalid Alternative Workweek Schedule; (2) a cause of action under Labor Code § 226 for failure to provide accurate itemized wage statements; and (3) a cause of action under PAGA for the underlying Labor Code violations.

41. Defendants deny Plaintiff’s claims and allegations and contend that the Action is not suitable for class certification and/or representative treatment. Class Representative believes that he can proceed with his class and representative claims, that the Action is meritorious, and that class certification is appropriate.

42. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting extensive exchange of informal discovery, including Defendants’ written policies and practices and the production of payroll and timekeeping records for Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has diligently pursued an investigation of the Class Members’ claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants, and numerous potential appellate issues.

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1 43. On September 7, 2022, the Parties participated in mediation before Steve
2 Serratore, a highly experienced class action mediator and reached a settlement via a mediator's
3 proposal.

4 44. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
5 to be performed or judgments to be entered pursuant to the terms of the Settlement and
6 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
7 any statute or law or liability on the claims or allegations in the Action.

8 45. Stipulation for Class Certification and Representative Treatment. For settlement
9 purposes only, Defendants will stipulate that the Settlement Class Members described herein who
10 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
11 class and that the Aggrieved Employees are appropriate for representative treatment for purposes
12 of settlement. This stipulation to certification and representative treatment is in no way an
13 admission that class action certification and/or representative treatment is proper and shall not be
14 admissible in this or in any other action except for the sole purposes of enforcing this Agreement.
15 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to
16 class certification and representative treatment as part of the Settlement shall become null and
17 void *ab initio* and shall have no bearing on and shall not be admissible in connection with the
18 issue of whether or not class certification and/or representative treatment would be appropriate in
19 a non-settlement context. Defendants expressly reserve their rights and declare that they will
20 continue to oppose class certification, representative treatment, and the substantive merits of the
21 case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and
22 declares that he will continue to pursue class certification and representative treatment and a trial
23 should the Court fail to issue Final Approval.

24 **C. Terms of Settlement**

25 46. The financial terms of the Settlement are as follows:

26 (a) Gross Settlement Amount: The Parties agree to settle this Action for Three
27 Hundred Sixty Thousand Dollars (\$360,000) ("the Settlement Amount"). The Settlement Amount
28 is the maximum amount that will be paid by Defendants, and includes Individual Settlement

1 Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Payment to Class
2 Representative, all Settlement Administration Costs, and payment to the Labor Workforce
3 Development Agency (LWDA) for PAGA penalties. Defendants shall separately pay the
4 employers' share of applicable payroll taxes.

5 (b) The Settlement is based on Defendants' representation that the estimated weeks
6 worked by the Class Members through the date of mediation is 9,000. Schaefer estimates that its
7 non-exempt employees who fall within the definition of Class Members worked 7,009 workweeks
8 through the date of mediation. Hedy Corporation, Inc. ("Hedy Holmes") estimates that its non-
9 exempt employees who fall within the definition of Class Members worked 1,755.54 workweeks.
10 If the actual number of workweeks worked by all Class Members during this period increases by
11 15% or more, then Defendants shall increase the Maximum Settlement Amount on a proportional
12 basis (i.e., if there was a 20% increase in the number of workweeks, Defendants will increase the
13 Maximum Settlement Amount by 5%).

14 (c) Contribution Between Defendants: Schaefer and Hedy Holmes shall be
15 responsible for the Maximum Settlement Amount as follows: (1) Schaefer shall pay no more than
16 Three Hundred Fifty Thousand Dollars (\$350,000); and (2) Hedy Homes shall pay Ten Thousand
17 Dollars ((\$10,000). In the event that the actual number of workweeks worked during the Class
18 Period increases by 15% or more, requiring an increase in the Maximum Settlement Amount, the
19 Defendant(s)' relative contribution to the additional amount owed will be based on the extent to
20 which each Defendant's estimates were inaccurate. For example, if there is a 20% increase in the
21 number of actual workweeks due one of the Defendant's under-estimate of workweeks, that
22 Defendant alone would be responsible for the 5% increase in the Maximum Settlement Amount.
23 In the alternative, in the event that this provision is triggered, Defendants may elect to end the
24 class period to limit the covered workweeks to the total included in this Agreement, in lieu of
25 paying an increase to the Maximum Settlement Amount. This alternative shall apply only if both
26 defendants agree to shorten the class period.

27 (d) Net Settlement Amount: The "Net Settlement Amount" is defined as the
28 Settlement Amount less attorneys' fees and litigation costs as approved and awarded by the Court,

the Service Payment to Class Representative as approved and awarded by the Court, the Settlement Administration Costs, as approved and awarded by the Court, and the Seven Thousand Five Hundred Dollars (\$7,500.00) allocated to payment for PAGA penalties as described in paragraph 46(d) below. In the event that the Court reduces the attorneys' fees and litigation costs or Service Awards, Settlement Administration Costs, or either increases or decreases the amount allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly.

(e) Individual Settlement Amounts for the Settlement Class: The Settlement Administrator will use the Class Data provided by Defendants to calculate each Participating Class Member's and Aggrieved Employee's Individual Settlement Amounts based on the following formula:

i. PAGA Amount: \$10,000 of the Gross Settlement Amount has been designated to the PAGA claims. Twenty-five percent (25%) or \$2,500, shall be paid out to Aggrieved Employees, while seventy-five percent (75%), or \$7,500, will be paid to the LWDA. Each Aggrieved Employee shall receive a portion of the \$2,500 proportionate to the number of Workweeks Worked by the Aggrieved Employees during the PAGA Period compared to the total number of Workweeks Worked by all Aggrieved Employees during the PAGA Period. Aggrieved Employees shall have their settlement amount for the Released PAGA claims paid one hundred percent (100%) as civil penalties for which no taxes will be withheld and for which a Form 1099 will be issued by the Settlement Administrator.

ii. Class Amount: The Net Settlement Amount shall be allocated to each Participating Class Member based on his/her/their proportionate Workweeks Worked during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total Workweeks Worked during the Class Period, and the denominator of which is the total Workweeks Worked by all Participating Class Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

1 (f) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
2 will be allocated for tax purposes based on the allegations in the Action as follows: ten percent
3 (10%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes;
4 and ninety percent (90%) will be paid as interest and as civil penalties (pursuant to, *e.g.*, California
5 Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement
6 Administrator will issue to each Participating Class Member an Internal Revenue Service Form
7 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect
8 to the civil penalties and interest allocations.

9 (g) Service Payment to Class Representative: The amount awarded to Class
10 Representative as a Service Payment will be set by the Court in its discretion, not to exceed
11 \$10,000. Defendants agree not to oppose this request. The Service Payment to Class
12 Representative will be paid out of the Gross Settlement Amount. Class Representative will be
13 issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
14 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount
15 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not
16 be a basis for Plaintiff or Class Counsel to void this Stipulation. Should the Court approve a lesser
17 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
18 be distributed to the Participating Class Members. In the event of any appeal of the amount of the
19 service awards (if any) approved by the Court, if, after the exhaustion of any such appellate
20 review, additional amounts not awarded to Class Representative shall be added to the Net
21 Settlement Amount to be distributed to the Participating Class Members.

22 (h) Attorneys' Fees and Costs: Defendants agree not to oppose a request by Class
23 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Settlement
24 Amount (approximately \$120,000), plus reasonable litigation costs not to exceed \$20,000
25 ("Attorneys' Fees and Cost Award"). For purposes of this Settlement, Defendants agree not to
26 oppose any contention by Class Counsel that attorneys' fees should be based on the common fund
27 theory. The Attorneys' Fee and Cost Award shall be paid from the Gross Settlement Amount, and
28 except for this award, Defendants shall have no further obligation to pay any attorneys' fees,

costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and administration of the portion of the attorneys' fees and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts not awarded to counsel as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or Aggrieved Employees. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

(i) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$7,500 subject to Court approval, unless approved by all Parties and the Court.

(j) Tax Liability: Class Counsel, Defendants, and Defendants' Counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendants, or Defendants' Counsel in this regard. Plaintiff and Final Settlement Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this Section may be

modified in a manner to bring Defendants into compliance with any such changes.

(k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, THEIR, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

47. No Credit Towards Benefit Plans. The Individual Settlement Payments and Individual PAGA Payments made to Participating Class Members and/or Aggrieved Employees under this Settlement, as well as any other payment made pursuant to this Settlement, will not be

utilized to calculated any additional benefits under any benefit plans to which any Class Members and/or Aggrieved Employees may be eligible, including but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect the rights, contributions, or amounts to which any Class Member and/or Aggrieved Employees may be entitled under benefit plans.

48. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendants. Final Settlement Class Members will not have to make a claim to receive an Individual Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Final Settlement Class Member. The Settlement Administrator shall be responsible for accurately and timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final Settlement Class Member not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

49. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

D. Release by Plaintiff and the Final Settlement Class

50. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Release Period.

51. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

52. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each Aggrieved Employee, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees,

executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Release Period.

53. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

54. Plaintiff and Defendants intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opt out of the Settlement for purposes of Class Claims.

55. Plaintiff and Defendants intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Aggrieved Employees and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the Released PAGA Claims. The Aggrieved Employees and the LWDA shall be so notified in the Notice.

56. Class Representative, on behalf of himself and the Participating Settlement Class Members, acknowledges and agrees that the claims for (1) unpaid minimum wages; (2) unpaid overtime wages; (3) meal period violations; (4) rest break violations; (5) wage statement violations; (6) waiting time penalties; (7) unfair competition; and (8) PAGA penalties are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to him. Class Representative, on behalf of himself and the Participating Settlement Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

1 **E. Release by Class Representative**

2 57. As a material inducement to Defendants to enter into this Settlement Agreement,
3 in addition to Class Representative's release of the Released Class Claims and Released PAGA
4 Claims, as discussed in Paragraphs 50 and 52 above, Class Representative does hereby, for
5 himself and for his respective spouses, domestic partners, marital community, children, estates,
6 trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators,
7 trustees, conservators, guardians, assigns, and representatives, forever completely release and
8 discharge the Released Parties from any and all charges, complaints, claims, liabilities,
9 obligations, promises, agreements, contracts, controversies, damages, actions, causes of action,
10 suits, rights, demands, costs, losses, debts, and expenses (including for back wages, statutory
11 penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and
12 costs) of any nature whatsoever, from the beginning of time through the execution of this
13 Agreement, whether known or unknown, suspected or unsuspected, concealed or hidden,
14 including but not limited to all claims arising out of, based upon, or relating to Class
15 Representative's employment with Defendants or the remuneration for or termination of such
16 employment (collectively, the "Class Representative's Claims").

17 58. Without limiting the generality of the foregoing, Class Representative also
18 expressly releases all claims or rights against Released Parties arising out of or relating to alleged
19 violations of any contracts, express or implied (including but not limited to any contract of
20 employment); any contract or covenant of good faith and fair dealing (express or implied); any
21 tort, including but not limited to, negligence, fraud, misrepresentation and violation of California
22 Labor Code section 970, negligent infliction of emotional distress, intentional infliction of
23 emotional distress, defamation, "retaliation" claims and claims for violation of public policy, any
24 claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid
25 wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and
26 alleged "off the clock" work under federal and state law, including, but not limited to, California
27 Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section
28 203, damages, or penalties pursuant to California Labor Code Section 226, meal period and rest

break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, failure to provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200 *et seq.*, interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs, including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged violation or breach of any other state or federal statute, rule, and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs, or attorneys' fees in connection with any of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any "wrongful discharge," "constructive discharge," and "retaliation" claims; any claims relating to any breach of public policy; any legal restrictions on Defendant's right to discharge employees; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California Labor Code 197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government Code § 12900 *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1 *et seq.* (family/medical leave); (8) California Labor Code, including Section 1720 *et seq.*,

1 or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color,
2 religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age
3 discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap
4 discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security
5 Act, 29 U.S.C. § 1000 *et seq.* (employee benefits); (14) the California Civil Code; (15) the
6 California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act;
7 and (18) any other federal, state, or local statute or legislation.

8 59. Class Representative expressly waives and relinquishes all rights and benefits
9 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
10 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
11 of the State of California states:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
15 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
16 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

17 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
18 full and complete release and discharge of all parties, Class Representative, and Class Counsel
19 expressly acknowledge that this Settlement Agreement is intended to include in its effect, without
20 limitation, all claims that Class Representative knew of, as well as all claims that he does not
21 know or suspect to exist in his favor against the Released Parties, or any of them, for the time
22 period from the beginning of time to the execution of this Settlement Agreement, and that this
23 Settlement Agreement contemplates the extinguishment of any such Class Representative's
24 claims.

25 **F. Interim Stay of Proceedings**

26 60. Pending completion of all of the prerequisites necessary to effectuate this
27 Settlement, including amending the operative complaint, the Parties agree, subject to Court
28 approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the

Settlement.

G. Notice Process

61. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities, due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

62. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendants notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Final Settlement Class Members, and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

63. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will not be provided to Class Counsel and it will remain confidential, it shall be

used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendants' express written consent, or by order of the Court.

64. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

65. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, and/or Social Security number of the Class Member involved and will then perform a single re-mailing. In the event the procedures in this Paragraph are followed and the intended recipient of a Notice Packet still does not receive the Notice Packet, the Class Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if the Settlement is approved by the Court. Notices will be re-mailed to any Settlement Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

66. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an envelope has not been returned within thirty (30) days of the mailing that the Settlement Class Member received the Notice.

67. Disputes Regarding Class Data. Settlement Class Members are deemed to participate in the Settlement unless they opt-out. The Notice will inform Settlement Class

Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks Worked during the Class Period and during the PAGA Period. Settlement Class Members may dispute their Workweeks Worked if they feel they were employed more workweeks in the Class Period in California than Defendants' records show by timely submitting evidence to the Settlement Administrator. Defendants' records will be presumed determinative absent reliable evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. All disputes will be decided within ten (10) business days of the Notice Response Deadline. Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks Worked, object, or opt out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Workweeks Worked for any Settlement Class Member, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Amounts; accordingly, in no event will Defendants be required to increase the Gross Settlement Amount.

68. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

69. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of the Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in accordance with the following guidelines:

- (c) Requests for Exclusion from Participating Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the

1 Notice Response Deadline. The Request for Exclusion should state in
2 words to this effect:

3 I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
4 THE HERRERA V. SCHAEFER LAWSUIT. I UNDERSTAND THAT IF
5 I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL
6 NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE
7 CLASS CLAIMS IN THIS LAWSUIT.

8 Any Request for Exclusion must include the full name, address, telephone number, last
9 four digits of the social security number or date of birth, and signature of the Settlement Class
10 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
11 Settlement Administrator at the specified address. Any such Request must be made in accordance
12 with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked
13 by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement
14 Class Member who timely requests exclusion in compliance with these requirements: (i) will not
15 have any rights under this Agreement with respect to the Class Claims, including the right to
16 object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments
17 under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement,
18 or the Judgment, with respect to the Class Claims.

19 (b) Binding Effect on Final Settlement Class Members. Except for those
20 Settlement Class Members who exclude themselves in compliance with the procedures set forth
21 above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
22 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
23 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided
24 herein, will be deemed to have waived all objections and oppositions to the fairness,
25 reasonableness, and adequacy of the Settlement.

26 it's the Objections to Settlement of Class Claims. Any Settlement Class Member,
27 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims
28 and may appear at the Final Approval Hearing and object whether or not they have filed a written
objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement
Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice

1 Response Deadline at the address set forth in the Notice. Such objection shall include the full
2 name, address, telephone number, dates of employment with Defendants of the Objecting
3 Settlement Class Member, the case name and number, the basis for the objection, including any
4 legal support and each specific reason in support of the objection, as well as any documentation
5 or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by
6 counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member
7 wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting
8 Settlement Class Member's written submission should include a request to be heard, and the Court
9 will determine whether Objecting Settlement Class Members will be permitted to speak. The
10 Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel
11 within three (3) days of receipt, and the Settlement Administrator shall attach the same to the
12 declaration of due diligence it files with the Court prior to the Final Approval Hearing. Any
13 Participating Class Member who files an objection remains eligible to receive monetary
14 compensation from the Settlement. Plaintiff and Defendants shall not be responsible for any fees,
15 costs, or expenses incurred by any Class Member and/or his/her/their counsel related to any
16 objections to the Settlement. Submitting an objection does not preserve the right to appeal a final
17 judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and
18 properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure
19 section 663. Settlement Class Members and Aggrieved Employees may not object to or opt out
20 of the Settlement with respect to the PAGA Claims. At no time will any of the Parties or their
21 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
22 Settlement or appeal from the Judgment. To the extent a timely Notice of Objection is withdrawn
23 before final approval, such an objection shall be treated as though no objection has been made.

24 (d) Failure to Object. Any Settlement Class Member who desires to object
25 with respect to the Class Claims but fails to timely submit a written objection waives any right to
26 object will be foreclosed from making any objection to this Settlement. Any Settlement Class
27 Member who does not timely and properly become a party of record by intervening or filing a
28 motion to vacate the judgment waives any and all rights to appeal from the Judgment, including

all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure section 473, and extraordinary writs.

(e) Responses to Objections. Counsel for the Parties may file a response to any objections submitted by Objecting Settlement Class Members at least five (5) court days before the date of the Final Approval Hearing.

70. Settlement Class Members will have until the Notice Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

71. Funding of the Settlement Amount. Defendants shall make a one-time deposit into the QSF of the Settlement Amount, as described in Paragraph 46(a) that is necessary to make all payments required under this Settlement, within twenty-one (21) days after the Effective Date, plus Defendants shall separately pay its share of employer payroll taxes as calculated and directed by the Settlement Administrator.

72. Distribution of Funds. No later than seven (7) calendar days after deposit of the payment into the QSF, the Settlement Administrator will mail the payments to the Participating Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment to the Class Representatives, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs.

73. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Final Settlement Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued. All unclaimed funds shall be sent to the California Unclaimed Property Fund in the name of the class member. The release will be binding upon all Final Settlement Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of

1 mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned
2 settlement check, perform a skip trace to locate the individual. If a new address is located by these
3 means, the Administrator will have ten (10) business days to re-issue the check and will notify
4 Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant,
5 Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any
6 liability for lost or stolen settlement checks, forged signatures on settlement checks, or
7 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final
8 Settlement Class Member notifies the Settlement Administrator that he/she/they believe that a
9 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
10 payment on such check. If the check in question has not been negotiated prior to the stop payment
11 order, the Settlement Administrator will issue a replacement check.

12 74. No person shall have any claim against Defendants, Defendants' Counsel,
13 Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions,
14 payments, or reports made in accordance with or pursuant to this Agreement. This provision does
15 not, however, prevent a Party from seeking enforcement of this Agreement.

16 75. Without prejudice to any other remedies, the Settlement Administrator shall agree
17 to be responsible for any breach of its obligations (whether committed by the Settlement
18 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from
19 and against all liabilities, claims, causes of action, costs and expenses (including legal fees and
20 expenses) arising out of any breach committed by the Settlement Administrator or its agents.

21 **H. Duties of the Parties Prior to the Court's Approval**

22 76. Within 30 days of execution of this Agreement, Plaintiff will move the Court for
23 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
24 accomplishing the following:

25 (a) Scheduling the Final Approval Hearing on the issue of whether this
26 Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members
27 and a hearing on fees, costs, and the Service Payment;

28 (b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

77. In conjunction with the Preliminary Approval Hearing, Plaintiff will submit this Settlement Agreement, and will include the proposed Notice Packet, which will include the Notice of Class Action Settlement document and proposed Mailing Envelope.

78. In accordance with section 2699(1)(2) of the California Labor Code, Plaintiff shall provide a copy of this Settlement Agreement to the LWDA on the same day that Plaintiff files her motion for Preliminary Approval of this Settlement with the Court.

79. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

80. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the Released Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any Released PAGA Claims against any of the Released Parties.

///

1 **J. Voiding the Agreement**

2 81. If the Court fails or refuses to issue the Final Approval Order or fails to approve
3 any material condition of this Settlement Agreement which effects a fundamental change of the
4 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to
5 all Parties herein at the option of either Party.

6 82. If ten percent (10%) or more of the Settlement Class Members timely submit a
7 Request for Exclusion, Defendants shall have the option of terminating or modifying this
8 Agreement without prejudice to its pre-settlement positions and defenses in the Action. If
9 Defendants exercise such option under this paragraph, it shall be relieved of any obligation to pay
10 the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's
11 Counsel and the Settlement Administrator within ten (10) days of the Notice Response Deadline.
12 If Defendants exercise its option under this paragraph, Defendants shall be solely responsible for
13 all Settlement Administration Costs incurred.

14 83. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
15 have no further obligations under the Settlement, including any obligation by Defendants to pay
16 the Settlement Amount, or any amounts that otherwise would have been owed under this
17 Settlement.

18 84. If the Settlement is voided or fails for any reason, any costs incurred by the
19 Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise
20 specified in this Agreement.

21 **K. Other Terms**

22 85. Full and Complete Defense. This Agreement may be pleaded by any Released
23 Party as a full and complete defense to and may be used as the basis for an injunction against, any
24 action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted,
25 asserting any Released Claim.

26 86. Waiver. The waiver by one Party of any breach of this Agreement by another Party
27 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

28 ///

1 87. Parties' Authority. The signatories hereto represent that they are fully authorized
2 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
3 hereof.

4 88. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
5 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
6 such documents and to take such other action as may reasonably be necessary to implement the
7 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
8 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
9 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
10 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement
11 Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and
12 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval
13 of the settlement and the final entry of judgment.

14 89. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
15 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
16 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
17 cause of action, or rights released and discharged by this Settlement Agreement.

18 90. No Admission. Defendants deny any and all liability to Plaintiff and/or any
19 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
20 that might have been asserted in this Action. Nonetheless, Defendants wish to settle and
21 compromise to avoid further substantial expense and the inconvenience and distraction of
22 protracted litigation. Defendants also have taken into account the uncertainty and risks inherent
23 in litigation, and without conceding any infirmity in the defenses that they have asserted or could
24 assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims
25 be settled in the manner and upon the terms and conditions set forth in this Agreement.

26 91. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
27 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
28 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part

of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

92. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class Members and Aggrieved Employees:

Mehrdad Bokhour <i>mehrdad@bokhourlaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Joshua Falakassa <i>josh@falakassalaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (818) 456-6168; Fax: (888) 505-0868
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To Defendant: Schaefer

To Defendant: The Hedy Corporation, Inc.

Susan W. Pangborn <i>spanborn@kilpatricktownsend.com</i> Sean Shabbar <i>sshabbar@kilpatricktownsend.com</i> KILPATRICK TOWNSEND & STOCKTON LLP Two Embarcadero Center, Suite 1900 San Francisco, CA 94111 Tel: (415) 576-0200; Fax: (415) 576-0300	Alexander M. Medina (SBN 222015) <i>alex@medinamckelvey.com</i> MEDINA McKELVEY LLP 925 Highland Pointe Drive, Suite 300 Roseville, California 95678 Tel: (916) 960-2211; Fax: (916) 742-5488
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1 93. Construction. The Parties hereto agree that the terms and conditions of this
2 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
3 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
4 by reason of the extent to which any Party or their counsel participated in the drafting of this
5 Settlement Agreement. Plaintiff and Defendants expressly waive the common-law and statutory
6 rule of construction that ambiguities should be construed against the drafter of an agreement and
7 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
8 all cases construed as a whole, according to its fair meaning.

9 94. Captions and Interpretations. Paragraph titles or captions contained herein are
10 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
11 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
12 Settlement Agreement is contractual and not merely a recital.

13 95. Modification. This Settlement Agreement may not be changed, altered, or
14 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
15 Settlement Agreement may not be discharged except by performance in accordance with its terms
16 or by a writing signed by all of the Parties hereto.

17 96. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
18 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
19 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
20 Plaintiff and Defendants agree to seek the help of the mediator identified in this Agreement to
21 resolve any dispute they are unable to resolve informally.

22 97. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
23 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
24 section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
25 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
26 of this Agreement.

27 98. Enforceability. Pursuant to California Evidence Code section 1123(a) and (b), this
28 Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in

1 a court of law.

2 99. No Undue Publicity. The Parties and their counsel agree that there will be no
3 affirmative publicity of this settlement. The Parties and their counsel will make no comments to
4 the media or otherwise publicize the terms of the settlement.

5 100. Choice of Law. This Settlement Agreement shall be governed by and construed,
6 enforced, and administered in accordance with the laws of the State of California, without regard
7 to its conflicts-of-law rules.

8 101. Integration Clause. This Settlement Agreement contains the entire agreement
9 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
10 or contemporaneous agreements, understandings, representations, and statements, whether oral
11 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
12 hereunder may be waived except in writing.

13 102. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
14 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
15 successors, and assigns.

16 103. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
17 because the members of the Settlement Class are numerous, it is impossible or impractical to have
18 each Final Class Member execute this Settlement Agreement. The Notice will advise all
19 Settlement Class Members of the binding nature of the releases provided herein and such shall
20 have the same force and effect as if this Settlement Agreement were executed by each Final
21 Settlement Class Member.

22 104. Counterparts. This Settlement Agreement may be executed in counterparts, and
23 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
24 deemed an original, and, when taken together with other signed counterparts, shall constitute one
25 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
26 Electronic signatures shall have the same force and effect as an original.
27
28

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

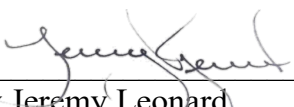
Dated: January __, 2023

Edgar Herrera

DEFENDANT:

SCHAEFER SYSTEMS, LLC

Dated: January 19, 2023



By Jeremy Leonard
Its Secretary of Schaefer Systems
International, Inc., Managing
Member of Schaefer Systems, LLC

HEDY HOMES CORPORATION, INC.

January __, 2023

By
Its

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3 **FALAKASSA LAW, P.C.**

4
5 Dated: January ___, 2023

6 Joshua Falakassa
7 Attorneys for Plaintiff and the Class

8 **BOKHOUR LAW GROUP, P.C.**

9
10 Dated: January ___, 2023

11 Mehrdad Bokhour
12 Attorneys for Plaintiff and the Class

13 **DEFENDANTS' COUNSEL:**

14 **MEDINA MCKELVEY LLP**

15
16 Dated: January ___, 2023

17 Alexander M. Medina
18 Attorneys for Defendant,
19 The Hedy Corporation, Inc.

20 **KILPATRICK TOWNSEND LLP**

21 

22
23 Dated: January 20, 2023

24 Susan W. Pangborn
25 Attorneys for Defendant,
26 Schaefer Systems, LLC
27
28

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

Dated: January ___, 2023

Edgar Herrera

DEFENDANT:

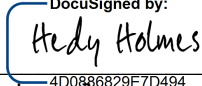
SCHAEFER SYSTEMS, LLC

Dated: January ___, 2023

By
Its

HEDY HOMES CORPORATION, INC.

January ___, 2023
1/31/2023

DocuSigned by:


By Hedy Holmes
Its President

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3 **FALAKASSA LAW, P.C.**

4
5 Dated: January __, 2023

6 _____
7 Joshua Falakassa
8 Attorneys for Plaintiff and the Class

9 **BOKHOUR LAW GROUP, P.C.**

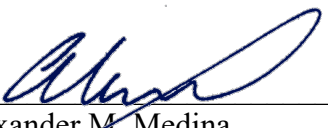
10 Dated: January __, 2023

11 _____
12 Mehrdad Bokhour
13 Attorneys for Plaintiff and the Class

14 **DEFENDANTS' COUNSEL:**

15 **MEDINA MCKELVEY LLP**

16 Dated: January 31, 2023

17 _____
18 
19 Alexander M. Medina
20 Attorneys for Defendant,
21 The Hedy Corporation, Inc.

22 **KILPATRICK TOWNSEND LLP**

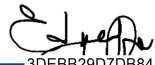
23 Dated: January __, 2023

24 _____
25 Susan W. Pangborn
26 Attorneys for Defendant,
27 Schaefer Systems, LLC
28

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

Dated: January __, 2023
1/10/2023

DocuSigned by:

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Edgar Herrera

DEFENDANT:

**SCHAEFER SYSTEMS, LLC, SCHAEFER SYSTEMS
INTERNATIONAL, INC. AND SCHAEFER
PLASTICS NORTH AMERICA, LLC**

Dated: January __, 2023

By
Its

HEDY HOMES CORPORATION, INC.

January __, 2023

By
Its

APPROVED AS TO FORM:

CLASS COUNSEL

FALAKASSA LAW, P.C.

Dated: January ___, 2023
1/10/2023

DocuSigned by:
Joshua Falakassa
15A628B2C5A149C...
Joshua Falakassa
Attorneys for Plaintiff and the Class

BOKHOUR LAW GROUP, P.C.

Dated: January ___, 2023
1/10/2023

DocuSigned by:
Mehrdad Bokhour
D8D3643F271940F...
Mehrdad Bokhour
Attorneys for Plaintiff and the Class

DEFENDANTS' COUNSEL:

MEDINA MCKELVEY LLP

Dated: January ___, 2023

Alexander M. Medina
Attorneys for Defendant,
The Hedy Corporation, Inc.

KILPATRICK TOWNSEND LLP

Dated: January ___, 2023

Susan W. Pangborn
Attorneys for Defendant,
Schaefer Systems, LLC (as well as Schaefer Plastics North
America, LLC and Schaefer Systems International, Inc.