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SUPERIOR COURT

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY SAN JOAQUIN**

12 EDGAR HERRERA, on behalf of himself and
13 all others similarly situated,

14 Plaintiff,

15 v.

16 SCHAEFER SYSTEMS, LLC., a North Carolina
17 Limited Liability Company; Hedy Holmes
18 Staffing Agency, a California Company; and
19 DOES 1-50, inclusive.

20 Defendants.

CASE NO.: STCK-CV-UOE-2021-9954

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) UNFAIR COMPETITION; and
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Edgar Herrera (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges and complains of defendants Schaefer Systems, LLC., Hedy Holmes
3 Staffing Agency, and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Schaefer Systems, LLC., (“Schaefer”) is a plastics manufacturing company
6 operating a large manufacturing plant in Lodi, California. Schaefer specializes in manufacturing
7 recycling and waste collection bins and carts, as well as other products.

8 2. Likewise, Defendant Hedy Holmes Staffing Agency (“Hedy Holmes”) is a personnel
9 staffing agency specializing in providing staff for businesses operating throughout California. Hedy
10 Holmes operates several offices throughout California, including offices in Stockton, Tracy,
11 Modesto, Lodi, and Sacramento.

12 3. Plaintiff brings this class and representative action against Defendants for alleged
13 violations of the California Labor Code and Business and Professions Code.

14 4. As set forth below, Plaintiff alleges that Defendants had a uniform payroll
15 practice/policy that unlawfully rounded Plaintiff and other non-exempt employees’ time entries. As
16 a result of the policy/practice above, Plaintiff and other similarly situated employees were not paid
17 for all hours worked.

18 5. Plaintiff further alleges that Defendants failed to pay all overtime compensation as a
19 result of not accounting for all hours worked. Plaintiff further alleges that Defendants’ meal and rest
20 period policies and practices failed to provide him and all other similarly situated employees with
21 compliant/timely meal and rest periods, or premium wages at the appropriate legal rate in lieu thereof.

22 6. Additionally, Plaintiff alleges that Defendants failed to provide non-exempt employees
23 with accurate written itemized wage statements and failed to timely pay all final wages upon
24 separation of employment.

25 7. Based on these alleged Labor Code violations, Plaintiff now brings this class and
26 representative PAGA action to recover unpaid wages, restitution, penalties, and other related relief
27 on behalf of himself and all others similarly situated.

1 **JURISDICTION AND VENUE**

2 8. Plaintiff, on behalf of himself and all other similarly situated non-exempt employees
3 hereby brings this class action for recovery of unpaid wages and penalties under California Labor
4 Code §§ 201-203, 204, 210, 226.7, 510, 512, 1194, 1197.1, 1199 and applicable Industrial Welfare
5 Commission Wage Orders (“Wage Orders”), in addition to seeking declaratory relief and restitution
6 pursuant to California Business and Professions Code § 17200, *et. seq.* This class action is brought
7 pursuant to California Code of Civil Procedure § 382.

8 9. This Court has jurisdiction over Defendants’ violations of the California Labor Code
9 and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional
10 minimum.

11 10. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
12 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of
13 Lodi, County of San Joaquin. Defendants own, maintain offices, transact business, have an agent or
14 agents within the County of San Joaquin, and/or otherwise are found within the County of San
15 Joaquin, and Defendants are within the jurisdiction of this Court for purposes of service of process.

16 **PARTIES**

17 11. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
18 California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt
19 employee in Lodi, California in the County of San Joaquin.

20 12. Plaintiff is informed and believes and thereon alleges that defendant Schaefer Systems,
21 LLC and Hedy Holmes, are corporations authorized to and doing business in Lodi, California, and is
22 and/or are the legal employers of Plaintiff and the Class Members during the applicable statutory
23 periods.

24 13. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
25 herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-203,
26 204, 210, 226.7, 510, 512, 1194, 1197.1, 1199, and California Business and Professions Code § 17200
27 *et seq.*, and applicable Wage Orders.

1 14. Plaintiff is informed and believes, and based thereon alleges, that during the four years
2 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
3 do) business in the State of California, County of San Joaquin.

4 15. Defendant Schaefer Systems, LLC operates a facility in Lodi, California. Defendant
5 Hedy Holmes Staffing Services is headquartered in Stockton, California.

6 16. Plaintiff does not know the true names or capacities, whether individual, partner, or
7 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
8 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
10 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
11 corporate, were responsible in some manner for the acts and omissions alleged herein, and
12 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
13 alleged herein.

14 17. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
15 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
16 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
17 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
18 them, were the agents, servants, and employees of each and every one of the other Defendants, as
19 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
20 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
21 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

22 18. At all times mentioned herein, Defendants, and each of them, were members of and
23 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
24 scope of and in pursuance of said joint venture, partnership, and common enterprise.

25 19. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of
26 Plaintiff and all members of the Classes.

1 **COMMON FACTUAL ALLEGATIONS**

2 20. Defendant Schaefer specializes in manufacturing waste and recycling bins and carts,
3 operating out of Lodi, California. Defendants employed Plaintiff as a non-exempt employee with the
4 title of “General Laborer” from approximately January 2019 until approximately March 2019.
5 Plaintiff and other non-exempt employees, including, but not limited to, production associates,
6 general laborers, machine operators, and other non-exempt positions, were responsible for all aspects
7 of Defendants’ services in California.

8 21. At all relevant times, Plaintiff and other non-exempt employees regularly worked
9 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
10 Plaintiff alleges that other non-exempt employees were also subjected to the same policies,
11 procedures, and practices, working conditions, and corresponding wage and hour violations to which
12 Plaintiff was subjected during his employment at the Lodi facility.

13 22. At all relevant times, and continuing into the present, Defendants have had a consistent
14 policy of rounding Plaintiff and other non-exempt employees’ time entries to the nearest ten minute
15 or quarter hour. As a result of this practice, Plaintiff and other non-exempt employees are not
16 compensated for all the hours that they work and all the overtime hours they work, in violation of
17 Cal. Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

18 23. The Court in *See’s Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907,
19 held that rounding time policies can be lawful, “if the rounding policy is fair and neutral on its face
20 and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate
21 the employees properly for all the time they have actually worked,’ (29 C.F.R. § 785.48; see DLSE
22 Manual, *supra*, §§ 47.1, 47.2).”

23 24. Here, Defendants’ rounding time policy is not neutral on its face as Plaintiff and other
24 non-exempt employees are subject to discipline, including termination for being tardy in reporting to
25 work, or returning from a meal or rest period. Moreover, because Defendants are capable of tracking
26 the time worked by non-exempt employees to the minute, the policy itself exists not for the
27 convenience or benefit of the employees who are trying to report their time on timecards or otherwise,
28 but for Defendants’ benefit. As a result, the policy is not neutral on its face, and over a period of time,

1 Plaintiff and other non-exempt employees were not properly paid for all hours worked in violation of
2 Cal. Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage Orders. Further, as a result
3 of the unlawful rounding policy, Plaintiff and other non-exempt employees were not properly paid at
4 the correct overtime rate for hours worked in excess of eight hours per shift. (Labor Code § 510).

5 25. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
6 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
7 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
8 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
9 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
10 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
11 underpaid regardless of whether the initial violation is intentionally committed.

12 26. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were not
13 paid all overtime wages based on Defendants' invalid and unlawful Alternative Workweek Schedule.

14 27. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
15 compliant and timely 30-minute off-duty meal periods as mandated by California law. First, as a
16 result of Defendants' uniform meal period policies/practices, Plaintiff and other non-exempt
17 employees were often unable to take uninterrupted first meal periods before the end of the fifth hour
18 of work. Plaintiff alleges that he and other non-exempt employees would not be provided a meal
19 break often until the 8th hour of their shift. Additionally, when Plaintiff and other non-exempt
20 employees worked in excess of 10.0 hours in a shift, which was a regular occurrence, they were not
21 allowed and permitted to take a mandated and timely second meal period before the end of the tenth
22 hour of work in violation of the Labor Code and applicable Wage Orders. Plaintiff and other non-
23 exempt employees were not provided meal period premiums for missed or non-compliant meal
24 periods at the appropriate "regular rate of pay."

25 28. Accordingly, due to Defendants' uniform meal period policies/practices, Plaintiff and
26 other non-exempt employees were also regularly denied legally compliant meal periods in violation
27 of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

1 29. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were also
2 not provided with 10 minutes of duty-free net rest period time for every 4 hours worked, or major
3 fraction thereof as mandated by California law. Defendants have had a policy that prevented Plaintiff
4 and other non-exempt employees from leaving the work premises during rest breaks thereby
5 exercising control over non-exempt employees during their rest periods in violation of the Labor
6 Code. As a result, Plaintiff and other non-exempt employees were and are routinely unable to take
7 (10) minute duty- free rest periods for every major fraction of four hours worked. This includes a
8 second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10
9 hours in a workday.

10 30. By not relieving all non-exempt employees of all duties during rest periods, Defendants
11 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
12 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
13 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
14 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period
15 to employees who worked as security guards and further explained “that employers [must] relinquish
16 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
17 at 273. Each time Plaintiff and other non-exempt employees were unable to take a compliant rest
18 period, Defendants failed and continue to fail to adequately pay rest period premium payments at the
19 “regular rate of pay” as required by Labor Code § 226.7.

20 31. Accordingly, due to Defendants’ uniform rest period policies/practices, Plaintiff and
21 other non-exempt employees were also regularly denied legally compliant rest breaks in violation of
22 Labor Code §§ 226.7, 512, and applicable Wage Orders.

23 32. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees all
24 minimum and overtime wages, and Defendants failure to pay for meal and rest period premiums,
25 Defendants issued wage statements which failed to accurately identify the gross wages earned, the
26 total hours worked, the net wages earned, and the correct corresponding number of hours worked at
27 each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

33. Labor Code § 226(e) provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

34. As such, the wage statements Defendants issued to Plaintiff and other non-exempt employees are in violation of Labor Code § 226(a). Thus, Defendants has violated Labor Code §226(a) with respect to Plaintiff and other non-exempt employees. Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code § 226(e).

35. Finally, because of, Defendants' failure to pay all minimum and overtime wages, and meal and rest period premiums at the appropriate "regular rate of pay", Defendants also failed and continue to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Pursuant to Labor Code §§ 201-202, an employer must provide non-exempt employees' wages at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty ..." for up to 30 days. Thus, non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- (1) All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”)
- (2) All employees who work or worked for Defendants in California, during the one year immediately preceding the filing of the Complaint through the date of trial. (“Wage Statement Subclass”).
- (3) All non-exempt employees who worked for Defendants in California and were separated from employment during the three years immediately

preceding the filing of the Complaint through the date of trial. (“Waiting Time Subclass”)

(collectively “the Classes”)

37. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment and payroll records.

38. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants’ rounding and other timekeeping policies/practices resulted in a failure to pay for all hours worked to the members of the Classes;
2. Whether Defendants provided legally compliant meal periods or proper compensation in lieu thereof to members of the Classes;
3. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a);
4. Whether Defendants provided legally compliant rest periods or proper compensation in lieu thereof to members of the Classes; and
5. Whether the timing and amount of payment of final wages at the time of separation from employment were unlawful.

39. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants’ policies and/or practices applicable to each individual class member, such as Defendants’ policy and/or practice of rounding time entries to the nearest 10/15-minute interval, Defendants’ uniform policy of failing to provide compliant meal and rest periods or adequate compensation in lieu thereof, and to

1 pay for all wages due upon separation of employment. As such, the common questions predominate
2 over individual questions concerning each individual class member's showing as to his or her
3 eligibility for recovery or as to the amount of his or her damages.

4 40. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
5 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
6 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
7 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was
8 deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest
9 period policies/practices and was not paid all wages owed at the time of his separation of employment.

10 41. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
11 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
12 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
13 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
14 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
15 members of the Classes.

16 42. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
17 important public interest in establishing minimum working conditions and standards in California.
18 These laws and labor standards protect the average working employee from exploitation by
19 employers who have the responsibility to follow the laws and who may seek to take advantage of
20 superior economic and bargaining power in setting onerous terms and conditions of employment. The
21 nature of this action and the format of laws available to Plaintiff and members of the Classes make
22 the class action format a particularly efficient and appropriate procedure to redress the violations
23 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
24 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
25 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

26 43. Moreover, requiring each member of the Classes to pursue an individual remedy would
27 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
28 against their former and/or current employer for real and justifiable fear of retaliation and permanent

1 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
2 the individual class members, even if possible, would create a substantial risk of inconsistent or
3 varying verdicts or adjudications with respect to the individual class members against Defendants
4 herein; and which would establish potentially incompatible standards of conduct for Defendants;
5 and/or legal determinations with respect to individual class members which would, as a practical
6 matter, be dispositive of the interest of the other class members not parties to adjudications or which
7 would substantially impair or impede the ability of the class members to protect their interests.
8 Further, the claims of the individual members of the class are not sufficiently large to warrant
9 vigorous individual prosecution considering all of the concomitant costs and expenses attending
10 thereto. As such, the Classes identified in Paragraph 25 are maintainable as Classes under § 382 of
11 the Code of Civil Procedure.

12 **FIRST CAUSE OF ACTION**

13 **MINIMUM WAGE VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 45. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
17 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
18 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
19 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
20 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
21 the unpaid wages and interest accrued thereon.

22 46. At all relevant times herein, Defendants failed to conform their pay practices to the
23 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
24 and unlawful practice rounding to the nearest 10/15-minute interval, which resulted in these
25 individuals not being paid for all hours actually worked. Accordingly, Plaintiff and members of the
26 Classes were not compensated for all hours worked including, but not limited to, all hours they were
27 subject to the control of Defendants and/or suffered or permitted to work under the California Labor
28 Code and applicable Wage Orders.

47. Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

48. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and applicable Wage Orders.

49. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

51. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

52. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194 and the applicable Wage Orders.

53. Section 3 of the applicable Wage Order requires an employer to pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per

1 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
2 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
3 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
4 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
5 Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

6 54. Defendants failed to conform their pay practices to the requirements of the law. This
7 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
8 failing to pay for all hours worked due to rounding time entries to the nearest 10/15-minute interval
9 which resulted in Plaintiff and the Classes not being paid all overtime wages owed.

10 55. The foregoing policies and practices are unlawful and create entitlement to recovery
11 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of overtime wages,
12 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
13 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
14 1021.5.

15 **THIRD CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
20 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
21 and members of the Classes, with all required meal periods in accordance with the mandates of the
22 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
23 Allegations section of this Complaint. Despite Defendants' violations, Defendants have not paid an
24 additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Classes at their
25 respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

26 58. As a result, Defendants are responsible for paying premium compensation for meal
27 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
28 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 60. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
6 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
7 each four (4) hour period worked, or major fraction thereof.

8 61. Due to their unlawful rest period policy and practices, Defendants did not authorize
9 and permit Plaintiff and members of the Classes to take any rest periods to which they were legally
10 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the
11 "regular rate of pay" to Plaintiff and members of the Classes at their respective regular rates of pay
12 for each violation, in accordance with California Labor Code § 226.7.

13 62. The foregoing violations create an entitlement to recovery by Plaintiff and members
14 of the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest
15 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
16 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

19 **(AGAINST ALL DEFENDANTS)**

20 63. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 64. Labor Code 226(a) states in pertinent part the following:

22 "(a) An employer, semimonthly or at the time of each payment of wages,
23 shall furnish to his or her employee, either as a detachable part of the check,
24 draft, or voucher paying the employee's wages, or separately if wages are
25 paid by personal check or cash, an accurate itemized statement in writing
26 showing (1) gross wages earned, (2) total hours worked by the employee,
27 (3) the number of piece-rate units earned and any applicable piece rate if the
28 employee is paid on a piece-rate basis, (4) all deductions, provided that all
deductions made on written orders of the employee may be aggregated and
shown as one item, (5) net wages earned, (6) the inclusive dates of the
period for which the employee is paid, (7) the name of the employee and

1 only the last four digits of his or her social security number or an employee
2 identification number other than a social security number, (8) the name and
3 address of the legal entity that is the employer, and (9) all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.”

5 65. As set forth above, during the Class Period, Defendants issued and continue to issue
6 wage statements to its employees including Plaintiff and members of the Wage Statement Subclass,
7 which are inadequate under Labor Code Section 226(a).

8 66. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass
9 for all overtime wages, sick pay, and missed meal and rest period premiums at the appropriate legal
10 rate, Defendants failed to include required information on Plaintiff and the Wage Statement Subclass’
11 wage statements, including, but not limited to, the gross wages earned, the net wages earned in
12 violation of Labor Code section 226(a)(1,2,5, and 9).

13 67. In addition, the wage statements issued to Plaintiff and other aggrieved employees
14 independently fail to include all applicable hourly rates in effect during the pay period, including but
15 not limited to, the shift pay rates in effect.

16 68. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
17 and intentional.

18 69. As a result of Defendants’ issuance of inaccurate itemized wage statements to
19 Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California
20 Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an
21 initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate
22 penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from
23 Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

24 **SIXTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

26 **(AGAINST ALL DEFENDANTS)**

27 70. Plaintiff re-alleges and incorporates by reference all previous paragraphs.
28

1 71. The actionable period for this cause of action is three years prior to the filing of this
2 Complaint through the present, and on-going until the violation is corrected or the class is certified.

3 72. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
4 to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or
5 around the time that their employment is or was terminated or ended.

6 73. Labor Code § 203 provides that if an employer willfully fails to pay compensation
7 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
8 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

9 74. Defendants willfully failed to pay Plaintiff and the Waiting Time Subclass for all hours
10 worked, including all minimum and overtime wages, and their meal and rest period premiums at the
11 “regular rate of pay”, prior to or upon termination or separation from employment with Defendants
12 as required by Labor Code §§ 201 and 202.

13 75. As a result, Defendants are liable to Plaintiff and the Waiting Time Subclass for
14 waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time
15 Subclass pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of
16 wages due upon termination entitles an employee to recover waiting time penalties).

17 **SEVENTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(AGAINST ALL DEFENDANTS)**

20 76. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 77. Defendants have engaged and continue to engage in unfair and/or unlawful business
22 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
23 failing to pay for all hours worked, by failing to provide all legally required meal and rest periods or
24 pay premium payments at the regular rate of pay in lieu thereof, and by failing to pay all earned wages
25 at the time of separation from employment.

26 78. Defendants’ utilization of these unfair and/or unlawful business practices deprived
27 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
28 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over

1 Defendants' competitors who have been and/or are currently employing workers and attempting to
2 do so in honest compliance with applicable wage and hour laws.

3 79. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
4 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
5 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
6 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

7 80. The acts complained of herein occurred within the last four years immediately
8 preceding the filing of the Complaint in this action.

9 81. Plaintiff was compelled to retain the services of counsel to file this court action to
10 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
11 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
12 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
13 he is entitled to recover under Code of Civil Procedure § 1021.5.

14 **EIGHT CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

16 **(AGAINST ALL DEFENDANTS)**

17 82. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 83. Defendants have committed several Labor Code violations against Plaintiff and
19 other non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
20 § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees, bring this representative
21 action against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
22 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
23 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
24 violation per employee per pay period for those violations of the Labor Code for which no civil
25 penalty is specifically provided based on the following Labor Code violations:

26 a. Failing to provide Plaintiff and other non-exempt employees all minimum and
27 overtime wages in violation of Labor Code § 204, 510, 1194 and 1198;

28 b. Failing to provide Plaintiff and other non-exempt employees with all of their

1 statutorily mandated meal periods or compensation at the “regular rate of pay” in lieu thereof in
2 violation of Labor Code §§ 204, 510, 1194 and 1198;

3 c. Failing to authorize and permit Plaintiff and other non-exempt employees with all
4 of their statutorily mandated rest periods or compensation at the “regular rate of pay” in lieu thereof
5 in violation of Labor Code §§ 226.7, and 516;

6 d. Failing to timely compensate Plaintiff and other non-exempt employees with all
7 earnings at their separation of employment in violation of Labor Code §§ 201-203.

8 e. Failing to furnish Plaintiff and other non-exempt employees with complete,
9 accurate, itemized wage statements in violations of Labor Code § 226(a); and

10 84. On or about November 2, 2022, Plaintiff notified Defendants via certified mail, and
11 the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s
12 violations of the California Labor Code § 2698 et seq., with respect to violations of the California
13 Labor Code identified in Paragraph 83(a)-(e).

14 85. Plaintiff will have exhausted his administrative requirements for bringing a claim
15 under the Private Attorneys General Act with respect to these violations.

16 86. Plaintiff was compelled to retain the services of counsel to file this court action to
17 protect their interests and the interests of other non-exempt employees, and to assess and collect the
18 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which she
19 is entitled to receive under California Labor Code § 2699.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
22 this suit is brought against Defendants, as follows:

- 23 1. For an order certifying the proposed Classes;
24 2. For an order appointing Plaintiff as representative of the Classes;
25 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
26 4. Upon the First Cause of Action, for compensatory, consequential, general and special
27 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;

1 5. Upon the Second Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;

3 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
4 damages according to proof pursuant to Labor Code §§ 226.7 and 512;

5 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
6 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

7 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(c), and
8 reasonable costs and attorneys' fees;

9 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor
10 Code §§ 201-203.10. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
11 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
12 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

13 10. Upon the Eight Cause of Action, for civil penalties due to Plaintiff, other non-exempt
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
15 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
16 subsequent violation per employee per pay period for those violations of the Labor Code for which
17 no civil penalty is specifically provided under the Labor Code.

18 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
19 § 218.6 and Civil Code §§ 3287 and 3289;

20 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
21 218.5, 1194, and Code of Civil Procedure § 1021.5; and

22 13. For such other relief that the Court may deem just and proper.

23 Dated: December 12, 2022

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

24
25
26 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the
Stars, Suite 450, Los Angeles, California 90067.

5 On December 21, 2022, I served the following document(s) described as **FIRST**
6 **AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in
this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

7
8 Susan W. Pangborn, Esq.
spanborn@kilpatricktownsend.com
Sean Shabbar, Esq.
9 sshabbar@kilpatricktownsend.com
KILPATRICK TOWNSEND &
10 STOCKTON, LLP
Two Embarcadero Center, Suite 1900
11 San Francisco, California 94111

12 **Counsel for defendant Schaefer Systems,**
13 **LLC**

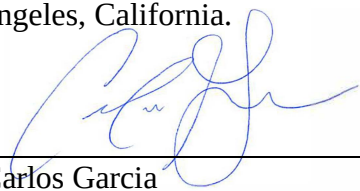
Alexander M. Medina, Esq.
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Kyle W. Owen
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Medina McKelvey, LLP
925 Highland Point Drive, Suite 300
Roseville, California 95678

Counsel for defendant The Hedy
Corporation, Inc. dba Hedy Holmes
Staffing Agency

14 **BY ELECTRONIC MAIL:** Based on a Court order or an agreement by the parties to
15 accept service by e-mail or electronic transmission, I caused such the document(s) described above
16 to be sent from my email address to the persons listed above. I did not receive, within a reasonable
time after the transmission, any electronic message or indication that the transmission was
unsuccessful.

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

18 Executed on December 21, 2022, at Los Angeles, California.

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20 
21 _____
Carlos Garcia
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