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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 07 2022

Brenda Matsumura

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN BERNARDINO**

13 CURTIS BAILEY and AVERY DUNN,
14 individually, on behalf of other members of
15 the general public similarly situated, and on
16 behalf of aggrieved employees pursuant to
17 the Private Attorneys General Act
18 ("PAGA");

19 Plaintiffs,

20 v.

21 ENCORR SHEETS, LLC, a Delaware
22 limited liability company; and DOES 1
23 through 100, inclusive;

24 Defendants.

Case No.: CIVDS2021228
[Consolidated with Case No.
CIVSB2029182]

FIRST CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION
AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION, AND
CIVIL PENALTIES:

- (1) Violation of California Labor Code §§ 246, 510, 551, 552, 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698 *et seq.* (Private Attorneys

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General Act of 2004); and
(9) Violation of California Business &
Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs CURTIS BAILEY and AVERY DUNN (“Plaintiffs,” “Plaintiff Bailey,” and “Plaintiff Dunn”), individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

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

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

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

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

PARTIES

5. Plaintiff Bailey is an individual residing in the State of California, County of San Bernardino.

1 6. Plaintiff Dunn is an individual residing in the State of California, County of San
2 Bernardino.

3 7. Defendant ENCORR SHEETS, LLC, at all times herein mentioned, was and is,
4 upon information and belief, a Delaware limited liability company, and at all times herein
5 mentioned, was and is, an employer whose employees are engaged throughout the State of
6 California, including the County of San Bernardino.

7 8. At all relevant times, Defendants ENCORR SHEETS, LLC was the “employer”
8 of Plaintiffs within the meaning of all applicable California laws and statutes.

9 9. At all times herein relevant, Defendants ENCORR SHEETS, LLC and DOES 1
10 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
11 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each
12 of the other, and at all times relevant hereto were acting within the course and scope of their
13 authority as such agents, partners, joint venturers, joint employers, representatives, servants,
14 employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein
15 were duly committed with the ratification, knowledge, permission, encouragement,
16 authorization, and consent of each defendant designated herein.

17 10. The true names and capacities, whether corporate, associate, individual or
18 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sues
19 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on
20 that information and belief allege, that each of the Defendants designated as a DOE is legally
21 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
22 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
23 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
24 capacities when the same have been ascertained.

25 11. Defendants ENCORR SHEETS, LLC and DOES 1 through 100 will hereinafter
26 collectively be referred to as “Defendants.”

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

CLASS ACTION ALLEGATIONS

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

14. The proposed class is defined as follows:

All current and former California-based (*i.e.*, currently “residing” in California with the intent to remain in California indefinitely) hourly-paid or non-exempt employees of Defendants within the State of California at any time during the period from April 6, 2016¹ to final judgment.

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

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

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than four hundred (400) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

b. Typicality: Plaintiffs’ claims are typical of all other class members’ claims as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom he has a well-

¹ Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council’s Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Accordingly, Plaintiffs’ claims were tolled during that time period.

defined community of interest.

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

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

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

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

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants failed to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed

- 1 meal periods and rest breaks in violation of California law;
- 2 c. Whether Defendants required Plaintiffs and the other class members to
- 3 work over eight (8) hours per day, over forty (40) hours per week, and/or
- 4 seven (7) consecutive workdays and failed to pay the legally required
- 5 overtime compensation to Plaintiffs and the other class members;
- 6 d. Whether Defendants properly calculated the regular rate for Plaintiffs
- 7 and the other class members who worked overtime and earned incentive
- 8 bonuses and shift differentials;
- 9 e. Whether Defendants deprived Plaintiffs and the other class members of
- 10 meal and/or rest periods or required Plaintiffs and the other class
- 11 members to work during meal and/or rest periods without compensation;
- 12 f. Whether Defendants failed to pay minimum wages to Plaintiffs and the
- 13 other class members for all hours worked;
- 14 g. Whether Defendants failed to pay all wages due to Plaintiffs and the
- 15 other class members within the required time upon their discharge or
- 16 resignation;
- 17 h. Whether Defendants failed to timely pay all wages due to Plaintiffs and
- 18 the other class members during their employment;
- 19 i. Whether Defendants complied with wage reporting as required by the
- 20 California Labor Code, including, inter alia, section 226;
- 21 j. Whether Defendants failed to reimburse Plaintiffs and the other class
- 22 members for necessary business-related expenses and costs;
- 23 k. Whether Defendant maintained an illegal rounding policy that resulted in
- 24 Plaintiffs and other class members being underpaid;
- 25 l. Whether Defendant failed to properly calculate and pay sick leave to
- 26 Plaintiffs and other class members;
- 27 m. Whether Defendant forced Plaintiffs and other class members to work for
- 28 seven (7) consecutive days and did not average at least one (1) day's rest

in seven (7) during each calendar month;

- n. Whether Defendants' conduct was willful or reckless;
- o. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*;
- p. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- q. Whether Plaintiffs and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

18. During the relevant time period set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California.

19. Defendants, jointly and severally, employed Plaintiff Bailey as an hourly-paid, non-exempt employee from approximately July 2018 to January of 2019 in the State of California.

20. Defendants, jointly and severally, employed Plaintiff Dunn as an hourly-paid, non-exempt employee from approximately August 2018 to November 2019 in the State of California.

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

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

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

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

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

3 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
4 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
5 employees within the State of California. This scheme involved, inter alia, failing to pay them
6 for all hours worked, failing to properly calculate overtime pay and sick leave, forcing
7 employees to work seven (7) consecutive days without a day of rest, missed meal periods, and
8 missed rest breaks in violation of California law.

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

13 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
14 knew or should have known that they maintained an illegal rounding policy that resulted in
15 Plaintiffs and other class members being underpaid.

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

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

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

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

12 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Plaintiffs and other class members were entitled to sick leave
14 pay and that Defendants failed to properly calculate and pay sick leave to Plaintiffs and other
15 class members pursuant to the methods outlined in the California Labor Code.

16 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 knew or should have known that Plaintiffs were entitled to one (1) day's rest and that
18 Defendants forced Plaintiffs and other class members to work seven (7) consecutive days
19 without receiving a day's rest.

20 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
21 knew or should have known that Plaintiffs and other class members were entitled to receive the
22 wages owed to them upon discharge or resignation, including overtime and minimum wages
23 and meal and rest period premiums, and that Plaintiffs and other class members did not, in fact,
24 receive such wages owed to them at the time of their discharge or resignation.

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1 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and other class members were entitled to receive
3 complete and accurate wage statements in accordance with California law, but, in fact,
4 Plaintiffs and other class members did not receive complete and accurate wage statements from
5 Defendants. The deficiencies included, inter alia, the failure to include the total number of
6 hours worked by Plaintiffs and other class members and failing to factor incentive bonuses and
7 shift differentials into their regular rates of pay to change their overtime rates.

8 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants
9 knew or should have known that Plaintiffs and the other class members were entitled to
10 reimbursement for necessary business-related expenses.

11 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 knew or should have known that Defendants had to keep complete and accurate payroll records
13 for Plaintiffs and other class members in accordance with California law, but, in fact, did not
14 keep complete and accurate payroll records for Plaintiffs and other class members.

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

21 40. As a pattern and practice, during the relevant time period set forth herein,
22 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
23 worked. Plaintiffs and other class members were required to work more than eight (8) hours
24 per day, forty (40) hours per week, and/or seven (7) consecutive workdays without overtime
25 compensation.

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1 41. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants maintained an illegal rounding policy that was neither fair nor neutral and resulted
3 in Plaintiffs and other class members being underpaid the wages owed to them.

4 42. As a pattern and practice, during the relevant time period set forth herein,
5 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
6 Plaintiffs and other class members.

7 43. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants failed to pay Plaintiffs and other class members at least minimum wages for all
9 hours worked.

10 44. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to properly calculate and pay sick leave to Plaintiffs and other class
12 members using the methods outlined in the California Labor Code.

13 45. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants forced Plaintiffs and employees to work seven (7) days without receiving one (1)
15 day's rest in seven.

16 46. As a pattern and practice, during the relevant time period set forth herein,
17 Defendants failed to pay Plaintiffs and other class members the wages owed to them upon
18 discharge or resignation.

19 47. As a pattern and practice, during the relevant time period set forth herein,
20 Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class
21 members.

22 48. As a pattern and practice, during the relevant time period set forth herein,
23 Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class
24 members.

25 49. As a pattern and practice, during the relevant time period set forth herein,
26 Defendants failed to reimburse Plaintiffs and the other class members for necessary business-
27 related expenses and costs.

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

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

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 246, 510, 551, 552, 1198)

(Against ENCORR SHEETS, LLC and DOES 1 through 100)

52. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 51, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

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

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1 56. California Labor Code section 510 codifies the right to overtime compensation
2 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
3 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
4 of work, and overtime compensation at twice the regular hourly rate for hours worked in
5 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
6 of work.

7 57. California Labor Code sections 551 and 552 respectively state, "Every person
8 employed in any occupation of labor is entitled to one day's rest therefrom in seven" and "No
9 employer of labor shall cause his employees to work more than six days in seven."

10 58. Finally, California Labor section 246(1) states that sick leave may be calculated:
11 (1) "in the same manner as the regular rate of pay for the workweek in which the employee
12 uses paid sick time, whether or not the employee actually works overtime in that workweek";
13 (2) "by dividing the employee's total wages, not including overtime premium pay, by the
14 employee's total hours worked in the full pay periods of the prior 90 days of employment"; or
15 (3) "in the same manner as the employer calculates wages for other forms of paid leave time."

16 59. During the relevant time period set forth herein, Plaintiffs and other class
17 members worked in excess of eight (8) hours in a day, in excess of forty (40) hours in a week,
18 and/or seven (7) consecutive workdays.

19 60. As a pattern and practice, during the relevant time period set forth herein,
20 Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs and
21 other class members (but not all).

22 61. As a pattern and practice, during the relevant time period set forth herein,
23 Defendants had in place an illegal rounding policy that was neither fair nor neutral, which
24 underpaid the wages owed to Plaintiffs and other class members.

25 62. As a pattern of practice, during the relevant time period set forth herein,
26 Defendants intentionally and willfully scheduled Plaintiffs and other class members to work
27 seven (7) consecutive days without providing them with one (1) day's rest.

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63. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to properly calculate and pay sick leave to Plaintiffs and other class members using the methods outlined in California Labor Code section 246(1).

64. Defendants' pattern and practice of failing to pay Plaintiffs and other class members the unpaid balance of overtime compensation, scheduling Plaintiffs and other class members to work seven (7) consecutive days without one (1) day's rest, and failing to properly calculate and pay sick leave to Plaintiffs and other class members, as required by California laws, violates the provisions of California Labor Code sections 246, 510, 551, 552, and 1198, and is therefore unlawful.

65. Pursuant to California Labor Code sections 248.5, 558, and 1194, Plaintiffs and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

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

(Against ENCORR SHEETS, LLC and DOES 1 through 100)

66. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 65, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

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

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

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

19 72. As a pattern and practice, during the relevant time period set forth herein,
20 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
21 time no longer than twelve (12) hours, and who did not waive their legally-mandated meal
22 periods by mutual consent, were required to work for periods longer than ten (10) hours
23 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
24 period.

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

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

11 75. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants intentionally and willfully required Plaintiffs and other class members (but not all)
13 to work during meal periods and failed to compensate Plaintiffs and the other class members
14 (but not all) the full meal period premium for work performed during meal periods.

15 76. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to pay Plaintiffs and other class members (but not all) the full meal period
17 premium due pursuant to California Labor Code section 226.7.

18 77. Defendants' conduct violates applicable IWC Wage Order and California Labor
19 Code sections 226.7 and 512(a).

20 78. Pursuant to the applicable IWC Wage Order and California Labor Code section
21 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one
22 additional hour of pay at the employee's regular rate of compensation for each workday that
23 the meal or rest period is not provided.

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85. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members (but not all) the full rest period premium due pursuant to California Labor Code section 226.7

86. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

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

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against ENCORR SHEETS, LLC and DOES 1 through 100)

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

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

90. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiffs and other class members (but not all) as required, pursuant to California Labor Code sections 1194 and 1197.

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

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92. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class members are entitled to recover a penalty of \$100 for the initial failure to timely pay each employee minimum wages, and \$250 for each subsequent failure to pay each employee minimum wages.

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

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against ENCORR SHEETS, LLC and DOES 1 through 100)

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

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

96. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiffs and other class members (but not all) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

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

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

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

SIXTH CAUSE OF ACTION

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

(Against ENCORR SHEETS, LLC and DOES 1 through 100)

100. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 99, and each and every part thereof with the same force and effect as though fully set forth herein.

101. During the relevant time period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the 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 his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

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1 102. As a pattern and practice, Defendants have intentionally and willfully failed to
2 provide Plaintiffs and other class members (but not all) with complete and accurate wage
3 statements. The deficiencies include but are not limited to: the failure to include the total
4 number of hours worked by Plaintiffs and other class members and failing to include proper
5 overtime rates due to not factoring incentive bonuses and shift differentials into their regular
6 rates of pay.

7 103. As a result of Defendants' violation of California Labor Code section 226(a),
8 Plaintiffs and other class members have suffered injury and damage to their statutorily
9 protected rights.

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

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

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

20 **SEVENTH CAUSE OF ACTION**

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

22 **(Against ENCORR SHEETS, LLC and DOES 1 through 100)**

23 107. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
24 through 106, and each and every part thereof with the same force and effect as though fully set
25 forth herein.

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

109. Defendants have intentionally and willfully failed to reimburse Plaintiffs and other class members (but not all) for all necessary business-related expenses and costs. Plaintiffs and other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

EIGHTH CAUSE OF ACTION

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

(Against ENCORR SHEETS, LLC and DOES 1 through 100)

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

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

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1 112. On October 14, 2020, Plaintiff Dunn provided written notice to the LWDA and
2 Defendants of the specific provisions of the Labor Code he contends were violated, and the
3 theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by
4 reference is a copy of the written notice to the LWDA. Plaintiffs believe that on or about
5 December 18, 2020, the sixty-five (65) day notice period expired, and the LWDA did not take
6 any action to investigate or prosecute this matter. Therefore, Plaintiffs have exhausted their
7 administrative remedies.

8 113. Plaintiffs and the other hourly-paid or non-exempt employees are “aggrieved
9 employees” as defined by California Labor Code § 2699(c) in that they are all current or
10 former employees of Defendants who worked for Defendants at any time during the period
11 from October 14, 2019 to the present, and one or more of the alleged violations was committed
12 against them.

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

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

18 115. As a policy and practice, Defendants failed to compensate Plaintiffs and the
19 other aggrieved current and former employees for all hours worked, resulting in a failure to
20 pay all minimum wages and overtime wages, where applicable.

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

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

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1 117. As a policy and practice, Defendants failed to provide Plaintiffs and the other
2 aggrieved current and former employees with legally mandated meal periods and rest breaks
3 and failed to pay proper compensation for this failure.

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

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

7 119. As a policy and practice, Defendants failed to pay Plaintiffs and the other
8 aggrieved current and former employees all wages due and owing them within the required
9 time period.

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

11 120. At all times relevant herein, Defendants were required to pay their employees all
12 wages owed in a timely fashion at the end of employment pursuant to California Labor Code
13 §§ 201 to 204.

14 121. As a result of Defendants' Labor Code violations alleged above, Defendants
15 failed to pay Plaintiffs and the other aggrieved former employees their final wages pursuant to
16 Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code
17 § 203.

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

19 122. At all times relevant herein, Defendants were required to keep *accurate* records
20 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

21 123. As a result of Defendants' various Labor Code violations, Defendants failed to
22 keep accurate records regarding Plaintiffs and the other aggrieved current and former
23 employees. For example, Defendants failed in their affirmative obligation to keep accurate
24 records regarding Plaintiffs and the other aggrieved current and former employees' gross
25 wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly
26 rates and the number of hours worked at each hourly rate.

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Failure to Reimburse Business Expenses

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

125. As a policy and practice, Defendants failed to pay Plaintiffs and the other aggrieved current and former employees all business expenses incurred and owing them within the required time period.

Failure to Pay Sick Leave Pay

126. California Labor Code § 246(l) allows an employer to calculate paid sick leave for non-exempt employees using two (2) methods. Per § 246(l), Defendants may pay sick leave either in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek or by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. Lab. Code § 246(l)(1)-(2).

127. As a policy and practice, Defendant failed to properly calculate and pay sick leave to Plaintiffs and other aggrieved current and former employees pursuant to the methods outlined in Labor Code section 246(l).

Penalties

128. Pursuant to California Labor Code § 2699, Plaintiffs, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including but not limited to:

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

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

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

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

133. An amount sufficient to recover unpaid wages under Labor Code § 1197.1;

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

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

NINTH CAUSE OF ACTION

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

(Against ENCORR SHEETS, LLC and DOES 1 through 100)

136. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 135, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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1 138. Defendants' activities as alleged herein are violations of California law, and
2 constitute unlawful business acts and practices in violation of California Business &
3 Professions Code section 17200, *et seq.*

4 139. A violation of California Business & Professions Code section 17200, *et seq.*
5 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
6 pattern and practice of requiring Plaintiffs and other class members work overtime hours
7 without paying them proper compensation violate California Labor Code sections 510 and
8 1198. Additionally, Defendants' pattern and practice of requiring Plaintiffs and other class
9 members to work through their meal and rest periods without paying them proper
10 compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants'
11 pattern and practice of failing to timely pay wages to Plaintiffs and other class members violate
12 California Labor Code sections 201 and 202. Defendants also violated California Labor Code
13 sections 226(a), 246, 551, 552, 1194, 1197, 2800, and 2802.

14 140. As a result of the herein described violations of California law, Defendants
15 unlawfully gained an unfair advantage over other businesses.

16 141. Plaintiffs and other class members (but not all) have been personally injured by
17 Defendants' unlawful business acts and practices as alleged herein, including but not
18 necessarily limited to the loss of money and/or property.

19 142. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
20 Plaintiffs and other class members are entitled to restitution of the wages withheld and retained
21 by Defendants during a period that commences four years prior to the filing of this Complaint;
22 an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and
23 other applicable laws; and an award of costs.

24 **DEMAND FOR JURY TRIAL**

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

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1 9. For pre-judgment interest on any unpaid overtime compensation commencing
2 from the date such amounts were due;

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

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

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

7 12. That the Court declare, adjudge, and decree that Defendants violated California
8 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
9 provide all meal periods (including second meal periods) to Plaintiffs and other class members
10 (but not all);

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

14 14. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 15. For premium wages pursuant to California Labor Code section 226.7(b);

17 16. For pre-judgment interest on any unpaid wages from the date such amounts
18 were due;

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

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

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

22 19. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
24 rest periods to Plaintiffs and other class members (but not all);

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

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

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

23. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

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

As to the Fourth Cause of Action

25. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs and other class members (but not all);

26. For general unpaid wages and such general and special damages as may be appropriate;

27. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

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

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

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

As to the Fifth Cause of Action

31. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiffs and other class members (but not all) no longer employed by Defendants;

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

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

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1 34. For pre-judgment interest on any unpaid compensation from the date such
2 amounts were due; and

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

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

5 36. That the Court declare, adjudge and decree that Defendants violated the record
6 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
7 as to Plaintiffs and other class members (but not all), and willfully failed to provide accurate
8 itemized wage statements thereto;

9 37. For actual, consequential and incidental losses and damages, according to proof;

10 38. For statutory penalties pursuant to California Labor Code section 226(e);

11 39. For injunctive relief to ensure compliance with this section, pursuant to
12 California Labor Code section 226(g); and

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

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

15 41. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and other class
17 members (but not all) for all necessary business-related expenses as required by California
18 Labor Code sections 2800 and 2802;

19 42. For actual, consequential and incidental losses and damages, according to proof;

20 43. For the imposition of civil penalties and/or statutory penalties;

21 44. For punitive damages and/or exemplary damages according to proof at trial;

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

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

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

25 47. Upon the Eight Cause of Action, for civil penalties pursuant to statute as set
26 forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203,
27 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198,
28 2800 and 2802.

1 48. Upon the Eight Cause of Action, for costs and attorneys' fees pursuant to Labor
2 Code §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and

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

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

5 50. That the Court declare, adjudge and decree that Defendants violated California
6 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and other
7 class members all overtime compensation due to them, failing to provide all meal and rest
8 periods to Plaintiffs and the other class members, failing to pay at least minimum wages to
9 Plaintiffs and the other class members, failing to provide one (1) day's rest to Plaintiffs and
10 other class members, failing to properly calculate and pay sick leave to Plaintiffs and other
11 class members, and failing to pay Plaintiffs' and other class members' wages timely as
12 required by California Labor Code section 201, 202.

13 51. For restitution of unpaid wages to Plaintiffs and other class members and all
14 pre-judgment interest from the day such amounts were due and payable;

15 52. For the appointment of a receiver to receive, manage and distribute any and all
16 funds disgorged from Defendants and determined to have been wrongfully acquired by
17 Defendants as a result of violation of California Business and Professions Code sections
18 17200, *et seq.*;

19 53. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
20 California Code of Civil Procedure section 1021.5;

21 54. For injunctive relief to ensure compliance with this section, pursuant to
22 California Business and Professions Code sections 17200, *et seq.*; and

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

Dated: March 4, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Haig Hogdanian
Attorneys for Plaintiffs



Made in USA



EXHIBIT 1



October 14, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: ENCORR SHEETS, LLC

Dear Representative:

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

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

Encorr Sheets, LLC is a Delaware limited liability companies located at 10 W. Carmel Dr., Carmel, Indiana 46032.

ENCORR employed Mr. Dunn as an hourly-paid non-exempt Forklift Operator within one year of the date of this letter (until in or about November of 2019²) in the State of California. ENCORR directly controlled the wages, hours and working conditions of Mr. Dunn's employment.

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¹ Mr. Dunn does not know the true names or capacities, whether individual, partner or corporate, of DOES 11 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Dunn will amend this notice when the true names and capacities are known. Mr. Dunn is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Dunn and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Mr. Dunn's PAGA cause of action is tolled.

LWDA

October 14, 2020

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The "aggrieved employees" that Mr. Dunn may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies or labor contractors) of ENCORN within the State of California.

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

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

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

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

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LWDA

October 14, 2020

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, ENCORR routinely required Mr. Dunn and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with ENCORR policies and expectations and meet production goals and deadlines. ENCORR also failed to adequately staff its facilities and provide coverage to Mr. Dunn and other aggrieved employees so they may be relieved of all work duties and take legally compliant meal and rest breaks. Moreover, ENCORR failed to authorize and permit Mr. Dunn and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, ENCORR failed to compensate aggrieved employees all the premium wages they were owed.

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

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LWDA

October 14, 2020

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

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

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

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

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

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Dunn and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by ENCORR, including for purchasing gear (like steel toed boots) they were required to wear as part of their uniform while working, and using their personal cellular phones to communicate with management.

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

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

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

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

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

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

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

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Encorr Sheets, LLC
c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833
Agent for Service of Process for Encorr Sheets, LLC

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

**FIRST CONSOLIDATED CLASS AND REPRESENTATIVE ACTION AMENDED
COMPLAINT FOR DAMAGES, RESTITUTION, AND CIVIL PENALTIES**

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on March 16, 2022, at Pasadena, California.

Moinh Andarsen

Mariah Anderson