

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

MAY 31 2023

BY 
JESSICA MORALES, DEPUTY

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

CURTIS BAILEY and AVERY 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");

Plaintiffs,

v.

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

Defendants.

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

Assigned for All Purposes to:
Honorable David Cohn
Department S-26

CLASS ACTION

**FURTHER AMENDED ~~[PROPOSED]~~
ORDER OF FINAL APPROVAL AND
JUDGMENT**

Hearing Date: May 26, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department S-26

Complaint Filed: September 25, 2020
FAC Filed: March 7, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Curtis Bailey and Avery
2 Dunn's ("Plaintiffs") Motion for Final Approval of Class Action Settlement, and considering the
3 papers submitted in support of the motion, including the Joint Stipulation and Settlement
4 Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS AND**
5 **ORDERS:**

6 Plaintiffs and Defendant Encorr Sheets, LLC ("Defendant") entered the Settlement
7 Agreement on or about October 20, 2021 to settle this lawsuit.

8 The Court entered an order dated December 3, 2021 preliminarily approving the
9 settlement of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
10 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
11 Members, providing Class Members with an opportunity to object to the Settlement or exclude
12 themselves from the Class, and scheduling a Final Approval Hearing.

13 The Court held a Final Approval Hearing on May 26, 2023 to determine whether to give
14 final approval to the Settlement of this lawsuit.

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

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
20 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
21 to the claims of Class Members. The Court also has subject matter jurisdiction over this lawsuit,
22 including jurisdiction to approve the Settlement and grants final certification of the Class.

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1 3. Final Class Certification. The Court finds the Class satisfies all applicable
2 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
3 process. The Court certifies the Class consisting of all persons who worked for Defendant in
4 California as an hourly-paid or non-exempt employee during the time period from April 6, 2016
5 to October 26, 2021 (“Class,” “Class Members,” and “Class Period”). There are four hundred
6 fifty-six (456) Class Members who did not submit valid and timely requests to exclude
7 themselves from the class action Settlement (“Participating Class Members”).¹

8 4. Adequacy of Representation. Class Counsel fully and adequately represented the
9 Class for the purposes of entering and implementing the Settlement and satisfied the
10 requirements of Code of Civil Procedure section 382.

11 5. Notice Packet. The Court finds the Notice of Class and Representative Action
12 Settlement (“Class Notice”) and the Election Not To Participate In (Opt Out From) Class Action
13 Settlement Form (“Exclusion Form”) (collectively, known as the “Notice Packet”) and its
14 distribution to Class Members were implemented pursuant to the Settlement and this Court’s
15 Preliminary Approval Order. The Court also finds the Notice Packet:

16 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
17 pendency of this lawsuit; (ii) material terms and provisions of the Settlement Agreement and
18 their rights; (iii) their right to object to any aspect of the Settlement Agreement; (iv) their right to
19 exclude themselves from the Settlement Agreement; (v) their right to receive Individual
20 Settlement Shares; (vi) their right to appear at the Final Approval Hearing; and (vii) binding
21 effect of the orders and judgment in this lawsuit on all Participating Class Members;

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

24 c. constitutes the best practicable notice to Class Members under the
25 circumstances of this lawsuit; and

26 d. constitutes notice reasonable, adequate, and sufficient to Class Members.
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28 ¹ The Settlement Administrator mailed Notice Packets to four hundred fifty-seven (457)
Class Members and receive one (1) request for exclusion. Thus, there are four hundred fifty-

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

7 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
8 Order and Judgment are binding on Plaintiffs, Participating Class Members, Eligible Aggrieved
9 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
10 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
11 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
12 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
13 that were or could have been raised in this lawsuit and are encompassed by the Released Claims
14 and Private Attorneys General Act of 2004 ("PAGA") Released Claims. The Settlement
15 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
16 Class Members who have submitted timely requests for exclusion.

17 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
18 any action to enforce the terms and provisions of the Settlement Agreement.

19 9. Release Claims. Upon Defendant's fulfillment of its payment obligations under
20 section III(H)(8)(a) of the Agreement, in exchange for the consideration set forth in the
21 Agreement, Plaintiffs and the Participating Class Members release the Released Parties from the
22 Released Claims arising during the Class Period.

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six (456) Participating Class Members.

1 a. PAGA Released Claims. Upon Defendant's fulfillment of its payment obligations
2 under section III(H)(8)(a) of the Agreement, the California Labor and Workforce
3 Development Agency ("LWDA") and each Eligible Aggrieved Employee,
4 including Plaintiffs, individually and on behalf of their heirs, executors,
5 administrators, representatives, attorneys, successors, and assigns are voluntarily
6 and knowingly barred from bringing any action for the PAGA Released Claims
7 during the PAGA Period. The release of the PAGA Released Claims is effective,
8 regardless of whether the Eligible Aggrieved Employee submits a timely and
9 valid request for exclusion.

10 b. Plaintiffs' Release of Claims and General Release. Upon Defendant's fulfillment
11 of its payment obligations under section III(H)(8)(a) of the Agreement, and in
12 exchange for the Class Representative Enhancement Payments to the Plaintiffs, in
13 recognition of their work and efforts in obtaining the benefits for the Class and
14 undertaking the risk for the payment of costs if this matter had not successfully
15 resolved, Plaintiffs provide a general release of claims for themselves and their
16 spouses, heirs, successors, and assigns. Plaintiffs' Release of Claims also includes
17 a waiver of Civil Code section 1542.

18 c. Released Parties. The Released Parties include Defendant and its past or present
19 officers, directors, shareholders, employees, agents, principals, heirs,
20 representatives, accountants, auditors, consultants, insurers and reinsurers, and
21 their respective successors and predecessors in interest, subsidiaries, affiliates,
22 parents, attorneys, and any entities that may be considered joint employers.

23 10. Class Representative Enhancement Payments. The Court finds the Class
24 Representative Enhancement Payments of \$10,000, to be paid by Defendant to each Plaintiff out
25 of the Maximum Settlement Amount (totaling \$20,000), to be reasonable and appropriate. Class
26 Representative Enhancement Payments are to be paid pursuant to the terms and provisions set
27 forth in the Settlement Agreement.

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1 a. The rationale for making enhancement payments is class representatives should
2 be compensated for the expense and risk they incurred in conferring a benefit on
3 the Class. Criteria courts consider include: (1) risk to the class representatives in
4 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
5 effort spent by the class representatives; (4) duration of the litigation; and (5)
6 personal benefit (or lack thereof) enjoyed by class representatives.

7 b. The Court reviewed Plaintiffs' declarations outlining their involvement. Given the
8 risks inherent in the services as the class representatives, duration of the case and
9 time involved, and benefits created for the Class, the Court approves the payment
10 of the Class Representative Enhancement Payments of \$10,000 to each Plaintiff.

11 11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award
12 of \$200,000, to be paid out of the Maximum Settlement Amount by Defendant to Class Counsel,
13 to be reasonable and appropriate. In addition, the Court finds the Cost Award as reimbursement
14 for actual litigation costs incurred of \$20,000, to be paid by Defendant to Class Counsel out of
15 the Maximum Settlement Amount, to be reasonable and appropriate. Such fees and costs are to
16 be paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant
17 shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
18 incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members.
19 Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or
20 disbursements incurred by Plaintiffs or Class Members in connection with or related in any
21 manner to this lawsuit, Settlement Agreement, settlement administration, and/or Released Claims
22 and PAGA Released Claims.

23 a. The Court has an independent right and responsibility to review the Attorney Fee
24 Award and only award so much as it determines reasonable. (See *Garabedian v.*
25 *Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The
26 Attorney Fee Award of \$200,000 is one-third (1/3) of the common fund created
27 for the benefit of the Class and is supported by use of the percentage-fee method.
28 (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.)

1 Considering the exceptional results achieved, financial risk undertaken, novel and
2 difficult nature of this litigation, skills required, percentage fees award in previous
3 and other cases, and contingent fees charged in the marketplace, the Court finds
4 the Attorney Fee Award is consistent with the marketplace, is reasonable, and is
5 approved.

- 6 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
7 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
8 seek reimbursement of up to \$20,000 in litigation costs. The Court finds Class
9 Counsel expended \$21,271.17 in litigation costs, and such costs were reasonable.
10 Because this exceeds the maximum amount permitted, the Court approves the
11 payment of the Cost Award of \$20,000 from the common fund for the
12 reimbursement of Class Counsel's litigation costs.

13 12. Administration Costs. The Court finds Administration Costs of \$14,830, to be
14 paid by Defendant to the Settlement Administrator out of the Maximum Settlement Amount, to
15 be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
16 provisions set forth in the Settlement Agreement.

- 17 a. The Court reviewed the declaration of Denise Islas from Simpluris, Inc., the
18 Court-approved Settlement Administrator. The Court finds notice was provided to
19 the Class pursuant to the Preliminary Approval Order, constitutes the best
20 practicable notice to the Class, and satisfied due process. Thus, the Court
21 approves the payment of the Administration Costs of \$14,830 for the Settlement
22 Administrator's services in administering the Settlement.

23 13. PAGA Payment. The Court finds the PAGA Payment of \$40,000, seventy-five
24 percent (75%) of which (\$30,000) will be paid to the LWDA out of the Maximum Settlement
25 Amount and twenty-five percent (25%) of which (\$10,000) shall be distributed to Eligible
26 Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment
27 is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

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1 14. Funding the Settlement. No later than thirty (30) calendar days after the date the
2 Final Approval of the Settlement can no longer be appealed or, if there are no objectors and no
3 Plaintiffs in intervention at the time the Court grants Final Approval of the Settlement, the date
4 the Court enters judgment granting Final Approval of the Settlement, Defendant shall deposit the
5 Maximum Settlement Amount of \$600,000 needed to pay the entire Maximum Settlement by
6 wiring the funds to the Settlement Administrator. Defendant shall also at this time provide any
7 tax information that the Settlement Administrator may need to calculate each Participating Class
8 Member's Individual Settlement Share. Within fourteen (14) calendar days after the deadline to
9 fund the Settlement, the Settlement Administrator shall calculate and disburse all payments due
10 under the Settlement.

11 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
12 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the
13 Settlement was the product of arm's-length negotiations following extensive litigation,
14 discovery, and exchange of documentation. The negotiations were facilitated with the aid of Paul
15 Grossman, an experienced and well-respected mediator.

16 a. The fairness of the Settlement is demonstrated by there being no objections to and
17 only one (1) request for exclusion from the Settlement. The Class Member who
18 requested exclusion is Angello Roa.²

19 b. The fairness of the Settlement is further illustrated by the gross *average*
20 Individual Settlement Share being approximately \$667.77, and the gross *highest*
21 Individual Settlement Share being about \$4,102.14.

22 16. Uncashed Checks. Participating Class Members and Eligible Aggrieved
23 Employees must cash or deposit their Individual Settlement Share and Individual PAGA
24 Payment checks within one hundred eighty (180) calendar days after the checks are mailed to
25 them. Uncashed settlement checks will be paid to the *cy pres* recipient Legal Aid At Work.

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27 ² There were three (3) individuals within the Class Data who did not receive mailings
28 because their addresses were never obtained. After meeting and conferring, the Parties agreed
these three (3) individuals without mailing addresses will not be a part of the Class. These
three (3) individuals are Joes Aguilar, Erman Al-Zoubi, and Jose Lopez.

1 17. Modification of Settlement Agreement. The Participating Class Members are
2 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
3 modifications of the Settlement Agreement by an express written instrument signed by counsel
4 for all Parties or their successors in interest. Such amendments or modifications shall be
5 consistent with this Order and Judgment and cannot limit the rights of Participating Class
6 Members under the Settlement Agreement.

7 18. Final Accounting and Compliance. The Court sets a nonappearance case review
8 for May 30, 2024 at 8:30 a.m. in Department S-26. Within ten (10) court days before this
9 hearing, Plaintiffs shall file a compliance status report. Pursuant to Code of Civil Procedure
10 section 384, the compliance status report shall specify the total amount paid to Participating
11 Class Members and the residual of the unclaimed settlement funds that will be paid to the entity
12 identified as the recipient of such funds above.

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

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

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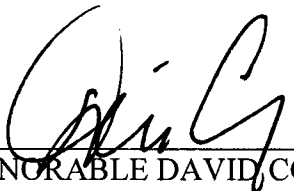
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1 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
2 Award, and Class Representative Enhancement Payments is GRANTED. The Settlement
3 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

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

11 IT IS SO ORDERED.

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13 DATED: 5/31/23



HONORABLE DAVID COHN
SUPERIOR COURT JUDGE

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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 bitty@justicelawcorp.com

FURTHER AMENDED ORDER OF FINAL APPROVAL AND JUDGEMENT

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

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.

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

Executed on June 6, 2023, at Pasadena, California.

Betty Marie Lundy

Bitty Minnis-Lemley