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

AVERY DUNN, individually, and on behalf
of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

v.

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

Defendants.

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

Honorable David Cohn
Department S-26

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Proposed Class Counsel
(Douglas Han); and [Proposed] Order filed
concurrently herewith]

Hearing Date: December 3, 2021
Hearing Time: 10:00 a.m.
Hearing Place: Department S-26

Complaint Filed: December 24, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 3, 2021 at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable David Cohn in Department S-26 of the San
3 Bernardino County Superior Court (San Bernardino Justice Center), located at 247 West Third
4 Street, San Bernardino, California 92415, Plaintiffs Curtis Bailey and Avery Dunn (“Plaintiffs,”
5 “Plaintiff Bailey,” and “Plaintiff Dunn”) will and hereby move for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
8 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
9 **“EXHIBIT 2”** to the Declaration of Douglas Han, including, and not limited to,
10 the means of allocation and distribution of funds, and the allocations for penalties
11 under the California Labor Code Private Attorneys General Act of 2004
12 (“PAGA”), the Attorney Fee Award, the Cost Award, the Class Representative
13 Enhancement Payments, and the Administration Costs;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiffs as the Class Representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class and Representative Action Settlement
18 (“Class Notice”) attached as **“Exhibit A”** to the Settlement Agreement;
- 19 • Approving the Election Not To Participate In (Opt Out From) Class Action
20 Settlement Form (“Exclusion Form”) attached as **“Exhibit B”** to the Settlement
21 Agreement;
- 22 • Directing the mailing of the proposed Class Notice and Exclusion Form
23 (collectively, known as the “Notice Packets”) with a postage-paid return
24 envelope to the proposed Class;
- 25 • Approving the proposed deadlines for the notice and Settlement Administration
26 process;
- 27 • Approving Simpluris, Inc. (“Simpluris”) as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the Administration Costs, and approval of the allocation for PAGA penalties.

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); the [Proposed] Order filed concurrently with this motion; the pleadings and other records on file with the Court in this matter; and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: November 4, 2021

JUSTICE LAW CORPORATION

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

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$600,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all persons who
4 worked for Defendant Encorr Sheets, LLC (“Defendant”) in California as an hourly-paid or non-
5 exempt employee during the Class Period (“Class”). The Class Period is the time period from
6 April 6, 2016 to October 26, 2021 (“Class Period”). At the time of this filing, the number of
7 Class Members provided by Defendant is estimated to be about four hundred fourteen (414).

8 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
9 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
10 proposed settlement of \$600,000 – with an average Individual Settlement Share estimated at
11 \$712.56¹ – is well within the “ballpark” of reasonableness.

12 **II. BACKGROUND**

13 Defendant is a major manufacturer of corrugated packaging materials and boxes, based
14 out of its 160-thousand square foot facility in Ontario California. This case involves all persons
15 who worked for Defendant in California as an hourly-paid or non-exempt employee during the
16 time period April 6, 2016 to October 26, 2021. (Declaration of Douglas Han (“Han Dec.”) ¶ 9.)

17 On September 25, 2020, Plaintiff Bailey, a former employee of Defendant, filed a wage-
18 and-hour class action lawsuit in the Superior Court of California, County of San Bernardino,
19 Case Number CIVDS2021228 (“Class Action”). (Han Dec., *supra*, ¶ 10.)

20 On October 14, 2020, Plaintiff Dunn provided written notice to the Labor and Workforce
21 Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code he
22 contends were violated and the theories supporting her contentions. After waiting the requisite
23 sixty-five (65) days for the PAGA notice period to expire, Plaintiff Dunn filed a representative
24 PAGA action on December 24, 2020 in the Superior Court of California, County of San
25 Bernardino, Case Number CIVSB2029182 (“PAGA Action”). (Han Dec., *supra*, ¶¶ 11-12.)

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 ¹ \$295,000 (Net Settlement Amount) / 414 (Class Members) = \$712.56.

1 The Parties attended mediation on Plaintiffs' collective claims on July 14, 2021. Under
2 the auspices of experienced mediator Paul Grossman, the Parties were eventually able to reach a
3 settlement that will resolve both lawsuits in their entirety. (Han Dec., *supra*, ¶ 13.)

4 Following mediation, during a Case Management Conference on October 12, 2021, Judge
5 David Cohn ordered the Class Action (Case Number CIVDS2021228) and PAGA Action (Case
6 Number CIVSB2029182) to be consolidated, with the PAGA Action (Case Number
7 CIVSB2029182) serving as the lead case. (Han Dec., *supra*, ¶ 14.)

8 Defendant generally and specifically denies any and all liability or wrongdoing of any
9 sort with regard to any of the claims alleged, makes no concessions or admissions of liability of
10 any sort, and contends that for any purpose other than settlement, the Class Action is not
11 appropriate for class or representative treatment. (Han Dec., *supra*, ¶ 15.)

12 **III. INVESTIGATION/ LITIGATION HISTORY**

13 **a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions**

14 After Plaintiff Bailey filed his wage-and-hour class action complaint, both Parties
15 engaged in formal and informal discovery. Plaintiffs propounded one (1) set of form
16 interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions; and
17 one (1) set of requests for production of documents. Afterwards, the Parties met and conferred
18 regarding this discovery and agreed to mediate Plaintiffs' claims. (Han Dec., *supra*, ¶ 16.)

19 Prior to the mediation and both before and after the Class Action was filed, the Parties
20 conducted significant investigation and discovery of the facts and law. This included Defendant
21 producing hundreds of documents relating to its policies, practices, and procedures and Plaintiffs
22 interviewing several Class Members. (Han Dec., *supra*, ¶¶ 17-18.)

23 Based upon Defendant's document production and interviews with Class Members,
24 Plaintiffs contend – and Defendant denies – that Defendant failed to provide employees with
25 legally mandated meal and rest breaks. Specifically, Defendant's improper, uniform practices
26 purportedly forced employees to skip, cut short, or take late meal and rest breaks (*i.e.*, heavy
27 workloads, pressures from supervisors, understaffing). (Han Dec., *supra*, ¶¶ 19-20.)

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1 Plaintiffs also assert – and Defendant denies – that Defendant failed to pay employees for
2 all hours worked. Specifically, employees were purportedly forced to perform various pre-shift
3 and post-shift duties, and Defendant maintained an improper practice of shifting employees’
4 times to the next day to minimize overtime. (Han Dec., *supra*, ¶ 21.)

5 Additionally, Plaintiffs allege – and Defendant denies – that Defendant failed to
6 compensate employees for their overtime at their regular rate of pay. This included supposedly
7 not factoring incentive bonuses and shift differentials into employees’ regular rates of pay for
8 overtime compensation and improperly calculating and paying sick leave based on employees’
9 hourly rates instead of their regular rates. (Han Dec., *supra*, ¶ 22.)

10 Next, Plaintiffs contend – and Defendant denies – that Defendant failed to reimburse
11 employees for incurring business expenses. This included purportedly not reimbursing
12 employees for purchasing tools, boots, rain suits, safety glasses, gloves, or ear plugs and using
13 their personal cell phones for work. (Han Dec., *supra*, ¶ 23.)

14 Finally, Plaintiffs allege – and Defendant denies – that Defendant is liable for waiting
15 time penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, ¶¶ 24-25.)

16 Defendant denies Plaintiffs’ contentions in their entirety. In fact, the Parties took
17 staunchly conflicting positions concerning Defendant’s policies and procedures and their effect
18 on hourly-paid and non-exempt employees. (Han Dec., *supra*, ¶ 26.)

19 **b. The Parties Were Able to Reach an Agreement on Settlement of the Action**

20 **i. The Parties Attended Mediation Which Ultimately Led to the Joint**
21 **Stipulation and Settlement Agreement**

22 The Parties agreed to go to mediation with experienced wage-and-hour mediator, Paul
23 Grossman that took place on July 14, 2021. During the mediation, the Parties discussed the risks
24 of continued litigation, risks of certification, and risks on the merits of the claims versus the
25 benefits of settlement. The Parties were able to reach an agreement on a global settlement of the
26 cases at issue, the terms of which were memorialized in a Settlement Agreement that the Parties
27 now seek Preliminary Approval of. (Han Dec., *supra*, ¶ 27, Exhibit 2.)

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1 **ii. The Settlement Was Reached Because of Arm’s-Length Negotiations**

2 The Settlement was reached because of arm’s-length negotiations. Though cordial and
3 professional, the settlement negotiations have been, always, adversarial, and non-collusive in
4 nature. At the mediation, counsel for the Parties conducted extensive arm’s-length settlement
5 negotiations until an agreement was ultimately reached by all Parties. (Han Dec., *supra*, ¶ 45.)

6 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the
7 expense and length of continued proceedings necessary to continue the litigation against
8 Defendant. Plaintiffs and Class Counsel have also considered the uncertainty and risk of further
9 litigation, the potential outcome, and the difficulties and delays inherent in such litigation. (Han
10 Dec., *supra*, ¶ 46.)

11 **iii. The Settlement Is the Result of Thorough Investigation and Discovery**

12 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
13 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
14 discovery. The proposed settlement was only possible following significant discovery and
15 evaluation of Defendant’s relevant policies and procedures, as well as the data they produced for
16 the putative Class. Furthermore, this case has reached the stage where “the Parties certainly have
17 a clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement.
18 (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, ¶ 47.)

19 **c. Terms of the Proposed Settlement**

20 **i. Deductions from the Settlement**

21 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
22 action be settled and compromised for the non-reversionary total sum of \$600,000 (“Maximum
23 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award in
24 an amount not to exceed \$210,000 (35% of the Maximum Settlement Amount) to Class Counsel;
25 (b) the Cost Award for the reimbursement of actual litigation costs not to exceed \$20,000; (c) the
26 Class Representative Enhancement Payments of \$10,000 to each Class Representative; (d) the
27 Administration Costs to Simpluris, the Settlement Administrator, in the sum not to exceed
28 \$15,000; and (e) the PAGA Payment in the amount of \$40,000 seventy-five percent (75%) of

1 which (\$30,000) will be paid to the LWDA and twenty-five percent (25%) of which (\$10,000)
2 shall be distributed Eligible Aggrieved Employees. (Han Dec., *supra*, ¶ 28.)

3 **ii. Calculation of the Individual Settlement Shares to Class Members**

4 After all Court-approved deductions from the Maximum Settlement Amount, it is
5 estimated that \$295,000 (“Net Settlement Amount”) will be distributed to Class Members – with
6 an average Individual Settlement Share estimated at \$712.56. (Han Dec., *supra*, ¶ 30.)

7 Each Participating Class Member’s Individual Settlement Share will be apportioned as
8 follows: thirty-three percent (33%) wages and sixty-seven percent (67%) interest, penalties, and
9 reimbursements. The Settlement Administrator will pay each Participating Class Member an
10 Individual Settlement Share from the Net Settlement Amount. The Individual Settlement Share is
11 calculated based on the number of weeks Class Members worked as hourly-paid or non-exempt
12 employees during the Class Period. (Han Dec., *supra*, ¶¶ 31-32.)

13 The Settlement Administrator shall pay each Eligible Aggrieved Employee according to
14 his or her proportional share, which will be based upon the total number of pay periods he or she
15 was employed during the PAGA Period. Each Eligible Aggrieved Employee’s Individual PAGA
16 Payment will be apportioned as one hundred percent (100%) penalties and shall be subject to all
17 authorized and required withholdings other than the tax withholdings customarily made from
18 employees’ wages and shall be reported by IRS 1099 forms. (Han Dec., *supra*, ¶¶ 33-34.)

19 **iii. Notice to the Class**

20 Within thirty (30) calendar days after entry of the Preliminary Approval Order,
21 Defendant shall deliver the Class Data to the Settlement Administrator. Afterwards, the
22 Settlement Administrator will mail the Notice Packets to all identified Class Members via first-
23 class regular U.S. Mail. (Han Dec., *supra*, ¶¶ 36-37.)

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1 **iv. Distribution of Funds**

2 No later than thirty (30) calendar days after the date the Final Approval of the Settlement
3 can no longer be appealed or, if there are no objectors and no Plaintiffs in intervention at the time
4 the Court grants Final Approval of the Settlement, the date the Court enters judgment granting
5 Final Approval of the Settlement, Defendant shall deposit the Maximum Settlement Amount of
6 \$600,000 needed to pay the entire Maximum Settlement Amount by wiring the funds to the
7 Settlement Administrator. Then within fourteen (14) calendar days after the deadline to fund the
8 Settlement, the Settlement Administrator shall calculate and disburse all payments due under the
9 Settlement Agreement, including all Individual Settlement Shares, Individual PAGA Payments,
10 the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the
11 PAGA Payment, and the Administration Costs. (Han Dec., *supra*, ¶¶ 38-39.)

12 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
13 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
14 eighty (180) calendar days after the checks are mailed to them. If any checks remain uncashed or
15 not deposited by the expiration of the 90-day period after mailing the reminder notice, the
16 Settlement Administrator will, within two hundred (200) calendar days after the checks are
17 mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment (as
18 applicable) to the California State Controller's Office in accordance with California Unclaimed
19 Property Law. (Han Dec., *supra*, ¶ 40.)

20 **v. Release of Claims**

21 Upon Defendant's fulfillment of its payment obligations described in the Agreement, in
22 exchange for the consideration set forth in the Agreement, Plaintiffs and the Participating Class
23 Members release the Released Parties from the Released Claims ("Released Claims"). *See*
24 Exhibit 2 §§ I(LL), III(I). (Han Dec., *supra*, ¶ 41.)

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1 Upon Defendant's fulfillment of its payment obligations described in the Agreement, the
2 LWDA and each Eligible Aggrieved Employee, including Plaintiffs, individually and on behalf
3 of their heirs, executors, administrators, representatives, attorneys, successors and assigns
4 voluntarily and knowingly are barred from bringing any action for the PAGA Released Claims.
5 ("PAGA Released Claims"). See Exhibit 2 §§ I(GG), III(J). (Han Dec., *supra*, ¶ 42.)

6 The Released Parties include Defendant and its past or present officers, directors,
7 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
8 consultants, insurers and reinsurers, and their respective successors and predecessors in interest,
9 subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint
10 employers ("Released Parties"). See Exhibit 2 § I(MM). (Han Dec., *supra*, ¶ 43.)

11 Upon Defendant's fulfillment of its payment obligations described in the Agreement, and
12 in exchange for the Class Representative Enhancement Payments to the Plaintiffs in amounts not
13 to exceed \$10,000 each, in recognition of their work and efforts in obtaining the benefits for the
14 Class, and undertaking the risk for the payment of costs in the event this matter had not
15 successfully resolved, Plaintiffs provide a general release of claims for themselves and their
16 spouses, heirs, successors and assigns. See Exhibit 2 § III(K). (Han Dec., *supra*, ¶ 44.)

17 **d. Counsel for Both Parties Are Experienced in Similar Litigation**

18 Both Class Counsel and Counsel for Defendant are particularly experienced in wage-and-
19 hour employment law and class actions. Class Counsel has significant experience in litigating
20 unpaid wages, non-compliant meal break, and non-compliant rest break class actions. Class
21 Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations.
22 Class Counsel are experienced and qualified to evaluate the class claims, to evaluate settlement
23 versus trial on a fully informed basis, and to evaluate the viability of the defenses. This
24 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
25 their determination to endorse the proposed Settlement.² (Han Dec., *supra*, ¶¶ 2-7, Exhibit 1.)

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28 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class
Action Settlement has been provided to the Class and they have had an opportunity to respond. This information
will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 **IV. ARGUMENT**

2 **a. Class Action Settlements Are Subject to Court Review**

3 California Rule of Court 3.769 requires court approval for class action settlements.³
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed
6 motion for preliminary approval of class settlements:

7
8 (a) A settlement or compromise of an entire class action, or a cause of action
9 in a class action, or as to a party, requires the approval of the court after
hearing.

10 (c) . . .
11 Any party to a settlement agreement may serve and file a written notice of
12 motion for preliminary approval of the settlement. The settlement
agreement and proposed notice to class members must be filed with the
motion, and the proposed order must be lodged with the motion.

13 Courts act within their discretion in approving settlements that are fair, not collusive, and take
14 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
15 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
16 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
17 U.S. 905.)

18 **b. The Proposed Settlement Is a Reasonable Compromise of Claims**

19 An understanding of the amount in controversy is an important factor in whether the
20 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
21 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
22 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of San Bernardino*
23 (2010) 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of
24 the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

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26
27 ³ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases
28 applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see
Green v. Obledo (1981) 29 Cal.3d 126, 145-146.) Where appropriate, therefore, the Parties cite Federal Rule 23 and
federal case law in addition to California law.

1 In weighing the strength of the Plaintiffs’ case, *Kullar* instructs that the court is not to
2 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
3 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require an
4 explicit statement of the maximum amount the class could recover if the plaintiff prevailed on all
5 his claims, provided there is a record that allows “an understanding of the amount that is in
6 controversy and the realistic range of outcomes of the litigation.” (*Munoz, supra*, 186
7 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a settlement as in
8 good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the
9 class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at
10 p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500).)

11 **i. The Settlement Amount of \$600,000 Is Fair and Reasonable**

12 The proposed Settlement was only possible following significant discovery and
13 evaluation of Defendant’s relevant policies and procedures, as well as the data Defendant
14 produced for the putative class as referenced in Section III above, permitting Class Counsel to
15 engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, ¶ 47.)

16 This discovery informed Plaintiffs’ central theories of liability, which are predicated on
17 Plaintiffs’ claims that Defendant failed to properly pay overtime wages, failed to properly
18 calculate and pay sick leave, failed to pay minimum wages, failed to provide meal and rest
19 breaks and pay applicable premiums, failed to pay wages in a timely manner, failed to issue
20 compliant wage statements, failed to reimburse business expenses, violated Labor Code section
21 2698, *et seq.* (PAGA), and violated the Business & Professions Code sections 17200, *et seq.*
22 Defendant has vehemently denied Plaintiffs’ theories of liability and asserts several
23 counterarguments to Plaintiffs’ assertions. (Han Dec., *supra*, ¶¶ 48-49.)

24 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
25 to certification are always present. As the California Supreme Court ruled in *Sav-On v. Superior*
26 *Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court’s sound
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discretion. Decisions following *Sav-On* have reached different conclusions concerning certification of wage-and-hour claims.⁴ (Han Dec., *supra*, ¶ 50.)

ii. The PAGA Payment of \$40,000 is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 246(l), 510, 512(a), 1194, 1197, 1197.1, 1198, and 2802. Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. Defendant also maintained that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Plaintiffs argued that without stacking and limited to the initial violation, PAGA penalties would be limited to \$21,000 (211 employees x \$100 initial violation) on the low end and \$147,700 on the high end based on six (7) major theories of recovery. (Han Dec., *supra*, ¶¶ 58-62.)

Plaintiffs also recognized the risk that any PAGA award could be significantly reduced. Many of the causes of action brought were duplicative of the statutory claims such as violations of California Labor Code sections 226(a), 226.7, 246(l), 510, 512(a), 1194, 1197, 1198, and 2802. Thus, the maximum penalties for each pay period are not justified. It was indeed arguable whether the Court would award the maximum penalties under the law. Thus, allocating \$40,000 to PAGA civil penalties was reasonable based on a rate of \$5.87 per pay period [$\$40,000 \div 6,814$ Pay Periods in PAGA Date Range = \$5.87], given the fact that Defendant are also paying an additional \$560,000 in the class settlement.⁵ Where PAGA penalties are negotiated in good faith

⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th 1422 (affirming denial of certification).)

⁵ (See *Carrington, supra*, 30 Cal.App.5th at p. 529 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁶ (Han Dec., *supra*, ¶ 63.)

Considering Defendant’s defenses, their supporting evidence, and its position that the Class Action is not suitable for class treatment, the settlement amount of \$600,000—with an average Individual Settlement Share estimated at \$712.56—is reasonable and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about \$4,501,697.15 on the low end and \$4,678,964.72 on the high end. (Han Dec., *supra*, ¶ 64.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$523,573.29	70%	60%	\$62,828.79
Meal Break Premiums	\$179,832.72	60%	50%	\$35,966.54
Overtime/Minimum Wage: Off-the-Clock	\$353,278.74 to \$530,546.31	40%	50%	\$105,983.62 to \$159,163.89
Overtime/Minimum Wage: Non-Discretionary Incentive Bonuses, Shift Differentials and Sick Leave Pay	\$1,023,252	40%	60%	\$245,580.48
Unreimbursed Business Expenses	\$103,688	30%	70%	\$21,774.48
Wage Statement Penalty	\$664,650	50%	50%	\$166,162.50
Waiting Time Penalty	\$1,653,422.40	50%	50%	\$413,355.60
MAXIMUM TOTAL EXPOSURE	\$4,501,697.15 to \$4,678,964.72⁷			\$1,051,652.01 to \$1,104,832.28⁸

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⁶ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)

⁷ Han Dec., *supra*, ¶¶ 52-57

⁸ *Id.*, ¶¶ 65-71.

1 Based on this analysis, the realistic recovery for this case is \$1,051,652.01 on the low end
2 and \$1,104,832.28 on the high end. The Maximum Settlement Amount of \$600,000 is
3 approximately twelve percent (12.82%) of the maximum potential exposure and is about fifty-
4 four percent (54.31%) of the maximum realistic exposure at trial, which is a good settlement.
5 (Han Dec., *supra*, ¶ 72.)

6 The only question at preliminary approval is whether the settlement is within the range of
7 possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078,
8 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential
9 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
10 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
11 455.); see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is
12 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
13 that induce consensual settlements. The proposed settlement is not to be judged against a
14 hypothetical or speculative measure of what might have been achieved by the negotiators.”).)
15 Nevertheless, this settlement is in line with the realistic exposure had Plaintiffs prevailed at trial
16 and provides a significant recovery for the Class Members.

17 **d. Conditional Certification of the Class Is Appropriate**

18 For settlement purposes only, the requisites for establishing conditional class certification
19 are met. Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one
20 of a common or general interest, of many persons, or when the parties are numerous, and it is
21 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
22 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
23 “both [1] an ascertainable class and [2] a well-defined community of interest among class
24 members.” (*Ibid.*)

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1 The proposed Class is ascertainable and numerous as to make it impracticable to join all
2 Class Members, and there are common questions of law and fact that predominate over any
3 questions affecting any Class Member. Plaintiffs contend that as hourly-paid employees of
4 Defendant, their claims are typical of the claims of the Class Members, and Class Counsel will
5 fairly and adequately protect the interests of the Class. Also, Plaintiffs assert the prosecution of
6 separate actions by individual Class Members would create the risk of inconsistent or varying
7 adjudications, and a class action is superior to other available means. (Han Dec., *supra*, ¶ 73.)

8 **i. The Proposed Class Is Ascertainable and Sufficiently Numerous**

9 “Ascertainability is required in order to give notice to putative class members as to whom
10 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
11 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
12 by describing a set of common characteristics sufficient to allow a member of that group to
13 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
14 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
15 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

16 The Class Action involves approximately four hundred fourteen (414) Class Members.
17 Thus, the Class is sufficiently numerous. (*See Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
18 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and
19 former employees” is sufficiently numerous).) (Han Dec., *supra*, ¶ 74.)

20 **ii. The Class Members Share a Well-Defined Community of Interest**

21 The community of interest requirement “embodies three factors: (1) predominant
22 common questions of law or fact; (2) class representatives with claims or defenses typical of the
23 class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drugs,*
24 *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not*
25 *mandate that class members have uniform or identical claims.*” (*Capitol People First v.*
26 *Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).)
27 Rather, courts focus on the Defendant’s internal policies and “pattern and practice . . . in order to
28 assess whether that common behavior toward similarly situated plaintiffs renders class

certification appropriate.” (*Id.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).) The application of each of these factors is discussed below.

1. Common Issues Predominate

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*, 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v. JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-21244 (court certified class of dancers on state law claims).)

Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. Plaintiffs contend all hourly-paid and non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures, which are described in greater detail above. (Han Dec., *supra*, ¶ 75.)

2. Plaintiffs’ Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs were non-exempt employees and allege that they and the Class Members were employed by the same company and injured by Defendant’s common policies and practices related to the issues described in detail above. Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. Thus, Plaintiffs’ claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (Han Dec., *supra*, ¶ 76.)

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1 **3. Plaintiffs are Adequate to Represent the Class**

2 Plaintiffs have proven to be adequate Class Representatives. They have conducted
3 themselves diligently and responsibly in representing the Class in this litigation, understand their
4 fiduciary obligations, and have actively participated in the prosecution of this case. Plaintiffs
5 have spent time meeting with counsel to provide counsel with a complete understanding of their
6 work environment and requirements. (Han Dec., supra, ¶ 77.)

7 **4. Class Action is Superior for the Fair and Efficient**
8 **Adjudication of this Controversy**

9 A class action is superior to other available means for the fair and efficient adjudication
10 of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that
11 class treatment will permit many similarly-situation persons to prosecute their common claims in
12 a single forum simultaneously for settlement purposes without the necessary duplication of effort
13 and expense that numerous individual actions would engender. Because several Class Members
14 are current employees, Plaintiffs believe the fear of retaliation further supports the superiority of
15 class-wide relief as this fear discourages current employees from seeking legal redress.

16 **e. The Settlement Is Fair, Reasonable, and Adequate**

17 In deciding whether to approve a proposed class action settlement under Code of Civil
18 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
19 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class
20 action settlement is presumed fair under the following circumstances: (1) the parties reached
21 settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to
22 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
23 and (4) the percentage of objectors is small. (*Id.* at p. 1802.)

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California Rule of Court, No. 3.769(f), provides:

The proposed Notice Packet meets all these requirements. The proposed Notice Packet advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and the date, time, and location of the Final Approval hearing. (See Han Dec., *supra*; Exhibits A and B to Exhibit 2.)

Plaintiffs submit the proposed Settlement is in the best interests of the Class Members, as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the proposed Settlement should be preliminarily approved by the Court, the Class should be conditionally certified for purposes of settlement only, and the Class Notice should be approved.

JUSTICE LAW CORPORATION

Dsk.

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Haig Hogdanian
Attorneys for Plaintiffs

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 aokada@justicelawcorp.com

On November 4, 2021, I served the foregoing document described as

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING
DATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

for the following case: **Dunn v. Encorr Sheets, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM- 809587-20**
Court Case No.: CIVSB2029182
San Bernardino County Superior Court

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 November 4, 2021, at Pasadena, California.



Anna Okada