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

VERONICA SILVA, individually, and on
behalf of other members of the general public
similarly situated and aggrieved employees
pursuant to the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

CORODATA CORPORATION, a California
corporation; CORODATA MEDIA
STORAGE, INC., a California corporation;
CORODATA RECORDS MANAGEMENT,
INC., a California corporation; CORODATA
SHREDDING, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2020-00033872-CU-OE-CTL

Assigned for All Purposes to:
Honorable Timothy Taylor
Department C-72

CLASS ACTION

**PLAINTIFF'S 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 Plaintiff's Counsel
(Douglas Han); and [Proposed] Order filed
concurrently herewith]

Hearing Date: April 29, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department C-72

Complaint Filed: September 24, 2020
FAC Filed: January 24, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 29, 2022 at 1:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Timothy Taylor in Department C-72 of the San Diego County
3 Superior Court, located at 330 W. Broadway, San Diego, California 92101, Plaintiff Veronica Silva
4 (“Plaintiff”) will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as **Exhibit 2** to
8 the declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds, the allocations for payments under the Labor
10 Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff’s Counsel Award,
11 Class Representative Enhancement, and Settlement Administration Costs;
- 12 • Conditionally certifying the proposed Class for settlement purposes only;
- 13 • Appointing Plaintiff as the Class Representative;
- 14 • Appointing Justice Law Corporation as Plaintiff’s Counsel;
- 15 • Approving the proposed Notice of Pendency of Class Action Settlement (“Class
16 Notice”) attached as **Exhibit A** to the Agreement;
- 17 • Approving the Request for Exclusion Procedure;
- 18 • Directing the mailing of the proposed Class Notice with a postage-paid return
19 envelope to the proposed Class;
- 20 • Approving the proposed deadlines for the notice and settlement administration
21 process;
- 22 • Approving Phoenix Administrators (“Phoenix”) as the Settlement Administrator;
23 and
- 24 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
25 Agreement, at which time the Court will also consider whether to grant Final
26 Approval of the requests for the attorneys’ fees, the costs and expenses, the Class
27 Representative Enhancement, the Settlement Administration Costs, and approval
28 of the allocation of the PAGA Payment.

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

6
7 Dated: April 5, 2022

JUSTICE LAW CORPORATION

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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
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Cases

Aguilar v. Cintas Corp. No. 2

(2006) 144 Cal.App.4th 12118

Amaro v. Anaheim Arena Management, LLC

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Bartold v. Glendale Federal Bank

(2000) 81 Cal.App.4th 81621

In re Beef Industry Antitrust Litigation

(5th Cir. 1979) 607 F.2d 16716

Boyd v. Bechtel Corp.

(N.D.Cal. 1979) 485 F.Supp. 61012

Brinker Restaurant Corporation v. Superior Court

(2012) 53 Cal.4th 100422

Capitol People First v. Department of Developmental Services

(2007) 155 Cal.App.4th 67622

Carrington v. Starbucks Corp.

(2018) 30 Cal.App.5th 50419

City of Detroit v. Grinnell Corporation

(2d Cir. 1974) 495 F.2d 44820

Classen v. Weller

(1983) 145 Cal.App.3d 2723

Dunbar v. Albertson's Inc.

(2006) 141 Cal.App.4th 142218

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 179416, 23, 24

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9	<i>Hopson v. Hanesbrands Inc.</i>	
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12	(1981) 452 U.S. 905	16
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20	<i>Linney v. Cellular Alaska Partnership</i>	
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6	(1971) 4 Cal.3d 800	16
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$822,631.08 proposed
3 wage-and-hour class action settlement by Plaintiff on behalf of himself and on behalf of all person
4 employed by Defendants Corodata Corporation, Corodata Media Storage, Inc., Corodata Records
5 Management, Inc., and Corodata Shredding, Inc. (“Defendants”) in California in a non-exempt
6 hourly paid position and any non-exempt hourly Temps assigned to work at Defendants’ California
7 locations and working for any of: (a) Accountemps; (b) Accounting Principals; (c) Adecco;
8 (d) Aerotek; (e) Aston Carter; (f) CorTech; (g) Decton; (h) Manpower; (i) Modis, Inc.;
9 (j) Pridestaff; (k) ProDrivers; (l) Randstad; (m) Robert Half Tech; (n) Roth Staffing Companies,
10 LP; (o) Select Staffing; (p) Silicon Valley Staffing; (q) Slingshot Connections; (r) Snelling;
11 (s) Solomon-Page Group LLC; (t) Spectra 360; (u) Staffworks; and (v) Viking Staffing (“Temp
12 Agencies”) at any time from April 6, 2016 and ending on November 1, 2021 (“Class,” “Class
13 Members,” and “Settlement Class Period”). At the time of this filing, the number of Class Members
14 is estimated to be estimated to be seven hundred eighty-six (786). (Declaration of Douglas Han
15 (“Han Dec.”), ¶¶ 8-9.)

16 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
17 vulnerabilities of the class claims alongside Defendants’ potential liability exposure, this proposed
18 settlement of \$822,631.08 is well within the range of reasonableness. Plaintiff’s Counsel and
19 Plaintiff is convinced that the proposed Settlement is in the best interests of the Class Members
20 based on the negotiations and a detailed knowledge of the issues present in this action.

21 **II. BACKGROUND**

22 On July 17, 2020, Plaintiff, a former hourly-paid, non-exempt employee of Defendant,
23 provided written notice to the California Labor and Workforce Development Agency (“LWDA”)
24 and Defendants. (Han Dec., *supra*, at ¶ 10.) On September 24, 2020, Plaintiff filed a complaint
25 against Defendants Corodata in San Diego County Superior Court, that asserted six (6) causes of
26 action (the “Action”). (*Id.* at ¶ 11.)

27 The Parties attended mediation on Plaintiff’s claims with mediator Lynn Frank, Esq., on
28 August 3, 2021, resulting in the settlement of this Action. (Han Dec., *supra*, at ¶ 13.)

Pursuant to the settlement of this Action, Plaintiff filed a First Amended Complaint on January 24, 2022 that amended the Settlement Class Period and PAGA Period and added additional causes of action. (Han Dec., *supra*, at ¶ 15.)

III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiff filed her wage-and-hour class action lawsuit, both Parties engaged in discovery. (Han Dec., *supra*, at ¶ 12.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of documents. (*Ibid.*)

In the months preceding the August, 3, 2021, mediation session, Defendants produced hundreds of pages of relevant written policies, personnel records, thousands of pay and time records, and key data points. (Han Dec., *supra*, at ¶ 14.) The Parties engaged in discussions leading up to the mediation session, as well as during mediation, to ensure that each side understood the claims, defenses, groups of employees, scope and limitations of data and information, and statutory periods at issue. (*Ibid.*) With respect to the PAGA claims at issue, the Parties' negotiations covered all pending claims against Defendants and considered the number of PAGA Members and a data sample from pay periods/workweeks at issue. (*Ibid.*) With respect to any potential class claims, the Parties' negotiations covered all pending claims against Defendants brought by Plaintiff and considered the number of Class Members and a data sample from pay periods/workweeks at issue. (*Ibid.*) After more than 12 hours of negotiation at the mediation, and subsequent weeks of further negotiation, the Parties agreed to a settlement in principle pursuant to a mediator's proposal. (*Ibid.*)

Based upon the information provided by Defendants and interviews Plaintiff's Counsel had with non-exempt employees, Plaintiff contends – and Defendants deny – that Defendant: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to include non-discretionary bonuses and incentives in employees' regular rates of pay for purposes of overtime compensation and sick leave pay; (4) failed to reimburse employees for necessary business expenses; (5) issued noncompliant wage statements; and (6) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 17-24.)

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

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

4 During the Parties' mediation on August 3, 2021, the Parties discussed the risks of
5 continued litigation, certification, and the merits of the claims and defenses versus settlement
6 benefits. (Han Dec., *supra*, at ¶ 13.) With the assistance of the mediator, the Parties were able to
7 reach an agreement on settlement, the terms of which were memorialized in the Settlement
8 Agreement that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 2.)

9 **ii. The Settlement Was Reached as a Result of Arm's-length Negotiations**

10 The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec.,
11 *supra*, at ¶ 28.) Though cordial and professional, the settlement negotiations have always been
12 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel conducted
13 extensive arm's-length settlement negotiations until an agreement was reached. (*Ibid.*)

14 Plaintiff and Plaintiff's Counsel believe in the merits of the case but also recognize the
15 expense and length of continued proceedings necessary to continue the litigation. (Han Dec.,
16 *supra*, at ¶ 29.) Plaintiff and Plaintiff's Counsel have also considered the inherent uncertainty and
17 risk of further litigation, the potential outcome, and the difficulties and delays of such litigation.
18 (*Ibid.*) Based on the foregoing, Plaintiff and Plaintiff's Counsel believe the Settlement is a fair,
19 adequate, and reasonable settlement, and is in the Class's best interests. (*Ibid.*)

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

21 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
22 Plaintiff's claims and Defendants' defenses before reaching the Settlement and engaged in
23 sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶
24 30.) The Settlement was only possible following significant investigation and evaluation of
25 Defendants' relevant policies and procedures, as well as the data Defendants produced. (*Ibid.*)
26 Furthermore, this case has also reached the stage where "the Parties certainly have a clear view of
27 the strengths and weaknesses of their cases" sufficient to support the Settlement's reasonableness,
28 adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

2 **i. Deductions from the Settlement**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
4 action be settled and compromised for the non-reversionary total sum of \$822,631.08 (“Gross
5 Settlement Amount”) which includes, subject to Court approval: (a) the attorneys’ fees to
6 Plaintiff’s Counsel of \$287,920.87 (35% of the Gross Settlement Amount); (b) the costs and
7 expenses to Plaintiff’s Counsel of \$10,000 for reimbursement of litigation costs and expenses; (c)
8 the Class Representative Enhancement of \$10,000 to Plaintiff; (d) Settlement Administration Costs
9 to Phoenix, the Settlement Administrator, of \$11,500; and (e) the PAGA Payment of \$65,000,
10 seventy-five percent (75%) of which (\$48,750) will be paid to the LWDA and twenty-five percent
11 (25%) of which (\$16,250) shall be distributed to the PAGA Members, on a pro rata basis. (Han
12 Dec., *supra*, at ¶ 25.)

13 **ii. Calculation of the Class Members’ Individual Settlement Payments**

14 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
15 that \$438,710.21 (“Net Settlement Amount”) will be distributed to Class Members – with an
16 average gross Individual Settlement Payment estimated at \$558.15.¹ (Han Dec., *supra*, at ¶ 27.)

17 Individual Settlement Payment to all Class Members who do not timely opt-out of the
18 Action (“Settlement Class Members”) will be apportioned twenty percent (20%) wages and eighty
19 percent (80%) penalties and interest. (Settlement Agreement § 3.3.1.1.; Exhibit 2 to Han Dec.)

20 The Settlement Administrator will pay an Individual Settlement Payment from the Net
21 Settlement Amount to each Settlement Class Member in accordance with the formula listed in the
22 Agreement, which is based on the number of work weeks. (Settlement Agreement § 3.3.1.)

23 The Settlement Administrator shall also pay each PAGA Member according to his or her
24 proportional share, which will be based upon the total number of work weeks the PAGA Member
25 worked as a California non-exempt employee of Defendants during the PAGA Period. (Settlement
26 Agreement § 3.3.2.)

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1 \$438,710.21 (Net Settlement Amount) / 786 (Class Members) = \$558.15.

1 **iii. Notice to the Class**

2 Within thirty (30) calendar days after entry of the Preliminary Approval Order,
3 Defendants shall deliver the Class List to the Settlement Administrator. (Settlement Agreement §
4 3.1.2.) Within fifteen (15) calendar days after the delivery of the Class List from Defendant, the
5 Settlement Administrator will mail the Class Notice to the Class Members via first-class regular
6 U.S. using the most current mailing address information available. (Settlement Agreement § 3.1.3.)
7 Settlement Class Members are not required to submit a claim form to receive their Individual
8 Settlement Payments.

9 **iv. Distribution of Funds**

10 Fifteen (15) business days after the Effective Date, Defendants shall provide to the
11 Settlement Administrator the Gross Settlement Amount plus all employer payroll taxes.
12 (Settlement Agreement § 3.5.) Within ten (10) calendar days after the Settlement Administrator's
13 receipt of the Gross Settlement Amount, the Settlement Administrator will disburse the Individual
14 Settlement Payments, the PAGA LWDA Payment, the PAGA Member Payment, the Court-
15 approved Class Representative Enhancement, the Court-approved Representative Enhancement,
16 the Court-Approved Plaintiff's Counsel Award and the Settlement Administration Costs. (*Ibid.*)

17 Individual Settlement Payment checks which are not negotiated within one hundred fifty
18 (150) calendar days after the date they are mailed shall be distributed pursuant to California Code
19 of Civil Procedure section 384 with 100% of the amount being distributed to CASA (see
20 <http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301295/k.BE9A/Home.htm>) if permitted
21 by the Court or as otherwise directed by applicable law and as ordered by the Court with
22 jurisdiction over the settlement or agreed by the Parties. (Settlement Agreement § 3.4.)

23 **v. Release of Claims**

24 Upon the occurrence of the Effective Date and Defendants' full payment of all sums
25 required herein, Plaintiff and all Settlement Class Members will release acquit, and forever
26 discharge Released Parties of all Settled Claims arising during the Settlement Class Period. Upon
27 the Effective Date, Settlement Class Members shall be bound by this Settlement Agreement and
28 the Court's orders related to the Action. (Settlement Agreement § 5.1.)

1 Upon the PAGA Approval, (i) Plaintiff, in her capacity as private attorney generals for,
2 and proxies or agents of, the California LWDA; (ii) all Class Members who are also PAGA
3 Members, and (iii) the LWDA, as the real party in interest, shall irrevocably release, acquit, and
4 forever discharge the Released Parties of all Settled Claims, including all PAGA Claims, arising
5 during the PAGA Period. Upon the Effective Date, PAGA Members and the LWDA shall be bound
6 by this Settlement Agreement and the Court's orders related to the Action. The Parties
7 acknowledge and agree that the formula used to calculate workweeks and individual settlement
8 payments and PAGA Member Payments does not imply that all of the elements of damages
9 covered by the release are not being taken into account. The above formula was devised as a
10 practical and logistical tool to simplify the payment process. (Settlement Agreement § 5.2.)

11 Subject to the occurrence of the Effective Date and Defendants' full payment of all sums
12 required in the Agreement, Plaintiff shall provide a general release in exchange for a general
13 release. (Settlement Agreement § 5.3.)

14 With regards to class action releases, “[A] court may release not only those claims alleged
15 in the complaint and before the court, but also claims which ‘could have been alleged by reason of
16 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
17 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scopes of the releases in
18 this case are acceptable because they are limited to the scope of the allegations in the Complaint.
19 Moreover, the released claims are ““based on *the identical factual predicate* as that underlying
20 the claims in the settled class action.”” (*Ibid.*) In other words, the released claims do not ““go
21 beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

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

23 Counsel for both Parties are particularly experienced in wage-and-hour employment law
24 and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Plaintiff's Counsel has prosecuted
25 numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and
26 qualified to evaluate the class claims, the settlement versus trial on a fully informed basis, and the
27 viability of the defenses. (*Ibid.*) This experience instructed Plaintiff's Counsel on the risks and
28

1 uncertainties of further litigation and guided their determination to endorse the proposed
2 Settlement.² (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.)

3 **IV. ARGUMENT**

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

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

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

12 . . .

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

17 Courts have discretion to approve settlements that are fair, not collusive, and consider “all the
18 normal perils of litigation as well as the additional uncertainties inherent in complex class actions.”
19 (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub nom.*
20 *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

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24 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
25 the Notice of Class Action and PAGA Settlement has been provided to the Class and they have
26 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.

27 ³ The California Supreme Court has also authorized California’s trial courts to use Federal
28 Rule 23 and cases 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, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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

2 An understanding of the amount in controversy is an important factor in whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
4 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
5 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
6 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for
7 plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129; see
8 also *Munoz*, at p. 409.)

9 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
10 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
11 that of the attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.)
12 Finally, *Kullar* does not require an explicit statement of the maximum amount the class could
13 recover if the plaintiff prevailed on all his claims, provided there is a record that allows “an
14 understanding of the amount that is in controversy and the realistic range of outcomes of the
15 litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p.
16 409.) Put differently, “as the court does when it approves a settlement as in good faith under Code
17 of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within
18 the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

19 **i. The Settlement Amount of \$822,631.08 Is Fair and Reasonable**

20 The Settlement was only possible following significant investigation and evaluation of
21 Defendants’ relevant policies and procedures, as well as the data Defendants produced for the
22 putative class, as referenced in Section III above, which permitted Plaintiff’s Counsel to engage in
23 a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 30.)

24 This investigation and evaluation informed Plaintiff’s central theories of liability. (Han
25 Dec., *supra*, at ¶ 31.) These claims are predicated on Defendants’ alleged: (1) failure to properly
26 calculate and pay overtime wages and sick leave pay; (2) failure to provide meal and rest breaks
27 and pay applicable premiums; (3) failure to pay minimum wages; (4) failure to timely pay wages;
28 (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7)

1 failure to provide one day's rest in seven (8) violation of Labor Code section 2698, *et seq.* (PAGA);
2 and (9) violation of Business & Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶
3 31.)

4 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
5 to certification are always present. (Han Dec., *supra*, at ¶ 33.) As the California Supreme Court
6 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
7 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
8 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴
9 (*Ibid.*) These factors led Plaintiff to discount calculations of potential damages.

10 **ii. The PAGA Payment of \$65,000 Is Reasonable**

11 The provisions of the Labor Code potentially triggering PAGA penalties in this case
12 include but are not limited to Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3,
13 226.7, 246, 510, 512(a), 551, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*,
14 at ¶ 41.) Defendants asserts that, regardless of the results of the underlying causes of action, PAGA
15 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintains
16 that, in addition to its strong arguments against the underlying claims, it had a strong argument
17 that it would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*;
18 *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30%
19 under this authority].) Defendants argued that without stacking and limited to the initial violation,
20 the PAGA penalties would be limited to **\$34,800** (348 employees x \$100 initial violations) on the
21 low end and **\$278,400** (348 employees x \$100 x 8 theories of recovery) on the high end. (Han
22 Dec., *supra*, at ¶¶ 42-45.)

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25 ⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 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].)

1 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Decl., *supra*, at ¶ 46.) Many of the causes of action brought were duplicative of the statutory
3 claims such as violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7,
4 246, 510, 512(a), 551, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating
5 \$65,000 to PAGA civil penalties was reasonable based on a rate of **\$7.17** per pay period [$\$65,000$
6 $\div$ 9,065 pay periods in PAGA date range = **\$7.17**], given the fact that Defendants is also paying an
7 additional \$757,631 in the class settlement⁵ (*Ibid.*) When PAGA penalties are negotiated in good
8 faith and “there is no indication that [the] amount was the result of self-interest at the expense of
9 other Class Members,” such amounts are generally considered reasonable.⁶ (*Ibid.*)

10 Considering Defendants’ defenses, its supporting evidence, and its position that the case is
11 not suitable for class treatment, the settlement of \$822,631.08 is reasonable, adequate, and fair.

12 **c. Discount Analysis Justifies the Settlement**

13 Excluding the civil penalties, which could be completely discretionary, for the reasons
14 stated, the total estimated potential exposure, assuming certification and prevailing at trial, would
15 be approximately **\$3,192,680.04** on the low end and **\$3,366,921.87** on the high end. (Han Dec.,
16 *supra*, at ¶ 47.)

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24 ⁵ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5
25 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to
26 \$75 per violation and a total PAGA penalty of \$70,000,000].)

27 ⁶ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
28 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”.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$642,856.83	60%	50%	\$128,571.36
Meal Break Premiums	\$643,059.56	50%	50%	\$160,764.89
Overtime/Minimum Wage: Off-the-Clock Work	\$348,483.65 to \$522,725.48	60%	60%	\$55,757.38 to \$83,636.07
Overtime/Minimum Wage: Regular Rate	\$88,928.00	10%	10%	\$72,031.68
Unreimbursed Business Expenses	\$139,632.00	20%	25%	\$83,779.20
Wage Statement Penalty	\$442,320.00	40%	50%	\$132,696.00
Waiting Time Penalty	\$887,400.00	20%	20%	\$567,936.00
MAXIMUM TOTAL EXPOSURE	\$3,192,680.04 to \$3,366,921.87⁷			\$1,201,536.51 to \$1,229,415.20⁸

Based on this analysis, the realistic recovery for this case is **\$1,201,536.51** on the low end and **\$1,229,415.20** on the high end. (Han Dec., *supra*, at ¶ 55.) The Gross Settlement Amount of \$822,631.08 is about twenty-four (24.4%) of the maximum potential exposure and sixty-seven percent (66.9%) of the maximum realistic exposure at trial, which is a good settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”).) Nevertheless, this settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides a significant recovery for the Class Members.

⁷ (Han Dec., *supra*, at ¶¶ 34-40.)

⁸ (*Id.* at ¶¶ 48-54.)

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

2 Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one of
3 a common or general interest, of many persons, or when the parties are numerous, and it is
4 impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*,
5 *supra*, 34 Cal.4th at p. 326.) California courts certify class actions where the plaintiff identifies
6 “both [1] an ascertainable class and [2] a well-defined community of interest among class
7 members.” (*Ibid.*)

8 The proposed Class is ascertainable and numerous as to make it impracticable to join all
9 Class Members, and there are common questions of law and fact that predominate over any
10 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 56.) Plaintiff contends
11 that as former hourly-paid, non-exempt employees of Defendant, their claims are typical of the
12 claims of the Class, and Plaintiff’s Counsel will fairly and adequately protect the interests of the
13 Class. (*Ibid.*) Also, Plaintiff asserts that the prosecution of separate actions by individual Class
14 Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

16 “Ascertainability is required in order to give notice to putative class members as to whom
17 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
18 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
19 by describing a set of common characteristics sufficient to allow a member of that group to identify
20 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
21 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
22 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

23 This case involves approximately seven hundred eighty-six (786) Class Members. (Han
24 Dec., *supra*, at ¶ 57.) Therefore, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva*
25 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many
26 as 190 current and former employees” is sufficiently numerous].)

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1 **ii. The Class Members Share a Well-defined Community of Interest**

2 The community of interest requirement “embodies three factors: (1) predominant common
3 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
4 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*
5 *Superior Court, supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for
6 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*
7 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis
8 in original).) Rather, courts focus on the defendant’s internal policies and “pattern and practice . .
9 . in order to assess whether that common behavior toward similarly situated plaintiffs renders class
10 certification appropriate.” (*Ibid.*) The application of each of these factors is discussed below.

11 **1. Common Issues Predominate**

12 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
13 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
14 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
15 other words, courts determine whether the elements necessary to establish liability are susceptible
16 to common proof, even if the class members must individually prove their damages. (*Brinker*
17 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
18 regularly granted class certification when the plaintiff can present evidence of common policies.
19 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
20 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
21 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
22 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

23 Plaintiff asserts common issues of fact and law predominate as to each of the claims
24 alleged. (Han Dec., *supra*, at ¶ 58.) Plaintiff contends all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of Defendants and alleges she and the Class Members were employed by the same company and injured by Defendants' common policies and practices related to the claims described above. (Han Dec., *supra*, at ¶ 59.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices. (*Ibid.*)

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 60.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this litigation, understand her fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Plaintiff's Counsel to provide Plaintiff's Counsel with a complete understanding of her work environment and requirements. (*Ibid.*) Plaintiff has no interest that is averse to the interests of the other Class Members. (*Ibid.*)

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiff contends the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense that numerous individual actions would necessitate. Because several Class Members are current employees, Plaintiff believes fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement

1 after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel
2 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
3 percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th at p. 1802.) All
4 these elements are present here.

5 **f. Notice to Class Members Complies with California Rules of Court, Rule 3.769(f)**

6 California Rules of Court, rule 3.769(f), provides:

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8 If the court has certified the action as a class action, notice of the final approval
9 hearing must be given to class members in the manner specified by the court. The
10 notice must contain an explanation of the proposed settlement and procedures for
11 class members to follow in filing written objections to it and in arranging to appear
12 at the settlement hearing and state any objections to the proposed settlement.

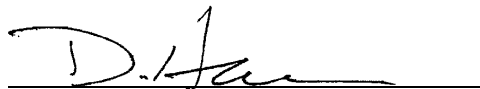
13 The proposed Class Notice meets all these requirements. The proposed Class Notice
14 advises the Class Members of their right to participate in the Settlement; how and when to object
15 to or request exclusion from the Settlement; and the date, time, and location of the Final Approval
16 hearing.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

17 **V. CONCLUSION**

18 Plaintiff submits that the proposed Settlement is in the best interests of the Class, as it is
19 fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the
20 proposed Settlement should be preliminarily approved by the Court, the Class should be
21 conditionally certified for purposes of settlement only, and the Class Notice should be approved.

22 Dated: April 5, 2022

23 **JUSTICE LAW CORPORATION**

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25 Douglas Han
26 Attorneys for Plaintiff
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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 manderson@justicelawcorp.com

On April 5, 2022, I served the foregoing document described as

PLAINTIFF'S 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: **Corodata Corporation, et al. adv. Silva**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-797435-20**
Court Case No.: 37-2020-00033872-CU-OE-CTL
San Diego 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 April 5, 2022, at Pasadena, California.


Mariah Anderson