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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

NICOLE GRIMES, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

PACIFIC CARDIOVASCULAR
ASSOCIATES MEDICAL GROUP, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 30-2020-01168857-CU-OE-CXC

Assigned for All Purposes to:
Honorable Lon F. Hurwitz
Department CX-103

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 Class Counsel
(Douglas Han); Declaration Settlement
Administrator (Lisa Mullins); Declaration of
Bill Kuhl; and [Proposed] Order filed
concurrently herewith]

Hearing Date: February 9, 2024
Hearing Time: 1:30 p.m.
Hearing Place: Department CX-103

Complaint Filed: November 5, 2020
FAC Filed: November 20, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 9, 2024 at 1:30 p.m. or as soon as the matter
2 may be heard, before the Honorable Lon F. Hurwitz in Department CX-103 of the Orange County
3 Superior Court located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff
4 Nicole Grimes (“Plaintiff”) will and hereby does move 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 of Class Action and PAGA
7 Settlement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
8 **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the
9 means of allocation and distribution of funds;
- 10 • Conditionally certifying the proposed Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
14 attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class
15 Action Settlement and Settlement Agreement;
- 16 • Approving the proposed Request for Exclusion Form (“Exclusion Form”) attached
17 as **Exhibit B** to the [Proposed] Order Preliminarily Approving Class Action
18 Settlement and Settlement Agreement;
- 19 • Directing the mailing of the proposed Class Notice and Exclusion Form
20 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
21 to the proposed Class;
- 22 • Approving the proposed deadlines for the notice and settlement administration
23 process;
- 24 • Approving ILYM Group, Inc. 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, Cost Award, Class Representative Enhancement Payment, Administration Costs, and Private Attorneys General Act of 2004 (“PAGA”) Payment.

This motion is based upon the following memorandum of points and authorities; Declaration of Proposed Class Counsel (Douglas Han); Declaration Lisa Mullins; Declaration of Bill Kuhl; [Proposed] Order filed concurrently with this motion; 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: January 2, 2024

JUSTICE LAW CORPORATION

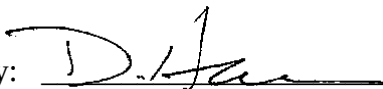
By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a fixed total non-reversionary proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of herself all individuals who are or were
4 employed by Defendants Pacific Cardiovascular Associates Medical Group, Inc. and Via Vitae
5 MSO, LLC (collectively, “Defendant”) in California as hourly-paid non-exempt employees from
6 May 11, 2016 through December 11, 2023 or the date of preliminary approval, whichever occurs
7 first (“Class” and “Class Period”). At the time of this filing, the number of Class Members
8 confirmed by Defendant is estimated to be three hundred thirty-three (333). (Declaration of
9 Douglas Han In Support of Plaintiff’s Motion For Preliminary Approval of Class Action
10 Settlement (“Han Decl.”), ¶¶ 8-9.)

11 **II. BACKGROUND**

12 On August 3, 2020, Plaintiff provided written notice to the California Labor and
13 Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

14 On November 5, 2020, Plaintiff filed a wage-and-hour class action lawsuit in the Superior
15 Court of California, County of Orange, alleging nine (9) causes of action. (Han Decl., *supra*, at
16 ¶ 11; Exhibit 4.)

17 After engaging in discovery, investigations, and negotiations, the Parties remotely
18 attended mediation on October 12, 2023 with the mediator Marc Feder, resulting in the settlement
19 of this matter. (Han Decl., *supra*, at ¶ 12.)

20 On November 20, 2023, Plaintiff filed a First Amended Complaint adjusting the “Class”
21 and “aggrieved employees” definition, adding Defendant Via Vitae MSO, LLC as a named
22 defendant, and updating the factual allegations. (Han Decl., *supra*, at ¶ 13.)

23 **III. INVESTIGATION/ LITIGATION HISTORY**

24 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

25 The Parties propounded form interrogatories, special interrogatories, requests for
26 admission, and requests for production of documents, including motions to compel further
27 responses to discovery. (Han Decl., *supra*, at ¶ 15.) The Parties responded to the formal discovery
28 requests. (*Ibid.*) The Parties then met and conferred and agreed to engage in an informal exchange

1 of information and eventually remotely attended mediation. (Han Decl., *supra*, at ¶ 15.)

2 Prior to mediation, Defendant produced several documents relating to its wage-and-hour
3 policies, practices, and procedures. (Han Decl., *supra*, at ¶ 16.) Plaintiff also reviewed time and
4 pay records and information relating to the size and scope of the Class. (*Ibid.*) Several putative
5 class members were also located and interviewed to obtain a better understanding of the extent
6 and frequency of the alleged day-to-day violations. (*Ibid.*)

7 Based upon the information provided by Defendant and interviews with putative class
8 members, Plaintiff contends – and Defendant denies – that Defendant: (1) failed to provide
9 employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours
10 worked; (3) failed to factor non-discretionary bonuses into employees’ regular rate of pay; (4)
11 failed to reimburse employees for necessary business expenses; (5) issued noncompliant wage
12 statements; and (6) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-25.)

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

14 **i. The Parties Attended Mediation Which Led to the Settlement**

15 The Parties remotely attended mediation with the mediator Marc Feder on October 12,
16 2023. (Han Decl., *supra*, at ¶ 26.) During the mediation, the Parties discussed the risks of
17 continued litigation, likelihood of certification, and merits of the claims and defenses versus the
18 benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the Parties managed to
19 negotiate a settlement, the terms of which were memorialized in the Settlement Agreement. (*Id.*
20 at ¶ 26; Exhibits 2, 5.)

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

22 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at
23 ¶ 29.) Though cordial and professional, the settlement negotiations have always been adversarial
24 and non-collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive
25 arm’s-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

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1 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
2 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶
3 30.) Plaintiff and Class Counsel have considered the uncertainty and risk of further litigation,
4 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and
5 Class Counsel believe the settlement set forth in the Agreement is a fair, adequate, and reasonable
6 settlement and is in the Class Members’ best interests. (*Ibid.*)

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

8 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
9 of the claims and defenses and engaged in sufficient investigation, research, and discovery. (Han
10 Decl., *supra*, at ¶ 31.) The Settlement Agreement was only possible following significant
11 investigation and evaluation of the relevant policies and procedures in place and the data
12 produced. (*Ibid.*) This information permitted Class Counsel to engage in a comprehensive
13 analysis of liability and potential damages. (*Ibid.*) Thus, this case has reached the stage where
14 the Parties understand “the strength of the case; the reasonableness of the settlement in light of
15 the attendant risks of litigation, and in light of the best possible recovery” sufficient to support
16 the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 31; *Boyd v.*
17 *Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

19 **i. Deductions from the Settlement**

20 The Parties agreed (subject to and contingent upon the Court’s approval) this case be
21 settled and compromised for a fixed total non-revisionary amount of \$1,168,960 (“Gross
22 Settlement Amount”), which includes: (1) Attorney Fee Award of up to \$409,136 (35% of the
23 Gross Settlement Amount); (2) Cost Award of up to \$50,000; (3) Class Representative
24 Enhancement Payment of up to \$10,000; (4) Administration Costs of up to \$20,000; and (5)
25 PAGA Payment of \$100,000. (Han Decl., *supra*, at ¶ 27.)

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1 **ii. Calculation of the Individual Settlement Shares**

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 \$579,824 (“Net Settlement Amount”) will be distributed to Participating Class Members,
4 resulting in a gross *average* Individual Settlement Share of \$1,741.21. (Han Decl., *supra*, at ¶
5 27; footnote 4.)

6 Individual Settlement Shares will be calculated using the formula set forth in the
7 Settlement Agreement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(G)(1).) Eligible
8 Aggrieved Employees’ portion of the PAGA Payment will be calculated using the formula set
9 forth in the Settlement Agreement. (*Id.* at § III(H)(7)(g).)

10 **iii. The Allocation of 20% to Wages and 80% to Non-Wages Is Justified**
11 **Under the Claims of this Action**

12 Individual Settlement Shares will be apportioned twenty percent (20%) as wages and
13 eighty percent (80%) as non-wages, including liquidated damages, statutory damages, penalties,
14 and interest. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(G)(2).)

15 The allocation of wages, penalties, and interest indicated above was based on the realistic
16 exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages.
17 (Han Decl., *supra*, at ¶ 49.) Plaintiff added the realistic exposure for rest break premiums and
18 meal break premiums (\$86,828.91 + \$48,091.79 = \$134,920.70). (*Ibid.*) Plaintiff then added the
19 \$134,920.70 to the low end realistic exposure for unpaid wages due to off-the-clock work and
20 underpaid overtime wages, sick leave, and premium wages (\$134,920.70 + \$108,027.25 +
21 \$9,021.71 = \$251,969.66). (*Ibid.*) The realistic exposure of \$251,969.66 Plaintiff can expect to
22 receive if she were to prevail at trial for meal and rest break premiums, low end unpaid wages
23 due to off-the-clock work, and underpaid overtime wages, sick leave, and premium wages
24 represents about twenty-one percent (20.90%) of the low end total realistic exposure (\$251,969.66
25 ÷ \$1,205,874.53 = 0.20895 x 100 = 20.90%). (*Ibid.*) Because this represents twenty percent
26 (20%) of wages, Individual Settlement Shares being apportioned twenty percent (20%) as wages
27 and eighty percent (80%) as non-wages, including liquidated damages, statutory damages,
28 penalties, and interest pursuant to the Settlement Agreement is appropriate. (*Ibid.*)

1 **iv. Notice to the Class**

2 Within fourteen (14) calendar days after entry of the Preliminary Approval Order,
3 Defendant shall deliver to the Settlement Administrator the Class Data. (Han Decl., *supra*, at ¶
4 26; Exhibit 2, *supra*, at § III(J)(2)(a).) Afterwards, the Settlement Administrator will conduct a
5 National Change of Address Database search for all Class Members to obtain the most up-to-date
6 address information. (*Ibid.*)

7 Within twenty-one (21) calendar days after receiving the Class Data, the Settlement
8 Administrator will mail the Notice Packet in English to all identified Class Members via first-
9 class regular U.S. Mail, using the most current mailing address information available. (Han Decl.,
10 *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(J)(2)(b).) Class Members are not required to submit a
11 claim form to receive their Individual Settlement Shares. (*Id.* at § I(W).)

12 **v. Distribution of Funds**

13 The Settlement will be funded and distributed in the manner and schedule set forth in the
14 Settlement Agreement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ III(H)(2), III(H)(3).)

15 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
16 their settlement checks within one hundred eighty (180) calendar days after the checks are mailed
17 to them. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(H)(5).) Uncashed settlement checks
18 will be paid to the California State Controller's Unclaimed Property Division. (*Ibid.*)

19 **vi. Release of Claims**

20 As of the Effective Date and upon fulfillment of Defendant's payment obligations under
21 section III(H)(2) of the Agreement, all Participating Class Members will be bound by a release of
22 all claims and causes of action falling under the definition of Released Claims occurring during
23 the Class Period. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ I(II), III(K).)

24 As of the Effective Date and upon fulfillment of Defendant's payment obligations under
25 section III(H)(2) of the Agreement, the LWDA, and any other representative, proxy, or agent
26 thereof, including Plaintiff, will be bound by a release of all claims and causes of action falling
27 under the definition of PAGA Released Claims occurring during the PAGA Period. (Han Decl.,
28 *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ I(DD), III(L).) The release of the PAGA claims is effective

1 regardless of whether the Eligible Aggrieved Employee submits a valid and timely Exclusion
2 Form. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ I(DD), III(L).)

3 As of the Effective Date and upon fulfillment of Defendant’s payment obligations under
4 section III(H)(2) of the Agreement, and in exchange for the Class Representative Enhancement
5 Payment to Plaintiff, in an amount not to exceed \$10,000, in recognition of her work and efforts
6 in obtaining the benefits for the Class and undertaking the risk of paying litigation costs if this
7 matter had not successfully resolved, Plaintiff provides a general release of all claims for herself
8 and any spouse, heirs, successors, and assigns. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §
9 III(M).) Plaintiff also stipulates and agrees, as of the Effective Date, Plaintiff shall be deemed to
10 have knowingly expressly waived and relinquished, to the fullest extent permitted by law, the
11 provisions, rights and benefits of Civil Code section 1542, or any other similar provision under
12 federal or state law. (*Ibid.*)

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

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

22 Counsel for both Parties are particularly experienced in wage-and-hour employment law
23 and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted
24 numerous cases on behalf of employees for Labor Code violations and are experienced and
25 qualified to evaluate the class claims, advantages, and disadvantages of settlement versus trial,
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1 and viability of the defenses. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel’s experience
2 guided their determination to endorse the Settlement.¹ (*Ibid.*)

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.²
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 a class
10 action, or as to a party, requires the approval of the court after hearing.

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

14 Courts have discretion to approve settlements that are fair, not collusive, and consider
15 “all the normal perils of litigation as well as the additional uncertainties inherent in complex
16 class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert.
17 den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 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 if settlement “of the
20 class members’ claims is reasonable in light of the strengths and weaknesses of the claims and
21 the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
22 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th

23 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
24 number of objectors – is not determinable until the Notice Packet has been provided to the Class
25 Members, and they have had an opportunity to respond. This information will be provided to the
26 Court in conjunction with the Motion for Final Approval of Class Action Settlement.

27 ² The California Supreme Court authorized California’s trial courts to use Federal Rule 23
28 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, the Parties Federal Rule 23 and federal case law in addition to California law.

399, 409.) The most important factor is ““the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar v. Foot Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 130; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186 Cal.App.4th at p. 409.)

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

i. The Settlement Amount of \$1,168,960 Is Fair and Reasonable

The Settlement was only possible following significant investigation and evaluation of the relevant policies and procedures and the data produced for the putative class, as referenced in Section III(b) above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 31.)

This investigation and evaluation informed the central theories of liability that are predicated on the alleged: (1) failure to properly calculate and pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums consistently and properly; (3) failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code sections 2698, *et seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 32.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 33.)

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1 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
2 to certification are always present. (Han Decl., *supra*, at ¶ 34.) As the California Supreme Court
3 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
4 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores,*
5 *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (Han
6 Decl., *supra*, at ¶ 34.) These factors led to discounting the calculations of the potential damages.

7 **ii. The PAGA Payment of \$100,000 Is Reasonable**

8 The provisions of the Labor Code triggering PAGA penalties include, but are not limited
9 to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558,
10 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 43.) Defendant
11 asserted, regardless of the results of the underlying causes of action, PAGA penalties are not
12 mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintain it had a strong
13 argument it would be unjust to award maximum PAGA penalties given the law's current unsettled
14 state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 43; *Thurman v. Bayshore Transit Mgmt.*
15 (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore,
16 Defendant argued without stacking and limited to the initial violation, the PAGA penalties would
17 be limited to about **\$24,300** (243 employees x \$100 penalty for initial violation) on the low end
18 and around **\$170,100** (243 employees x \$100 penalty for initial violation x 7 theories of recovery)
19 on the high end. (Han Decl., *supra*, at ¶¶ 44-46.)

20 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
21 at ¶ 47.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
22 Allocating \$100,000 to PAGA civil penalties was reasonable given that Defendant is also paying
23 an additional \$1,068,960 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in

24 _____
25 ³ (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 Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440
[affirming decertification of class claiming misclassification]; *Aguiar 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].)

good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are reasonable.⁴ (Han Decl., *supra*, at ¶ 47.)

Considering Defendant’s defenses, supporting evidence, and position that the case is not suitable for class treatment, the settlement amount is reasonable, adequate, 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 **\$4,426,393.51** on the low end and **\$4,769,483.27** on the high end. (Han Decl., *supra*, at ¶ 48.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$992,330.38	75%	65%	\$86,828.91
Meal Break Premiums	\$305,344.70	65%	55%	\$48,091.79
Overtime/Minimum Wage: Off-the-Clock Work	\$685,887.28 to \$1,028,977.04	65%	55%	\$108,027.25 to \$162,063.88
Regular Rate	\$25,235.55	35%	45%	\$9,021.71
Unreimbursed Business Expenses	\$259,728	35%	75%	\$42,205.80
Wage Statement Penalty	\$935,550	35%	35%	\$395,269.88
Waiting Time Penalty	\$1,222,317.60	35%	35%	\$516,429.19
MAXIMUM TOTAL EXPOSURE	\$4,426,393.51 to \$4,769,483.27⁵			\$1,205,874.53 to \$1,259,911.16⁶

Based on this analysis, the realistic recovery is **\$1,205,874.53** on the low end and **\$1,259,911.16** on the high end. (Han Decl., *supra*, at ¶ 57.) The Gross Settlement Amount is about twenty-four percent (24.51%) of the maximum potential exposure and ninety-three percent (92.78%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 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”).

⁵ (Han Decl., *supra*, at ¶¶ 35-42.)

⁶ (*Id.* at ¶¶ 49-56.)

1 The only question at preliminary approval is whether the settlement is within the range of
2 possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979)
3 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The
4 fact that a proposed settlement may only amount to a fraction of the potential recovery does not,
5 in and of itself, mean that the proposed settlement is grossly inadequate and should be
6 disapproved.” (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v.*
7 *Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of
8 outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
9 settlements. The proposed settlement is not to be judged against a hypothetical or speculative
10 measure of what might have been achieved by the negotiators”.) Nevertheless, this settlement is
11 in line with the realistic exposure if Plaintiff had prevailed at trial and provides significant
12 recovery for the Class Members.

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

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

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact that predominate over any questions
21 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 58.) Plaintiff contends, as a former
22 hourly-paid, non-exempt employee of Defendant, her claims are typical of the claims of the Class,
23 and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiff
24 also asserts the prosecution of separate actions by individual Class Members would create the risk
25 of inconsistent or varying adjudications, and a class action is superior to other available means
26 for the fair and efficient adjudication of the case. (*Ibid.*)

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28 ///

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

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

9 This case involves about three hundred thirty-three (333) Class Members, meaning the
10 Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 59.) All Class Members can and will be
11 identified by the Settlement Administrator through a review of employment records concerning
12 all hourly-paid, non-exempt California employees of Defendant during the Class Period. (*Ibid.*)

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

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

23 **1. Common Issues Predominate**

24 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
25 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
26 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts
27 determine whether the elements necessary to establish liability are susceptible to common proof,
28 even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v.*

1 *Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
2 certification when the plaintiff can present evidence of common policies. (See e.g. *JGC*
3 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
4 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
5 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court
6 certified class of dancers on state law claims].)

7 Plaintiff asserts common issues of fact and law predominate as to each of the claims
8 alleged. (Han Decl., *supra*, at ¶ 60.) Plaintiff contends all Class Members were subject to the
9 same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

10 **2. Plaintiff's Claims Are Typical of the Class Claims**

11 Typical claims rely on legal theories and facts that are substantially like those of other
12 class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

13 Plaintiff is a former employee of Defendant and alleges she and the Class Members were
14 employed by the same company and injured by the common policies and practices related to the
15 claims described above. (Han Decl., *supra*, at ¶ 61.) Plaintiff seeks relief for these claims and
16 derivative claims on behalf of the Class. (*Ibid.*) Plaintiff's claims arise from the same employment
17 practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

18 **3. Plaintiff Is Adequate to Represent the Class**

19 Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at
20 ¶ 62.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this
21 litigation, understands her fiduciary obligations, and has actively participated in the prosecution
22 of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to
23 provide Class Counsel with a complete understanding of the work environment and requirements.
24 (*Ibid.*) Plaintiff also has no interest that is averse to the interests of the Class. (*Ibid.*)

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1 **4. Class Action Is Superior for the Fair and Efficient**
2 **Adjudication of this Controversy**

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

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

11 In deciding to approve a proposed class action settlement under Code of Civil Procedure
12 section 382, the Court must find a proposed settlement is “fair, adequate and reasonable.” (*Dunk*
13 *v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action settlement is
14 presumed fair under the following circumstances: (1) parties reached settlement after arm’s-
15 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
16 to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors
17 is small. (*Id.* at p. 1802.) All these elements are present here.

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

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

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

24 The Notice Packet meets all these requirements. The Notice Packet advises the Class
25 Members of their right to participate in the Settlement, how and when to object to or request
26 exclusion from the Settlement, and date, time, and location of the Final Approval Hearing.

27 ///

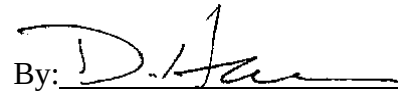
28 ///

1 **V. CONCLUSION**

2 Plaintiff submits the Settlement is in the best interests of the Class, as it is fair, adequate,
3 and reasonable. Under the applicable class action criteria and guidelines, the Settlement should
4 be preliminarily approved by the Court, Class should be conditionally certified for purposes of
5 settlement only, and Notice Packet should be approved.

6
7 Dated: January 2, 2024

JUSTICE LAW CORPORATION

8
9 By: 

Douglas Han

Attorneys for Plaintiff

**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 January 2, 2024, 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: **Grimes v. Pacific Cardiovascular Associates Medical Group, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 801113-20**
Court Case No.: 30-2020-01168857-CU-OE-CXC
Orange 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 January 2, 2024, at Pasadena, California.


Mariah Anderson