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

LORELEI CHAMBERS, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

SOMACIS INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2021-00033445-CU-OE-CTL

(Assigned to Hon. Eddie C. Sturgeon, Dept. C-67)

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: November 18, 2022

Time: 9:00 a.m.

Dept.: C-67

Complaint Filed: August 5, 2021

Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 18, 2022, at 9:00 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Eddie C. Sturgeon, judge presiding,
4 in Department C-67 of the above referenced Court, located at 330 W. Broadway, San Diego,
5 California 92101, Plaintiff Lorelei Chambers (“Plaintiff”) will seek an Order approving the
6 Parties’ Settlement Agreement, pursuant to the procedures set forth in Labor Code § 2698, *et seq.*

7 This motion will be based on this notice of motion, the attached memorandum of points
8 and authorities, the accompanying declarations of Larry W. Lee, Kristen M. Agnew, Nicholas
9 Rosenthal, William Marder and Plaintiff Lorelei Chambers, the records and file herein, and on
10 such other evidence as may be presented at the hearing of the motion.

11
12 DATED: May 17, 2022

DIVERSITY LAW GROUP, P.C.

13
14 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Aggrieved
Employees

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1 **I. INTRODUCTION**

2 The operative complaint filed by Plaintiff Lorelei Chambers (“Plaintiff”) seeks civil
3 penalties from Defendant Somacis Inc. (“Defendant”) for alleged violations of the Labor Code
4 pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698,
5 *et seq.* As set forth in the Complaint, Plaintiff alleges that Defendant failed to timely pay wages
6 to its employees in violation of Labor Code § 204.

7 Plaintiff and Defendant (collectively, the “Parties”) agreed to participate in a mediation
8 and informally exchange information to evaluate Plaintiff’s claims and Defendant’s potential
9 exposure. With the assistance of the Hon. Brian C. Walsh (Ret.) and an all-day mediation, the
10 Parties reached an agreement to settle the action in its entirety.

11 The Parties now seek this Court’s approval of the proposed settlement. The settlement
12 was reached after litigation and the exchange of information through informal discovery.
13 Pursuant to the terms of the Parties’ proposed settlement agreement, Defendant will pay the
14 gross amount of \$120,000.00, which includes PAGA Penalties of approximately \$54,000.00 to
15 be split amongst the Labor and Workforce Development Agency (“LWDA”) and the aggrieved
16 employees, as required by PAGA. The proposed settlement, moreover, does not release any
17 substantive claims of the aggrieved employees, merely their rights to bring PAGA actions
18 predicated on violations of Labor Code §§ 204 and 210.

19 As will be explained in further detail below, based on the California Supreme Court’s
20 opinion in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) and *Iskanian v. CLS Transportation*
21 *Los Angeles, LLC*, 59 Cal. 4th 348 (Cal. 2014), Plaintiff can seek appropriate civil penalties as
22 called for under PAGA on behalf of the State of California and other similarly situated aggrieved
23 employees without seeking class certification or meeting all of the requirements of class
24 certification (*i.e.*, numerosity, typicality, commonality and adequacy). As such, while the PAGA
25 settlement reached herein is on behalf of the State of California and other aggrieved employees,
26 the usual two-step preliminary and final approval process is not required. Rather, as called for
27 under Labor Code § 2699(1), all that is required is an approval by this Court of any settlement of
28 the PAGA claim by the plaintiff and defendant.

1 The Parties have reached such an agreement, and thus, now seek this Court’s approval of
2 their settlement which provides for the payment of civil PAGA penalties.

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 **A. Summary of the Allegations**

5 On June 1, 2021, Plaintiff submitted her written notice under Labor Code § 2699.3 (the
6 “PAGA Notice”) to the Labor and Workforce Development Agency (“LWDA”) and Defendant.
7 (Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 2.) As set forth in the PAGA Notice,
8 Plaintiff alleged that Defendant failed to pay wages in a timely manner, in violation of California
9 Labor Code § 204. (*Id.*)

10 On August 5, 2021, Plaintiff filed a representative PAGA action against Defendant in the
11 Superior Court of California, County of San Diego (the “Action”). (Rosenthal Decl. ¶ 3.) The
12 Complaint alleges a single cause of action for violation of Labor Code § 2698, *et seq.*, based on
13 the facts described in Plaintiff’s PAGA Notice. (*Id.*) As alleged in the Complaint, Plaintiff
14 contends that Defendant failed in its affirmative obligation to make timely payments of wages to
15 employees according to the terms of Labor Code § 204(d). (*Id.*) Specifically, Plaintiff alleges
16 that Defendant, as a matter of policy and practice, paid the wages of employees beyond the time
17 periods allowed pursuant to Labor Code § 204. (*Id.*)

18 **B. The Parties Participated in Private Mediation**

19 After the filing of the Complaint and meeting and conferring regarding Plaintiff’s claims,
20 the Parties agreed to participate in private mediation with the Hon. Brian C. Walsh (Ret.).
21 (Rosenthal Decl. ¶ 4.) Prior to the mediation, Defendant informally produced data relevant to the
22 potential value of the claims, including the number of alleged aggrieved employees and pay
23 periods encompassed by the allegations of Plaintiff’s complaint. (*Id.*) Using the data provided by
24 Defendant, Plaintiff’s Counsel performed a comprehensive damages analysis. (*Id.*)

25 On January 19, 2022, the Parties engaged in an all-day mediation session before Retired
26 Judge Walsh, a respected mediator knowledgeable of the wage and hour laws and representative
27 claims at issue in this action. (Rosenthal Decl. ¶ 5.) After a full day of arm’s length negotiations,
28 the Parties agreed to a settlement of the Action and executed a memorandum of understanding.

1 (*Id.*)

2 The Parties thereafter worked to memorialize the terms of the settlement in a long-form
3 Settlement Agreement (“Agreement” or “Settlement Agreement”), which is attached to the
4 Rosenthal Declaration as Exhibit A. (Rosenthal Decl. ¶ 9.) Based on their own independent
5 investigation and evaluation, Plaintiff’s Counsel is of the opinion that the settlement with
6 Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair,
7 reasonable, and adequate and is in the best interest of Plaintiff, the LWDA, and aggrieved
8 employees, in light of all known facts and circumstances, including the risk of significant delay,
9 the uncertainty associated with litigation, the various defenses asserted by Defendant, and the
10 numerous potential appellate issues. (Rosenthal Decl. ¶ 25; Declaration of Larry W. Lee (“Lee
11 Decl.”) ¶ 2; Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶ 2.) Defendant and its counsel
12 also agree that the settlement is fair, reasonable, and adequate.

13 **III. THE SETTLEMENT TERMS AND ACTUAL AMOUNTS REQUESTED**

14 The material terms of the settlement are described below and set forth in detail in the
15 Settlement Agreement. Rosenthal Decl., Ex. A.

16 **A. The Aggrieved Employees**

17 The Settlement Agreement consists of “all employees who were employed by SOMACIS
18 in the State of California during the PAGA Period” (“PAGA Settlement Group Members”).
19 (Settlement Agreement ¶ I.O.)

20 The PAGA Settlement Group Members worked approximately 3,224 pay periods during
21 the period of June 1, 2020, through June 15, 2021. (Settlement Agreement ¶¶ I.N, III.A.b.)

22 **B. The Settlement Fund**

23 The Settlement Agreement negotiated by the Parties provides for a “Settlement Fund” in
24 the amount of \$120,000.00 for resolution of the Action. (Settlement Agreement ¶ I.V.) The
25 balance of the Settlement Fund remaining after deduction of approved attorneys’ fees and
26 litigation costs, approved enhancement award to Plaintiff, and costs of the settlement
27 administration, will be available for distribution to the LWDA and Aggrieved Employees.
28 (Settlement Agreement ¶¶ I.L, I.M.)

1 **C. Allocation of the Net Settlement Amount**

2 The Parties estimate that the remaining net settlement amount will be at least \$62,868.17
3 (Rosenthal Decl. ¶ 17.) Seventy-five percent (75%) of the net settlement amount, or
4 approximately \$47,151.12, will be paid to the LWDA for PAGA penalties (“LWDA Payment”).
5 (Settlement Agreement ¶ I.L; Rosenthal Decl. ¶ 17.) The remaining twenty-five percent (25%) of
6 the net settlement amount, or approximately \$15,717.04, will be paid to the PAGA Settlement
7 Group Members (“Net Employee Benefit Funds”). (Settlement Agreement ¶ I.M; Rosenthal
8 Decl. ¶ 17.) This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v.*
9 *Superior Court*, 8 Cal. 5th 175 (2019).

10 The individual settlement payments to PAGA Settlement Group Members, or Net
11 Employee Benefit Funds, will be based on the number of pay periods worked by the employee
12 during the PAGA Period. (Settlement Agreement ¶ VI.B.)

13 Based on the net settlement amount of approximately \$62,868.17, the civil penalty value
14 of each pay period during which each PAGA Settlement Group Member worked during the
15 PAGA Period is approximately \$19.50 ($\$62,868.17 \div 3,224$ pay periods = \$19.50 per pay
16 period). (Rosenthal Decl. ¶ 19.) The amount each PAGA Settlement Group Member will be
17 entitled to recover will be premised on the number of pay periods he or she worked during the
18 PAGA Period, and upon the distribution of \$15,717.04, or 25% of the net settlement amount,
19 pursuant to the Labor Code § 2699. *See ZB, N.A.*, 8 Cal. 5th at 175. The amount any particular
20 PAGA Settlement Group Member will be entitled to recover will vary depending on the number
21 of pay periods he or she worked, with some entitled to receive more, and others less. (Rosenthal
22 Decl. ¶ 19.) This is fair, as it directly allocates greater penalties to individual PAGA Settlement
23 Group Members who experienced a higher number of alleged violations. (*Id.*) Based on the
24 estimated number of employees provided before mediation and based on a raw average, each
25 PAGA Settlement Group Member will receive approximately \$103.40 as a result of the
26 Settlement ($\$15,717.04 \div 152$ PAGA Settlement Group Members = \$103.40). (*Id.*)

27 **D. Enhancement Award to Plaintiff**

28 Pursuant to the terms of the Settlement Agreement, and without opposition from

1 Defendant, Plaintiff will be entitled to request an Enhancement Award in the amount of
2 \$7,500.00. (Settlement Agreement ¶ V.E.) This amount is to compensate Plaintiff for her efforts
3 and work in prosecuting this case, including meeting and communicating with counsel and
4 reviewing the pleadings and documents in this case. (Declaration of Lorelei Chambers
5 (“Chambers Decl.”) ¶ 4.) In total, Plaintiff has spent approximately 25 hours in the prosecution
6 of this matter. (Chambers Decl., ¶ 4). This time includes meeting with her attorneys, gathering
7 relevant documents, and reviewing case documents and the settlement agreement. (Chambers
8 Decl., ¶ 4). Any portion of the Enhancement Award not used or approved by the Court shall be
9 added to the net settlement amount for distribution to the LWDA and PAGA Settlement Group
10 Members.

11 **E. Attorneys’ Fees and Costs**

12 The Settlement Agreement specifies up to thirty-three and one-third percent (33 1/3%) of
13 the Settlement Fund, or \$40,000.00 will be paid as attorneys’ fees, as well as declared litigation
14 costs not to exceed \$15,000.00.¹ (Settlement Agreement ¶¶ V.A, V.B.) Any portion of the
15 attorneys’ fees and litigation costs not used or approved by the Court shall be added to the net
16 settlement amount for distribution to the LWDA and PAGA Settlement Group Members.

17 **F. Settlement Administration Costs**

18 The Parties have selected Phoenix Settlement Administrators as the Settlement
19 Administrator. (Settlement Agreement ¶ I.U.) The anticipated costs for the settlement
20 administration are not to exceed \$3,500.00. (Settlement Agreement ¶ VI.K.) Plaintiff’s Counsel
21 believes that this amount is reasonable in relation to the value of the settlement. (Rosenthal Decl.
22 ¶ 15.) The settlement administration costs will be deducted from the Settlement Fund (Settlement
23 Agreement ¶ VI.K.) Any portion of the settlement administration costs not used or approved by
24 the Court shall be added to the net settlement amount for distribution to the LWDA and PAGA
25 Settlement Group Members.

26
27
28 ¹ Plaintiff seeks reimbursement of the actual amount of costs incurred, which is \$6,131.83, which
is well short of the potential maximum allowed. (Rosenthal Decl. ¶ 32)

1 **G. Scope of Release**

2 Upon payment of the Settlement Fund, Defendant and the Released Parties shall be
3 entitled to a release of Released Claims, as set forth below. (Settlement Agreement ¶ VII.)

4 Plaintiff and the PAGA Settlement Group Members will release Defendant and the
5 Released Parties from the following:

6 all claims or causes of action that are delineated in Plaintiff's letter
7 to the LWDA and/or asserted in, or that could have been asserted
8 in, the Action against Defendant regarding employees who worked
9 for Defendant in California during the PAGA Period, including
10 any and all claims for civil penalties under PAGA that were or
 could have been pled based on California Labor Code sections
 204, 210, and 2699, *et seq.*

11 (Settlement Agreement ¶¶ I.S, VII.) As noted above, this release is limited to those claims
12 premised on the PAGA and thus is appropriately tailored to the allegations of the Complaint.

13 **IV. PAGA REQUIREMENTS**

14 Prior to the enactment of PAGA, many of the penalties provided against employers for
15 violations of certain Labor Code provisions were solely within the province of the California
16 Department of Labor to seek, enforce, and assess. *Arias v. Superior Court*, 46 Cal. 4th 969, 980
17 (2009). However, due to the lack of financing to California's agencies and the potential number
18 of Labor Code violations by California employers, the California Legislature found that it was in
19 the public interest to allow aggrieved employees to act as private attorneys general and to
20 enforce and recover penalties on behalf of other similarly situated aggrieved employees for
21 Labor Code violations committed by their employers. *Id.* As such, PAGA was enacted to allow
22 such enforcement and recovery by private individuals who have been aggrieved by their
23 employers. Moreover, 75% of any penalties recovered under PAGA by an aggrieved employee is
24 to be paid to California's LWDA and the remaining 25% is to be shared amongst the aggrieved
25 employees. Cal. Lab. Code § 2699(i).

26 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
27 employee must first provide written notice to the LWDA and the employer of the particular
28 Labor Code violation the aggrieved employee alleges the employer has violated. *See* Cal. Labor

Code § 2699.3(a)(1). Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations or the time for the LWDA to investigate the claims passes, the aggrieved employee is allowed to proceed in a civil action against the employer on the alleged violations on behalf of all other similarly situated employees. *See* Cal. Labor Code § 2699.3(a)(2)(A).

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA claim on behalf of himself and others similarly situated needs to seek the PAGA claim as a class action and meet class certification requirements. *Arias*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the California Supreme Court held that an aggrieved employee's representative action brought on behalf of other similarly situated employees against an employer for PAGA violations do not need to meet all of the requirements for class certification. *Id.* at 975; 980-88. As the California Supreme Court held, a plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because an employee's PAGA action functions as a substitute for an action brought by the government itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an action brought by the government. *Id.*

Finally, in a settlement of a PAGA action brought by an aggrieved employee, the Superior Court must "review and approve any settlement of any civil action filed pursuant to" PAGA. Labor Code § 2699(1)(2). As the Parties to this current PAGA action have reached such an agreement, the Parties now seek this Court's approval as to the settlement of the penalties amount.

V. THE SETTLEMENT VALUE IS REASONABLE CONSIDERING THE ATTENDANT RISKS OF CONTINUING LITIGATION AND DEFENDANT'S CONTENTIONS

Defendant argued that it made a good faith effort to comply with Labor Code Section 204 and that Section 2699(e)(2) provides courts with the discretion to reduce any civil penalties recoverable in a PAGA action if imposition of the full penalty amount would be "unjust, arbitrary and oppressive, or confiscatory." As the California Court of Appeal has affirmed, trial

1 courts are well within their discretion to reduce PAGA penalties “for technical violations that
2 cause no injury,” especially where the “violation was inadvertent.” *Raines v. Coastal Pac. Food*
3 *Distributors, Inc.*, 23 Cal. App. 5th 667, 681 (2018).

4 In deciding whether to award the maximum penalty amount, courts may focus on whether
5 the employer made a **good faith effort to follow the law**. *Thurman v. Bayshore Transit*
6 *Management, Inc.*, 203 Cal. App. 4th 1112, 1136 (2012). In *Thurman*, the Court of Appeal
7 upheld the trial court’s significant reduction of PAGA penalties by 30% because the **employer**
8 **was not initially on notice that it was in violation of the law** and because it would have been
9 **unfair** to award penalties where the employer was unaware of the violations. *Id.* When the
10 employer made aware of the violations, it timely took steps to come into compliance. *Id.* By
11 contrast, the imposition of full penalties was justified when an employer took a “cavalier
12 approach to fulfilling its contractual and statutory obligations” and demonstrated “reckless
13 disregard” with respect to paying its employees. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
14 1214 (2008).

15 In this case, Defendant asserted that a substantial reduction in potential PAGA penalties
16 was warranted because (1) the alleged violation was inadvertent, (2) the alleged violation was a
17 mere technicality, (3) Defendant changed its practices to eliminate the violation after receiving
18 notice of the alleged violation, (4) the allegedly aggrieved employees did not suffer any actual
19 economic damages, and (5) PAGA penalties were completely unnecessary to punish or deter
20 Defendant’s behavior. Immediately after Defendant received Plaintiff’s pre-filing LWDA notice,
21 it changed its payroll system to eliminate the possibility of any future late paydays. Thus,
22 Defendant contended that no PAGA penalties were needed to punish or deter Defendant for its
23 inadvertent behavior, much less to deter it from committing any future violations that were
24 completely foreclosed by its new payroll schedule. (Rosenthal Decl. ¶ 6.)

25 Plaintiff’s counsel also considered the Court of Appeal’s recent holding in *Wesson v.*
26 *Staples the Off. Superstore, LLC*, 68 Cal. App. 5th 746, 763, 283 Cal. Rptr. 3d 846, 857 (2021),
27 *reh’g denied* (Sept. 27, 2021), *review denied* (Dec. 22, 2021), which upheld the trial court’s order
28 striking PAGA claim as unmanageable. (Rosenthal Decl. ¶ 7.)

1 Under PAGA, based on underlying violation of Labor Code § 204, the statutory penalty
2 is \$100 per pay period per employee. Labor Code § 210. Thus, based on the data provided to
3 Plaintiff's Counsel prior to mediation, the estimated potential penalties based on the numbers
4 Defendant has provided to Plaintiff, the potential civil penalties are approximately \$322,400
5 ([3,224 pay periods x \$100 = \$322,400]). (Rosenthal Decl. ¶ 22.)

6 Further, pursuant to Labor Code § 2699(f)(2) the Court can decline to award PAGA
7 penalties where "...if, based on the facts and circumstances of the particular case, to do
8 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." In
9 other words, were this matter to go to trial, *any* award granted would be at the discretion of the
10 Court. Plaintiff further recognizes that there may be reasons that the Court would be unwilling to
11 issue an award in this matter even if Plaintiff were able to prove the PAGA violation at trial.

12 Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*,
13 while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum
14 PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the
15 law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction
16 to be proper. *Id.* at 539. Courts have also suggested that a reduction of civil penalties may be
17 appropriate where the alleged violation is a technical one. *Raines v. Coastal Pacific*, 23 Cal.
18 App. 5th 667, 681 (2018) ("[A] trial court has discretion in awarding civil penalties and may
19 reduce the award for technical violations that cause no injury"). Defendant argued that if a court
20 were to find it liable for the violations alleged, any penalties awarded should be reduced under
21 this other similar line of reasoning that would render any such award of penalties as unjust,
22 arbitrary, and oppressive, and/or confiscatory.

23 *Carrington* is not the only cautionary tale. In *Magadia v. Wal-Mart Assocs., Inc.*, while
24 the trial court imposed substantial PAGA penalties upon the defendant, such amount still
25 represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist.
26 Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019). Moreover, this was only after the plaintiff in
27 *Magadia* had prevailed after trial. Thereafter, the Ninth Circuit reversed a substantial judgment
28 in favor of the plaintiff and the aggrieved employees. *Magadia v. Wal-Mart Assocs., Inc.*, 999

1 F.3d 668, 682 (9th Cir. 2021).

2 While Plaintiff maintains that there does not exist any reason for reducing PAGA
3 penalties, Plaintiff is not blind to the fact that Defendant's defenses could be persuasive to the
4 Court at trial or on appeal. Accordingly, Plaintiff factored in those evaluations into the proposed
5 settlement amount. Here, the Settlement Fund is approximately 37.2% of the total estimated
6 exposure (\$120,000 Settlement Fund ÷ \$322,400 maximum penalties). This settlement is fair and
7 reasonable, considering the attendant risks. (Rosenthal Decl. ¶ 25.) For all of the foregoing
8 reasons, the Court should approve the Settlement.

9 **VI. ATTORNEYS' FEES AND COSTS ARE APPROPRIATE**

10 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code §
11 2699(g). Although this is not a class action, in representative class actions California state and
12 federal courts have recognized that an appropriate method for determining award of attorneys'
13 fees is based on a percentage of the total value of benefits to class members by the settlement.
14 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal.
15 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent*
16 *v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable
17 doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally
18 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
19 *Vincent*, 557 F. 2d at 769.

20 The Common Fund doctrine is predicated on the principle of preventing unjust
21 enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits,
22 he may require the passive beneficiaries to compensate those who created the fund. Both
23 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
24 *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
25 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
26 been applied "consistently in California when an action brought by one party creates a fund in
27 which other persons are entitled to share." The reasons for applying the common fund doctrine
28 include: "fairness to the successful litigant, who might otherwise receive no benefit because his

1 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
2 the others who are entitled to share in the fund and who should bear their share of the burden of
3 its recovery; encouragement of the attorney for the successful litigant who will be more willing
4 to undertake and diligently prosecute proper litigation for the protection or recovery of the fund
5 if he is assured that he will be properly and directly compensated should his efforts be
6 successful.” *Id.*

7 Indeed, most recently, the California Supreme Court has also held that the award of
8 attorneys’ fees in common fund wage and hour class action settlements should start with the
9 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
10 overwhelming majority of federal and state courts in holding that when class action litigation
11 establishes a monetary fund for the benefit of the class members, and the trial court in its
12 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
13 of a reasonable fee by choosing an appropriate percentage of the fund created.”). The California
14 Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1
15 Cal. 5th at 506. Here, Plaintiff’s counsel seeks thirty-three and one-third percent (33 1/3%) of the
16 Settlement Fund in attorneys’ fees, or \$40,000.00.

17 As a secondary support for the percentage of the fund method, when fees are allocated by
18 percentage method, courts have discretion to “cross-check” the fees awarded through the lodestar
19 method. However, the *Laffitte* Court “emphasize[d] [that] the lodestar calculation, when used in
20 this manner, does not override the trial court’s primary determination of the fee as a percentage
21 of the common fund and thus does not impose an absolute maximum or minimum on the
22 potential fee award.” (*Laffitte*, 1 Cal. 5th at p. 505 (emphasis added); *In re Rite Aid Corp. Secs.*
23 *Litig.* (3d Cir. 2005) 396 F.3d 294, 306-307 (“[The lodestar cross-check does not trump the
24 primary reliance on the percentage of common fund method”).)

25 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
26 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
27 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
28 court is not necessarily required to make such an adjustment.” (*Id.*) Thus, a lodestar cross-check

1 is aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases,
2 performing a cross-check “undermines” one of the primary reasons for using the percentage
3 method: aligning counsel’s incentives with the benefits delivered to the class and discouraging
4 protracted litigation. (*Id.* at p. 506 (finding trial courts “retain the discretion to forgo a lodestar
5 cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* (1985) 108
6 F.R.D. 237, 258; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, pp. 29-30
7 (citing the recommendations of the Third Circuit Task Force with approval and observing that
8 “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many
9 authorities, who have been most vocal about the manner in which it exacerbates the problem of
10 ‘cheap settlements’ and burdens already overworked trial judge”).)

11 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
12 4 or even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 255; *see also*,
13 *e.g.*, *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 (applying a 2.52
14 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix* (2008) 162 Cal. App.
15 4th 43, 60 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland*
16 *Raiders* (1988) 203 Cal. App. 3d 78 (affirming a 2.34 multiplier without remand).)

17 With respect to Plaintiff’s Counsel’s lodestar, to date, approximately 71.2 hours have
18 been expended by Plaintiff’s Counsel this matter. (Rosenthal Decl. ¶ 29, Ex. C; Declaration of
19 Larry W. Lee (“Lee Decl.”) ¶ 6, Ex. A; Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶ 10,
20 Ex. A.); Declaration of William Marder (“Marder Decl.”) ¶ 8, Ex. A). Mr. Lee requests an hourly
21 rate of \$750.00 per hour. (Lee Decl. ¶ 7.) Mr. Marder requests an hourly rate of \$750.00 per
22 hour. (Marder Decl. ¶ 9). Ms. Agnew requests an hourly rate of \$700.00 per hour. (Agnew Decl.
23 ¶ 11.) Mr. Rosenthal requests an hourly rate of \$700.00 per hour. (Rosenthal Decl. ¶ 26.) The
24 courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time
25 records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney
26 as to the number of hours worked on a particular case is sufficient evidence to support an award
27 of attorney fees, even in the absence of detailed time records.” (*Martino v. Denevi* (1986) 182
28 Cal. App. 3d 553, 559.)

1 Reasonable hours include, in addition to time spent during litigation, the time spent
2 before the action is filed, including time spent interviewing the clients, investigating the facts and
3 the law, and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447
4 U.S. 54, 62.) Further, the fee award should include fees incurred to establish and defend the
5 attorneys' fee claim. (*Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639 [*Serrano IV*].)

6 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
7 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084,
8 1095.) The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
9 attorney's skill and experience, the nature of the work performed, the relevant area of expertise
10 and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61
11 Cal. App. 4th 629, 632-33.)

12 Plaintiff's Counsel's skill and experience justify the requested rate. As shown in the
13 supporting declarations, Plaintiff's Counsel have significant experience in the area of
14 employment and wage and hour class actions. Specifically, Plaintiff's Counsel's practice focuses
15 on representing employees in employment matters, particularly wage and hour cases. (Lee Decl.
16 ¶¶ 3-5; Agnew Decl. ¶¶ 4-9; Rosenthal Decl. ¶¶ 26-29; Marder Decl. ¶ 3-7.) As such, based on
17 the hours and applicable rate, the total lodestar to be expended by Plaintiff's Counsel through
18 finalizing this Settlement will be approximately \$51,020.00, based on 71.2 total hours. (Lee
19 Decl. ¶ 6, Ex. A; Agnew Decl. ¶ 10, Ex. A; Rosenthal Decl. ¶ 29, Ex. C; Marder Decl. ¶ 8, Ex.
20 A.)

21 Once the court establishes the lodestar amount, it may enhance the fee award by a
22 multiplier in order to make an appropriate fee award. (*Serrano III*, 20 Cal. 3d at p. 48.) The
23 pertinent factors include the difficulty of the questions involved and the skill in presenting them,
24 the contingent nature of the fee award, the extent to which the litigation precluded other
25 employment, and the percentage-of-the-fund the attorney would have received on the fair
26 market. (*Id.*, *Lealao*, 82 Cal. App. 4th at p. 49.) However, this list is not exhaustive and the court
27 can consider other factors it deems important in setting the multiplier. (*Ketchum v. Moses* (2001)
28 24 Cal. 4th 1122, 1139.)

1 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
2 enhancement based on a percentage-of-the-fund. (*Lealao*, 82 Cal. App. 4th at p. 52 (the
3 promptness of settlement “cannot be used to justify the refusal to apply a multiplier”).)
4 According to *Lealao*, courts placed “an extraordinarily high value” on settlement, and counsel
5 should be rewarded, not punished, for achieving this goal in a timely fashion. (*Id.*)

6 Here based upon Plaintiff’s counsel’s lodestar of \$51,020.00, Plaintiff’s request for a fee
7 award of \$40,000.00 is more than reasonable and fair. As the Court can see, the lodestar is such
8 that Plaintiff’s counsel requests a *negative* multiplier of .78. Based thereon, Plaintiff’s Counsel’s
9 request for attorneys’ fees in the amount of \$40,000.00 is fair and reasonable, and the Court
10 should approve this amount.

11 Plaintiff’s counsel’s cost reimbursement request in the amount of \$6,131.83 is also
12 reasonable, especially in light of the fact that the Parties agreed that Plaintiff’s counsel may seek
13 up to \$15,000.00 in costs under the Settlement Agreement. (Rosenthal Decl. ¶ 32.) As set forth in
14 their declarations, the costs were all directly incurred or will be incurred in the prosecution of
15 this action, including, but not limited to, filing/service and mediation fees. (Rosenthal Decl. ¶ 32,
16 Exhibit B.) As such, the requested costs should be awarded as fair and reasonable.

17 **VII. NOTICE TO THE LWDA HAS BEEN PROVIDED**

18 Pursuant to California Labor Code § 2699(1), on May 17, 2022, Plaintiff uploaded the
19 instant motion, Settlement Agreement, and proposed order to the LWDA’s website. (Rosenthal
20 Decl. ¶ 33.) In addition, Plaintiff shall submit to the LWDA a copy of the Court’s judgment and
21 order approving the Settlement Agreement within ten (10) days after entry of judgment or order.
22 (*Id.*)

23 **VIII. CONCLUSION**

24 Based on the above, Plaintiff requests the Court approve the current PAGA settlement.
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28

1 DATED: May 17, 2022

DIVERSITY LAW GROUP, P.C.

2
3 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

4 Attorneys for Plaintiff and the Aggrieved
5 Employees

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STATE OF CALIFORNIA]
]ss.
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 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On May 17, 2022, I served the following document(s) described as:

- 1. PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 2. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 3. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 4. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 5. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 6. DECLARATION OF LORELEI CHAMBERS IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 7. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; AND JUDGMENT THEREON**

on the interested parties in this action as follows:

Merrili Escue mescue@rcllp.com Ricketts Case, LLP 162 South Rancho Santa Fe Road, Suite B-60 Encinitas, California 92024 <i>Attorneys for Defendant Somacis Inc.</i>	Shirley Shu sshu@rcllp.com Ricketts Case, LLP 1900 Embarcadero Road, Suite 111 Palo Alto, CA 94303 <i>Attorneys for Defendant Somacis Inc.</i>
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 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the One Legal E-Filing System at the website www.onelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 17, 2022, at Los Angeles, California.



Erika Mejia