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Attorneys for Plaintiff Xenia Cesilia De Alba, individually,
and on behalf of all others similarly situated.

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

XENIA CESILIA DE ALBA, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

COGIR MANAGEMENT USA INC.;
WELLTOWER COGIR TENANT, LLC; and
DOES 1 through 20, inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0007961

*Assigned for all purposes to
Hon. Barbara Kronlund
Dept. 10D*

**DECLARATION OF KRISTY R. CONNOLLY
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

1 I, Kristy R. Connolly, hereby declare as follows:

2 1. I am an attorney at law licensed to practice before all of the courts of the State of
3 California. I am an associate with Aegis Law Firm, PC (“Aegis”), counsel for Plaintiff Xenia Cesilia
4 De Alba (“Plaintiff”) in this matter. I am thoroughly familiar with and have personal knowledge of all
5 of the facts set forth herein.

6 2. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of
7 Class Action Settlement. If called as a witness, I could and would competently testify thereto.

8 **Case History**

9 3. On June 30, 2020, Plaintiff’s counsel provided written notice to the LWDA and Defendants
10 regarding Defendant’s alleged Labor Code violations, as required by Lab. Code § 2699.3(a). The LWDA
11 did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a
12 PAGA claim against Defendants.

13 4. On June 30, 2020, Plaintiff filed a class action on behalf of Defendants’ non-exempt
14 employees, which Defendant removed to the United States District Court on September 7, 2022 (the
15 “Federal Court Action”). Plaintiff alleged the following causes of action: (1) failure to pay minimum
16 wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest
17 breaks; (5) failure to provide accurate wage statements; (6) failure to pay all wages timely and upon
18 separation of employment; (7) violation of Business and Professions Code § 17200, *et seq.*, based on the
19 preceding claims.

20 5. While the class action was pending in federal court, Plaintiff filed this separate action as a
21 PAGA-only case in the Superior Court of California (the “State Court Action”). On March 15, 2023, this
22 Court stayed the State Court Action pending the resolution of the Federal Court Action.

23 6. In the Federal Court Action, the Parties engaged in significant formal discovery. Both
24 Parties served and responded to Interrogatories and Requests for Production of Documents. Through
25 formal discovery, Defendant produced a significant amount of documents and information, including
26 Plaintiff’s personnel file, relevant policy documents, the class members’ contact information, and a 20%
27 sample of class members’ timekeeping and pay records. After formal discovery and engaging in numerous
28 discussions between the Parties’ attorneys, the Parties agreed to attend a private mediation session. To

1 prepare for mediation, Plaintiff's counsel interviewed Class Members and extensively reviewed policy
2 documents and Class Members' time and pay records to perform a thorough analysis. Further, Plaintiff's
3 Counsel worked with experts to analyze time-keeping and payroll data related to the claims in order to
4 evaluate the potential damages and penalties

5 7. On June 12, 2023, the Parties attended private mediation with David Rotman, a respected
6 wage and hour mediator. The action did not settle.

7 8. Accordingly, the Parties again proceeded with litigation. Defendant took Plaintiff's
8 deposition and Plaintiff took the deposition of Defendant's representative. Plaintiff's counsel also spent
9 considerable time preparing the Motion for Class Certification, including engaging an expert to provide
10 opinions at the certification stage.

11 9. On February 6, 2024, the Parties attended a second day of mediation with Jeff Ross, a
12 respected wage and hour mediator. After a full day of negotiating, the Parties agreed to a settlement
13 amount and executed a Memorandum of Understanding with the material terms the parties had agreed to.
14 The Parties spent the next few months negotiating the terms of the Settlement, which was finalized in May
15 of 2024. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of
16 both sides to serve the interests of their clients.

17 10. Pursuant to the terms of the Settlement, the Parties stipulated to stay the Federal Court
18 Action pending approval of the Settlement in the State Court Action before this Court. To that end, the
19 Parties agreed that Plaintiffs would file a First Amended Complaint in the State Court Action to allege the
20 class claims asserted in the Federal Court Action. Plaintiff's First Amended Complaint was filed on May
21 24, 2024.

22 11. On July 25, 2024, Plaintiff submitted the Settlement to the LWDA pursuant to Lab. Code
23 § 2699(1)(2).

24 12. Defendants' records show the Class consists of approximately 1,500 individuals, making
25 joinder of all Class Members impracticable. Further, the Class is readily ascertainable from Defendants'
26 business records because all Class Members are current or former employees of Defendants.

27 13. Plaintiff alleged that Defendants maintained uniform employment policies and/or practices
28 that illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage

1 statements, and waiting time pay. Plaintiff's allegations present common legal and factual questions of,
2 *inter alia*, whether Defendants applied the same scheduling, timekeeping, minimum and overtime pay,
3 meal period, and rest break policies to all Class Members; whether these policies and practices resulted in
4 Labor Code violations; whether Defendant's conduct was intentional; and whether Class Members are
5 entitled to penalties. These common questions could be resolved using Class Members' schedules, time
6 punches, and payroll records, Defendants' corporate representative's testimony, written communications
7 between Defendants and Class Members, and Class Member declarations.

8 14. Plaintiff alleges that she and other Class Members were employed by Defendants and
9 injured by Defendants' common wage and hour policies and practices, including Defendants'
10 scheduling, timekeeping, compensation, meal period, and rest break practices and policies. Through
11 documents and information exchanged in formal discovery, including production of thousands of pages
12 of documents by Defendants and the Parties' depositions, Plaintiff confirmed that these common
13 policies and practices similarly affected Plaintiff and the Class. Plaintiff's Counsel fully understood the
14 strengths and weaknesses of the claims before the Parties reached a settlement.

15 15. Plaintiff contend that her claims are based on Defendant's common, class-wide policies
16 and procedures, and that liability could be determined on a class-wide basis without dependence on
17 individual assessments of liability

18 **Exposure Analysis**

19 16. While Plaintiff and her counsel believed and continue to believe this is a strong case for
20 certification, the significant risks and expenses associated with class certification and liability
21 proceedings must be taken into account.

22 17. In determining whether the amount offered in settlement was reasonable, Plaintiff's
23 Counsel weighed that figure against many risk factors. Although the amount of the Class' maximum
24 potential damages – if proven – is substantial, legitimate and serious risks compelled a considerable
25 discount for settlement.

26 18. Plaintiff's Counsel calculated Defendants' total potential exposure assuming Plaintiff
27 prevailed on all aspects of her claims at trial, but weighed that value against the chance of succeeding
28 at class certification and trial. If Plaintiff continued to prosecute the claims rather than accept a

1 settlement, Plaintiff would have faced deadlines to file a motion for class certification, had to have
2 engaged in more formal written discovery and taken additional depositions, expended time and
3 resources to resolve disputes, prepared and filed potential dispositive motions and/or discovery motions,
4 and engaged in extensive trial preparation. An adverse ruling at any one of these stages could have
5 prevented the Class from obtaining any recovery

6 19. Plaintiff's minimum wage and overtime claims were premised on the theories that
7 Defendants failed to compensate class members for all time worked, including by requiring them to
8 conduct temperature checks and health screenings prior to clocking in for work. Assuming unpaid wages
9 of five minutes per shift, Plaintiff's expert calculated a maximum exposure of \$690,142. However,
10 because any time spent completing the Covid-19 screenings was not recorded, this theory would be
11 largely dependent on competing testimonial evidence about Defendants' practices. Plaintiff would need
12 supportive testimony through depositions and declarations (which will likely be countered with
13 Defendants' own testimony received by Class Members) to support that wages were unpaid under these
14 theories in every pay period. The reliance on supportive testimony through depositions and declarations
15 renders the value of this claim uncertain. Furthermore, Defendants provided evidence that these
16 temperature checks ended in March of 2023, thereby reducing Defendants' exposure and the estimated
17 damages. As such, Plaintiffs assumed there was a 60% chance of success at class certification and 40%
18 chance of success on the merits at trial, rendering the claim worth approximately \$165,634.

19 20. Plaintiff's meal period claim was potentially worth about \$325,906 in light of the
20 violations shown in the records. However, Defendants argued that they maintained compliant written
21 policies and that employees could waive their meal periods. Further, they provided evidence that they
22 paid a significant amount of meal period premiums. Thus, Plaintiffs discounted this claim for the risk
23 that the damages could at least be reduced, and that the claim would be hard to certify with a compliant
24 policy and the existence of written meal period waivers. As such, Plaintiffs' counsel believed there was
25 a 50% chance succeeding at class certification and a 30% chance at trial, resulting in a value of \$48,886.

26 21. Plaintiff alleged Defendants failed to provide rest breaks at the required intervals due a
27 rest break policy that only authorized rest breaks in four-hour increments rather than "major fractions
28 thereof." Plaintiff also alleged that Defendants failed to relieve Class Members from duty by requiring

1 them to monitor their radios at all times. If Plaintiffs could prove a 100% violation rate for each shift
2 over 3.5 hours, then damages could reach up to \$7,187,710. However, Defendants argued they complied
3 with their obligations to provide rest breaks, revised the policy documents to provide for timely rest
4 breaks, and provided evidence that Class Members were instructed to leave their radios unattended at
5 work during breaks. As such, Plaintiffs were unsure if they could certify this claim since it would
6 depend heavily on class member testimony. Plaintiff's counsel believed there was a 60% chance
7 succeeding at class certification and a 30% chance at trial, resulting in a value of \$1,293,788.

8 22. Plaintiff argued that Class Members were not reimbursed for expenses related to personal
9 cell phones. Plaintiffs' expert calculated unreimbursed business expenses to be valued at around
10 \$1,718,796 assuming \$30 of unreimbursed cell phone expenses per month. However, Defendants argued
11 that they maintained a policy and practice permitting class members to seek reimbursement of business
12 expenses. Further, even if class members did have to resort to their personal cell phones for work, there
13 is no source of common proof as to who incurred expenses and whether they sought reimbursement,
14 making the claim difficult to prove at trial. Plaintiff's counsel believed there was a 20% chance
15 succeeding at class certification and a 20% chance at trial, resulting in a value of \$68,752.

16 23. Plaintiff's Counsel investigated and evaluated direct and derivative claims for failure to
17 maintain accurate itemized wage statements. Plaintiff argued that Defendants failed to accurately identify
18 the rate of pay when they paid double-time wages. If Plaintiff could prove that all wage statements were
19 inaccurate, then damages could reach \$5,099,750. However, Defendants argued that despite the rate listed,
20 Class Members could determine the actual rate paid by simple math. Additionally, Plaintiff considered
21 the fact that Defendant could argue that Plaintiff could not show that Class Members suffered an "injury"
22 because of the wage statement violations, as required by Labor Code section 226. Plaintiff would also
23 have to overcome damaging precedent to prove the Class deserved penalties. *See, e.g., Alonzo v.*
24 *Maximum, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011)(finding insufficient evidence of bad
25 faith or actual injury). Thus, Plaintiff discounted this claim accordingly, assuming a 60% chance of class
26 certification and 30% chance of proving liability, which brings the value down to about \$917,955.

27 24. Plaintiff's Counsel also considered the arguable presence of derivative waiting time
28 penalties, and weighed the potential recoveries against probable defenses. Specifically, Defendants could

1 argue that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under
2 Labor Code § 203. Moreover, Plaintiff would not recover these derivative penalties if she failed to prove
3 the underlying claims. Thus, although these penalty claims could have reached \$2.2 million if Plaintiff
4 prevailed, Plaintiff discounted this claims assuming a 40% chance of class certification and 30% chance
5 at the merits, resulting in a realistic value of \$266,061.

6 25. The PAGA claim presented even higher hurdles. Although Plaintiff’s Counsel found
7 Defendants’ exposure could potentially reach approximately \$5,173,700 under Lab. Code § 2699(f),
8 assuming the initial penalty rate of \$100 for each pay period, Plaintiff would have to prove a violation
9 in every pay period. Most importantly, the Court would have discretion to reduce the PAGA award
10 based on whether the amount of the award would be “unjust, arbitrary and oppressive, or confiscatory.”
11 Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so wished. Plaintiff
12 was doubtful she could recover any PAGA penalties, especially if a large class judgment was entered
13 for the same violations. Accordingly, Plaintiff could not place a high value on the PAGA penalties, and
14 therefore allocated \$100,000 of the Gross Settlement Amount to settle these claims.

15 **Incentive Award**

16 26. Plaintiff had the option to pursue her claims individually, but instead chose to pursue this
17 class action, delaying individual recovery until approval of a class action settlement. Throughout the
18 case, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the class claims,
19 maintained regular contact with counsel, was available on the two full days of mediation and
20 communicated with their attorneys during the days of mediation to answer critical questions, and
21 reviewed the Settlement to make sure it was fair to the Class. Plaintiff was also deposed, and provided
22 crucial testimony in support of mediations and in preparation of her Motion for Class Certification. None
23 of the other 1,500 Class Members had shown any interest in bearing the expense and burden of litigating
24 their own claims. No action would likely have been taken by Class Members individually, and no
25 compensation would have been recovered for them, but for Plaintiff’s services on behalf of the Class.

26 27. The amount of Plaintiff’s requested Incentive Award was not negotiated until after the
27 Parties agreed to the Gross Settlement Amount and many other terms.

28. At the final approval stage, Plaintiff will further support the request for an Incentive Award by a declaration that addresses the factors for the award.

Counsel's Qualifications

29. Aegis Law Firm prosecutes wage and hour cases, including class actions on behalf of employees and others who have had their rights violated. Aegis, either on its own, or with co-counsel is currently serving as plaintiffs' counsel of record in dozens of wage and hour and employment class action cases pending in both state and federal court.

30. The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions.

31. Aegis has litigated and successfully resolved many wage and hour class action cases involving failure to pay wages and derivative Labor Code claims and penalties. *See, e.g., Roman, et al. v. TRM Manufacturing, Inc.*, Riverside Superior Court, Case No. RIC1706458 (class certification granted on December 17, 2020 for all current and former non-exempt workers' on issues of rounding, meal period, and rest period claims); *Gamboa v. Kamran, et al.*, San Bernardino Superior Court, Case No. CIVDS1605273 (class certification granted on September 16, 2019, for factory workers on issues of rounding, automatic deduction of first meal period, and second meal period); *Romo, et. al. v. GMRI, Inc. d/b/a/ Olive Garden*, United States District Court Central District of California, Case No. EDCV-12-0715-JLQ (class certification granted for restaurant workers' rest period claims); *Sawyer v. Retail Data, LLC*, Orange County Superior Court, Case No. 30-2014-00753767-CU-OE-CXC (unpaid wage and rest break claims for piece rate workers); *Gonzalez v. SFFI Company, Inc., et. al*, San Bernardino County Superior Court, Case No. CIV DS1504287 (unpaid wages, meal period and rest break claims for non-exempt employees); *Antoine v. Riverstone Residential California, Inc., et. al*, Sacramento County Superior Court, Case No. 34-2013-00155974 (rate of pay, on-call time, unpaid wage, meal period, rest break, and expense reimbursement claims for non-exempt employees); *Nguyen v. Pharmerica*, Orange County Superior Court, Case No. 30-2014-00716072-CU-OE-CXC (unpaid wages and unreimbursed expenses for pharmacists); *Orellana v. Westlake*, Los Angeles County Superior Court, Case No. BC539614 (unpaid overtime, meal period and rest break claims for call center employees); *Kent v. Mountain View Child Care, Inc.*, Los Angeles County Superior Court, Case No. BC539633 (minimum

wage, overtime, meal period, and rest break claims for hospital workers); *Durroh v. East West Bank*, Los Angeles County Superior Court, Case No. BC528860 (overtime claims for failure to include bonuses in regular rate of pay for bank workers); *O'Brien et al. v. Pizza Hut of Southeast Kansas, Inc. et al.*, Riverside County Superior Court, Case No MCC 1301030 (meal period and expense reimbursement claims for delivery drivers); *Bell v. Prime Healthcare*, Orange County Superior Court, Case No. 30-2011-00475240-CU-OE-CXC (overtime claims for failure to include shift premiums in regular rate of pay and failure to provide meal and rest periods to hospital workers), *Grana v. Toys R US-Delaware, Inc.*, Central District of California, Case No. 2:13-cv-01302-DSF-JCG (bag check claims for unpaid wages and failure to provide meal periods and rest breaks to retail employees); *Mendez v. H.J. Heinz Company, L.P., et. al*, Orange County Superior Court, Case No. 30-2013-00644915-CU-OE-CXC (failure to pay all wages to factory workers due to rounding practice); *Fresh & Easy Wage and Hour Cases*, Los Angeles Superior Court, Cas No. JCCP 4705 (failure to provide meal and rest periods to supermarket workers); *Lunsford v Stater Bros.*, Riverside Superior Court, Case No. RIC 1104475 (failure to provide meal and rest periods to supermarket workers); *Gregg v. Belo*, Riverside Superior Court, Case No. RIC 523697 (unpaid wages and missed meal and rest periods due to misclassification of newspaper delivery employees); *Brown v. Experian Information Solutions, Inc., et. al.*, Orange County Superior Court, Case No. 30-2012-00375163 (misclassification of engineers and similar positions); *Tereth v. Shakey's USA, Inc.*, Los Angeles Superior Court, Case No. BC441359 (failure to provide meal and rest periods to restaurant employees); *Azurin v. Harbor Distributing LLC, et. al.*, Los Angeles Superior Court, Case No. BC421392 (failure to pay overtime wages, provide meal and rest periods, reimburse business expenses to Account Managers); *Caffero v. ABC* (failure to provide meal periods and reimburse expenses of therapists). All cases cited above were successfully resolved for the plaintiff classes.

32. Kashif Haque received his J.D. in 2001 from Washington University School of Law. While in law school, Mr. Haque was a member of the Law Review Editorial Board, author of an article published in the Law Review, Executive Board Member of Moot Court, and a member of the Dean's List. He received a Bachelor's of Science in Business Administration from the University of Central Missouri in 1998, where he was a member of the Beta Alpha Psi honors fraternity.

1 33. Since 2004, Mr. Haque has exclusively focused his practice on plaintiff's employment
2 litigation with a specific focus on wage and hour claims. Since then, he has represented over 500,000
3 employees with their employment claims, many of which included wage and hour claims. He has been
4 appointed class counsel in approximately 100 cases and is currently litigating over 150 employment
5 wage and hour class action cases.

6 34. Mr. Haque authored a book on employment litigation strategies with West Publishing
7 and has been invited to speak on class action and wage and hour issues on numerous occasions. He has
8 spoken at seminars by the State Bar of California, California Employment Lawyer's Association
9 (CELA), Orange County Bar Association, and various other CLE providers. Mr. Haque is the former
10 Chair for the Labor and Employment Section of the Orange County Bar Association. He was selected
11 as one of the Top 50 Attorneys in Orange County by Super Lawyers for 2017 and 2019. He has been a
12 Super Lawyer for every year from 2009 to the present. OC Register/Metro has selected him as one of
13 the Top 5 Employment Lawyers in Orange County for every year the list was published, from 2012 to
14 2018.

15 35. Samuel A. Wong is a graduate of University of Pennsylvania Law School, where he
16 received his J.D. in 2001. Mr. Wong received a Bachelors of Arts in Sociology from the University of
17 California at Berkeley in 1997.

18 36. After graduation from law school in 2001, the same year in which Mr. Wong took and
19 successfully passed the California Bar Exam, Mr. Wong moved to back to Los Angeles, California
20 where he was employed at Paul Hastings, Janofsky & Walker, LLP. While working in the employment
21 department at Paul Hastings, he was involved in numerous wage and hour class action lawsuits and
22 other employment related matters.

23 37. Mr. Wong became a founding partner of Aegis Law Firm, PC in 2003, and focused his
24 practice on plaintiff's side employment work. Throughout his years of practice, Mr. Wong represented
25 and obtained successful outcomes for his clients, including awards through arbitration and trial.

26 38. Mr. Wong is a member of the Orange County Bar Association, Orange County Trial
27 Lawyers Association, and California Employment Lawyers Association.

39. Mr. Wong was chosen by Law and Politics Magazine as a Super Lawyer Rising Star, representing one of the top 2.5% of lawyers under 40 in Southern California in 2011, 2012, 2013, and 2014. He was chosen by Law and Politics Magazine as a Super Lawyer in 2015, 2016, 2017, and 2018. Mr. Wong was also chosen as a Top Attorney in the field of employment law by OC Metro in 2014, 2015, and 2018.

40. Jessica L. Campbell is a partner at Aegis Law Firm. Ms. Campbell was admitted to the California Bar in December of 2011, and received her J.D. from Santa Clara University School of Law and her B.A. from the University of California, Berkeley. Ms. Campbell has dedicated her career to plaintiffs' side class actions. Ms. Campbell's experience includes successful work on class action appeals, class certification motions, and class settlements. She was chosen by Law and Politics Magazine as a Super Lawyer Rising Star, representing one of the top 2.5% of lawyers under 40 in Southern California in 2018-2021.

41. I am an associate at Aegis Law Firm. I was admitted to the California Bar in December of 2019. I received my J.D. from Chapman University Dale E. Fowler School of Law where I graduated cum laude. While in law school, I was a recipient of numerous honors, including Merit Scholarships and CALI Awards, and externed for Judge Di Cesare of the Orange County Superior Court. I received my B.A. from the University of California, Davis. While at Aegis Law Firm, I primarily focus my practice on representing plaintiffs in wage and hour class and representative actions.

42. Aegis Law Firm has performed significant work and expended litigation costs in prosecuting the matter with no guarantee of any payment.

43. At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs.

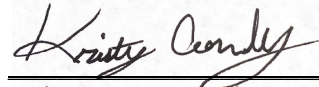
Exhibits

44. A true and correct copy of the Joint Stipulation of Settlement is attached hereto as **Exhibit 1.**

45. A true and correct copy of the LWDA's confirmation that my office submitted the Joint Stipulation of Settlement and this Motion is attached hereto as **Exhibit 2**.

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

3 Executed on July 25, 2024 at Irvine, California.

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6 Kristy R. Connolly
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