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OCT 14 2021
Filed
BRANDON E. RILEY, CLERK
Brandon E. Riley
DEPUTY

SEP 13 2021

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN JOAQUIN

17 JESSE MARTINEZ and DEENA
18 SAKHEL, as individuals and on behalf of
19 all others similarly situated,

20 Plaintiffs,

21 vs.

22 COGIR MANAGEMENT USA INC., a
23 Delaware corporation; and DOES 1
24 through 50, inclusive,

25 Defendants.

Case No.: STK-CV-UOE-2020-0001215

Assigned for all purposes to the Hon. ~~Carter Holly~~,
Dept. 10B *Erin Guy Castillo*

26 **[PROPOSED] ORDER GRANTING**
27 **PLAINTIFFS' MOTION FOR PRELIMINARY**
28 **APPROVAL OF CLASS ACTION**
SETTLEMENT

Date: October 7, October 8, October 13, October
14, or October 15, 2021

Time: 9:00 a.m.
Dept.: 10B

Actions Filed: January 24, 2020
January 23, 2020
FAC Filed: July 13, 2020
Trial Date: None Set

1 Plaintiffs Jesse Martinez and Deena Sakhel's (together, "Plaintiffs") application for an
2 Order Granting Preliminary Approval of Class Action Settlement was filed with the Court on
3 September 13, 2021, and a hearing was held before this Court on 10/14, 2021.
4 Plaintiffs' counsel, Nicholas Rosenthal of Diversity Law Group, appeared on behalf of Plaintiffs,
5 and Defendant's counsel, Diane Marie O'Malley / Winston K. Hu of Hanson Bridgett LLP,
6 appeared on behalf of Defendant Cogir Management USA, Inc. ("Defendant").

7 The Court has considered the Joint Stipulation of Settlement of Class and Representative
8 Action and Release of Claims ("Stipulation" or "Settlement Agreement") and all other papers
9 filed in this action.

10 NOW THEREFORE, IT IS HEREBY ORDERED:

11 1. This Court grants preliminary approval of the Settlement Agreement between
12 Plaintiffs and Defendant filed herewith. The Settlement Agreement appears to be fair, adequate,
13 and reasonable to the Class.

14 2. The Class Representatives and Defendant (hereafter, "Settling Parties"), through
15 their counsel of record in the Litigation, have reached an agreement to settle the class and PAGA
16 claims in the Litigation as set forth in the Settlement Agreement, on behalf of the Class (as
17 defined below and in the Settlement Agreement).

18 3. The Court hereby conditionally certifies the following Class for settlement
19 purposes only:

- 20 a. All current and former non-exempt employees of Defendant in the State of
21 California who worked at any time during the period of February 1, 2019,
22 through April 14, 2021 (the "Non-Exempt Class" or "Non-Exempt Class
23 Members");
24 b. All current and former exempt employees of Defendant in the State of
25 California who were paid wages at any time between February 1, 2019,
26 through April 14, 2021 (the "Wage Statement Class" or "Wage Statement
27 Class Members"); and
28 c. Aggrieved Employees entitled to recover under the PAGA Payment.

Should for whatever reason the Settlement Agreement not become Final, the fact that the
Parties were willing to stipulate to certification of a class as part of the Settlement Agreement
shall have no bearing on, or be admissible in connection with, the Litigation or the issue of

1 whether a class should be certified in a non-settlement context.

2 4. The Court appoints and designates: (a) Plaintiffs Jesse Martinez and Deena
3 Sakhel as the Class Representatives and (b) Larry W. Lee, Kristen M. Agnew, and Nicholas
4 Rosenthal of Diversity Law Group, P.C.; William L. Marder of Polaris Law Group; and Timothy
5 B. Del Castillo and Kent L. Bradbury of Castle Law: California Employment Counsel as Class
6 Counsel for the Class. Class Counsel is authorized to act on behalf of the Class with respect to all
7 acts or consents required by, or which may be given, pursuant to the Settlement Agreement, and
8 such other acts reasonably necessary to finalize the Settlement Agreement and its terms. Any
9 Class Member may enter an appearance through his or her own counsel at such Class Member's
10 own expense. Any Class Member who does not enter an appearance or appear on his or her own
11 behalf will be represented by Class Counsel.

12 5. The Court hereby approves the terms and conditions provided for in the
13 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
14 falls within the range of reasonableness of a settlement, including the amount of the PAGA
15 penalties, and appears to be presumptively valid, subject only to any objections that may be
16 raised at the final fairness hearing and final approval by the Court. It appears to the Court on a
17 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class
18 Members when balanced against the probable outcome of further litigation relating to liability
19 and damages issues. It also appears that investigation, research, and court proceedings have been
20 conducted so that counsel for the Settling Parties are able to reasonably evaluate their respective
21 positions. It appears to the Court that settlement at this time will avoid substantial additional
22 costs by all Settling Parties, as well as avoid the delay and risks that would be presented by the
23 further prosecution of the Litigation. It also appears that settlement has been reached as a result
24 of intensive, serious, and non-collusive arm's-length negotiations.

25 6. A final fairness hearing on the question of whether the proposed Settlement
26 Agreement, the allocation of payments to Settlement Class Members, attorneys' fees and costs to
27 Class Counsel, the payment to the Settlement Administrator, the payment to the Labor
28 Workforce & Development Agency, and the Class Representative Incentive Awards should be

1 finally approved as fair, reasonable, and adequate as to the members of the Class is hereby set for
2 February 15, 2022 at 9:00am in this Court.

3 7. The Court hereby approves, as to form and content, the Notice of Class Action
4 Settlement (“Notice Packet”) to be sent to Class Members, which is attached herewith as **Exhibit**
5 **A**. The Court finds that distribution of the Notice Packet to Class Members substantially in the
6 manner and form set forth in the Settlement Agreement and this Order meets the requirements of
7 due process and shall constitute due and sufficient notice to all parties entitled thereto.

8 8. The Court appoints and designates Phoenix Settlement Administrators as the
9 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
10 approved Notice Packet to Class Members using the procedures set forth in the Settlement
11 Agreement.

12 9. Any Class Member may choose to opt out of and be excluded from the Settlement
13 as provided in the Settlement Agreement and Class Notice, and by following the instructions for
14 requesting exclusion. Any person who timely and properly opts out of the Settlement will not be
15 bound by the Settlement Agreement or have any right to object, appeal, or comment thereon.
16 Any requests for exclusion must be in writing and signed by each such Class Member opting out
17 and must otherwise comply with the requirements delineated in the Notice Packet. Class
18 Members who have not requested exclusion by submitting a valid and timely request by the
19 deadline shall be bound by all determinations of the Court, the Settlement Agreement, and
20 Judgment.

21 10. Any Class Member may object to the Settlement Agreement or express his or her
22 views regarding the Settlement Agreement, and may present evidence and file briefs or other
23 papers that may be proper and relevant to the issues to be heard and determined by the Court as
24 provided in the Notice Packet.


25 11. The Motion for Final Approval shall be filed by the Class Representatives no later
26 than sixteen (16) court days before the Settlement Fairness Hearing.

27 12. The Court reserves the right to adjourn or continue the date of the Settlement
28 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to

1 the Class, and retains jurisdiction to consider all further applications arising out of or connected
2 with the Class Settlement Agreement.

3 IT IS SO ORDERED.

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5 DATED: 10/14/21

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HON. CARTER HOLLY
SUPERIOR COURT OF CALIFORNIA

EXHIBIT A

Jesse Martinez and Deena Sakhel v. Cogir Management USA Inc.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
(CASE NO. STK-CV-UOE-2020-0001215)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

**IF YOU ARE A CURRENT OR FORMER EMPLOYEE OF COGIR MANAGEMENT USA, INC.
 (“COGIR”) IN THE STATE OF CALIFORNIA AND YOU**

- **WORKED AS A NON-EXEMPT EMPLOYEE AT ANY TIME DURING THE PERIOD OF
FEBRUARY 1, 2019, THROUGH APRIL 14, 2021;**

AND/OR

- **WORKED AS AN EXEMPT OR NON-EXEMPT EMPLOYEE AND WERE PAID WAGES AT
ANY TIME, DURING THE PERIOD OF FEBRUARY 1, 2019, THROUGH APRIL 14, 2021**

YOU MAY BE ELIGIBLE TO RECEIVE MONEY AS PART OF A SETTLEMENT.

The San Joaquin County Superior Court (“Court”) authorized this Notice to be sent by Phoenix Settlement Administrators (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

**COGIR CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING
IN THIS SETTLEMENT.**

«BarcodeString»
SIMID «SIMID»
ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY
\$«MERGED_EstSettAmnt_CALC»
THROUGH THIS CLASS ACTION
SETTLEMENT**

- Two former employees, Jesse Martinez and Deena Sakhel (“Named Plaintiffs”), have sued Defendant Cogir Management USA Inc. (“Cogir” or “Defendant”) on behalf of themselves and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement, and the Court has preliminarily approved it.
- The settlement resolves the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue Defendant separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is
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	shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.
You Can ASK TO BE EXCLUDED FROM THE SETTLEMENT (Deadline: _____, 2021)	If you ask to be excluded from the settlement, you will get no payment from the settlement, but you will keep any rights to sue Defendant separately for the same legal claims made in this lawsuit. Important: You cannot ask to be excluded <u>and</u> still get a settlement payment.
You Can OBJECT TO THE SETTLEMENT (Deadline: _____, 2021)	If you do not like the settlement, you can send a written objection to the Settlement Administrator by the deadline. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. Important: If you object to the settlement, you cannot also ask to be excluded.

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read this Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What is this Lawsuit About?

In the lawsuit, the Named Plaintiffs claimed that Defendant: (1) failed to provide accurate wage statements; (2) failed to pay all minimum wages for all hours worked; (3) failed to provide off-duty meal and rest periods; (4) failed to keep accurate payroll records; and (5) engaged in unfair and unlawful business practices in violation of Business and Professions Code § 17200, *et seq.* Named Plaintiffs also asserted claims under Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”) based upon the above-stated violations; and claims for attorneys’ fees and costs. Defendant denies the allegations in the lawsuit and denies it has engaged in any wrongdoing.

3. Why is this a Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Jesse Martinez and Deena Sakhel), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The San Joaquin County Superior Court is in charge of the case. The lawsuit is known as *Jesse Martinez and Deena Sakhel v. Cogir Management USA Inc.*, Case No. STK-CV-UOE-2020-0001215.

4. Why is There a Settlement?

The Court did not decide in favor of Named Plaintiffs or Defendant. Named Plaintiffs think they could have won at trial. Defendant thinks the Named Plaintiffs would not have won anything. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. The class representative and the attorneys think the settlement is best for class members.

5. How Do I Know If I Am Part of the Settlement?

The Court has decided that (1) all current and former non-exempt employees of Cogir in the State of California who worked at any time during the period of February 1, 2019, through April 14, 2021 (the "Non-Exempt Class"); and (2) all current and former exempt and non-exempt employees of Cogir in the State of California who were paid wages at any time between February 1, 2019, through April 14, 2021 (the "Wage Statement Class"), are class members.

6. What Does the Settlement Provide?

The proposed settlement provides for a cash payment by Defendant of \$1,300,000.00 to fully and finally resolve all claims in the lawsuit (referred to as the "Maximum Settlement Amount"). The total amount to be distributed to class members who can be located and who do not exclude themselves from the settlement will be the value of the Class Settlement Amount after deducting the following (the "Net Settlement Amount"): (a) settlement administration costs not to exceed \$13,000.00; (b) class representative incentive award to Named Plaintiffs not to exceed \$10,000.00 each for their work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable); (c) Class Counsel's attorneys' fees not to exceed \$455,000.00; (d) Class Counsel's actual litigation costs and expenses as supported by declaration not to exceed \$25,000.00; and (f) payment of \$75,000.00 to the Labor and Workforce Development Agency. **Class Counsel's attorneys' fees and costs and Named Plaintiffs' class representative service award remain subject to Court approval.**

No portion of the Net Settlement Amount will be returned to Defendant under any circumstances.

7. How Much Will My Payment Be?

Your estimated share of the settlement is shown above and is based on the number of your applicable pay periods during the Covered Period. Based upon Defendant's records, the number of pay periods you worked during the Covered Period is determined to be ***, and the number of pay periods in which you received a wage statement reflecting the payment of wages during the Covered Period is determined to be ***. Your total number of applicable pay periods during the Covered Period is ***. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of applicable pay periods, see below (Question 9).

8. How Do I Get a Payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check within about fourteen (14) calendar days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

9. What If I Believe the Information is Inaccurate?

If you believe your number of applicable pay periods during the Covered Period is inaccurate, you may dispute it by sending a letter to *****, [ADMINISTRATOR'S ADDRESS] no later than _____, 2021. Be sure to include your name, address, telephone number, last four digits of your Social Security number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

10. What Am I Giving Up to Get a Settlement Payment?

Unless you request to be excluded from the settlement, you remain a part of the settlement class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant for any legal claims arising during the Covered Period that are based on the facts alleged by Named Plaintiffs in the lawsuit.

After the Court has approved the settlement, each class member who has not submitted a timely and valid request to be excluded from the settlement will be bound by the approval and judgment, and will thereby release, Defendant Cogir Management USA Inc. and its affiliates, parents, joint ventures, owners, partnerships and any and all affiliated, related organizations, and each of their company-sponsored benefit plans, and their respective successors and predecessors in interest, all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and each of their past, present and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, attorneys, accountants, auditors, consultants, attorneys, vendors, contractors (including Aureon, Paychex PEO, Inc. and Oasis Outsourcing, Inc.), insurers and reinsurers.

Specifically, you will be giving up or "releasing" the claims described below:

Released Claims:

- Non-Exempt Class: All claims for or arising under Labor Code §§ 226.7, 510, 512, 558, 1174(d), 1194, 1197, and 1197.1, and associated penalties under Labor Code §§ 201, 202, 203, and 226, during the period of February 1, 2019 through April 14, 2021.
- Wage Statement Class: All claims for or arising under Labor Code § 226, during the period of February 1, 2019, through April 14, 2021.
- Class Members will also release associated PAGA claims based on the foregoing during the period of February 1, 2019, through April 14, 2021.

11. How Do I Exclude Myself from the Settlement?

To exclude yourself from the settlement (also referred to as "opt-out"), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *Jesse Martinez and Deena Sakhel v. Cogir Management USA Inc.* settlement, in substance "I wish to opt out of the class action and the settlement of the case *Jesse Martinez and Deena Sakhel v. Cogir Management USA Inc.*"

Be sure to include your name, address, telephone number, last four digits of your Social Security number, and your signature. You must mail your exclusion letter postmarked no later than _____, 2021, to the Settlement Administrator at *****.

If you submit a timely and valid “opt-out” request, you will no longer be a member of the class and you will not receive any money from the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens in this lawsuit. You will keep any rights to sue (or continue to sue) Defendant in the future for the same legal claims made in this lawsuit, at your own expense.

12. If I Don't Exclude Myself, Can I Sue Defendant or Get Money from the Settlement?

If you do not exclude yourself from the settlement, you cannot sue Defendant for any of the claims that this settlement resolves. If you have a pending lawsuit against Defendant, speak to your lawyer in that case immediately. You may have to exclude yourself from this case to continue on with your own lawsuit. Remember, the exclusion deadline is _____, 2021.

Again, if you exclude yourself from this settlement, you cannot get money from this settlement.

13. How Do I Tell the Court that I Don't Like the Settlement?

If you are a class member and you do not exclude yourself from the settlement, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve the settlement. If you object in time and follow the procedures set out in this section, your objection will be considered.

You must object to the proposed settlement in writing. You may also appear at the final approval hearing for the settlement (see section 17 below for details as to when this hearing will take place), either in person or through an attorney at your own expense, provided you submit a timely written objection to the Settlement Administrator.

All objections must be signed by you and must include: (1) your full name; (2) your dates of employment; (3) the last four digits of your Social Security number and/or Employee ID number; (4) a written statement of the basis for your objection; and (5) whether you intend to appear at the Final Approval/Settlement Fairness Hearing. You may also include any copies of papers, briefs, or documents upon which the objection is based. You must mail your objection postmarked no later than _____, 2021, to the Settlement Administrator at *****.

14. What is the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the class. Excluding yourself, on the other hand, is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court.

15. Do I Have a Lawyer in this Case?

The Court decided that the law firms of Diversity Law Group, Polaris Law Group, and Castle Law: California Employment Counsel, which represent the Named Plaintiffs, are also qualified to represent you and all class members. You will not be charged for these lawyers. The law firm is referred to as “Class Counsel.” If you want to be represented by your own lawyer, you may hire one at your own expense.

16. How Will the Attorneys for the Class and the Class Representative be Paid?

The attorneys for the Named Plaintiffs and the class will be paid from the Class Settlement Amount. Class

Counsel will ask for up to \$455,000.00 in attorneys' fees and for actual litigation costs incurred up to a maximum of \$25,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 17 below for details as to when this hearing will take place). Class members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, a service payment for the Named Plaintiffs of an amount up to \$10,000.00 each will be paid from the Class Settlement Amount for her work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

17. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable Jayne Lee on _____, 2021, at ____ a.m., in Courtroom 10C of the Superior Court of California for the County of Kern, located at 1415 Truxtun Ave., Bakersfield, California 93301, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them and will listen to people who have timely submitted a valid written objection. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment against Defendant, and all class members who have not requested exclusion will be deemed to have waived the Released Claims set forth above.

18. How Do I Get More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

19. What is the Contact Information for Class Counsel?

The addresses for Class Counsel are as follows:

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Telephone: (916) 245-0122

WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

Jesse Martinez and Deena Sakhel v. Cogir Management USA Inc.
c/o Phoenix Settlement Administrators
Address
City, CA, Zip
Toll-Free Phone Number: [insert]

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

PLEASE DO NOT CONTACT DEFENDANT, ITS MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.