

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
JOSE GARCIA

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
JOSE GARCIA

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

JOSE GARCIA, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

TURN KEY SCAFFOLD, LLC, a California
limited liability company; and DOES 1 through
100, inclusive,

Defendants.

Case No. 37-2020-00021177-CU-OE-CTL

*[Case assigned for all purposes to the Hon. Kenneth
J. Medel, Dept. C-66]*

**DECLARATION OF SCOTT M.
LIDMAN IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE
AWARD, AND ATTORNEYS' FEES
AND COSTS**

Date: February 18, 2022
Time: 9:30 a.m.
Dept.: C-66

Action Filed: June 19, 2020
Trial Date: None Set

1 I, SCOTT M. LIDMAN, declare as follows:

2 1. I am a shareholder and principal of the law firm Lidman Law, APC, and counsel for the
3 named Plaintiff Jose Garcia (“Plaintiff”) and the proposed Settlement Class in the above-captioned
4 matter. I am a member in good standing of the bar of the State of California and am admitted to practice
5 in this Court. I have personal knowledge of the facts stated in this declaration and could testify
6 competently to them if called upon to do so.

7 2. I am a 1998 graduate of Santa Clara University School of Law, where I graduated *summa*
8 *cum laude*. During law school, I worked as a summer associate for the international employment law
9 firm of Littler Mendelson, P.C., located in Los Angeles, California.

10 3. Since graduating from law school, my practice has focused exclusively on employment
11 litigation. In September 1998, I began working as an associate attorney at the international law firm of
12 Littler Mendelson P.C., at its Los Angeles office, which according to its website is the largest law firm
13 in the world exclusively devoted to representing management in employment, employee benefits and
14 labor law matters.

15 4. In 2000, I left Littler Mendelson to work at the Los Angeles office of Jones Day, which
16 was at the time one of the largest international firms in the world. During my employment at Jones
17 Day, I worked exclusively in the labor and employment department. In or around 2003, I went to work
18 at the law firm of Loeb & Loeb, again working exclusively in the Labor & Employment department. In
19 2008, I returned to Littler Mendelson, was promoted to Shareholder in 2009, and from 2008 until the
20 end of 2017, I practiced exclusively labor and employment law, with a strong emphasis and most of my
21 time working on wage and hour class actions venued in both state and federal courts. During that time
22 and my legal career in general, I also worked on a number of single and multi-plaintiff wage and hour
23 matters as well.

24 5. During my employment at Littler Mendelson, I played a significant role in the class
25 actions that I was staffed on, and ran many on my own both as an Of Counsel and as a Shareholder. In
26 particular, I received a wide-array of wage and hour class action experience performing the following
27 types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions from state court
28

1 to federal court; drafting and responding to written discovery; drafting and opposing discovery related
2 motions; arguing discovery related motions; drafting motions to consolidate related matters;
3 interviewing putative class members and obtaining declarations in connection with class certification;
4 drafting oppositions to motions for class certification; drafting motions for decertification following
5 class certification; conducting exposure analyses to assess the strengths and weaknesses of asserted
6 claims, the likelihood of prevailing at class certification and potential damages resulting from such
7 claims; drafting mediation briefs; serving as the primary contact to in-house counsel; deposing named
8 plaintiffs and putative class members; deposing retained expert witnesses; and defending the depositions
9 of corporate witnesses. I also was involved in the negotiations and settlements of many large wage and
10 hour class actions. In short, I played an integral role in all aspects of litigation from the inception of a
11 matter through and beyond class certification. I also supervised the work of several junior attorneys
12 who were staffed on the same wage and hour class actions.

13 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
14 actions that I performed substantial work on while I was a shareholder at Littler Mendelson:

- 15 ► *Ortega v. J.B. Hunt Transport, Inc.*, Case No. 07-cv-8336-RGK-AFMx, United
16 States District Court, Central District of California, Honorable Gary Klausner,
17 presiding¹.
- 18 ► *Aceves v. J.B. Hunt Transport, Inc.*, Case No. CIVDS1306133, California
19 Superior Court, County of San Bernardino, Honorable Michael Sachs, presiding.
- 20 ► *Moreno v. J.B. Hunt Transport, Inc.*, Case No. BC388612, California Superior
21 Court, County of Los Angeles, Honorable Mel Red Recana, presiding.
- 22 ► *Newcomb v. J.B. Hunt Transport, Inc.*, Case No. RG16815734, California
23 Superior Court, County of Alameda, Honorable Winifred Smith, presiding.
- 24 ► *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. 12-cv-08590-PA-MAN,
25 United States District Court, Central District of California, Honorable Percy
26 Anderson, presiding.

27 ¹ My work on this matter including proceedings not only in District Court, but also work before the United States Court of
28 Appeals for the Ninth Circuit as well as the United States Supreme Court.

- 1 ▶ *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. BC388612, California
2 Superior Court, County of Los Angeles, Honorable Elihu Berle, presiding.²
- 3 ▶ *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
4 States District Court, Central District of California, Honorable Percy Anderson,
5 presiding.
- 6 ▶ *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
7 States District Court, Central District of California, Honorable Percy Anderson,
8 presiding.
- 9 ▶ *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
10 Superior Court, County of Los Angeles, Honorable Jane Johnson, presiding.³
- 11 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
12 Superior Court, County of Orange, Honorable Thierry Patrick Colaw, presiding.
- 13 ▶ *Sakkab v. Luxottica Retail North America, Inc.*, Case No. 12-cv-00436-GPC-
14 KSC, United States District Court, Southern District of California.⁴
- 15 ▶ *Page v. Oakley, Inc.*, Case No. FCS041512, California Superior Court, County
16 of Solano, Honorable Paul Berman, presiding.
- 17 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00731617-CU-OE-CJC California
18 Superior Court, County of Orange, Honorable William Claster, presiding.
- 19 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00723846-CU-DE-CXC, California
20 Superior Court, County of Orange, Honorable William Claster, presiding.
- 21 ▶ *Sierra v. Oakley, Inc.*, Case No. 13-cv-00319-AG-JPR, United States District
22 Court, Central District of California, Honorable Andrew Guilford, presiding.⁵

26 ² My work on this matter included proceedings not only in the trial court, but also before the California Courts of Appeal
27 and the California Supreme Court.

27 ³ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

28 ⁴ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

28 ⁵ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ► *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
2 States District Court, Central District of California, Honorable Margaret Morrow,
3 presiding.
- 4 ► *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
5 States District Court, Central District of California, Honorable Margaret Morrow,
6 presiding.
- 7 ► *Khelghatian v. Comerica Bank, et al.*, Case No. 11-cv-7689-DSF-FFMx, United
8 States District Court, Southern District of California, Honorable John A.
9 Houston, presiding.
- 10 ► *Babasa v. Comerica Bank, et al.*, Case No. 11-cv-0595-JAH-BGS, United States
11 District Court, Central District of California, Honorable Margaret Morrow,
12 presiding.
- 13 ► *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
14 District Court, Central District of California, Honorable Margaret Morrow,
15 presiding.
- 16 ► *Khalili v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
17 States District Court, Northern District of California.
- 18 ► *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
19 California Superior Court, County of San Diego, Honorable Jeffrey B. Barton,
20 presiding.
- 21 ► *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
22 Court, County of Santa Clara.
- 23 ► *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior
24 Court, County of Los Angeles, Honorable Terry Green, presiding.
- 25 ► *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
26 Court, County of San Francisco.

1 ► *Smith v. Werner Enterprises*, Case No. 15-cv-02978-RS, United States District
2 Court, Northern District of California, Honorable Richard Seeborg, presiding.

3 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to open my own
4 law firm, Lidman Law, APC, to represent employees with work-related claims, including primarily
5 wage and hour claims and almost exclusively on a class-action basis. I am the President and Shareholder
6 of Lidman Law. Currently, over ninety percent (90%) of my practice is dedicated exclusively to the
7 prosecution of wage and hour class actions, and I am currently responsible for prosecuting over sixty-
8 five (65) wage and hour class actions filed in State courts throughout California, with several of them
9 having been removed to Federal courts. I believe that my professional experience renders me more than
10 qualified to serve as class counsel in this lawsuit involving claims of underpaid overtime and minimum
11 wages, meal and rest period violations, and derivative penalty claims. Not only have I litigated dozens
12 of wage and hour cases throughout my career involving similar claims, including the wage and hour
13 class actions identified above, I have litigated similar claims from both plaintiff and defense
14 perspectives. As a result, I am able to realistically assess and evaluate the facts and legal arguments
15 that can be made in pursuit and defense of similar wage and hour claims, as well as those facts and
16 arguments in support and in opposition to class certification. Consequently, I am able to appreciate the
17 significant risks, uncertainties, and delay involved in wage and hour class action litigation.

18 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
19 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
20 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
21 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-
22 2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge
23 William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412,
24 California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina*
25 *v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los Angeles,
26 Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case
27 No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F.

Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; and *Acuna v. Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S. Cunningham presiding.

9. As co-lead counsel for Plaintiff and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is a favorable result for the Settlement Class Members under the circumstances presented.

10. On June 19, 2020, Plaintiff filed a putative class action complaint against Turn Key in San Diego County Superior Court. On August 28, 2020, Plaintiff filed a First Amended Class and

Representative Action Complaint adding a cause of action for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). Plaintiff’s primary allegations are that Turn Key: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) made unlawful deductions from earned wages; (4) failed to pay all prevailing wages; (5) failed to provide all legally required meal periods; (6) failed to authorize and permit all legally required rest periods; (7) failed to provide accurate, itemized wage statements; (8) failed to indemnify all necessary business expenses; (9) failed to pay all wages upon termination; (10) engaged in unlawful business practices; and (11) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11. As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories of liability are related to Turn Key’s alleged failure to pay Settlement Class members for all time worked and its alleged failure provide Settlement Class members all legally compliant duty-free meal and rest periods. Specifically, Plaintiff alleges that he and Settlement Class members were not fully compensated for all of their time worked. Plaintiff alleges Turn Key would keep track of his hours and the hours of the other non-exempt employees, and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. Plaintiff also alleges that this time shaving and/or rounding practice utilized by Turn Key was not-even handed over time and would almost exclusively round and shave in Turn Key’s favor such that the employees were routinely underpaid for their time worked. Further, Plaintiff alleges that he and other non-exempt employees were not paid for compensable time worked traveling from job worksites to and/or from Turn Key’s yard.

12. Turn Key contends that it compensated Settlement Class members for all of their time worked and the employees executed arbitration agreements and class action waivers. Turn Key also contends that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-compensable. Turn Key further asserts that Plaintiff would be unable to certify this class given the individualized inquiries that would be required, and also that Turn Key’s rounding mechanism was, according to it, allegedly facially neutral.

1 13. Plaintiff alleges that he and Settlement Class members were not provided with all
2 legally-required off-duty first meal periods beginning before the end of the fifth hour of work.
3 Specifically, Plaintiff alleges Turn Key had a policy and practice of not keeping track of Plaintiff's
4 actual time worked. Further, due to his job duties, Plaintiff alleges he was often prevented from taking
5 meal periods that commenced before the end of the 5th hour of work and/or which were at least 30
6 minutes in length. Moreover, from the records produced by Turn Key, Turn Key maintained a policy
7 and practice of automatically deducted thirty minutes from Plaintiff and other non-exempt employees'
8 work time for purported meal periods, regardless of whether a meal period was actually taken.

9 14. Turn Key counters that it has always provided non-exempt employees with an
10 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
11 employee timekeeping records, if any, were solely the result of employee choice, rather than any policy
12 or practice of Defendant. Turn Key points out that it is only required to "provide" the opportunity to
13 take meal periods, not "ensure" meal periods are taken, and that they have always done so. Finally,
14 Turn Key contends that class action waivers will prevent certification, and also that Plaintiff's meal
15 period claim is not suited for class certification since individual inquiries would be required to assess
16 which employees took non-compliant meal periods, how many meal periods were non-compliant or
17 missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
18 period during a particular shift.

19 15. Plaintiff alleges that he and Settlement Class members were also not authorized and
20 permitted to take all required rest periods due to Turn Key's rest period policies and practices that fail
21 to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*.
22 Specifically, Plaintiff alleges that as a result of the work demands imposed by Turn Key, he was
23 prevented from taking his rest periods. Further, Turn Key maintains a facially unlawful rest period
24 policy in their employee handbook, stating, "[a]s part of orientation, each employee signed a consent
25 whereby the break periods and the rest breaks are merged such that each employee receives a full hour
26 for meal period, of which only 30 minutes is off the clock."
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1 16. Turn Key contends it has always maintained and enforced lawful rest period policies
2 and practices, and that Settlement Class Members were authorized and permitted to take all off-duty
3 rest periods in compliance with California law. Turn Key also contends that its employees voluntarily
4 chose to waive their rest breaks in exchange for an hour lunch. Further, Turn Key argues that
5 Plaintiff's rest period claim is inherently unsuited for class treatment because there are class action
6 waivers and because the claim requires an individualized inquiry into whether each Settlement Class
7 Member was in fact authorized and permitted to take a compliant rest period, which would devolve
8 into an unmanageable series of mini-trials.

9 17. Plaintiff alleges that Turn Key failed to reimburse him and Settlement Class members
10 for necessary business expenditures, including the use of their personal vehicle for work activities, as
11 required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.* (2014) 228
12 Cal.App.4th 1137. Plaintiff contends that Turn Key required Plaintiff to use his personal vehicle to
13 visit Turn Key's clients' work sites and would unlawfully deduct from his earned wages for safety
14 gear.

15 18. Turn Key contends that it provided employees the opportunity to report and receive
16 reimbursements for their mileage and they were in fact provided with tools or safety gear, and would
17 only purchase additional gear on their own volition. Turn Key also argues that this claim is not suitable
18 for class treatment because of the class waivers, and because it would require individualized
19 determinations as to whether each employee used a personal vehicle or how much was deducted for
20 tools for work related purposes and if so, how much of that use was a reasonable percentage of their
21 individual monthly expenses and mileage.

22 19. Plaintiff alleges that Turn Key failed to pay the prevailing wage on public works
23 projects. Plaintiff contends that the public works projects accounted for a small portion of Turn Key
24 projects in California during the relevant time period, including the Rams Stadium, a three-day project,
25 and only approximately 17 employees worked at their regular rate of approximately \$27.00 per hour.

26 20. Turn Key argues it has always paid employees properly on public works projects. Turn
27 Key points out that, as noted above, there was only one prevailing wage project in California during
28

1 the relevant time period, and thus potential damages for any employee are *de minimis*. Turn Key
2 further asserts that this claim is not amenable to class certification, as individual inquiries would be
3 required to determine whether each employee on each prevailing wage project was paid the proper
4 prevailing wage, and if they were underpaid, by how much, which would devolve into a series of
5 unmanageable mini-trials.

6 21. Plaintiff further alleges that Turn Key issued inaccurate wage statements in violation
7 of Labor Code § 226 as a result of the alleged unpaid wages and unpaid meal and rest period premium
8 wages described above.

9 22. Turn Key argues that meal and rest period claims cannot support a claim for wage
10 statement penalties. Turn Key further argues that its alleged wage statement violations could not be
11 shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee
12 “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code §
13 226(e) for imposition of penalties.

14 23. Plaintiff alleges that Turn Key is also liable for waiting time penalties under Labor
15 Code § 203 as a result of its failure to pay all wages and all meal and rest period premium wages.

16 24. Turn Key asserts it has strong defenses to the waiting time claim because there exist
17 good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties.

18 25. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged
19 Labor Code violations.

20 26. Turn Key argues that Plaintiff’s PAGA claim will fail for the same reasons that his
21 underlying claims will fail. Turn Key also maintains that, given its good faith defenses, this Court
22 would exercise its discretion to substantially reduce any PAGA penalties if it were to find Turn Key
23 liable.

24 27. These considerations, in addition to Turn Key’s financial condition which, if this case
25 did not settle, could have resulted in a situation where Turn Key would not have been able to pay a
26 judgment if one were ever rendered in favor of Plaintiff or could have resulted in bankruptcy before
27 then, not only bore heavily on the negotiations leading to the Settlement, but also confirm that the
28 Settlement is fair, adequate, and reasonable compromise in view of the risks of further litigation. As

1 detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff carefully vetted the claims at issue
2 and conducted a detailed statistical analysis of class-wide data to arrive at the calculated damages
3 figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
4 adequate, and reasonable in view of them.

5 28. After agreeing to participate in an early mediation, Turn Key informally produced a
6 sampling of timekeeping and payroll data for the putative class, as well as a putative class list with
7 hire and termination dates and other relevant documents and information relevant to the claims alleged.
8 After the detailed review of the time and payroll records and other documents and policies produced
9 by Turn Key, Class Counsel drew on their extensive experience in similar cases to assess the strengths
10 and weaknesses of Plaintiff's case. This discovery allowed the parties to assess the merits and value
11 of Plaintiff's claims and Turn Key's defenses thereto, if a settlement could not be reached.

12 29. On December 1, 2020, after extensive research and analysis, a full-day mediation was
13 held with Steven Mehta, Esq., a well-respected wage and hour class action mediator. During
14 mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification
15 of Plaintiff's claims, the legal basis for the claims and defenses, and Turn Key's financial condition
16 and ability to pay a class-wide settlement, which was impacted by the COVID-19 pandemic. The
17 Parties were unable to reach a settlement at mediation.

18 After the Parties' unsuccessful mediation, Turn Key filed a Petition to Compel Arbitration and
19 Stay Proceedings, contending that Plaintiff was subject to an arbitration agreement and also that he
20 signed a stand-alone class action waiver that would prevent adjudication of the claims on a class-wide
21 basis. Additionally, Turn Key produced information and records to show its financial condition was
22 in very poor shape due to the shutdown necessitated by the pandemic. As a result, Plaintiff's counsel
23 retained a forensic accountant to conduct an analysis to verify Turn Key's financial condition, where
24 it was determined that Turn Key was indeed in a very poor financial condition.⁶ Ultimately, the parties
25 agreed in principle on a class-wide resolution.

26
27 ⁶ Following Turn Key's representation of its financial condition, it turned over its financials to Plaintiff's retained forensic
28 accountant, Keith Messerschmidt, who opined that Turn Key could not afford to pay any larger amount without substantially
impacting its ability to continue operating on a go-forward basis. Lidman Decl., ¶13, footnote 6. Should the Court wish to

1 30. Plaintiff submitted the Settlement to the Court with his Motion for Preliminary
2 Approval on April 29, 2021. On October 8, 2021, the Court granted preliminary approval of the class
3 action settlement. Lidman Decl., ¶ 30, Exh. A (Order Granting Preliminary Approval). Attached
4 hereto as **Exhibit A** is a true and correct copy of the Order Granting Preliminary Approval.

5 31. The Settlement Class encompasses “all current and former non-exempt, hourly
6 employees of Defendant Turn Key Scaffold, LLC who worked for Defendant in California at any time
7 from April 6, 2016 through June 30, 2021.”

8 32. Funds remaining unclaimed will be distributed to the California State Controller's
9 Office – Unclaimed Property Fund in the name of the Settlement Class member.

10 33. In my experience in wage and hour class action matters similar to this one, fee awards
11 generally average around one-third of the gross recovery.

12 34. My law firm's and co-counsel's work on this case includes, but is not limited to:
13 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
14 Turn Key's documents and policies, analyzing Settlement Class members' timekeeping data and
15 payroll records, preparing for and attending mediation, reviewing Turn Key's financial records and
16 retaining a forensic accountant to analyze same, engaging in months of direct settlement negotiations,
17 negotiating and revising the long-form Settlement, preparing the Preliminary Approval Motion and
18 this Motion, and otherwise litigating the case.

19 35. Since undertaking representation of Plaintiff, my firm and/or co-counsel's firm
20 dedicated substantial resources to this litigation, including expended \$10,777.00, in actual costs, have
21 devoted substantial time to this litigation and expect to incur approximately \$300.00 in future costs
22 for filing the instant motion, filing the final declaration regarding distribution of settlement, service
23 and messenger fees, postage fees, and/or copying costs. A true and correct copy of my firm's and
24 Haines Law Group's costs summary in this matter is attached hereto as **Exhibit B**.

25 36. My experience in matters similar to this one was integral in evaluating the strengths
26 and weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field of

27 _____
28 review a declaration from Mr. Messerschmidt attesting to these facts, such declaration could either be filed *in camera* or
filed under seal, at the Court's request.

wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. This case involved nuanced legal issues including questions surrounding Turn Key's obligation to "provide" meal periods, "authorize and permit" rest periods, and the propriety of statutory penalties, to name just a few.

37. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great. In addition to the legal and procedural challenges this lawsuit presented, there were also other practical challenges. There was a real risk that my firm and co-counsel's firm would not be compensated for our work, because our firms handled this matter on a purely contingent basis. Thus, Plaintiffs were not responsible for paying my firm's attorneys' fees and my firm could only recover attorneys' fees if Plaintiff was successful. By the time I (or someone from my firm) attend the final approval hearing in this matter, my firm and co-counsel firm will have litigated this case for well over one year with no payment, all while bearing the risk of non-payment if Plaintiff was unsuccessful. Moreover, as discussed above, Class Counsel has advanced \$10,777.00 in litigation costs on a contingency basis, which also carried risk because Class Counsel would not recoup its costs in the event Plaintiff did not prevail in this lawsuit.

38. In this case, Class Counsel have a lodestar of \$150,190 without the use of any multiplier, which is over 2.57 times the \$58,333.33 fee request. The following is a general summary showing the number of hours of work performed by each attorney and paralegal in my firm and co-counsel's firm on this case:

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (23rd Year Attorney)	\$750	80.1	\$60,075
Elizabeth Nguyen (16th Year Attorney)	\$650	64.4	\$41,860
Paul K. Haines (15th Year Attorney)	\$650	18.8	\$12,220
Milan Moore	\$400	79.5	\$31,800

(6th Year Attorney)			
Paralegals	\$175	24.2	\$4,235
Total Lodestar			\$150,190.00

39. My proposed hourly rate of \$750, Ms. Nguyen's proposed hourly rate of \$650, Mr. Haines' proposed hourly rate of \$650, and Ms. Moore's proposed hourly rate of \$400 are reasonable in light of our respective skills, wage and hour class action litigation experience, reputation, and fee awards to other attorneys of similar experience in California. Moreover, our requested hourly rates are in line with the *Laffey Matrix*, a true and correct copy of which is attached hereto as **Exhibit C**.

40. The attorneys' fee award requested is consistent with those routinely awarded by California superior courts. California superior courts frequently grant common fund awards of 33%. *See, e.g., Ochoa v. Haralambos Beverage Co.*, No. BC319588 (Super. Ct., Los Angeles County, Feb. 1, 2007) (33.3% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.*, No. RG05210418 (Super. Ct., Alameda County, Nov. 27, 2006) (33% fee award with no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.*, No. BC293134 (Super. Ct., Los Angeles County, Nov. 20, 2006) (30.7% fee award from \$12.9 million settlement with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarkets*, No. 312026 (Super. Ct., Stanislaus County, Aug. 3, 2004) (33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.*, No. GIC795732 (Super. Ct., San Diego County, Feb. 10, 2004) (approving 33% fee award); *Big Lots Overtime Cases*, JCC Proceeding No. 4283, San Bernardino County Superior Court, Feb 4, 2004) (approving a 33% fee recovery); *Tokar v. GEICO*, (San Diego Superior Court, No. GIC 810166, July 9, 2004) (approving award of 33-1/3%); *Davis v. The Money Store, Inc.*, (San Diego County Superior Court, No. 99AS01716, December 26, 2000) (33-13% of the settlement).

41. Indeed, numerous courts have awarded attorneys' fees of up to, or in excess of 40% of the common fund. *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct., Case No. RG05198014 (awarded 43.8%) (2015); *In re California Indirect Purchaser X Ray Film*

1 *Antitrust Litigation*, San Francisco Sup. Ct. 1998 (citing *Abzug v. Kerkorian*, Los Angeles Sup. Ct.,
2 Nov. 19, 1990, Case No. CA-00981 (45%) and *Haitz v. Meyer*, Alameda County Sup. Ct., August
3 20, 1990, Case No. 5729683 (45%)); *Hall v. Cinema 7, Inc.*, San Francisco Sup. Ct., July 16, 2008,
4 Case No. CGC-01-409105 (53%); and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Sup. Ct.,
5 January 15, 2014, Case No. 26-56886 (40%).

6 42. Being a private law practice my firm can only properly litigate a limited number of
7 cases at one time. The professional demands of this case were significant, including a significant
8 number of hours of attorney and paralegal time. This litigation precluded my firm from other
9 employment due to the time and financial commitments required by the case. Indeed, because my
10 firm takes on cases on a purely contingency fee, we are only compensated for our time if we
11 successfully settle a case or prevail at trial. Accordingly, I believe the requested fees are reasonable.

12 43. The requested enhancement payment to Plaintiff of \$7,500.00 is also reasonable given
13 Plaintiff's efforts in this case and the risks he undertook on behalf of Settlement Class members.
14 Plaintiff gathered documents for use in the lawsuit, and attended in person/telephonic meetings with
15 Class Counsel discussing the case, the merits, the defenses, and the overall fairness of the settlement
16 reached. Thus, the enhancement payment to Plaintiff is appropriate and justified as part of the
17 Settlement and should be finally approved.

18 44. Plaintiff served the proposed Settlement Agreement on the California Labor &
19 Workforce Development Agency ("LWDA") on April 29, 2021, the same date as he filed his Motion
20 for Preliminary Approval. A true and correct copy of the email generated by the LWDA website after
21 Plaintiff submitted the Settlement Agreement to the LWDA is attached hereto as **Exhibit D**.

22 45. Plaintiff served the Order Granting Preliminary Approval on the LWDA on November
23 2, 2021. A true and correct copy of the email generated by the LWDA website after Plaintiff submitted
24 the order Granting Preliminary Approval to the LWDA is attached hereto as **Exhibit E**.

25 46. Plaintiff has provided written approval of the split of attorneys' fees in this action: 60%
26 to Haines Law Group, APC and 40% to Lidman Law, APC.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed on January 25, 2022, at El Segundo, California.

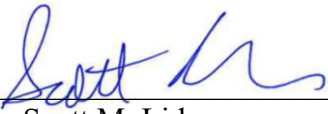
3
4 
5 Scott M. Lidman

EXHIBIT A

EXHIBIT A

1 **LIDMAN LAW, APC**
2 Scott M. Lidman (SBN 199433)
3 slidman@lidmanlaw.com
4 Elizabeth Nguyen (SBN 238571)
5 enguyen@lidmanlaw.com
6 Milan Moore (SBN 308095)
7 mmoore@lidmanlaw.com
8 2155 Campus Drive, Suite 150
9 El Segundo, California 90245
10 Tel: (424) 322-4772
11 Fax: (424) 322-4775

12 Attorneys for Plaintiff
13 JOSE GARCIA

14 **HAINES LAW GROUP, APC**
15 Paul K. Haines (SBN 248226)
16 phaines@haineslawgroup.com
17 2155 Campus Drive, Suite 180
18 El Segundo, California 90245
19 Tel: (424) 292-2350
20 Fax: (424) 292-2355

21 Attorneys for Plaintiff
22 JOSE GARCIA

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

25 JOSE GARCIA, as an individual and on
26 behalf of all others similarly situated,

27 Plaintiff,

28 vs.

TURN KEY SCAFFOLD, LLC, a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

Case No. 37-2020-00021177-CU-OE-CTL

*[Case assigned for all purposes to the Hon.
Kenneth J. Medel, Dept. C-66]*

**~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: October 8, 2021
Time: 9:30 a.m.
Dept.: C-66

Action Filed: June 19, 2020
Trial Date: None Set

ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego

04/29/2021 at 11:36:07 AM
Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

FILED
Clerk of the Superior Court

OCT 08 2021

By: B. Orihuela, Deputy

1 The Motion of Plaintiff Jose Garcia ("Plaintiff") for Preliminary Approval of Class Action
2 Settlement came on regularly for hearing before this Court on October 8, 2021 at 9:30 a.m. The Court,
3 having considered the proposed Stipulation of Settlement (the "Settlement"), attached as Exhibit 1 to
4 the Declaration of Scott M. Lidman filed concurrently with the Motion; having considered Plaintiff's
5 Motion for Preliminary Approval of Class Action Settlement, Memorandum of Points and Authorities
6 in support thereof, and supporting declarations filed therewith; and good cause appearing, HEREBY
7 ORDERS THE FOLLOWING:

8 1. The Court GRANTS preliminary approval of the class action settlement as set forth in
9 the Settlement and finds its terms to be within the range of reasonableness of a settlement that ultimately
10 could be granted approval by the Court at a Final Fairness Hearing. For purposes of the Settlement,
11 the Court finds that the proposed Settlement Class is ascertainable and that there are a sufficiently well-
12 defined community of interest among the members of the Settlement Class in questions of law and fact.
13 Therefore, for settlement purposes only, the Court grants conditional certification of the following
14 Settlement Class:

15 All current and former non-exempt, hourly employees of Defendant Tum
16 Key Scaffold, LLC who worked for Defendant in California at any time
from April 6, 2016 through June 30, 2021.

17 2. For purposes of the Settlement, the Court designates Plaintiff Jose Garcia as Class
18 Representative, and Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC and
19 Paul Haines of Haines Law Group, APC as Class Counsel.

20 4. The Court designates Phoenix Settlement Administrators as the third-party Settlement
21 Administrator for mailing notices.

22 5. The Court approves, as to form and content, the proposed e Notice of Pendency of Class
23 Action and Settlement ("Class Notice"), which is attached to the Settlement as Exhibit A.

24 6. The Court finds that the form of notice to the Settlement Class regarding the pendency of
25 the action and of the Settlement, and the methods of giving notice to members of the Settlement Class,
26 constitutes the best notice practicable under the circumstances, and constitute valid, due, and sufficient
27 notice to all members of the Settlement Class. The form and method of giving notice complies fully
28 with the requirements of California Code of Civil Procedure section 382, California Civil Code section

1 1781, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and
2 other applicable law.

3 7. The Court further approves the procedures for Settlement Class Members to opt out of or
4 object to the Settlement, as set forth in the Class Notice.

5 8. The procedures and requirements for filing objections in connection with the Final
6 Fairness Hearing are intended to ensure the efficient administration of justice and the orderly
7 presentation of any Settlement Class Member's objection to the Settlement, in accordance with the due
8 process rights of all Settlement Class Members.

9 9. The Court directs the Settlement Administrator to mail the Class Notice to the members
10 of the Settlement Class in accordance with the terms of the Settlement.

11 10. The Class Notice shall provide at least 60 calendar days' notice for members of the
12 Settlement Class to opt out of, or object to, the Settlement.

13 11. The Final Fairness Hearing on the question of whether the Settlement should be finally
14 approved as fair, reasonable, and adequate is scheduled in Department C-66 of the above-entitled Court,
15 located at 330 West Broadway, San Diego, CA 92101 on Feb 16., 2022 at 9:30 a.m. /
16 p.m.

17 12. At the Final Fairness Hearing, the Court will consider: (a) whether the Settlement should
18 be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether a judgment
19 granting final approval of the Settlement should be entered; and (c) whether Plaintiff's application for
20 reasonable attorneys' fees, reimbursement of litigation expenses, enhancement payment to Plaintiff, and
21 payment to the Labor and Workforce Development Agency ("LWDA") for penalties under the Labor
22 Code Private Attorneys General Act ("PAGA") should be granted.

23 13. Counsel for the parties shall file memoranda, declarations, or other statements and
24 materials in support of their request for final approval of the Settlement, attorneys' fees, litigation
25 expenses, Plaintiff's service award, settlement administration costs, and payment to the LWDA for
26 PAGA penalties prior to the Final Fairness Hearing according to the time limits set by the Code of Civil
27 Procedure and the California Rules of Court.

14. An implementation schedule is below:

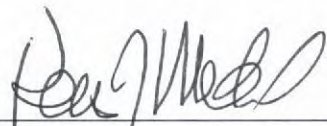
Event	Date	Actual Date ¹
Defendant to provide Class Data to Settlement Administrator	15 calendar days after issuance of the preliminary approval order	October 25, 2021 ²
Settlement Administrator to mail Class Notices to Class Members	10 business days after receiving Class Information from Defendant	November 8, 2021
Deadline for Class Members to request exclusion from, submit disputes, or object to, the Settlement	60 calendar days after mailing of the Notice by the Settlement Administrator	January 7, 2022
Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement:		
Final Fairness Hearing:	<u>Feb 18</u> , 2022	

15. Pending the Final Fairness Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

16. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement.

IT IS SO ORDERED.

Dated: 10.8, 2021


Honorable Kenneth J. Medel
Judge of the Superior Court

¹ These dates are based on the Court granting preliminary approval at the October 8, 2021 hearing.

² Plaintiff recognizes 15 calendar days would be October 23, 2021, which is a Saturday. Therefore, Plaintiff calendared this deadline for the next business day, Monday, October 25, 2021.

EXHIBIT B

EXHIBIT B

Expense Summary
Jose Garcia v. Turn Key Scaffold, LLC

EXPENSE	AMOUNT
Mediation Costs	\$5,000.00
Expert Expenses	\$3,125.25
Filing, Service, and Messenger Fees	\$2,456.89
Copying Costs	\$71.50
Postage Costs	\$18.70
Legal Research	\$104.66
Anticipated Costs for filing FA motion, service fees, copying and postage	\$300.00
TOTAL:	\$11,077.00

EXHIBIT C

EXHIBIT C

LAFFEY MATRIX

[History](#)
[Case Law](#)
[Expert Opinions](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)
[Links](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406

6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT D

EXHIBIT D

Dana Joudi

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, April 29, 2021 11:26 AM
To: Dana Joudi
Subject: Thank you for your Proposed Settlement Submission

04/29/2021 11:26:05 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT E

EXHIBIT E

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Gladys Beltran](#)
Subject: Thank you for your Court Order or Judgment Submission
Date: Tuesday, November 02, 2021 2:11:26 PM

11/02/2021 02:11:08 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Order or Judgment

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm