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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]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

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

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

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 October 8, 2021 at 9:30 a.m. in Department C-66 of the above-entitled Court, located at 330 West
4 Broadway, San Diego, CA 92101, Plaintiff Jose Garcia (“Plaintiff”), individually and on behalf of a
5 class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification
8 of the following Settlement Class defined as follows:

9 All current and former non-exempt, hourly employees of Defendant Turn Key
10 Scaffold, LLC who worked for Defendant in California at any time from April 6,
11 2016 through June 30, 2021.

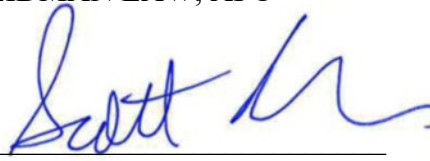
- 12 3. Preliminary appointment of Plaintiff Jose Garcia as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
14 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
15 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
16 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
17 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
18 costs to Class Counsel;
19 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
20 Administrator for mailing notices; and
21 7. Approval of the proposed Notice of Pendency of Class Action and Proposed Settlement and
22 an order that it be disseminated to the proposed Settlement Class Members as provided in
23 the Settlement Agreement.

24 This Motion is based on this notice of motion, the memorandum of points and authorities, the
25 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Jose Garcia,
26 and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the
27 pleadings and other papers filed in this action, and on any further oral or documentary evidence or
28 argument presented at the time of hearing.

1
2 Dated: April 29, 2021
3
4

Respectfully Submitted,
LIDMAN LAW, APC

5 By:



6 Scott M. Lidman
7 Attorney for Plaintiff
8 JOSE GARCIA
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Garcia (“Plaintiff”) brought this class and representative action against Defendant
4 Turn Key Scaffold, LLC (hereinafter “Turn Key” or “Defendant”) alleging that Defendant: (1) failed to
5 pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) made unlawful deductions
6 from earned wages; (4) failed to pay all prevailing wages; (5) failed to provide all legally required meal
7 periods; (6) failed to authorize and permit all legally required rest periods; (7) failed to provide accurate,
8 itemized wage statements; (8) failed to indemnify all necessary business expenses; (9) failed to pay all
9 wages upon termination; (10) engaged in unlawful business practices; and (11) is liable for civil penalties
10 under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which Turn Key has agreed to pay One Hundred Seventy-Five Thousand
13 Dollars and Zero Cents (\$175,000.00) on behalf of the following Settlement Class:

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

17 Significantly, Settlement Class members do not need to file a claim to benefit from the Settlement
18 because all Settlement Class members will automatically receive a payment unless they affirmatively opt-
19 out. There are approximately 320 Settlement Class members, rendering the average payment to
20 participating Settlement Class members to be approximately \$228.16-\$230.93.²

21 The Settlement was reached only after the parties mediated the action with Steven G. Mehta, Esq.,
22 a well-respected wage and hour class action mediator and continued settlement negotiations for
23 approximately three months thereafter, and also included Defendant’s production of various documents
24 and information concerning its financial condition, including tax returns and supporting schedules.

25 If the Settlement is approved, Turn Key will pay a non-reversionary Gross Settlement Amount

26 ¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Scott M. Lidman as Exhibit 1. The proposed
27 Notice of Pendency of Class Action and Proposed Settlement is attached to the Settlement as Exhibit A. All defined terms in
28 this motion have the same definitions as used in the Settlement.

² This amount includes the PAGA allocation for each Settlement Class member and depends on the employer’s actual
payroll tax rate.

1 (“GSA”) of \$175,000.00. After deducting administration costs, Plaintiff’s service award, attorneys’ fees
2 and costs, employer’s side of payroll taxes, and payment of PAGA civil penalties payable to the LWDA,
3 the remaining Net Settlement Amount (“NSA”) of approximately \$73,010.82-\$73,896.32 (depending on
4 the employer’s payroll tax applied) will be distributed to all Settlement Class members who do not opt-
5 out of the Settlement.

6 This proposed Settlement is well-within the range of possible approval in light of the significant
7 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, Turn Key’s financial
8 condition and ability to pay a class-wide settlement.

9 **II. SUMMARY OF THE LITIGATION**

10 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH 11 NEGOTIATIONS**

12 **1. The Parties**

13 Turn Key provides scaffolding services to its clients, including without limitation, the United
14 States Navy. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff, a former non-exempt
15 employee, was employed by Turn Key on three separate occasions, the last being from approximately
16 November 2019 through around March 13, 2020. *See* Declaration of Jose Garcia (“Garcia Decl.”), ¶ 2.
17 During his employment, Plaintiff worked as a Journeyman and performed various job duties including
18 providing scaffolding services. *Id.*

19 **2. Procedural History**

20 On June 19, 2020, Plaintiff filed a putative class action complaint against Turn Key in San Diego
21 County Superior Court. Lidman Decl., ¶ 10. On August 28, 2020, Plaintiff filed a First Amended Class
22 and Representative Action Complaint adding a cause of action for civil penalties under the Labor Code
23 Private Attorneys General Act (“PAGA”).

24 **3. Discovery**

25 After agreeing to participate in an early mediation, Turn Key informally produced a sampling of
26 timekeeping and payroll data for the putative class, as well as a putative class list with hire and termination
27 dates and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 11.
28 After the detailed review of the time and payroll records and other documents and policies produced by
Turn Key, Class Counsel drew on their extensive experience in similar cases to assess the strengths and

1 weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of
2 Plaintiff's claims and Turn Key's defenses thereto, if a settlement could not be reached.

3 **4. Arms-Length Negotiations**

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

10 **5. Direct Settlement Negotiations**

11 After the Parties' unsuccessful mediation, Turn Key filed a Petition to Compel Arbitration and
12 Stay Proceedings, contending that Plaintiff was subject to an arbitration agreement and also that he signed
13 a stand-alone class action waiver that would prevent adjudication of the claims on a class-wide basis.
14 Lidman Decl., ¶ 13. Additionally, Turn Key produced information and records to show its financial
15 condition which it contended was in very poor shape due to the shutdown necessitated by the pandemic.
16 As a result, Plaintiff's counsel retained a forensic accountant to conduct an analysis to verify Turn Key's
17 financial condition, where it was determined that Turn Key was indeed in a very poor financial condition.³
Id. Ultimately, the parties agreed in principle on a class-wide resolution. *Id.*

18 **III. ARGUMENT**

19 **A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

20 California Rule of Court 3.769 conditions settlement of a class action on court approval, which is
21 generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil
22 Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial court to
23 determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler*
24 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine "whether a proposed
25

26 ³ Following Turn Key's representation of its financial condition, it turned over its financials to Plaintiff's retained forensic
27 accountant, Keith Messerschmidt, who opined that Turn Key could not afford to pay any larger amount without substantially
28 impacting its ability to continue operating on a go-forward basis. Lidman Decl., ¶13, footnote 6. Should the Court wish to
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.

1 settlement is fundamentally fair, adequate, and reasonable”). As further explained below, the Settlement
2 Class satisfies the criteria for certification of a settlement class under California law because: (1) the
3 Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact
4 predominate over individual questions such that class certification is the most efficient and desirable way
5 to maintain this litigation; (3) Plaintiff’s claims are typical of the claims of absent Settlement Class
6 members; and (4) Plaintiff and his counsel will fairly and adequately represent Settlement Class members’
7 interest. *See* Cal. Civ. Proc. § 382.

8 **1. Numerosity is Satisfied.**

9 Here, the proposed Settlement Class consists of approximately 320 members, and is therefore
10 sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 15; *See, e.g., Bowles v. Sup.*
11 *Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).
12 Thus, numerosity is satisfied. Further, a class is “ascertainable” where the members “may be readily
13 identified without unreasonable expense or time by reference to official [or business] records.” *See*
14 *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed
15 Settlement Class is defined as “current and former non-exempt, hourly employees of Defendant Turn Key
16 Scaffold, LLC who worked for Defendant in California at any time from April 6, 2016 through June 30,
2021.” Lidman Decl., ¶ 14.

17 **2. Commonality is Satisfied.**

18 The focus in a certification dispute is not the merits, but rather on what types of questions,
19 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court*
20 *(Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class members’ claims arise from Turn Key’s
21 common, uniform policies and practices that applied to Settlement Class members during the class period.
22 Lidman Decl., ¶ 16. Specifically, Plaintiff alleged that Turn Key’s common and uniform policies and
23 practices resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure to
24 pay all minimum wages owed; (3) unlawful deductions from earned wages; (4) failure to pay all prevailing
25 wages; (5) failure to provide all legally required meal periods; (6) failure to authorize and permit all
26 legally required rest periods; (7) failure to provide accurate, itemized wage statements; (8) failure to
27 indemnify all necessary business expenses; (9) failure to pay all wages upon termination; (10) unlawful
28 business practices; and (11) liability for civil penalties under the PAGA. As a result of the common and

uniform policies and practices that applied to all Settlement Class members, their claims involve common questions of law and fact, including but not limited to:

1. Whether Turn Key properly paid all minimum wages owed;
2. Whether Turn Key properly paid all overtime wages owed;
3. Whether Turn Key lawfully deducted from earned wages;
4. Whether Turn Key properly paid all prevailing wages;
5. Whether Turn Key provided all legally compliant meal periods;
6. Whether Turn Key authorized and permitted all legally required rest periods;
7. Whether Turn Key failed to furnish accurate, itemized wage statements;
8. Whether Turn Key indemnified non-exempt employees of all necessary business expenses;
9. Whether Turn Key paid all wages upon separation of employment; and
10. Whether Turn Key's conduct constituted unlawful and/or unfair business practices.

These alleged practices result in common questions as to the affected Settlement Class members. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

3. Typicality is Satisfied.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action).

Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiff was employed by Turn Key during the Class Period as a non-exempt employee and was subject to Turn Key's wage and hour policies at issue in this case. *See Garcia Decl.*, ¶ 2. Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he was not paid for all minimum and overtime hours worked, had unlawful deductions from his earned wages, was not paid all prevailing wages, was not provided all meal periods, was not authorized and permitted all rest periods, received inaccurate itemized wage statements, similar to those received by the Settlement Class members, was not reimbursed for all necessary business expenses, and was not paid all wages upon his separation of employment with Turn Key. *Id.* Given that Turn Key's policies and practices applied to all non-exempt employees, Settlement

1 Class members possess a similar interest and have suffered similar alleged injuries as Plaintiff.
2 Accordingly, typicality is satisfied.

3 **4. Adequacy is Satisfied.**

4 The adequacy requirement examines conflicts of interest between named parties and the class(es)
5 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
6 Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
7 Settlement Class he seeks to represent. Indeed, Plaintiff's interests are aligned with those of the Settlement
8 Class members, as they all seek monetary relief under the same facts and legal theories. Additionally,
9 Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of*
10 *America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class
11 Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed
12 class). Further, Class Counsel also have extensive experience in wage and hour class action
13 litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Elizabeth
14 Nguyen ("Nguyen Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of
15 Milan Moore ("Moore Decl."), ¶¶ 2-4.

16 **B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE**
17 **PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR,**
18 **ADEQUATE, AND REASONABLE**

19 Settlement is the preferred means of dispute resolution, particularly in complex class action
20 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in
21 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
22 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
23 Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of an
24 experienced wage and hour class action mediator and additional months of direct settlement negotiations.
25 *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

26 **1. The Preliminary Approval Standard is Met**

27 To make a fairness determination, the Court should consider several factors, including: "the
28 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk
of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford*

1 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to
2 engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba*
3 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. As discussed below, the proposed Settlement
4 is fair, adequate, and reasonable in light of the balance of factors in this case.

5 **a. The Strength of Plaintiff’s Case**

6 Although Plaintiff maintains that his claims are meritorious, Plaintiff acknowledges that there were
7 substantial risks and uncertainty in proceeding with litigation, especially in light of the potential
8 application of the arbitration agreement and class action waiver, as well as Defendant’s financial
9 condition. As described below, Turn Key presented multiple defenses to Plaintiff’s claims, both on the
10 merits and class certification. Thus, while Plaintiff was prepared to litigate these claims through
11 certification, and ultimately trial, success was far from certain.

12 **b. Risk, Expenses, Complexity, and Duration of Further Litigation**

13 Although the parties engaged in informal discovery throughout this action, the parties still had
14 significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 36.
15 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of
16 a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if
17 the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably
18 more attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal. *Id.*
19 This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary
20 approval.

21 **c. Risk of Maintaining Class Action Status**

22 Plaintiff had not yet filed his motion for class certification and as such, the extent to which
23 Plaintiff’s proposed classes were certifiable is somewhat speculative. Especially in light of the existence
24 of arbitration agreements and Turn Key’s pending Petition to Compel Arbitration. Absent settlement,
25 there was a risk that there would not be a certified class at the time of trial.

26 **d. Overview of the Settlement Agreement**

27 If the Court approves this Settlement, Turn Key will pay a Gross Settlement Amount (“GSA”) of
28 \$175,000.00. Lidman Decl., ¶¶ 13, Exh. 1 (Settlement, ¶ 4). Significantly, this Settlement is **non-**
reversionary, and no Settlement Class member will have to submit a claim form to receive a Settlement

Award. *Id.* (Settlement at ¶ 4). Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$175,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$58,333.33
Minus Court-approved, verified costs (up to \$15,000.00):	\$15,000.00
Minus Court-approved Class Representative Service Award:	\$7,500.00
Minus Settlement Administration Costs:	\$10,000.00
Minus PAGA payment to the LWDA:	\$7,500.00
Minus Estimate of Employer’s Payroll Taxes	\$2,770.35- \$3,655.85⁴
Net Settlement Amount (“NSA”):	\$73,010.82- \$73,896.32

With the exception of the Settlement Administrator’s fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the “Effective Date.” *See* Settlement, ¶ 4.B.⁵

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, the PAGA payment to the LWDA, and estimate of Turn Key’s side of payroll taxes, the Settlement requires Turn Key to pay a Net Settlement Amount (“NSA”) of at least **\$73,010.82** to all Settlement Class members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 1.

According to Turn Key there are approximately 320 total Settlement Class members. Lidman Decl., ¶ 14. Each Settlement Class members will be based on the following formula:

The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member’s total workweeks worked as a non-exempt employee during the Class Period, and the denominator of which is the total workweeks worked

⁴ The estimate of the employer’s side of payroll taxes was determined using a low estimate based on the lowest payroll tax rate of 9.51% and a high estimate based on the highest payroll tax of 14.45%.

⁵ Effective Date is defined as the latter of: (a) the Court’s final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. *See* Settlement, ¶ 4.B.

1 as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the
2 Class Period. Settlement, ¶ 5.B.i. Additionally, \$2,500.00 of the Gross Settlement Amount has been
3 designated as the “PAGA Amount” as described above. Each PAGA Employee shall receive a portion
4 of the PAGA Amount proportionate to the number of workweeks that he or she worked during this PAGA
5 Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which
6 is the PAGA Employee’s number of workweeks worked as a non-exempt employee during this time
7 period, and the denominator of which is the total number of workweeks worked by all PAGA Employees.
8 Settlement, ¶ 5.C.

9 Thus, the average Individual Settlement Award (assuming all Settlement Class members worked
10 the same length of time) is projected to be approximately \$228.16-\$230.93. Lidman Decl., ¶ 14. Those
11 Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release
12 all claims against Turn Key included within the Settlement, for the period of April 6, 2016 through June
13 30, 2021. See Settlement, ¶ 3.

14 **e. The Parties Engaged in Fair and Honest Negotiations.**

15 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
16 of a mediator. In connection with mediation, Turn Key produced a sampling of timekeeping and payroll
17 data. Plaintiff conducted an analysis of the timekeeping and payroll data produced by Turn Key, from
18 which Class Counsel analyzed the potential exposure for Plaintiff’s claims. After the detailed review of
19 the timekeeping and payroll records and other documents and policies produced by Turn Key, Class
20 Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of
21 Plaintiff’s case. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims
22 and Turn Key’s defenses thereto, if a settlement could not be reached. *Id.* On December 1, 2020, the
23 Parties participated in full-day mediation with Steve Mehta, Esq., a preeminent wage and hour class action
24 mediator. Lidman Decl., ¶¶ 11-12. During mediation, the Parties vigorously debated their opposing legal
25 positions, the likelihood of certification of Plaintiff’s claims, Turn Key’s financial condition, as well as
26 the legal basis for the claims and defenses. After approximately three months of direct settlement
27 negotiations and Turn Key providing information and data concerning its financial condition, the Parties
28 ultimately agreed in principle on a class-wide resolution. Lidman Decl., ¶ 13, Exhibit 1.

1 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of
2 factual investigation and data analysis; the exchange of substantial information and class data, including
3 timekeeping and payroll records; arm's length negotiations by counsel; mediation before an experienced
4 wage and hour class action mediator; a forensic accountant, and additional months of negotiation. *See*
5 Lidman Decl., ¶¶ 10-12; *See Kullar, supra*, 168 Cal.App.4th at 130. The Parties attended a full-day
6 mediation, then continued negotiations for approximately three months and worked collaboratively in the
7 following weeks to finalize the Settlement. *Id.* Thus, this factor supports preliminary approval. Further,
8 there are no deficiencies in the Settlement. The Settlement does not grant preferential treatment to the
9 class representative or segments of the class (except for appropriate allocations based on the applicable
10 and differing statutes of limitations for the various claims), and is within the range of possible approval,
11 as discussed in detail below. The Settlement will provide monetary relief to Settlement Class members.
12 The amounts proposed for Class Counsel's attorneys' fees and costs, and service awards are all reasonable
13 and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies,
14 this factor supports preliminary approval.

15 **f. Amount Offered in Settlement Given Realistic Value of Claims**

16 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the
17 face of disputed claims. Plaintiff's analysis of the maximum and realistic expected recoveries for each of
18 the theories of liability pled is set forth below:

19 Unpaid Wages Claim: Plaintiff alleges that he and Settlement Class members were not fully
20 compensated for all of their time worked. Lidman Decl., ¶ 17. Specifically, Plaintiff alleges Turn Key
21 would keep track of his hours and the hours of the other non-exempt employees, and would unlawfully
22 shave their work time and/or round their work time such that they would not be fully paid for all time
23 worked. *Id.* Plaintiff also alleges that this time shaving and/or rounding practice utilized by Turn Key
24 was not-even handed over time and would almost exclusively round and shave in Turn Key's favor such
25 that the employees were routinely underpaid for their time worked. *Id.* Further, Plaintiff alleges that he
26 and other non-exempt employees were not paid for compensable time worked traveling from job
27 worksites to and/or from Turn Key's yard. *Id.* Plaintiff estimates he and other non-exempt employees
28 were underpaid approximately 15 minutes per shift, or approximately 1.25 hours per workweek as a result
of Turn Key's timekeeping policies and practices. *Id.* Accordingly, Plaintiff calculated Turn Key's

1 maximum exposure for unpaid wages at \$300,100.00 ((10,623 workweeks x 1.25 hours per workweek x
2 \$11.30 (average minimum wage) + \$150,050.00 (liquidated damages)). *Id.*

3 Turn Key contends that it compensated Settlement Class members for all of their time worked and
4 the employees executed arbitration agreements and class action waivers. Lidman Decl., ¶ 18. Turn Key
5 also contends that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore
6 non-compensable. *Id.* Turn Key further asserts that Plaintiff would be unable to certify this class given
7 the individualized inquiries that would be required, and also that Turn Key's rounding mechanism was,
8 according to it, allegedly facially neutral. Lidman Decl., ¶ 18. In light of these defenses, Plaintiff
9 discounted the maximum exposure by 65% for the risk of non-certification, and an additional 60% to
10 account for Turn Key's defenses on the merits, to arrive at an estimated exposure of \$42,014. *Id.*

11 Meal Period Claim: Plaintiff alleges that he and Settlement Class members were not provided with
12 all legally-required off-duty first meal periods beginning before the end of the fifth hour of work. Lidman
13 Decl., ¶ 19. Specifically, Plaintiff alleges Turn Key had a policy and practice of not keeping track of
14 Plaintiff's actual time worked. *Id.* Further, due to his job duties, Plaintiff alleges he was often prevented
15 from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least
16 30 minutes in length. *Id.* Moreover, from the records produced by Turn Key, Turn Key maintained a
17 policy and practice of automatically deducted thirty minutes from Plaintiff and other non-exempt
18 employees' work time for purported meal periods, regardless of whether a meal period was actually taken.
19 *Id.* Accordingly, Plaintiff estimates there was at least one meal period violation during every shift over 6
20 hours during the relevant time period. *Id.* Therefore, Plaintiff calculated Turn Key's maximum exposure
21 for the alleged meal period violations at approximately \$1,425,993 ((10,623 workweeks x 5 shifts/week x
22 \$22.21 average hourly rate) + (4,436 workweeks with auto deduction x 5 shifts/week x .50 (30 minute
auto-deducted) x \$22.21 (average hourly rate))). *Id.*

23 Turn Key counters that it has always provided non-exempt employees with an opportunity to take
24 legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping
25 records, if any, were solely the result of employee choice, rather than any policy or practice of Defendant.
26 Lidman Decl., ¶ 20. Turn Key points out that under *Brinker Restaurant Corp. v. Superior Court* (2012)
27 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal
28 periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure"

standard). Finally, Turn Key contends that class action waivers will prevent certification, and also that Plaintiff's meal period claim is not suited for class certification since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. Lidman Decl., ¶ 20. Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 65% to account for Turn Key's defenses on the merits to arrive at an estimated exposure of \$174,684.14. *Id.*

Rest Period Claim: Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to Turn Key's rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Lidman Decl., ¶ 21. Specifically, Plaintiff alleges that as a result of the work demands imposed by Turn Key, he was prevented from taking his rest periods. *Id.* Further, Turn Key maintains a facially unlawful rest period policy in their employee handbook, stating, "[a]s part of orientation, each employee signed a consent whereby the break periods and the rest breaks are merged such that each employee receives a full hour for meal period, of which only 30 minutes is off the clock." *Id.* From the records produced by Turn Key, 100% of the shifts worked were in excess of 3.5 hours. *Id.* Accordingly, Plaintiff calculated Turn Key's maximum exposure for rest period violations at \$1,179,684 (10,623 workweeks x 5 shifts over 3.5 hours/week x \$22.21 average hourly rate). *Id.*

Turn Key contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 22. Turn Key also contends that its employees voluntarily chose to waive their rest breaks in exchange for an hour lunch. *Id.* Further, Turn Key argues that Plaintiff's rest period claim is inherently unsuited for class treatment because there are class action waivers and because the claim requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 60% to account for Turn Key's defenses on the merits to arrive at an estimated exposure of \$165,155.76. *Id.*

1 Unreimbursed Business Expenses Claim: Plaintiff alleges that failed to reimburse him and
2 Settlement Class members for necessary business expenditures, including the use of their personal vehicle
3 for work activities, as required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service,*
4 *Inc.* (2014) 228 Cal.App.4th 1137. Lidman Decl., ¶ 23. Plaintiff contends that Turn Key required Plaintiff
5 to use his personal vehicle to visit Turn Key's clients' work sites and would unlawfully deduct from his
6 earned wages for safety gear. *Id.* Plaintiff estimates that, on average, Settlement Class members drove
7 about 30 miles per workweek and were deducted about \$3.00 per workweek for tools. *Id.* Accordingly,
8 Plaintiff calculates Turn Key's maximum exposure for this claim at approximately \$286,688 ((10,623
9 workweeks x 30 miles/workweek x .56625 (average mileage reimbursement rate)) + (10,623 workweeks
10 x \$3.00)). *Id.*

11 Turn Key contends that it provided employees the opportunity to report and receive
12 reimbursements for their mileage and they were in fact provided with tools or safety gear, and would only
13 purchase additional gear on their own volition. Lidman Decl., ¶ 24. Turn Key also argues that this claim
14 is not suitable for class treatment because of the class waivers, and because it would require individualized
15 determinations as to whether each employee used a personal vehicle or how much was deducted for tools
16 for work related purposes and if so, how much of that use was a reasonable percentage of their individual
17 monthly expenses and mileage. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 70% for
18 the risk of non-certification, and an additional 55% to account for Turn Key's defenses on the merits, to
19 arrive at an estimated exposure of \$38,702.88. *Id.*

20 Prevailing Wages Claim: Plaintiff alleges that Turn Key failed to pay the prevailing wage on
21 public works projects. Lidman Decl., ¶ 25. Plaintiff contends that the public works projects accounted
22 for a small portion of Turn Key projects in California during the relevant time period, including the Rams
23 Stadium, a three-day project, and only approximately 17 employees worked at their regular rate of
24 approximately \$27.00 per hour. *Id.* Plaintiff estimates these employees were underpaid at about \$10.00
25 per hour. *Id.* Accordingly, based on this, Plaintiff estimates that Plaintiff and the other non-exempt
26 employees were underpaid at approximately \$5,304.00 (\$10 per hour x 8 hours/day x 3 days x 17
27 employees). *Id.*

1 Turn Key argues it has always paid employees properly on public works projects. Lidman Decl.,
2 ¶ 26. Turn Key points out that, as noted above, there was only one prevailing wage project in California
3 during the relevant time period, and thus potential damages for any employee are *de minimis*. *Id.* Turn
4 Key further asserts that this claim is not amenable to class certification, as individual inquiries would be
5 required to determine whether each employee on each prevailing wage project was paid the proper
6 prevailing wage, and if they were underpaid, by how much, which would devolve into a series of
7 unmanageable min-trials. *Id.* As such, Plaintiff discounted the calculated exposure by 75% for a risk of
8 non-certification and an additional 70% for a risk of being unsuccessful on the merits, to arrive at an
9 estimated total of \$397.80. *Id.*

10 Wage Statements Claim: Plaintiff further alleges that Turn Key issued inaccurate wage statements
11 in violation of Labor Code section 226 as a result of the alleged unpaid wages and meal and rest period
12 premium wages described above. Lidman Decl., ¶ 27. Specifically, Plaintiff contends that this conduct
13 violated Labor Code section 226(a) because the wage statements issued to Settlement Class Members did
14 not include all hours worked and the rate at which they were being paid. *Id.* Plaintiff's data analysis
15 reflected that there were approximately 6,755 wage statements issued during the relevant time period. *Id.*
16 Therefore, Plaintiff calculated Turn Key's maximum exposure for wage statement violations at
approximately \$670,650.00 (($\50.00×97 current employees) + ($\$100.00 \times 6,658$)). *Id.*

17 Turn Key argues that meal and rest period claims cannot support a claim for wage statement
18 penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, *review granted*
19 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g., Jones v. Spherion Staffing,*
20 No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Lidman Decl., ¶ 28. Turn
21 Key further argues that its alleged wage statement violations could not be shown to be "knowing and
22 intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of
23 the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties.
24 Lidman Decl., ¶ 28. As such, Plaintiff discounted the calculated exposure by 60% for a risk of non-
25 certification and an additional 60% for a risk of being unsuccessful on the merits, to arrive at an estimated
26 total of \$107,304. *Id.*

27 Waiting Time Penalties: Plaintiff alleges that Turn Key is also liable for waiting time penalties
28 under Labor Code section 203 as a result of its failure to pay all wages. Lidman Decl., ¶ 29. Based on the

1 data provided by Turn Key, there were approximately 201 Settlement Class members who have separated
2 their employment with Turn Key during the relevant time period who could be entitled to waiting time
3 penalties. *Id.* Therefore, Plaintiff calculated Turn Key’s maximum exposure for waiting time penalties at
4 approximately \$1,071,410 (201 former employees x \$22.21/hour x 30 days x 8 hours/day). *Id.* Turn Key
5 asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to
6 Plaintiff’s underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 29. *See also* 8 Cal.
7 Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time
8 penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over
9 whether employee was exempt precluded imposition of waiting time penalties over contested wages
10 owed). Accordingly, Plaintiff discounted the maximum exposure by 70% for the risk of non-certification,
11 and an additional 75% to account for Turn Key’s defenses on the merits, to arrive at an estimated exposure
12 of \$80,355.75. *Id.*

13 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
14 foregoing alleged Labor Code violations. Lidman Decl., ¶ 30. Plaintiff calculated Turn Key’s maximum
15 exposure at \$675,500 (6,755 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas Corp. No.*
16 *2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until employer is notified that
17 it is violating a Labor Code provision). Turn Key argues that Plaintiff’s PAGA claim will fail for the same
18 reasons that his underlying claims will fail. Lidman Decl., ¶ 31; *see Price v. Starbucks Corp.* (2011) 192
19 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA
20 claims also fail.”). Turn Key also maintains that, given its good faith defenses and its financial condition,
21 this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Turn
22 Key liable for any of Plaintiff’s claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
23 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien*
24 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA
25 penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure
26 figure by 75% for a risk of being unsuccessful on the merits, and an additional 70% to account for the
possibility of this Court reducing penalties, to arrive at an estimated exposure of \$50,662.50. *Id.*

27 **g. The Settlement Is Within the Range of Possible Approval**

28 Using these estimated figures for each of the claims described above, Plaintiff predicted the

1 realistic total recovery for the Settlement Class would be approximately \$659,276.83. Lidman Decl., ¶
2 32. The proposed settlement of \$175,000.00 therefore represents approximately 26.5% of the reasonably
3 forecasted recovery for the Settlement Class. *Id.* Further, in light of Turn Key's financial condition due
4 to, among other things, the shutdown caused by the COVID-19 pandemic, Class Counsel believed that this
5 is a fair settlement. Preliminary approval is appropriate as the settlement will provide tangible monetary
6 relief to Settlement Class members, and will still provide an average recovery to Settlement Class members
7 of over \$200.00, which is good result in light of Turn Key's financial condition and the existence of an
8 arbitration agreement.

9 The proposed settlement reflects approximately 26.5% of the estimated recovery the Settlement
10 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
11 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
12 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*
13 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
14 representing 25% to 35% of potential damages).⁶ Thus, Plaintiff submits that the proposed settlement is
15 within the range of possible approval, such that notice should be provided to the Settlement Class so that
16 they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness
17 of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

18 **h. The Experience and Views of Counsel**

19 "Parties represented by competent counsel are better positioned than courts to produce a
20 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises*
21 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
22 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
23 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
24 Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. The Settlement was also reached with
25 the assistance of an experienced and respected wage and hour class action mediator. *Id.* This factor
26 strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

27 ⁶ *See also Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
28 recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (settlement may be acceptable
even though it amounts to only a fraction of the potential recovery).

1 **i. Attorneys’ Fees and Costs**

2 California courts recognize an appropriate method for awarding attorneys’ fees in class actions is
3 to award a percentage of the “common fund” created as a result of a settlement. *See e.g., Laffitte v. Robert*
4 *Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding “the percentage of fund method survives in California
5 class action cases”). Class Counsel’s request for fees of one-third of the GSA is well within the range of
6 reasonableness, and indeed is considered the typical rate for common fund settlements. Historically,
7 courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the
8 case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013). Here, Class Counsel will also apply for an
9 attorneys’ fees award of one-third of the GSA, which is currently estimated to be \$58,333.33, and up to
10 \$15,000.00 in verified costs reimbursement. *See* Settlement, ¶ 6; Lidman Decl., ¶ 33. Plaintiff submits
11 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming
12 litigation on a purely contingent fee basis. *Id.* Further, Plaintiff has provided written approval of the split
13 of attorneys’ fees in this action. Lidman Decl., ¶ 34. Class Counsel has incurred substantial attorney fees
14 conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, reviewing
15 Turn Key’s documents and policies, analyzing Settlement Class members’ timekeeping data and payroll
16 records, preparing for and attending mediation, reviewing Turn Key’s financial records, engaging in
17 months of direct settlement negotiations, negotiating and revising the long-form Settlement, preparing this
18 Motion, and otherwise litigating the case. Lidman Decl., ¶ 33. Class Counsel expect to expend additional
19 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions
20 from Settlement Class members, preparing the final approval papers and attending the Final Approval
21 hearing. *Id.* Class Counsel submits that the request for attorneys’ fees is reasonable when viewed as an
22 overall percentage of the settlement in light of the substantial risks, significant work undertaken, the
23 extremely positive results obtained for the class, and the efficiency with which the Parties conducted the
24 litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys’
25 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include
a lodestar analysis.

26 **j. Administration Costs**

27 Phoenix Settlement Administrators’ fees and expenses are estimated not to exceed \$10,000.00.
28 *See* Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary Approval filed

concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the proposed class size of approximately 320 Settlement Class members and the costs and expenses associated with administering the notices in both English and Spanish and distributing the awards.

k. Class Representative Service Award

“[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for his services to the Settlement Class. Lidman Decl., ¶ 35; Settlement, ¶ 7; Garcia Decl., ¶¶ 3-8. As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. *See* Lidman Decl., ¶ 35; Garcia Decl., ¶¶ 3-8; Settlement ¶ 7. Plaintiff also agreed to a general and 1542 release. *Id.*

l. PAGA Penalty

The parties have agreed to a PAGA award of \$10,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$7,500.00. Settlement ¶ 3.C.5. This \$7,500.00 represents roughly 4.29% of the \$175,000.00 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts.⁷

m. Payroll Taxes

Turn Key’s payroll taxes shall be paid from the Gross Settlement Amount. Settlement ¶ 4.D. Here, it is appropriate for Defendant’s share of payroll taxes to be deducted from the Gross Settlement Amount because the Parties negotiated the instant settlement and agreed to the Gross Settlement Amount with the

⁷ *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

1 understanding that the Gross Settlement Amount would include the employer's portion of payroll taxes.
2 This agreement was a material term that was specifically bargained for in connection with agreeing to
3 settlement for the Gross Settlement Amount of \$175,000.00. The Defendant's share of payroll taxes is
4 estimated to be between \$2,770.35 and \$3,655.85, depending on the applicable rates.

5 **n. Uncashed Funds**

6 The Settlement provides that Settlement Class members with 180 days from the date the
7 Settlement Administrator mails the checks and any funds remaining after 180 days will be delivered to
8 the California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class
9 member. Settlement ¶ 5.F. As all settlement funds will be distributed to the Settlement Class members,
10 there will be no residue and it is unnecessary to designate *cy pres* recipients.

11 **C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

12 Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies.
13 The Settlement will provide monetary relief to Participating Settlement Class members. The amounts
14 proposed for Class Counsel's attorneys' fees and costs, and service award are all reasonable and
15 appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
16 factor supports preliminary approval.

17 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE
18 TO SETTLEMENT CLASS MEMBERS**

19 Before the final approval hearing, the Court requires adequate notice of the settlement be given
20 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
21 of Pendency of Class Action and Proposed Settlement ("Class Notice") by first-class regular U.S. Mail
22 in English and Spanish, postage prepaid, using last known mailing address information provided by Turn
23 Key. *See* Settlement, ¶ 10, Exh. A. This manner of giving notice is the "best notice practicable" under
24 the circumstances because it provides "individual notice to all members who can be identified through
25 reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Settlement Class
26 members' addresses will be ascertainable through Turn Key's personnel and payroll records, which Turn
27 Key will provide to Phoenix Settlement Administrators ("PSA") within fifteen (15) calendar days of
28 preliminary approval of the Settlement. *See* Settlement ¶ 10.A. Within ten (10) business days of receipt
of the Settlement Class members' addresses, PSA will run the addresses through the United States Postal
Service Notice of Change of Address database and mail the notices to Settlement Class members. *See*

1 Settlement ¶ 10.B. To the extent that any notices are returned, PSA will perform a “skip trace” to track
2 any Class Member’s current mailing address. *See* Settlement ¶ 10.F.

3 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
4 advises Settlement Class members of the nature of the claims and the key terms of the Settlement, the
5 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the
6 recovery formula and expected recovery amount for each Settlement Class member, provides them the
7 opportunity to contest their total workweeks included in the notice, and advises them that they will be
8 bound by the terms of the Settlement if they do not opt-out. *See* Lidman Decl., Exh. 1 (Settlement, Exh.
9 A). The proposed Class Notice will also notify Settlement Class members of the final approval hearing
10 date and provides Settlement Class members the contact information for Class Counsel. This manner of
11 giving notice satisfies California Rule of Court 3.766(e).

12 **E. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

13 Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately
14 scheduled to follow the deadline by which Settlement Class members must file objections to the
15 Settlement or opt-out. *See* California Rule of Court 3.769.

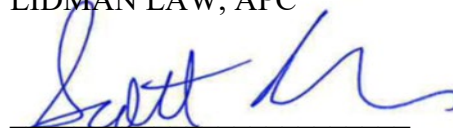
16 **IV. CONCLUSION**

17 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the
18 proposed Settlement.

19 Dated: April 29, 2021

Respectfully submitted,
LIDMAN LAW, APC

20 By:



21 Scott M. Lidman, Attorney for Plaintiff Jose Garcia