

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JOSE GARCIA,

Plaintiff,

vs.

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

Defendants.

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

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt, hourly employees of Defendant Turn Key Scaffold, LLC who worked for Defendant in California at any time from April 6, 2016 through June 30, 2021. Collectively, these employees will be referred to as “Settlement Class members.”

**PLEASE READ THIS NOTICE CAREFULLY  
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

***Why should you read this notice?***

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Jose Garcia v. Turn Key Scaffold, LLC*, Case No. 37-2020-00021177-CU-OE-CTL (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

Defendant’s records show that you were employed by Turn Key Scaffold, LLC (“Turn Key” or “Defendant”) as a non-exempt employee in California between April 6, 2016 and June 30, 2021. For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of April 6, 2016 through June 30, 2021.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

***What is this case about?***

Plaintiff Jose Garcia (“Plaintiff”) brought this Lawsuit against Defendant, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Defendant in California at any time beginning April 6, 2016. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

The Lawsuit alleges that Turn Key failed to provide Settlement Class members all minimum, overtime, and/or prevailing wages, failed to provide all legally required meal periods, failed to authorize and permit all legally required rest periods, unlawfully deducted from earned wages, and failed to reimburse necessary business expenses. As a result of the foregoing alleged violations, Plaintiff also alleges that Turn Key failed to provide accurate, itemized wage statements, failed to pay all wages upon termination of employment, engaged in unfair business practices and is liable for civil penalties under the California Labor Code Private Attorney General Act (“PAGA”).

Turn Key denies that it has done anything wrong or that it violated the law. Turn Key further denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Turn Key, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Turn Key; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, the Parties avoid additional expense, inconvenience, the inherent risk and costs of a trial, and the delays and uncertainties associated with litigation. The Settlement was reached after mediation and arm’s-length negotiations between the parties where Turn Key provided relevant information to Class Counsel.

**If you are still employed by Turn Key, your decision about whether to participate in the Settlement will not affect your employment. California law and Turn Key’s policies strictly prohibit unlawful retaliation.** Turn Key will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member’s decision to either participate or not participate in the Settlement.

## Who are the Attorneys?

Attorneys for the Plaintiff/Settlement Class Members:

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## What are the terms of the Settlement?

On October 8, 2021, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for Turn Key in California at any time from April 6, 2016 through June 30, 2021. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant as described below.

Defendant has agreed to pay \$175,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit, including payments to Settlement Class members, attorneys' fees and expenses, payment to the Labor Workforce Development Agency ("LWDA"), settlement administration costs, Turn Key's share of payroll taxes, and the Class Representative's Service Award.

The following deductions from the Gross Settlement Amount will be requested by the parties:

**Settlement Administration Costs.** The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$10,000.00 from the Gross Settlement Amount to pay the Settlement administration costs.

**Attorneys' Fees and Expenses.** Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$58,333.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$15,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

**Service Award to Class Representative.** Class Counsel will ask the Court to award the Class Representative a service award in the amount of \$7,500.00, to compensate him for his service and extra work provided on behalf of the Settlement Class members.

**LWDA Payment.** Class Counsel will ask the Court to approve a payment in the total amount of \$10,000.00 for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act ("PAGA"). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or \$7,500.00 will be payable to the LWDA, and the remaining twenty-five percent (25%), or (\$2,500.00), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

**Employer's Share of Payroll Taxes.** Turn Key's share of payroll taxes associated with any wage payments to Settlement Class members is currently estimated to be approximately \_\_\_\_\_.

Calculation of Individual Settlement Class Members' Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$ \_\_\_\_\_, to be shared among an estimated 320 Settlement Class members. The NSA will be divided as follows:

- (i) 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 as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period.
- (ii) In addition, Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of workweeks worked as a non-exempt employee during this time period, and the denominator of which is the total number of workweeks worked by all PAGA Employees.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion.

Payment by Defendant of Gross Settlement Amount. 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" which 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.

Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.

Each member of the Settlement Class who receives a Settlement Award must cash the check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members who checks were not cashed within 180 days after mailing will be submitted to the California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member.

Allocation and Taxes. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Sixty-seven percent (67%) as penalties and interest; and Thirty-Three percent (33%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will fully and forever completely release and discharge Defendant, and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the "Released Parties"), from all claims, demands, rights, liabilities and causes of action that were pled in the First Amended Complaint in the Action, or which could have been pled in the First Amended Complaint in the Action based on the factual allegations therein, that arose during the Class Period including but not limited to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) unlawful deductions from wages; (d) failure to pay all prevailing wages; (e) failure to provide meal periods, or pay premium pay for non-compliant meal periods; (f) failure to authorize and permit rest periods, or pay premium pay for non-complaint rest periods; (g) failure to provide accurate, itemized wage statements; (h) failure to indemnify all necessary business expenditures; (i) failure to timely pay wages upon separation of employment; and (j) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the "Released Claims"). The period of the Release shall extend to the limits of the Class Period.

**PAGA Release and PAGA Employees.** If the Court approves the Settlement, all PAGA Employees will release the Release Parties from all claims, demands, rights, liabilities and causes of action for penalties or other remedies under California Labor Code Private Attorneys General Act of 2004 against the Released Parties based on (as alleged in the letter to the Labor & Workforce Development Agency (“LWDA”) dated June 23, 2020 and the First Amended Complaint for: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) unlawful deductions from wages; (d) failure to pay all prevailing wages; (e) failure to provide meal periods, or pay premium pay for non-compliant meal periods; (f) failure to authorize and permit rest periods, or pay premium pay for non-complaint rest periods; (g) failure to provide accurate, itemized wage statements; (h) failure to indemnify all necessary business expenditures; and (i) failure to timely pay wages upon separation of employment (collectively, “PAGA Released Claims”).

The time period of the PAGA Released Claims is defined as the time period of April 6, 2019 through June 30, 2021 (PAGA Period”)

The Parties acknowledge that under the release, the right of the LWDA to investigate the released PAGA claims is not released, but Released Claims do include any claims for penalties by a Class Member as a result of any such LWDA investigation, and Class Members are waiving their right to act as a private attorney general as to the Released Claims.

You cannot submit a Request for Exclusion from the PAGA Release.

The release identified herein shall be effective following Defendant’s payment of the Gross Settlement Amount in full.

**Conditions of Settlement.** The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

### ***How can I claim money from the Settlement?***

**Do Nothing.** If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of individual workweeks you worked during the Class Period (as explained above). Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount is \$ \_\_\_\_\_. This is based on Turn Key records showing:

- (a) You worked a total of \_\_\_ workweeks for Turn Key during the period April 6, 2016 through June 30, 2021; and
- (b) You worked a total of \_\_\_ workweeks for Turn Key during the period April 6, 2019 through June 30, 2021.

If you dispute the above information from Turn Key’s records, Turn Key’s records will control unless you are able to provide documentation that establishes that Turn Key’s records are mistaken. If there is a dispute about whether Turn Key’s information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the “Notice of Pendency of Class Action and Proposed Settlement” that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED NO LATER THAN **JANUARY 7, 2022.**

### ***What other options do I have?***

**Dispute Information in Notice of Settlement Award.** If you disagree with the information in this Notice, you may submit a dispute, along with any supporting documentation, in accordance with the procedures set forth herein. Any disputes, along with supporting documentation, must be postmarked no later than January 7, 2022. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

**Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion from the Class Action Settlement” letter or card postmarked no later than January 7, 2022, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE GARCIA V. TURN KEY LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement.

If you submit a Request for Exclusion, you will only be excluded from the Released Claims. You cannot submit a Request for Exclusion from the PAGA Release. You will receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you were employed between April 6, 2019 and June 30, 2021.

**Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

**Objecting to the Settlement.** You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections must be in writing and must be postmarked on or before January 7, 2022.

Whether or not you submit a written objection, if you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for February 18, 2022 at 9:30 a.m. in Department C-66 of San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101. You have the right to appear either remotely, in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before January 7, 2022. All objections or other correspondence must state the name and number of the case, which is *Jose Garcia v. Turn Key Scaffold, LLC, et al.*, San Diego County Superior Court Case No. 37-2020-00021177-CU-OE-CTL.

Any Settlement Class member who elects to appear personally at the Court for any reason related to this Lawsuit must comply with the Court's social distancing and mandatory face covering requirements, as well as any other orders related to COVID-19. All such rules and orders can be located at the Court's website: <http://www.sdcourt.ca.gov>.

For more information on how to appear remotely, please visit the Court's website at [www.sdcourt.ca.gov/portal/page?\\_pageid=55,2053814&\\_dad=portal&\\_schema=PORTAL](http://www.sdcourt.ca.gov/portal/page?_pageid=55,2053814&_dad=portal&_schema=PORTAL).

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

#### ***What is the next step?***

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on February 18, 2022 at 9:30 a.m., in Department C-66 of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

Any changes to date, time, or location of the Final Approval Hearing will be posted on the Settlement Administrator's website <http://www.phoenixclassaction.com/>. Notice of the Court's final judgment will also be posted on the Settlement Administrator's website.

#### ***How can I get additional information?***

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101, during regular court hours. Due to COVID, appointments are required for clerk's office services. Please visit the Court's website at <http://www.sdcourt.ca.gov> for information on how to make an appointment in the Clerk's Office. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, TURN KEY, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

#### ***REMINDER AS TO TIME LIMITS***

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **January 7, 2022**. These deadlines will be strictly enforced.

**BY ORDER OF THE COURT ENTERED ON OCTOBER 8, 2021.**