MARA LAW FIRM, PC
David Mara (SBN 230498)
dmara@maralawfirm.com
Jill Vecchi (SBN 299333)
jvecchi@maralawfirm.com
2650 Camino Del Rio North, Suite 302
San Diego, CA 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

COHELAN KHOURY & SINGER
Isam C. Khoury (SBN 58759)
ikhoury@ckslaw.com
Rosemary C. Khoury (SBN 331307)
rkhoury@ckslaw.com
605 C Street, Suite 200
San Diego, CA 92101
Telephone: (619) 595-3001
Facsimile: (619) 595-3000

Attorneys for Plaintiff JUAN GARCIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

JUAN GARCIA on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiff, v. BACKYARD PRODUCTS LLC; and DOES 1-100, Defendants.	Lead Case No. 24CV009779 Consolidated with Case No. 24CV019984 ASSIGNED FOR ALL PURPOSES TO: The Honorable Jill Talley Department 23 **<u>CLASS ACTION</u>** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** Date: August 22, 2025 Time: 9:00 a.m. Dept.: 23 Reservation No.: #A-09779-001 Complaint Filed: May 17, 2024 Trial Date: Not set

TABLE OF CONTENTS

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

TABLE OF AUTHORITIES

PAGE

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

STATUTES AND REGULATIONS

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

I. INTRODUCTION

Plaintiff Juan Garcia ("Plaintiff") seeks preliminary approval of a $1,350,000, pre-certification, non-reversionary wage and hour class and Private Attorneys General Act ("PAGA") settlement. The settlement covers an estimated 509 persons who performed an estimated 17,677 installation services for Defendant Backyard Products LLC ("Backyard Products" or "Defendant") in California as an independent contractor during the Class Period, from September 1, 2020, through April 30, 2025. SA, ¶¶1.5, 1.12, 4.1, 9. Plaintiff alleges Backyard Products misclassified these persons as independent contractors, rather than employees, and thus: failed to pay all straight time, overtime, reporting time,[1] and final wages; failed to provide meal and rest periods and accurate wage statements; failed to reimburse expenses;[2] and violated the unfair competition law ("UCL"). Declaration of Isam C. Khoury ("Khoury Decl."), ¶12; **Exh. 1** – Class Action and PAGA Settlement Agreement ("SA"), ¶¶1.1, 1.9, 1.12, 1.16, 1.22, 1.35, 2.1-2.3, 4.1, 9. Class Members and Aggrieved Employees are referred to herein as "Installers." Khoury Decl., ¶15.

II. PARTIES, CLASS, AND AGGRIEVED EMPLOYEES

A. Plaintiff and Defendant

Defendant Backyard Products designs, manufactures, and installs sheds, pre-fab studios, playsets, and outdoor structures. *See* Elevate your Career at Backyard | Backyard Products Jobs, last accessed July 28, 2025. Backyard Products is headquartered in Ann Arbor, Michigan, with manufacturing plants and retailers nationwide. *See* Learn More About the Backyard Products Company, last accessed July 28, 2025. Backyard Products employs individuals to

---

[1] Plaintiff did not assess the reporting time claim because Plaintiff does not believe this claim would have had a significant impact on the maximum or realistic value of this action, given it only would have potentially been owed when an Installer showed up to install a shed or playset but was unable to do so due to an action by Backyard Products, which Plaintiff does not believe was a widespread issue. Khoury Decl., ¶13.

[2] Plaintiff alleges this failure to reimburse expenses may also constitute a deduction from wages under Labor Code section 221. Because this is an alternative theory, it is not separately assessed for damages herein. *See* **Exh. 2** – "Class Action Complaint;" *see also* **Exh. 3** – "PAGA Complaint;" *see also* **Exh. 4** – "Garcia PAGA Notice." Khoury Decl., ¶14. Together, the Class Action Complaint and PAGA Complaint are called the "Operative Complaints." *Id.*

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

perform installations and delivery work in California, including Sacramento County. **Exh. 2**, Class Action Complaint, ¶3.

Plaintiff Juan Garcia performed installations for Backyard Products in California from approximately March to April 2024, and was classified as an independent contractor. Declaration of Juan Garcia ("Garcia Decl."), ¶2. As an Installer, Plaintiff's job was to: accept a job through Backyard Products' mobile application, "Skedulo;" pick up an unassembled shed or playset, including instructions, from a Backyard Products' warehouse; drive to the customer's site with it; install it; and notify Backyard Products of status updates and of when he completed the installation. To accomplish his job, Plaintiff used his personal cell phone, personal vehicle, and tools he purchased, and purchased his own liability insurance. Khoury Decl., ¶16.

Plaintiff executed a Subcontractor Installer Agreement with Backyard Products which included an arbitration agreement and class action waiver. Khoury Decl., ¶17.

B. Class Members and Aggrieved Employees

Settlement Class Members are all persons who performed installation services for Defendant in California during the Class Period as an independent contractor who do not timely and properly opt out. SA, ¶¶1.5, 1.9, 1.34. The Class Period is from September 1, 2020 through April 30, 2025. SA, ¶1.12. Aggrieved Employees are all persons who performed shed construction services for Defendant in California during the PAGA Period as an independent contractor. SA, ¶1.4. The PAGA Period is from July 29, 2023 through April 30, 2025. SA, ¶1.30. Defendant estimates there are 509 Class Members, who performed a total of 17,677 Installations, and 153 Aggrieved Employees.[3] SA, ¶4.1. Aggrieved Employees will not be able to opt out of the settlement, and release, of PAGA claims. SA, ¶1.39, 1.9, 5.4, 8.5.4. Khoury Decl., ¶18;

III. PROCEDURAL HISTORY

On May 6, 2024, Plaintiff Garcia submitted a letter to Defendant and the LWDA

[3] Aggrieved Employees, and PAGA Members, are used interchangeably in the Settlement Agreement. For consistency, Plaintiff uses only Aggrieved Employees herein. *See, e.g.* SA, ¶1.4 ("Aggrieved Employees"), 4.1 ("PAGA Members"). Khoury Decl., ¶19.

pursuant to PAGA alleging potential Labor Code violations regarding (1) failing to pay all straight time and minimum wages, (2) failing to pay all overtime wages owed, (3) failing to provide meal periods, (4) failing to provide rest periods, (5) failing to pay reporting time wages, (6) failing to pay all wages due at termination and during employment, (7) failing to comply with itemized employee wage statement provisions, (8) failing to reimburse for business expenses, and (9) failing to pay employees twice per month. SA, ¶2.1.

On May 17, 2024, Plaintiff Garcia commenced a class action by filing a Complaint alleging causes of action against Defendant for (1) Failure to pay all straight time wages; (2) Failure to pay all overtime wages; (3) Failure to provide meal periods; (4) Failure to authorize and permit rest periods; (5) Failure to authorize and permit recovery periods; (6) Failure to pay reporting time wages; (7) Knowing and intentional failure to comply with itemized employee wage statement provisions; (8) Failure to pay all wages due at the time of termination of employment; (9) Failure to reimburse/illegal deductions; and (10) Violation of unfair competition law. SA, ¶2.2. On October 2, 2024 Plaintiff Garcia initiated a representative action pursuant to PAGA. SA, ¶2.3.

On February 13, 2025, the Parties mediated with Hon. Jill Sperber, Esq. After a full day of arms'-length negotiations, the matter was settled in principle. The Parties negotiated all necessary terms and entered the Settlement Agreement presented for preliminary approval. Khoury Decl., ¶20; SA, ¶2.5.

To effectuate the Settlement, the Parties sought, and on June 12, 2025 were granted, consolidation of the Class Action and Representative Action, with the Class Action serving as the lead case. Khoury Decl., ¶21; SA, ¶6.

IV. PRE-MEDIATION INVESTIGATION AND DISCOVERY

Prior to mediation, Plaintiff obtained, through informal discovery, pay data, exemplar contracts, recruiting and advertisement documents, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to fully understand the nature and scope of the allegations in the Complaint. SA, ¶2.6. Backyard Products provided that, through January 15, 2025, there were 509 Class Members (35 of whom had worked in the last 30 days)

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

who performed 17,677 Installations, and 153 Aggrieved Employees who performed 8,960 Installations. Backyard Products provided that its review of the Skedulo application showed the majority of Installations were completed within a single day. Khoury Decl., ¶¶22, 23. Plaintiff imputed an average Installer hourly rate of pay of $17.50 by dividing his average pay per Installation ($350) by the average time it took him to complete the Installation over two days (20 hours). Khoury Decl., ¶24.[4]

V. PLAINTIFF'S CLAIMS AND BACKYARD PRODUCTS' DEFENSES

A. Misclassification

Plaintiff contends Installers were misclassified as independent contractors under the "ABC Test"[5] or, alternatively, the right-to-control[6] test. Khoury Decl., ¶26; **Exh. 2**, ¶¶3-11. As to the "ABC Test," Plaintiff contends Installers: (a) were not free from the control and direction of Backyard Products, because they performed installations according to Backyard Products' specifications; (b) did Backyards Products' usual business by installing sheds and playsets produced by Backyard Products; and (c) did not customarily engage in independently established trades. Khoury Decl., ¶27. Plaintiff contends this misclassification was willful, subjecting Backyard Products to penalties under Labor Code section 226.8. Khoury Decl., ¶28; **Exh. 4**.

Backyard Products contends it rightfully classifies Installers as independent contractors under the "ABC Test" because Installers: (a) performed Installations on-site without Backyard Products' supervision; (b) did work outside Backyard Products' usual business (manufacturing); and (c) customarily engaged in independently established trades. Khoury Decl., ¶29.

///

---

[4] The Parties excluded the builders and installations covered by a prior settlement, in the case of *Brian Dunn v. Backyard Products, LLC*, Riverside Superior Court Case No. RIC 1901927, that covered a Class Period of March 18, 2015 through August 31, 2020, and that was subject to a separate release. Khoury Decl., ¶25.

[5] *See* Labor Code §§ 2750.3 (repealed September 4, 2020); *see also* 2775(b)(1) (effective September 4, 2020).

[6] *See S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341.

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

B. Unpaid Wages

Plaintiff contends Class Members were only paid for Installations, and as such, were not paid all hourly wages they were owed for all time worked. Khoury Decl., ¶30. Specifically, Plaintiff contends Installers were not paid for time spent: driving to pick up unassembled sheds; driving to Installation sites; and communicating with Backyard Products regarding Installations. Khoury Decl., ¶31. Plaintiff contends each Installation required him to work about three (3) hours of unpaid straight time. Khoury Decl., ¶32.

Backyard Products contends Installers were independent contractors not subject to the Labor Code requirement to pay wages. Backyard Products further contends that the majority of sheds could have be installed in four and one-half (4.5) hours or less, meaning Installers rarely worked over eight (8) hours per day. Khoury Decl., ¶33.

C. Meal & Rest Period Violations

Plaintiff contends Backyard Products did not have any meal or rest period policies and did not authorize and permit 30-minute, uninterrupted meal periods or 10-minute rest periods. Khoury Decl., ¶34. Backyard Products contends: Installers were independent contractors not subject to the Labor Code requirement to provide meal and rest breaks; Installers could decide independently when to take breaks because they had no Backyard Products' supervision during Installations; and that the overwhelming majority of shed Installations could be completed in 4.5 hours or less, before the entitlement to a meal period would arise. Khoury Decl., ¶35.

D. Unreimbursed Business-Related Expenses

Plaintiff contends Installers had to use their personal cell phones, vehicles, and tools, and had to purchase their own liability insurance under the Subcontractor Installer Agreement, to perform Installations for Backyard Products, but that Backyard Products had no policy to, and did not, reimburse them for these necessary business expenses. Khoury Decl., ¶36. Installer vehicle expenses included: insurance, maintenance, fuel, and mileage. **Exh. 2**, ¶134. Installer tool expenses included: ladders, roofing/framing guns, compressors, and hoses. *Id*. Backyard Products contends Installers were independent contractors not subject to the Labor Code requirement to reimburse necessary business expenses. Khoury Decl., ¶37.

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

E. Inaccurate Wage Statements & Unpaid Final Wages

Plaintiff contends Backyard Products willfully failed to issue wage statements and timely final wages to Installers. Khoury Decl., ¶38. Backyard Products contends Installers were independent contractors not subject to the Labor Code requirements to provide wage statements and timely final wages. Khoury Decl., ¶39.

VI. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

Backyard Products will pay a Gross Settlement Amount ("GSA") of $1,350,000 (SA, ¶1.22) - based on 17,677 installations performed by the Class (SA, ¶1.44)[7] - which includes: (a) an Administration Expenses Payment to Administrator ILYM Group, Inc. ("ILYM" or "Administrator") not to exceed $10,000 (SA, ¶¶1.2, 1.3, 3.2.3, 8.1); (b) a Class Counsel Fees Payment of not more than one-third of the GSA, currently estimated as $450,000, and a Class Counsel Litigation Expenses Payment not to exceed $30,000 (SA, ¶¶1.6, 1.7, 3.2.2); (c) a Class Representative Service Payment not to exceed $10,000 to Plaintiff (SA, ¶¶1.14, 3.2.1); and (d) PAGA Penalties of $75,000—$56,250 to the LWDA (75%) and $18,750 (25%) to Aggrieved Employees (SA, ¶¶1.27, 1.33, 3.2.5); Khoury Decl., ¶40.

The remainder, estimated at $775,000, is the Net Settlement Amount. SA, ¶¶1.28, 3.2.4. Plaintiff has consented in writing to the division of attorneys' fees between Mara Law Firm (50%) and Cohelan Khoury & Singer (50%). Garcia Decl., ¶16. Current actual itemized costs total $16,355.41. Khoury Decl., ¶41 ($237.43); Mara Decl., ¶11 ($16,117.98), **Exh. 5** - Itemized Costs. Plaintiff anticipates incurring a few hundred dollars more in costs in filing the instant motion and motion for final approval. Khoury Decl., ¶42; Mara Decl., ¶11.

Backyard Products will pay the employer's share of payroll taxes in addition to the GSA. SA, ¶¶3.1, 4.3. None of the GSA will revert to Backyard Products. SA, ¶3.1. Uncashed checks will be transmitted to California Controller's Unclaimed Property Fund. SA, ¶4.4.3.

---

[7] If the total number of Installations as of the end of the Class Period exceeds 17,677 by greater than 10%, then the GSA shall increase pro rata based on the number of additional Installations above 10% (i.e., if the number of Installations is 11% greater than 17,677, then the GSA shall increase by 1%). SA, ¶9.

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

The Net Settlement Amount (est. $775,000) will be divided by the total number of Class Period Intallations (approximately 17,677), resulting in payment of approximately $43.84 per Installation performed to each Participating Class Member. Khoury Decl., ¶43; SA, ¶¶1.23, 1.34, 3.2.4. The Aggrieved Employees' share of the $75,000 PAGA Penalties ($18,750) will be divided by the total number of PAGA Period Installations (approximately 8,960), resulting in payment of approximately $2.09 per PAGA Period Installation. Khoury Decl., ¶44; SA, ¶¶3.2.5, 3.2.5.1. The average Participating Class Member Payment will be $1,522.59 ($775,000 NSA/509 Class Members), and the average Aggrieved Employee Payment will be $122.55 ($18,750/153 Aggrieved Employees). Khoury Decl., ¶45. Each Participating Class Member Payment will be allocated 30% to wages (reported on an IRS Form W-2) ("Wage Portions") and 70% to penalties and interest (reported on an IRS Form-1099). SA, ¶3.2.4.1. Backyard Products will, separately from the GSA, pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. SA, ¶3.1.

B. Released Claims

Participating Class Members release Released Parties[8] from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaints, for the Class Period. Khoury Decl., ¶46; SA, ¶5.3. Aggrieved Employees release Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Action and the PAGA Notice, for the PAGA Period. Khoury Decl., ¶47; SA, ¶5.4. Plaintiff releases Released Parties "from all claims" arising during the Class Period, and also waives the protections of California Civil Code section 1542. Khoury Decl., ¶48; SA, ¶¶5.1, 5.2.

C. Settlement Administration and Notice

All Parties have agreed to the proposed language of the Class Notice. Khoury Decl., ¶49. Within fifteen (15) calendar days of Preliminary Approval, Defendant will provide the

[8] Released Parties means Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, subsidiaries (including but not limited to Backyard Storage Solutions, LLC and Backyard Play Systems, LLC), and assigns. SA, ¶1.40.

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

Class Data to ILYM. Khoury Decl., ¶50; SA, ¶4.2. Within fourteen (14) calendar days after receiving the Class Data, ILYM will search the National Change of Address Database to update and correct addresses, and will mail a Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail. Khoury Decl., ¶51; SA, ¶8.4.2 and **Exh. A** thereto; Declaration of Lisa Mullins on behalf of ILYM ("ILYM Decl."), ¶6. For Class Notices returned as undeliverable, ILYM will skip-trace search for an alternate address and re-mail the Class Notice within three (3) buisness days. Khoury Decl., ¶52; SA, ¶8.4.3; ILYM Decl., ¶7. In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be the extended by fourteen (14) calendar days. Khoury Decl., ¶53, SA, ¶¶1.42, 8.4.4.

The Class Notice informs all Class Members about the claims, the terms of the Settlement, the releases, the anticipated distribution, the amount of fees and expenses being requested by Class Counsel, the amount of the Service Payment being requested by Plaintiff, and how Class Members can dispute the number of Installations allocated to them, object to the Settlement, and request exclusion from the Settlement, as well as the timeline for doing so. Khoury Decl., ¶54; SA, ¶¶8.5-8.7 and **Exh. A**; ILYM Decl., ¶8. Further, the Class Notice will include the date and place of the final approval hearing, as well as information regarding how Class Members may access the proceedings remotely. Khoury Decl., ¶55; SA, **Exh. A**. All settlement checks mailed out will expire after one hundred eighty (180) days. Khoury Decl., ¶56; SA, ¶4.4.1. The total amount of expired checks will escheat to the State of California's Controller, to be held in the name of each expired check payee, pursuant to applicable unclaimed property laws. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code section 384. Khoury Decl., ¶57; SA, ¶4.4.3.

VII. ARGUMENT

A. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement the Court must find a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801. A proposed settlement is presumed fair where: (1) parties settle after

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

extensive arms'-length negotiations; (2) sufficient investigation and discovery allow counsel and the Court to act intelligently; (3) counsel is experienced; and, (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at p. 1802. Here, the first three factors are met. Khoury Decl., ¶58. The fourth *Dunk* factor cannot be known until Class notice and response.

1. Serious, Informed, Non-Collusive Negotiations Led to Settlement

The Settlement was reached through arm's-length, non-collusive negotiations facilitated by the Honorable Jill Sperber, Esq., an experienced and respected mediator. Khoury Decl., ¶¶20, 59.

2. Discovery and Stage of the Proceedings Support Settlement

Plaintiff's Counsel investigated all claims and defenses before filing this action. When the Parties agreed to mediation, Plaintiff requested, and Defendant produced, all data and documents needed to assess maximum and realistic liability. Khoury Decl., ¶¶22, 60.

Investigation and informal discovery gave the Parties a clear understanding of their strengths and weaknesses before negotiations. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 410.

3. Counsel are Highly Experienced in Similar Litigation

Plaintiff's Counsel have significant experience in wage and hour class actions. Declaration of David Mara ("Mara Decl."), ¶¶1-10; Khoury Decl., ¶¶1-11. This allowed Counsel to compare the settlement with the risks of further litigation, including trial and appeals. Defense counsel, Ashton Riley and Josh Klein of Fisher Phillips LLP, are experienced wage and hour class action litigators who defended Backyard Products vigorously, including through mediation and negotiation of all settlement terms. Khoury Decl., ¶62.

B. The Settlement is a Reasonable Compromise of Claims[9]

The GSA represents 83 percent of the realistic value of the Class claims, as explained below: $232,010.63 (Unpaid Wages) + $79,970.75 (Liquidated Damages) + $154,673.75 (Meal Period Premium Wages) + $154,673.75 (Rest Period Premium Wages) + $742,949.50 (Expense

[9] *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129 (requiring presentation to the court of information so court may determine whether settlement respresents a reasonable compromise of claims).

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

Reimbursements) + $61,200 (Wage Statement Penalties) + $196,350 (Waiting Time Penalties) = $1,621,828.38. $1,350,000/$1,621,828.38 = 83 percent. Khoury Decl., ¶63. The GSA further represents 54 percent of the realistic value of the Class and PAGA claims combined: $1,621,828.83 + $884,000 = $2,505,828.83. $1,350,000/$2,505,828.83 = 54 percent. Khoury Decl., ¶64.

Plaintiff discounted the maximum value of each claim below given the common risks that Backyard Products might: successfully compel Plaintiff to arbitration and have the class claims dismissed under the Subcontractor Installer Agreement;[10] defeat certification given the need for individualized inquiries as to damages;[11] and at summary judgment or trial, prove Plaintiff was properly classified as an independent contractor. Khoury Decl., ¶65.

1. Unpaid Wages[12]

Maximum straight time damages were calculated as: 17,677 Installations x 3 hours unpaid straight time per Installation, as estimated by Plaintiff x $17.50 per hour = $928,042.50. Maximum liquidated damages were calculated as: 17,677 Installations x 3 hours x $15.00 average minimum wage = $799,707.48. For a realistic exposure, Plaintiff discounted unpaid straight time wages by 75%, to $232,010.63, to account for the common risks above. Plaintiff discounted liquidated damages by 90%, to $79,970.75, for the same reasons, and because

---

[10] *See, e.g. Stock v. Fargo*, 2023 U.S. Dist. LEXIS 152663, at * 26 (C.D. Cal.) (finding arbitration agreements existed between Plaintiffs and Wells Fargo based on their acceptance of Wells Fargo's Online Access Agreements).

[11] *See, e.g. Wilson v. The La Jolla Group* (2021) 61 Cal.App.5th 897, 903, 922 (in case in which Defendant "classified [signature-gatherers] as independent contractors and paid them per signature submitted," the Court affirmed denial of class certification as to all wage, break, and reimbursement claims alleged, and reversed denial only as to wage statement claim because wage statements were not provided).

[12] Plaintiff does not contend for this analysis that Backyard Prodocts' Installation pay fell below the minimum or overtime wage rate for all time installing. The average minimum wage owed to Installers during the Class Period was $15.00, with an average overtime rate owed of $22.50: 2025 ($16.50) + 2024 ($16.00) + 2023 ($15.50) + 2022 ($15.00) + 2021 ($14.00) + 2020 ($13.00) = $90/6 years = $15.00; $15.00 x 1.5 = $22.50. Plaintiff estimated he was paid $350 for twenty (20) hours of work, or $17.50 per hour. If sixteen (16) of those hours were straight time, and four (4) were overtime, as explained herein, Plaintiff estimated he should have been paid at least $330 per Installation (16 x $15.00 + 4 x $22.50, or $240 + $90). As he was paid approximately $350, Plaintiff does not contend there was a shortfall of minimum or overtime wages paid by Backyard Products for Installations. Khoury Decl., ¶67.

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

Backyard Products might avoid paying these damages if it showed its omission was "in good faith" and based on "reasonable grounds." See Labor Code § 1194.2. Khoury Decl., ¶66.

2. Meal and Rest Period Premium Wages

Maximum meal and rest period premium wages were calculated, each, as: 17,677 Installations x 2 days per Installation x $17.50 per hour x 1 premium = $618,695. For a realistic exposure, Plaintiff discounted meal and rest period premiums by 90%, to $154,673.75, given the common risks above, and given that Backyard Products might prove the majority of Installations took less than five hours to complete, meaning no meal periods were due, and that Installers were free to take meal and rest periods when they pleased, given no Backyard Products' supervision on site. Khoury Decl., ¶68.

3. Expense Reimbursements

Maximum expense reimbursements, relying on Plaintiff's estimates and generally available information as to cell phone rates, were calculated as totaling $3,435,548, given the following calculations: *Mileage*: 17,677 Installations x 2 days per Installation x 100 miles per day worked x $0.67 per mile (2024 rate) = $2,368,718; *Cell Phone*: 56 months in the Class Period x an estimated 35 current employees per month = 1,960 months x $48.00 per month[13] = $94,080; *Liability Insurance*: 1,960 months x $250 per month = $463,750; and *Tools*: 509 Installers x $1,000 per Installer = $509,000. For a realistic exposure, Plaintiff first eliminated the liability insurance reimbursement amount, leaving exposure of $2,971,798, given that the mileage reimbursement method—an alternative to the actual expenses method—may be used to "approximate[] the per-mile costs of owning and operating an automobile." *Gattuso v. Harte-Hanks Shoppers, Inc*. (2007) 42 Cal.4th 554, 569. Next, Plaintiff reduced the remaining amount by 75%, given the common risks above, to $742,949.50. Khoury Decl., ¶69.

4. Wage Statement Penalties

Maximum wage statement penalties were calculated as: 153 Installers x $4,000 maximum penalty under section 226(e) = $612,000. For a realistic exposure, Plaintiff discounted wage statement penalties by 90%, to $61,200, given the common risks above, and

---

[13] $144 average monthly phone bill, assuming one-third use for work purposes, versus personal. *See, e.g*. [What is the Average Cell Phone Bill Per Month? | MoneyLion] (last accessed July 28, 2025).

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

given most Installers likely worked far fewer than the 41 pay periods which would entitle them to the maximum $4,000 in penalties. Khoury Decl., ¶70.

5. Waiting Time Penalties

Maximum waiting time penalties were calculated as: 374 Installers[14] x 30 days x average daily wage of $175.00[15] = $1,963,500. For a realistic exposure, Plaintiff discounted waiting time penalties by 90%, to $196,350, given the common risks above, and given that Plaintiff is unaware of any published authority which addresses when an app-based worker who chooses assignments is considered a former employee for purposes of waiting time penalties being owed. Khoury Decl., ¶71.

6. PAGA Penalties

Backyard Products Installers were paid per Installation, via direct deposit. Khoury Decl., ¶72. Therefore, each Installation can be viewed as its own pay period. Khoury Decl., ¶73. Maximum PAGA penalties were calculated as: $8.84 million for seven violations: Section 1194 (minimum wages)—$1,767,700 (17,677 Installations x $100 pay periods); sections 512, 226.7 (meal periods)—$1,767,700; section 226.7 (rest periods)—$1,767,700; section 2802 (expense reimbursements)—$196,000 (1,960 months x $100) (assuming reimbursement owed monthly); section 226 (wage statements)—$1,767,700; section 203 (final wages)—$47,400 (474 former employees, penalties at $100 per final pay period); and section 226.8 (willful misclassification)—$1,530,000 (153 Installers x $10,000 minimum penalty). For a realistic exposure, Plaintiff discounted waiting time penalties by 90%, to $884,000, given the likelihood the court would: limit the scope of Plaintiff's PAGA claims due to manageability concerns;[16]

---

[14] 509 Installers – 35 who had worked in the last 30 days = 474, who could be considered "former." The Class Period, from September 1, 2020 through April 30, 2025, is approximately 56 months. The three-year waiting time penalties period, from September 1, 2021 through April 30, 2025, is approximately 44 months. Therefore, Plaintiff calculated that approximately 79 percent of the "formers," or 374 Installers, were entitled to waiting time penalties.

[15] Plaintiff estimated $350 per Installation over two days, or $175 per day.

[16] The "superior court may limit the evidence to be presented at trial or otherwise limit the scope of any claim filed pursuant to this part to ensure that the claim can be effectively tried." Lab. Code § 2699(p).

decline to stack PAGA penalties;[17] decline to award the maximum penalties as they would be "unjust, arbitratrary and oppressive, or confiscatory,"[18] especially given that pay periods here are not the typical weekly or bi-weekly pay periods; and find that misclassification, if any, was not willful, negating $1.53 million in penalties under section 226.8. Khoury Decl., ¶74.

C. The PAGA Penalties are Reasonable

The $75,000 PAGA Penalties will be paid $56,250 (75%) to the LWDA, and $18,750 (25%) to Aggrieved Employees. Khoury Decl., ¶75; SA, ¶¶1.33, 3.2.5. Where PAGA penalties are negotiated in good faith, with "no indication [the] amount was the result of self-interest at the expense of other Class Members," such amounts are considered reasonable. *Hopson v. Hanesbrands Inc*, (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900, at *24. The $75,000 PAGA Penalties, which represents 5.6% of the GSA ($75,000/$1,350,000), are well within the range of allocations approved by California courts.[19] Khoury Decl., ¶76. Further, the percentage of maximum exposure achieved by the PAGA Penalties is in line with those accepted by other California district courts. Khoury Decl., ¶77. Finally, the Motion and exhibits were provided to the LWDA on the date filed. Khoury Decl., ¶78– **Exh. 6 -** LWDA Confirmation of Receipt.

D. The Attorneys' Fees Requested are Reasonable.

Class Counsel seek attorneys' fees up to $450,000, representing one-third of the Gross Settlement Amount. This request is reasonable and should be granted. Khoury Decl., ¶¶40, 79. Courts often award fees equaling one-third of the gross recovery in class action settlements. "[R]egardless whether the percentage method or the lodestar method is used, fee awards in

---

[17] "California Law is unsettled as to whether PAGA penalties may be stacked, and has observed that in the absence of binding appellate decision on this issue, courts have gone in different directions.…" *Merante v. Am. Inst. for Foreign Study, Inc*. (N.D.Cal. July 25, 2022, No. 21-cv-03234-EMC) 2022 U.S.Dist.LEXIS 131833, at *18.

[18] *See* Lab. Code § 2699(e)(2).

[19] "In wage and hour class action cases that settle, [ ] very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members." *Magadia v. Wal-Mart Assocs.* (2019) 384 F. Supp. 3d 1058, 1101; *see also Mejia v. Walgreen Co*. (E.D. Cal. Mar. 24, 2021) 2020 U.S. Dist. LEXIS 220685, *26 ("courts frequently approve settlements…that minimize the total amount of the settlement that is paid to PAGA penalties in order to maximize payments to class members.").

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n. 11; *see e.g., Laffitte*, 1 Cal. 5th at pp. 485-87 (affirming trial court's granting of a fee request for one-third of a $19 million settlement). Indeed, Class Counsel have been awarded one-third of the common fund in numerous class action and PAGA actions. Khoury Decl. ¶81. Class Counsel will provide their time records at final approval. Khoury Decl., ¶82.

E. The Service Payment Requested is Reasonable.

Plaintiff seeks a $10,000 service payment for the work he did, and the duties he undertook, by filing this action against Backyard Products. Garcia Decl., ¶10. Plaintiff estimates he spent approximately 30 hours working on his two cases with his attorneys, which he details in his declaration. *Id.*., ¶¶4-9. Plaintiff also executed a general release in conjunction with the Settlement. Garcia Decl., ¶13; SA, ¶5.1. This service payment comports with others awarded by California district courts, and those obtained by Class Counsel, under similar circumstances. Khoury Decl., ¶83. Further, given that the average Participating Class Member Payment will be *significant*, at $1,522.29, a service payment of $10,000 is not unreasonable. Khoury Decl., ¶84. Thus, this Court should award Plaintiff $10,000 in recognition of his service to the Class and general release. Khoury Decl., ¶85.

VIII. CONDITIONAL CLASS CERTIFICATION IS APPROPRIATE

When an ascertainable and sufficiently numerous class exists, with a well-defined community of interest, and class litigation is superior to alternate means, certification is appropriate. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. Here, the Class of all individuals performing installations for Backyard Products during the Class Period is ascertainable from Backyard Products's records, and is so numerous joinder would be impracticable, at 509 Members. Khoury Decl., ¶86. Here too, the same written policies applied to the entire putative Class, and common questions predominate. Khoury Decl., ¶87. Plaintiff's claims are typical because he was an individual, classified as an independent contractor, subject to the same written policies as Class and because he suffered the same violations. Garcia Decl., ¶¶2-3, 11-12, 14; Khoury Decl., ¶88. Plaintiff can and will continue to protect the interests of

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

the Class. Plaintiff accepted the risks of serving as a class representative, spent significant time assisting in the prosecution of the consolidated actions, and placed the interest of the class above his own. Garcia Decl., ¶¶2-3, 11-12, 14; Khoury Decl., ¶89. Plaintiff's attorneys are qualified to conduct the litigation and Plaintiff's interests are not adverse to the interest of the Class. *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450. Garcia Decl., ¶15; Mara Decl., ¶¶1-10; Khoury Decl., ¶¶1-11, 90. Finally, this Settlement should be preliminarily approved, though it may affect another pending superior court action against Backyard Products. Khoury Decl., ¶91.[20]

IX. CONCLUSION

Plaintiff requests the Settlement be preliminarily approved, Notice approved and ordered mailed to the Class, ILYM Group appointed Settlement Administrator, Mara Law Firm and Cohelan Khoury & Singer appointed Class Counsel, Juan Garcia appointed Class Representative, and a Final Approval Hearing date be set.

Respecfully submitted,

MARA LAW FIRM, PC
COHELAN KHOURY & SINGER

Dated: July 31, 2025

By: Rosemary Khoury
Rosemary C. Khoury
Attorneys for Plaintiff JUAN GARCIA, on behalf of himself and all others similarly situated

[20] The Parties are aware of two later filed actions, both on behalf of Victor Hernandez, against Backyard Products LLC. One *Hernandez* action was pending before the U.S. District Court for the Northern District of California, Case No. 5:24-cv-05963-EKL, but was apparently terminated on May 8, 2025. See https://ecf.cand.uscourts.gov/cgi-bin/HistDocQry.pl?114225722066097-L_1_0-1. The other *Hernandez* action is pending before the Sacramento County Superior Court, Case No. 24CV449470. On May 15, 2025, the individual PAGA claims were compelled to arbitration and the representative PAGA claims were stayed pending arbitration.

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101